What Works:
A Review of Auto Insurance Rate Regulation in America and How Best Practices Save Billions of Dollars

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J. Robert Hunter | Director of Insurance
Tom Feltner | Director of Financial Services
Douglas Heller | Consulting Insurance Expert

CFA
Consumer Federation of America

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Executive Summary

Over the past quarter century, auto insurance expenditures in America have risen by more than 40 percent. Consumers in some states are paying 80 percent, 90 percent, and even 100 percent more for auto insurance than they paid in 1989. These increases have accrued despite substantial gains in automobile safety and the arrival of several new players in the insurance markets. Only in California, where a 1988 ballot initiative transformed oversight of the industry and curtailed some of its most anti-consumer practices, has the amount that drivers spend on auto insurance declined.

This report follows prior reports in 2008 and 2001; it is part of Consumer Federation of America's ongoing effort to evaluate the various types of insurance regulatory regimes found across the country and identify best practices from a consumer protection perspective. The data sets we have reviewed allow us to conduct a rigorous comparative analysis of both state markets and regulatory systems.

The data provides several important findings about the insurance marketplaces in each state and the efficacy of different approaches to insurance regulation. We found,

On insurance prices:

1. The average expenditure on auto insurance since 1989 has increased by 43.3 percent;
2. The states with the highest increases are Nebraska, Louisiana, Montana, Wyoming and Kentucky;
3. The states with the lowest increases are Hawaii, New Hampshire, New Jersey, Massachusetts, and Pennsylvania; and
4. Only California has seen average expenditures decrease since 1989.

On regulatory systems:

1. The prior approval system of regulation, in which insurers must apply for rate changes before they can be imposed in the market, is most effective at keeping rates low;

2. Markets that are less or not regulated tend to have the most substantial increases;

3. While mildly and strongly regulated states tend to have very or somewhat competitive markets for auto insurance, deregulated and flexible rating states have the least competitive markets; and

4. Insurance companies are generally able to adapt to any regulatory system and consistently maintain reasonable profitability.

On California's unique success:

1. Over $100 billion in savings for motorists as a result of lower auto insurance rates driven by the strong regulatory oversight and more competitive market fostered by the 1988 insurance reform measure known as Proposition 103;

2. Between 1989 and 2002, insurance companies operating in California issued over $1.43 billion in premium refunds to more than seven million policyholders under Proposition 103's rollback mandate;

3. State rules prohibit many of the discriminatory elements that plague low-income and minority consumers in other states, especially prohibitions on use of credit scoring and prior insurance coverage as rating factors;

4. State rules temper the impact on consumers of other non-driving related classifications, such as territory and occupation by requiring that the most weight in the pricing for a consumer be given to driving record;

5. The intervenor system, allowing systemically-funded public challenges to rate hikes, improves both industry and government accountability; and

6. The state has innovated in the marketplace with the implementation of an unsubsidized alternative policy for low-income consumers.

The research conducted for this paper, building on prior research, clearly indicates that consumers across the country would be better served with a more robust, prior-approval system of auto insurance regulation than the system currently in place in most states. Policymakers and regulators should consider these findings as they look for ways to better protect consumers from marketplace abuses and from unnecessary increases in insurance premiums.

If every state in the nation were to implement and enforce a regulatory agenda as demonstrably pro-consumer as that in California, the research indicates that Americans could save over $350 billion over the next decade, even as insurance companies realize reasonable profitability. In order to achieve the most effective form of a prior approval system, states should construct an intervenor system that provides resources for citizen and organizational watchdogs who can serve as both a resource for and check on state Departments of Insurance and who will help hold insurance rates down to appropriate levels. Further, states should proscribe the egregious non-driving related premium factors that lead to higher premiums for low- and moderate-income drivers.

I. Analysis of Auto Insurance Results from Every State

A. Overview

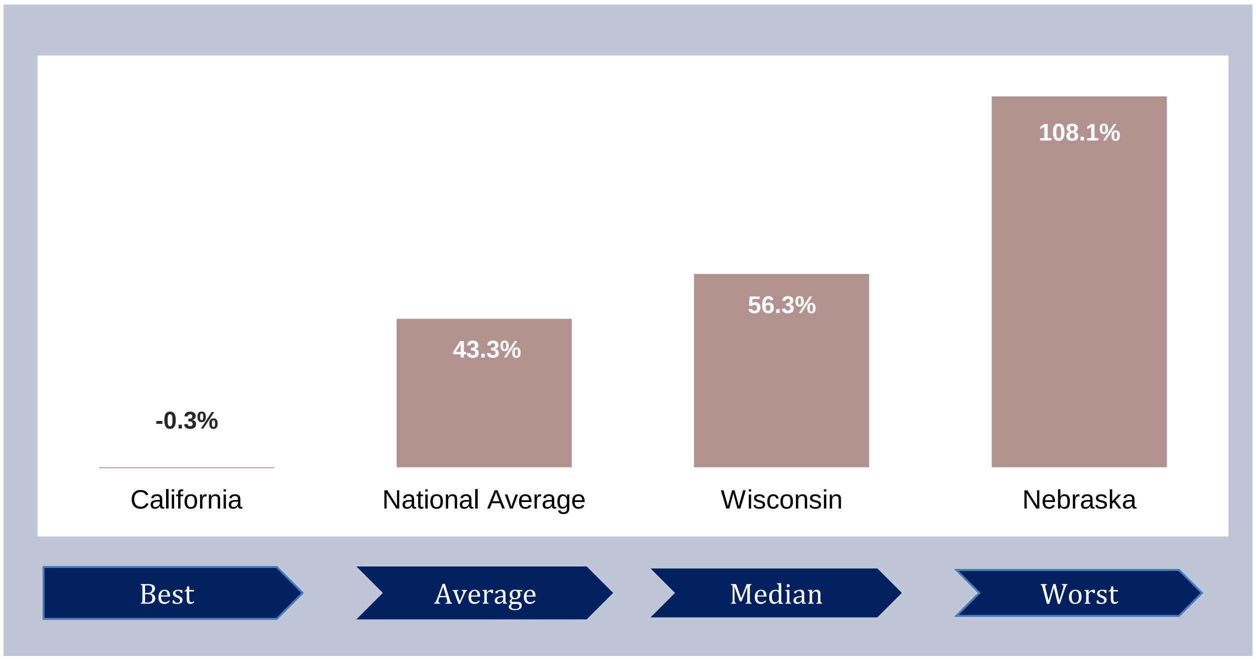
A primary purpose of this report is to assess the effectiveness of the various regulatory approaches to auto insurance across the country. Through our research we have identified the best practices that can serve as models for regulators and policymakers seeking to ensure a competitive and fair market that is first and foremost protective of consumers. In order to develop our findings we have looked at data from 1989-2010 (the last year for which complete data are available, except where noted)[i] and considered a variety of questions about state markets and the regulatory systems in each state. Among those questions are:

1. How have auto insurance expenditures changed over time?
2. How have expenditure changes differed under different regulatory systems?
3. How competitive is the auto insurance market in each state?
4. How profitable has the industry been in each state?
5. What factors other than the regulatory approach might explain state variation in expenditure change over time?
6. What steps have states taken to ensure fair rates and how successful have they been?

B. Analysis

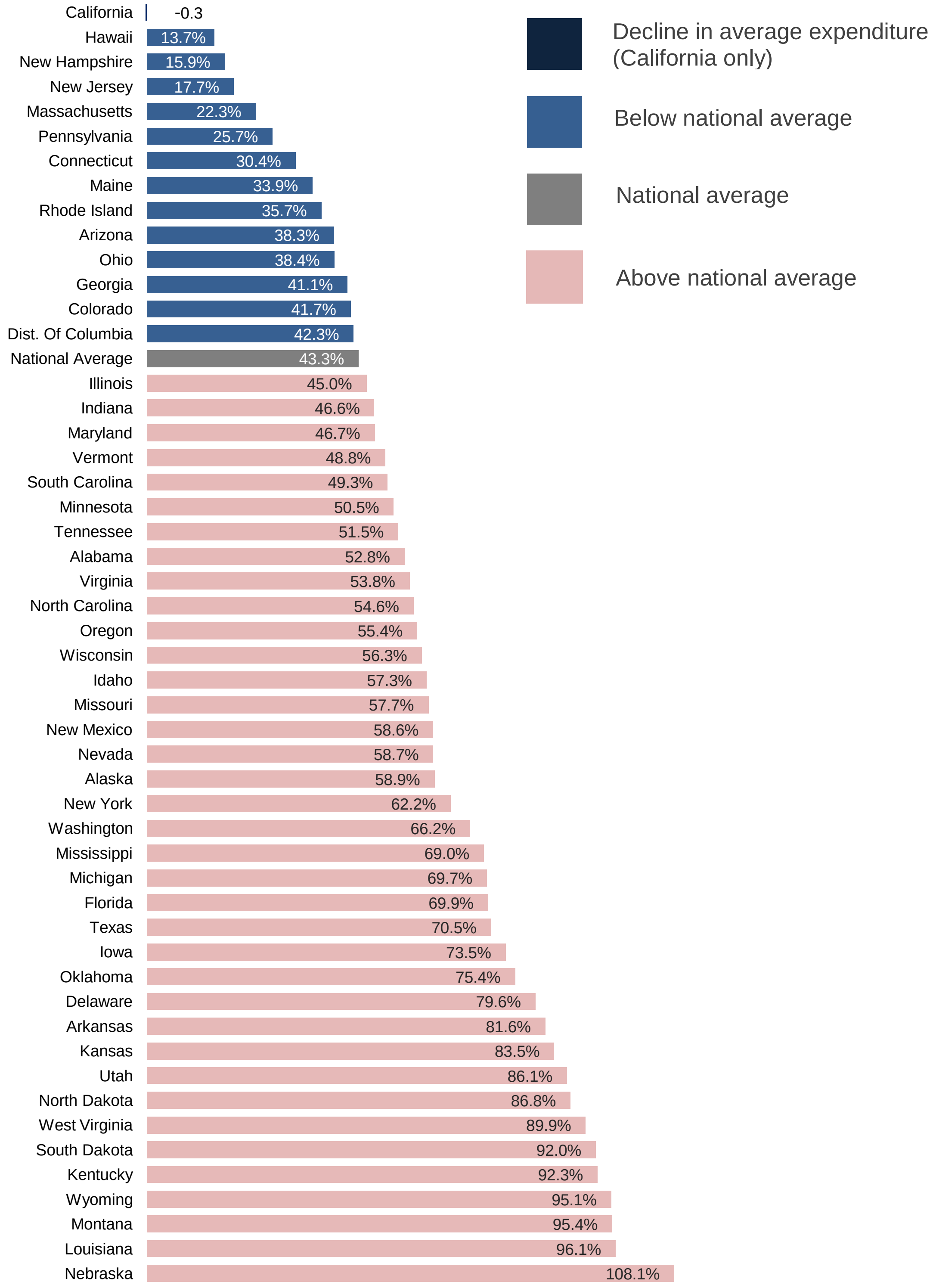
Annually, Americans spend $174 billion on auto insurance.[ii] Between 1989 and 2010 auto insurance expenditures across the country increased by 43 percent. However, the amount spent on auto insurance and the change of insurance costs over time varies dramatically from state to state. In fact, the national average increase of 43 percent was significantly influenced and lowered by data from the nation's most populous state, California, which is also the only state to have experienced a reduction in the average spent on auto insurance annually. The median increase during this time period was Wisconsin's 56 percent rise in insurance costs, while Nebraskans' spending on auto insurance doubled over the twenty one year period.

Figure 1. Best to Worst: Change in Auto Insurance Expenditures 1989-2010



As Figure 2 shows, during this two-decade period expenditures on auto insurance have increased by more than 50 percent for drivers in 32 states. Thirty-eight states and the District of Columbia have faced increases above the national average of 43.3 percent. See Appendix 1-A. (An alternative calculation of auto insurance cost changes - the change in average premium - shows similar changes, with a national increase in average premiums of 42.8 percent.)[iii]

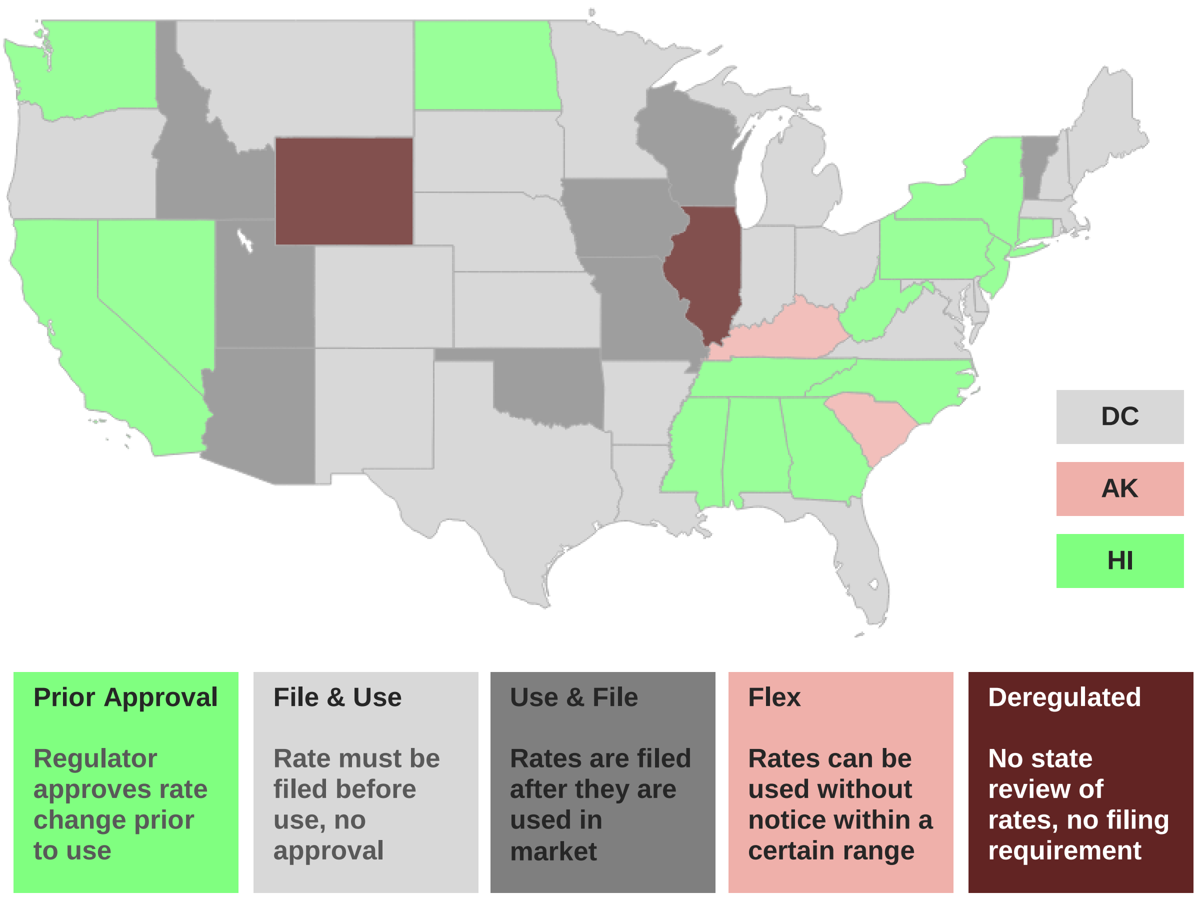
Figure 2. Change in Average Expenditure on Auto Insurance 1989-2010



Differences by Regulatory System

In the United States, auto insurance is regulated at the state level. Each state has its own unique set of laws and no two states' insurance regulation regimes are precisely the same. However, the states can be grouped, generally, among five different regulatory structures, ranging from the vigorous "prior approval" approach to rates in California to the virtual deregulation of rates in Wyoming. The five structures are:

Figure 3. Regulatory System by State



Our findings show that states with stronger regulatory systems - that is, states that require prior approval of rates before they can take effect - have had the most success in keeping auto insurance costs down. Figure 4 shows the regulatory system of the five states with the lowest auto insurance expenditure changes and the five states with the largest increases.

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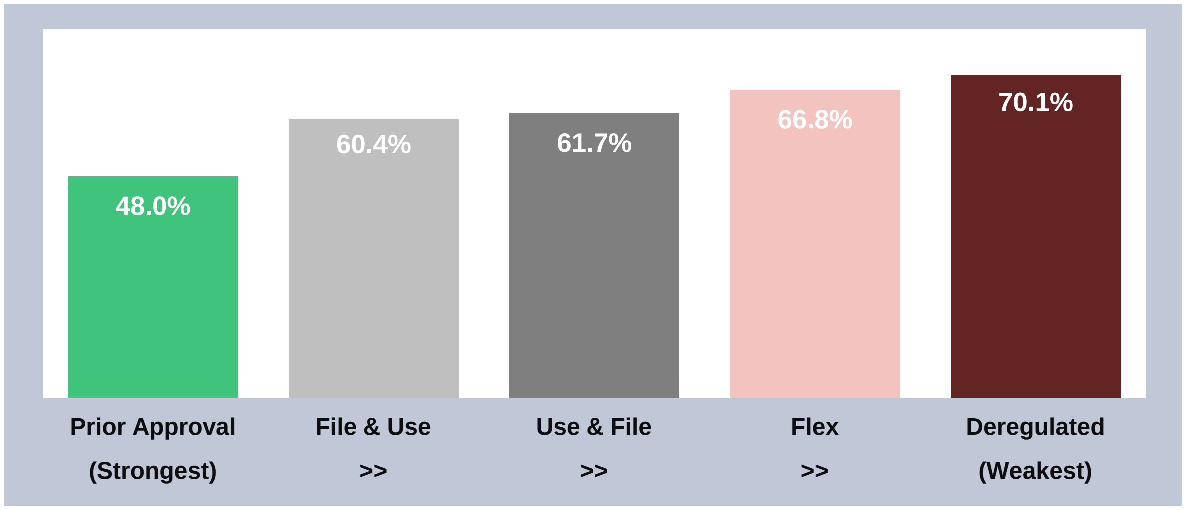
Figure 4. Regulatory Systems of States with Lowest and Highest Rate Changes

Lowest Rate Changes			Highest Rate Changes		
State	**Regulatory Structure**	**Change**	**State**	**Regulatory Structure**	**Change**
California	Prior Approval	-0.3%	Kentucky	Flex	92.3%
Hawaii	Prior Approval	13.7	Wyoming	Deregulated	95.1
New Hampshire	File & Use	15.9	Montana	File & Use	95.4
New Jersey	Prior Approval	17.7	Louisiana	File & Use	96.1
Massachusetts	File & Use*	22.3	Nebraska	File & Use	108.1

*Until 2008, MA used a state set system of ratemaking, which is an even stronger regulatory structure than prior approval. Since 2008, it has operated under a file and use system.

A simple average of the rate changes for the states aggregated by regulatory system illustrates the benefit to consumers of stronger regulatory regimes. Drivers in Prior Approval states have endured the lowest rate hikes, while those in Flex Rating and Deregulated states have seen the largest increases. (A premium-weighted analysis of the changes by regulatory systems keeps the same order as the simple averaging, except that the Deregulated states weighted increase is lower than all but Prior Approval, as a result of the dramatic population difference between the two states, Illinois and Wyoming.) See Appendix 1-B.

Figure 5. Average Increase in Auto Insurance Expenditures by Regulatory System 1989-2010



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Competition in the Auto Insurance Marketplace

"Regulatory systems that allow the most unregulated market activity produce the least competitive markets."

Unlike most products and services sold in the American marketplace, auto insurance is a government-mandated purchase for motorists in all states, save New Hampshire.

Additionally, the insurance industry has a rare exemption from federal antitrust laws *and* state antitrust laws in many states. Finally, insurance is a complex financial instrument that, for most people, is purchased but rarely, if ever, used, and studies show that consumers do not shop for coverage frequently.[iv] The interaction of these unique qualities makes the role and relevance of a competitive marketplace a complicated concern.

We consider two indicators of competitiveness, a standard measure and an analysis of state policy regarding market participation.

A Formal Measure of Competitiveness

To identify the level of market competition in the auto insurance market, we used the test commonly employed by the United States Department of Justice (DOJ) to measure competitiveness in a market, the Herfindahl-Hirshman Index (HHI).[v] The closer a market is to being a monopoly, the higher the HHI index. The DOJ considers a market with a score of less than 1,000 to be a competitive marketplace, a score of 1,000-1,800 to be a moderately concentrated marketplace and 1,800 or greater to indicate a highly concentrated marketplace.

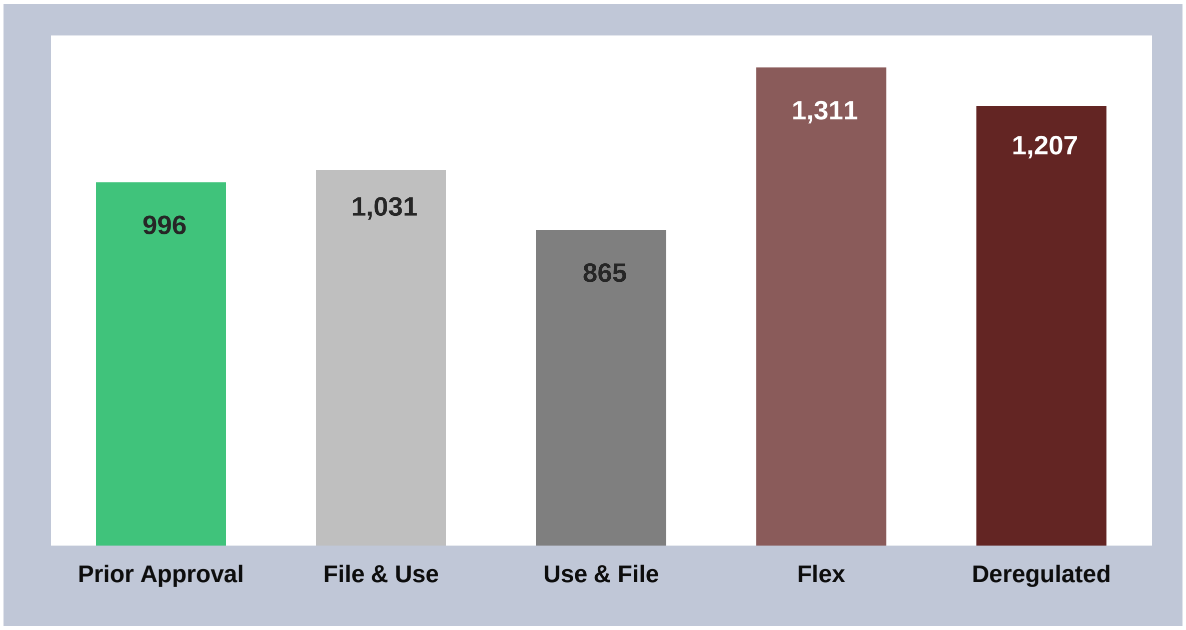
Figure 6. Most Competitive Markets

State	HHI
Maine	633
Vermont	662
Connecticut	702
New Hampshire	714
California	753
Washington	762
North Dakota	763
South Dakota	784
Nevada	788
Utah	796

See Appendix 1-C for all states' HHI scores

Our analysis finds that, generally, the level of competition tends to decrease, and HHI score increase, as regulation of the market gets weaker, except that the weakly regulated Use and File states have the lowest average HHI score. Half of the ten most competitive states use a Prior Approval system of regulation. Most notable, however, is that the regulatory systems that allow the most unregulated market activity – Flex Rating and Deregulated states – produce the least competitive markets. Deregulated states have average HHI scores of 1,207 and Flex states have an average HHI of 1,311, far higher than the averages of U&F, PA and F&U at 865, 996, 1,031, respectively (See Figure 7).

Figure 7. Average HHI by State Regulatory System



Competition-Enhancing Policies

Given the unique market power held by insurance companies *vis à vis* consumers, who have to purchase their product, states can play an important role in ensuring that motorists can access a competitive market for auto insurance. Below we describe several competition enhancing rules and practices we found amongst the states:

1. **Take All Good Drivers.** Only four states, California, Massachusetts, New Hampshire and North Carolina require insurers to take all good drivers who apply for insurance. In these states, a good driving record gives a consumer the right to obtain insurance from any licensed insurance company. This is a pro-competitive requirement, since all states but one require that consumers purchase auto insurance as a condition of driving their own car. Because of these mandatory insurance laws, auto insurance demand is inelastic. A mandate on insurers requiring that coverage be made available to good drivers balances this supply-demand situation.
2. **Enact and Enforce Antitrust Laws.** Only one state, California, fully applies its antitrust laws to the insurance industry. The insurance industry has historically engaged in extensive price fixing, relying in many instances on shared pricing tools developed by an industry funded "rating organization." When the industry is subjected to antitrust laws companies cannot engage in this collusive data sharing, which tends to result in inflated prices.
3. **Prohibit Shifting Good Drivers to Non-Preferred, Higher Rate Subsidiaries.** California is also the only state to require that an insurer group place good drivers into the lowest priced policy available from any of its companies when an insurance applicant asks for a quote. This blocks insurance companies from shifting drivers with good records into the expensive insurance policies written by an insurer's non-preferred subsidiary, which has been one of several techniques that insurers use to avoid selling policies to good drivers who do not fit into a company's target demographic.
4. **Insurer Profitability under Different Regulatory Systems.** We considered the question of whether the regulatory system in a state tends to support more or less profitability for the industry. Presumably, insurers would prefer a system that supports higher profits. As Figure 8 indicates, however, profits are relatively unaffected by regulatory systems, with only a slight trend toward higher profits in states with less regulation on an unweighted state-by-state basis, except that Flex Rating systems seem to trend toward lower profitability.

Figure 8. Profitability by Regulatory System, Weighted by Market Size

Regulatory System	Total Premium (in billions)	Average Annual Profitability
Prior Approval	$63.4	9.4%
File & Use	$63.8	7.7%
Use & File	$12.6	9.7%
Flex	$4.7	4.5%
Deregulated	$5.1	9.7%
Total	**$150**	**8.6%**

Perhaps most notable is the clear evidence that the stronger regulatory oversight associated with Prior Approval systems does not inhibit insurer profitability as some opponents of regulation might suggest. Figure 9 illustrates the five most profitable states since 1989 and the five least profitable states. Although there is a tendency toward higher profits in the less regulated states, the full list of states reveals that those with prior approval systems are distributed throughout the profitability range, with Hawaii as the most profitable, Nevada tied for the least, and another prior approval state, North Dakota, marking the data set's median at 9.1% average annual profit since 1989. See Appendix 1-D.

Figure 9. Most and Least Profitable States (Average Annual Profitability) 1989-2010

Most Profitable			Least Profitable		
State	**Regulatory Structure**	**Profitability**	**State**	**Regulatory Structure**	**Profitability**
Hawaii	Prior Approval	17.4%	Kentucky	Flex	4.7%
Maine	File & Use	14.0%	Michigan	File & Use	4.4%
Dist. Of Columbia	File & Use	13.7%	Louisiana	File & Use	3.9%
New Hampshire	File & Use	13.4%	Nevada	Prior Approval	3.7%
Vermont	Use & File	12.9%	South Carolina	Flex	3.7%

Steps States Have Taken to Ensure Fair Rates

Auto insurance prices can vary tremendously, based on the factors used by insurers to determine these rates. Some rating factors, like driving record, make a lot of sense in that the classification is based on a logical predicate: people who have driven poorly in the recent past will continue to drive poorly in the future and, hence, are more likely to file a claim. Moreover, data analysis confirms that this hypothesis is correct. Other rating factors, like credit scoring, do not have a logical or legitimate thesis underlying their use and are only supported by data that purports to show a correlation, but not a causal or even logical connection to a policyholder's driving record.

Our review shows that several states have taken steps to control or prohibit the use of unfair procedures to develop rate classifications like credit scoring. For example, Maryland has banned the use credit scoring for home insurance, but not for auto insurance. Hawaii and California have banned its use for auto insurance. Other states have put some restrictions, usually modest ones, on the use of credit scoring for underwriting and pricing insurance.

Only California has a comprehensive system to ensure that rates are set fairly. In that state, three auto rating factors are mandatory and must have the greatest impact on automobile insurance rates, with the first factor having the greatest impact of the three, and the third factor the least impact. The three factors are: (1) driving record, (2) miles driven, and (3) years of driving experience. Insurers can also propose other factors for approval. Credit scoring has not been approved for use in California. If another factor is approved (and several have been, ranging from type of vehicle driven to marital status and ZIP code of a driver's residence) that factor must have less impact on insurance rates than the third mandatory factor. Thus, unfair factors, even if they are approved, will have a limited impact on an individual's final auto insurance price. For example, the impact of territory – where a consumer lives – has been substantially reduced under California's rules.

In reviewing the regulatory systems of the states, we found that the most comprehensive regulatory requirements, with express standards for evaluating insurer rates and expenses, were the regulations of California. California is also the only state that funds consumer participation in the rate-setting process if an intervening consumer or consumer group makes a "substantial contribution" to a rate hearing. Three other states (Florida, South Carolina and Texas) had consumer advocates with the authority to intervene in a rate hearing on behalf of consumers. In Massachusetts, the attorney general can intervene in the ratemaking process.

C. Findings

Stronger Regulation Leads to Lower Rates for Automobile Insurance Consumers

We evaluated three significant factors in each state and for each of the five regulatory systems in use across the nation.

The first test examined the ability of a rating system to hold down rate increases. It was very clear in the results that the more stringent the regulatory regime, the lower the price increases that were observed. Prior Approval prices rose the least, rates in File and Use states the next slowest and then Use and File states. States with the least regulation, Flexible Rating and Deregulated states, were the least successful at holding prices down over the long term.

The second test was a test of competitiveness. Use and File states reported the least market concentration and highest average competitiveness, though half of the ten most competitive states were Prior Approval states (Prior Approval is only used in one-third of the states). States with Prior Approval and File and Use averaged around the 1,000 HHI breaking point, right between markets that are deemed to be competitive and those that are moderately concentrated. Most notably, deregulated systems, often called "Competitive States," exhibit the most market concentration and least competitive markets.

Next we examined the profits of the insurers in each state, categorized by regulatory system. It is not good for consumers if insurer profits are either too high or too low. Consistently low profits could lead to bankruptcy and volatility in the market, which is very disruptive to policyholders. Extremely high profits usually mean that insurers are charging too much for coverage. We found that profits do rise somewhat as regulation weakens, which is to be expected, although Flexible Rating states, which are weakly regulated, had substantially lower profit margins than any other system. Over the long term, profits in states with Prior Approval regimes are just under those in states that employ a File and Use system, and a point less than profits in states that have a Use and File process or a Deregulated regime. It is evident that in all cases and under any regulatory system, insurers have managed to thrive over the decades, enjoying reasonable profitability in virtually every state.

Overall, the Prior Approval system of regulation works best for consumers. This system is superior at holding prices down, yet allowing reasonable insurer profit and maintaining a competitive market. It is also clear that the worst regulatory regime for consumers is the Deregulated, so-called "competitive" system, which does not hold down prices, allows somewhat higher profits than other regimes and results in less competitive markets.

We also analyzed data on several other key factors that could affect insurance rates, including seatbelt laws, bad faith claims settlement laws, uninsured motorist population, size of the residual market, the legal regime in use for auto claims, thefts per 1,000 vehicles, traffic density, disposable income, repair costs and other factors, as shown in the appendices. These data do not appear to be confounding variables and instead help us affirm the first general finding that Prior Approval regulation is the best system for consumers. The data further sheds light on the second significant finding of this analysis, that California's active prior approval system exceeds even its prior approval peers in other states in ensuring access to reasonably priced auto insurance rates.

California Stands Out From All Other States in Having the Best Regulatory System for Protecting Consumers

In our review of the findings cited above, we found that one state – California –passed virtually every test for good performance, with the exception of a high-uninsured motorist population and profit levels for insurers that are higher than necessary. We found the following results for California:

- Ranked first among all states in holding down rate increases;
- Ranked fifth in market competitiveness as measured by the HHI;
- The only state to totally repeal its antitrust exemption for automobile insurers;
- Has a low residual market population (i.e., low level of participation in higher cost assigned risk plans);
- Among the eleven states with the highest ranking from the Insurance Institute for Highway Safety for strong seat belt laws;

- One of only four states to guarantee insurance to a good driver from any insurer the driver chooses;
- The only state to require that a person's driving record be the most important factor in determining insurance rates;
- One of only three states to ban the use of credit scoring;
- The only state that funds consumer participation in the ratemaking process if they make a substantial contribution; and
- The only state that bars insurance companies from considering whether a motorist was previously insured, or had a gap in coverage (such as a short drop of insurance during a time with no car) when pricing applicants for auto insurance.

On the negative side, California has the seventeenth highest uninsured motorist population in the nation according to the industry organization, the Insurance Research Council (IRC). While still too high, the population has decreased sharply from the 1980s when California had one of the highest rates of uninsured motorists. California has an uninsured motorist rate of 15 percent, according to the IRC study, compared to a 14 percent rate nationally.[vi] California's unique situation as home to more undocumented (and, thus, unlicensed drivers) in the nation may explain some of the uninsured population. That is likely to change in coming years in the wake of a new state law allowing undocumented immigrants to obtain drivers licenses and thereby purchase insurance more easily. Profits for auto insurers over the last 20 years have also been too high in California, 12.1 percent in the state compared with an 8.5 percent annual average nationally, indicating that regulators should require insurance companies to further reduce their rates.

On balance, California is clearly the best state in the nation for consumers buying auto insurance. We therefore studied the California system in-depth.

II. In Focus: California's Regulatory Success Story

A. Overview

The balance of this report is focused on the successes and failures of California's regulatory system, so that the public and policymakers can understand the details of the system that works better than any other in the nation to protect consumers. In this section we review the history of California's uniquely strong consumer protection standards and detail the specific policies in place that have contributed to the state's success in fostering the fairest auto insurance system in the country.

Additionally, we provide more detailed findings related to California from the research conducted for Part I of this report. In summary, we found that California:

- Was the only state in the nation to experience decreased auto insurance expenditures between 1989 and 2010;
- Maintained a highly competitive market for auto insurance, with the fifth lowest market concentration score in the nation and was the most competitive state outside of the New England states (which have historic reasons for being particularly competitive);
- Has very few drivers who turn to the high cost coverage of last resort known as the residual market;
- Has the only system of classifying risks that requires that a driving record have the most impact on a driver's premium and that eliminates or limits the impact of questionable non-driving-related classes like credit score;
- Encourages consumer participation in the regulatory process and provides regulators and consumers with a series of tools to ensure fair practices in the marketplace; and
- Has the nation's only low cost program for low-income good drivers.

B. Background on Proposition 103

Twenty-five years ago, on November 8, 1988, the people of California adopted an insurance reform initiative, Proposition 103 (attached, Appendix 2), by a narrow 51 to 49 percent margin. This was a remarkable victory for consumers, especially considering that the insurance industry spent $63.8 million opposing reform, while the grassroots campaign for Proposition 103, led by consumer advocates, spent only $2.9 million, less than 5 percent as much.

Proposition 103 replaced a regulatory structure that placed virtually no restrictions on how insurers determined rates or what they charged—similar to the system in use in deregulated states today. Despite nearly 100 lawsuits brought by insurance companies to invalidate Proposition 103 and numerous attempts to weaken or repeal the law by legislation and initiative, the measure remains in force twenty five years after enactment and continues to be the nation's most effective insurance reform law.

Through Proposition 103, voters made several changes to California law, giving the state the nation's most robust insurance regulatory system, one of the most competitive markets in the country and creating the nation's most transparent and accountable marketplace and regulatory environment. Its key provisions are listed below. See Appendix 2 for the text of the law.

Regulating Rates, Premiums and Underwriting Practices

Proposition 103:

- Imposed a 20 percent rate rollback on most property and casualty insurance companies doing business in California that returned $1.43 billion to customers;
- Adopted a Prior Approval system that required insurance companies to justify any rate change to the Insurance Commissioner before it can take effect.
- Requires insurance companies to sell auto insurance to any good driver who requested it;
- Requires insurers to give all good drivers an automatic 20 percent "good driver discount;"
- Requires insurers to base auto insurance premiums primarily on driving safety record, miles driven and years of driving experience; and
- Prohibits companies from surcharging customers who did not have prior insurance coverage.

Encouraging Competition in the Marketplace

Proposition 103:

- Repealed the insurance industry's state anti-trust exemption;
- Repealed the state's anti-rebate law;
- Applies the state's unfair business practices and unfair competition laws to the insurance industry;
- Applies the state's civil rights laws to the insurance industry;
- Allows consumers to negotiate group insurance rates; and
- Requires the Department of Insurance to create an insurance rate comparison system available to the public.

Increasing Transparency and Accountability for the Industry and its Regulator

Proposition 103:

- Makes public all information submitted by insurance companies as part of the prior approval process;
- Allows consumers and other members of the public to intervene in order to challenge rates or other proposed changes by insurance companies and requires insurers to fund the cost of these challenges if the intervenor makes a substantial contribution to reaching the decision;
- Gives consumers the right to challenge insurance companies' practices and Commissioner decisions in Court; and
- Made the Insurance Commissioner an elected rather than an appointed position.

C. Measuring Success in California

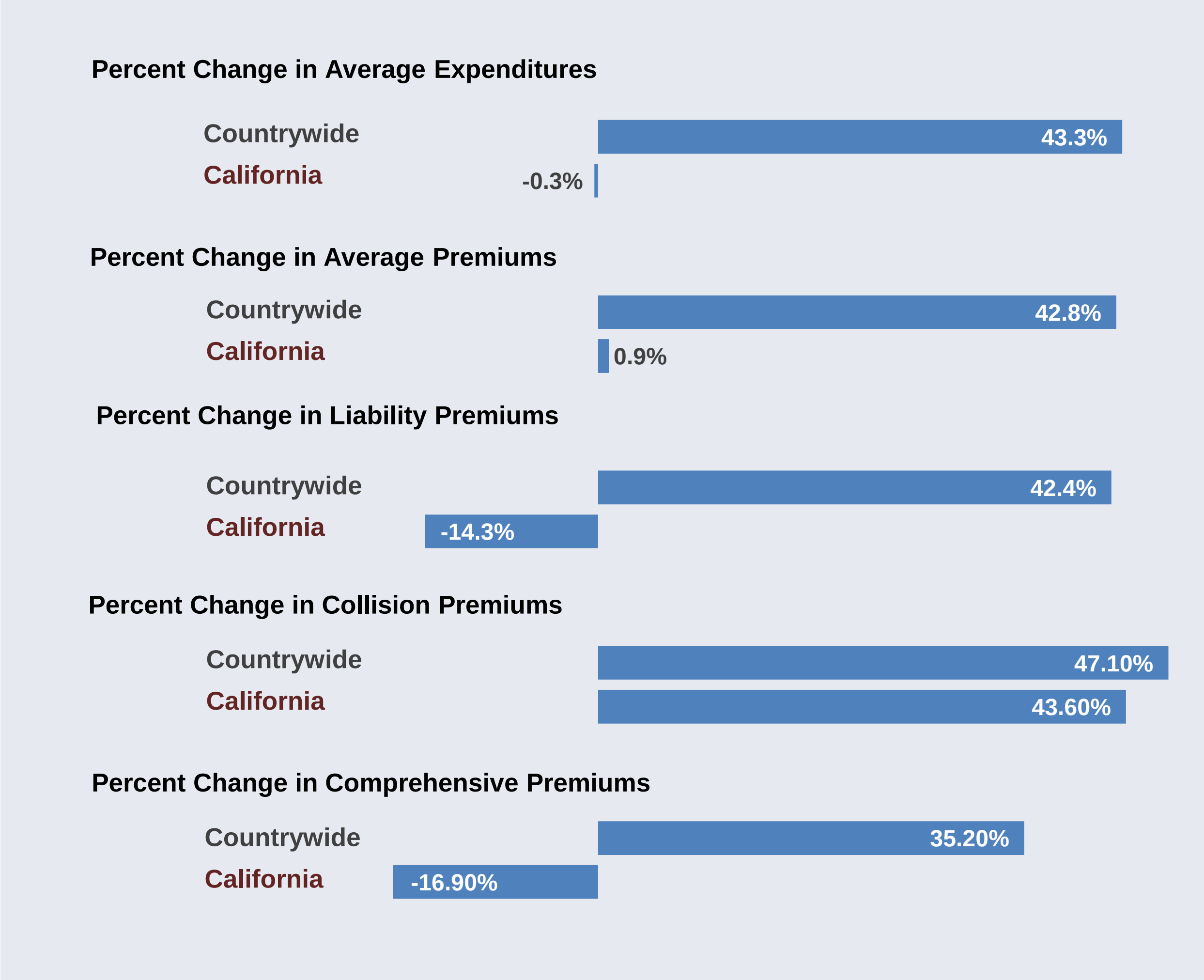
In reviewing the national data concerning the impact of regulatory systems and other factors on auto insurance rates and premiums, the clearest conclusion that can be drawn from the data is that California is far ahead of the rest of the nation in terms of limiting excessive rates and protecting consumers from abusive pricing practices. By virtue of a number of key data points, the California experience is unique. What follows is a discussion of several of the factors that convince us that California's Proposition 103, notwithstanding certain problems in its enforcement, provides a template for high quality consumer protection and effective insurance industry reform.

More than $100 Billion Saved by California Drivers 25 Years after Prop 103 – a $4.29 Billion per Year Dividend

In 2010, the average American driver spent 43.3 percent, or $239, more on auto insurance than he or she would have in 1989. In fact, drivers in every state but one spent more on average on auto insurance in 2010 than in 1989. The one state that defied the national trend was California, which, on November 8, 1988, enacted a transformative reform measure – Proposition 103 – that set California on this path to savings.

Figure 10 presents several different measures of performance with regard to the cost of auto insurance in California and countrywide. By each measure, California outpaces the nation in terms of consumer savings. With the exception of average annual collision premiums, California's cost ranking relative to other states has fallen significantly for consumers. Regarding the average premium charged for liability coverage – the only required auto insurance coverage – California fell from being the 2nd most expensive state in the nation in 1989 to the 30th most expensive in 2010. For comprehensive coverage, California fell from 9th to 48th. All told, California has enjoyed the lowest rate of increase of any state in the nation since the adoption of Proposition 103. See Appendix 1-E for the complete data set.

Figure 10. Measures of Average Auto Insurance Expenditure and Premium

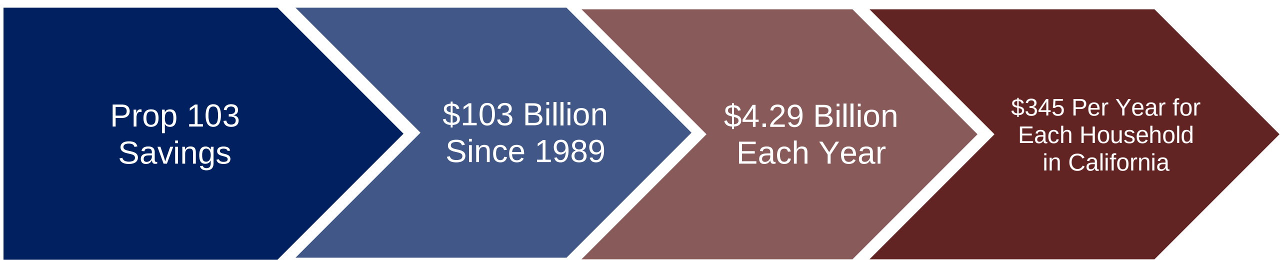


In 2010, Californians were spending 0.3 percent less on auto insurance than they spent in 1989, even as the nation spent 43.3 percent more on average. Hawaiians, who saw a 13.7 percent expenditure increase over the period, saw the results closest to California and only four states saw increases less than 25 percent, while drivers in 32 states endured increases of more than 50 percent. After adjusting for inflation, Californians were spending 43 percent less on average on auto insurance more than two decades after the passage of Proposition 103 than when insurance was sold in an unregulated market.

Prior to the passage of Proposition 103, auto insurance prices in California rose faster than the national average. Since then, California premiums have crept slightly downward annually while the national average has increased 1.8 percent a year. Using a savings test analysis that assumes that, in the absence of Proposition 103, California auto insurance rates would have merely kept pace with the national rate of change, the actual savings realized by California auto insurance customers was $90 billion through 2010, the latest year for which data are available.

Assuming that the same rates of change have persisted in California and the nation since 2010, we can project that in the quarter century since Proposition 103 began to reform the insurance industry, Californians have saved $102.87 billion, rounded quite coincidentally to $103 billion. It should also be noted that an additional $1.43 billion was refunded directly to consumers under Proposition 103's rate rollback provision. It is unlikely that any other voter-approved measure in American history returned to customers or saved consumers as much money as Proposition 103.

Figure 11. Proposition 103 Savings



Other Indicators of Success in California

The sheer scale of the savings achieved under Proposition 103 may seem to diminish otherwise notable indicators of success that this most-vigorous application of Prior Approval regulation has brought, but they are worth recounting.

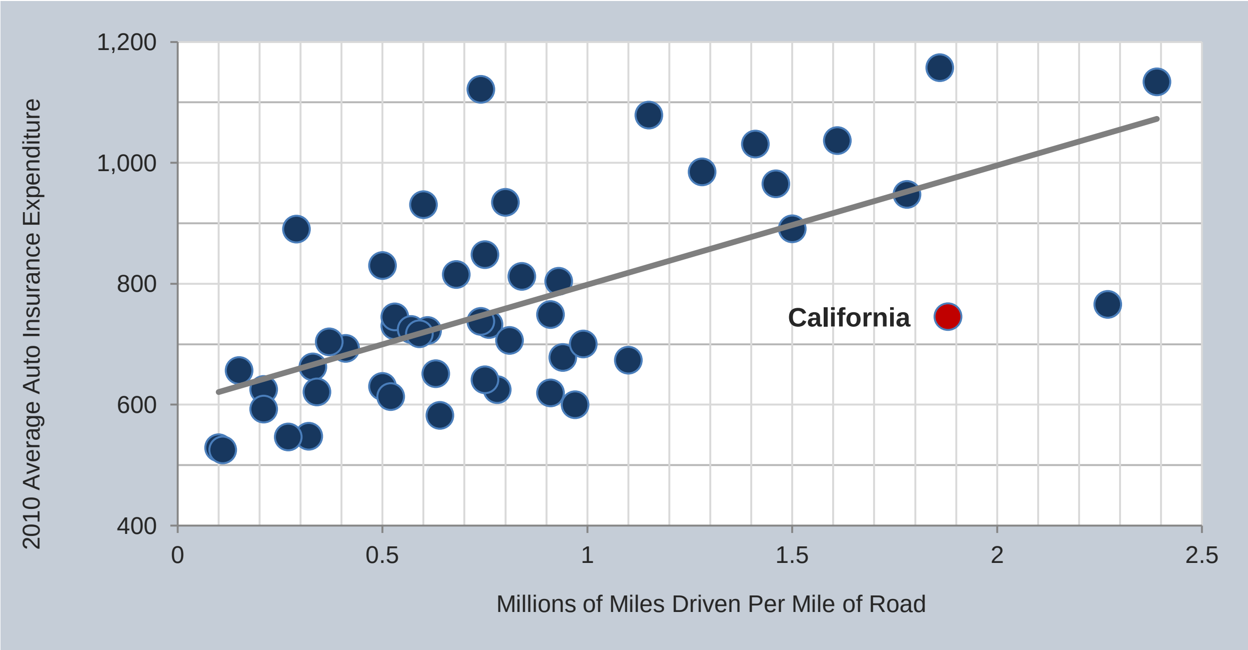
Highly Competitive Market

As noted above, California is the fifth most competitive auto insurance market in America, and the most competitive outside of New England.[vii] Using the standard HHI market concentration index, California scores a 753, where anything below 1,000 is considered competitive. As a contrast, Illinois and its deregulated marketplace earn a market-concentrated score of 1,216. This was anticipated by the California voters, who identified "encourag[ing] a competitive marketplace" as one of the chief purposes of shifting from a deregulated to a well-regulated system. This notion of regulation enhancing competition is counterintuitive to industry partisans who view regulation as a barrier rather than a facilitator for market health. In fact, market regulation and transparency have proved to be very conducive to a competitive marketplace in California, and Californians have dozens of options to buy insurance from carriers that are actively competing for California business. Indeed, it is obvious that competition and regulation are not enemies but allies working together toward the same end: the lowest possible prices delivering fair insurer profits in a robust market.

Resistant to the Rate Pull of Traffic Density

A common explanation for the variation in auto insurance costs from state to state and region to region is that accident frequency correlates with traffic density and, therefore, insurance rates correlate with traffic density. Data comparing state traffic density with state auto insurance expenditures exhibits a modest density to price correlation, as Figure 12 illustrates.

Figure 12. Average Auto Insurance by Traffic Density



Source (traffic density data): Federal Highway Administration

But California (along with Hawaii) is an outlier, where drivers spend substantially less on insurance, approximately 23 percent less, than the traffic density-price correlation would predict. The average annual expenditure would, according to the data, suggest that California ranks 25th in density, with approximately 0.71 million miles traveled per mile of roadway. In fact, California ranks third in terms of traffic density, with 1.88 million miles traveled per mile. See Appendix 1-F for the national data.

California's regulatory system requires that insurers justify rates in the context of costs, which creates a higher burden for insurers that may want to raise rates on the perceived relevance of traffic density. California does allow some variation between individual premiums based on geography, but the regulatory system prevents this presumed risk factor from having more impact on a consumer's rate than that consumer's driving record, annual mileage driven and years of driving experience. The relatively low rate-to-density ratio in California, then, is further proof of the success of Proposition 103's Prior Approval process.

Little Need for a Residual Market

The residual market for personal auto insurance is the "market of last resort" for motorists who cannot find coverage in the "voluntary" market where most people buy insurance.[viii] The reason drivers turn to the residual market may be because they have a bad driving record and no one wants to insure them or, as had been the case in California prior to the passage of Proposition 103 and many other states, insurers simply refused to offer a policy to certain good drivers because of other characteristics, such as their ZIP code or their lack of prior of insurance purchases. The price for insurance in the residual market is typically much higher than the premium for voluntary policies.

Insurers have claimed that one way that rate regulation will harm consumers is by increasing the size of the residual market for personal automobile coverage. They theorize that regulation keeps rates too low, which discourages insurance companies from offering coverage to certain kinds of consumers. Following this logic, California's residual market should have grown in the wake of Proposition 103's rigorous rate regulation system. Simply looking at the size of the residual market does not tell the entire story about the availability of insurance in the marketplace, as the size of the non-standard and uninsured markets are needed to fully examine the vitality of the "normal" or "voluntary" market in a jurisdiction. Still it is worth noting the relationship between California's strong rate regulation and the size of the state's residual market.

According to the industry view, California's residual market should have expanded to serve policyholders that insurers stopped serving in response to the regulatory controls enacted by Proposition 103. Thus, even if rate regulation merely held residual market participation steady at the 1989 level, where 8.4% of all insured drivers in California were in the California Automobile Assigned Risk Plan (CAARP), the residual market in the state should now be supplying approximately two million drivers a year with the insurance that they could not buy on the open market. In fact, in 2012, there were only 621 cars insured by the California plan, or less than 0.003% of the market, representing an astounding decline in enrollment of 99.97 percent.[ix] See Appendix 1-G for the national data through 2010.

California has also created a separate market within CAARP for low-income drivers. The California Low Cost Auto Insurance program, first established as a pilot program in 1999, provides approximately 9,000 California drivers annually with reduced-coverage policies that are priced significantly *lower* than the voluntary market, to address the needs of the very lowest income motorists, for whom even strong rate regulation has not pushed the price of coverage sufficiently low. This is not a residual market since these are good drivers, entitled to obtain insurance from the insurer of their choice by Proposition 103's terms, but because of their income restrictions, they often choose the low-income plan.

Even when noting that the residual markets are now generally smaller in most states than they were in decades past, it cannot be ignored that California's rate regulation did not press drivers into this market, as industry theory holds it should have. There are a few key reasons related to Proposition 103 for this:

- The requirement that insurers sell a policy to any good driver makes discriminatory sales practices much more difficult than in the past;
- The automatic 20 percent good driver discount makes the private market much more affordable to the vast majority of drivers who have good records; and
- The level of competition under California's regulatory system is so high that companies are much less willing to ignore pockets of potential customers than they were prior to the reforms.

California's effective regulation of rates did not hamper competition and force people into residual markets for auto insurance. As the market concentration index (HHI) discussed above demonstrates, and the almost total eradication of a residual market amplifies, the California market is much more competitive with rate regulation than it was without.

Uninsured Market in California Declining

If rate regulation had the effect of freezing the auto insurance market, as the industry often claims, another expected result, akin to the predicted increase in residual market participation, would be an increase in the number of uninsured drivers. Uninsured motorist data is difficult to agree upon, and the state of California has often used one method of measuring the uninsured, while the industry-organized Insurance Research Council (IRC) has used another. At this point in time, however, both sources indicate that the level of uninsured motorists in California has declined substantially since Proposition 103 took effect.

The IRC, which has more up-to-date data, estimated that in 2009 15 percent of motorists in California were uninsured. See Appendix 1-H for the national data. That marks a 40 percent decline from the 1989 estimate in which a quarter of all drivers were estimated to be uninsured. Notably, the IRC methodology for counting the uninsured relies on a model based on uninsured motorist claims data, which likely includes claims associated with undocumented immigrant drivers who have not purchased auto insurance because they do not have a drivers license. California is home to the most undocumented immigrants in the nation and its estimated uninsured motorist rate is likely skewed upward as a result.[x] In 2013, California lawmakers approved legislation that will give undocumented immigrants access to driver's licenses by 2015. We believe this new law will eventually drive the IRC's estimate for California's uninsured motorist rate down further still.

Insurance Industry Profits in California

Insurers often complain that rate regulation improperly suppresses rates and stifles their profits. However, the data shows that the excellent results for consumers under Proposition 103 did not come at the expense of insurer profits. Insurers have enjoyed automobile insurance profits in California that are considerably higher than the national average during the first two decades of expanded state rate regulation.

What Works: A Review of Auto Insurance Rate Regulation in America and How Best Practices Save Billions of Dollars

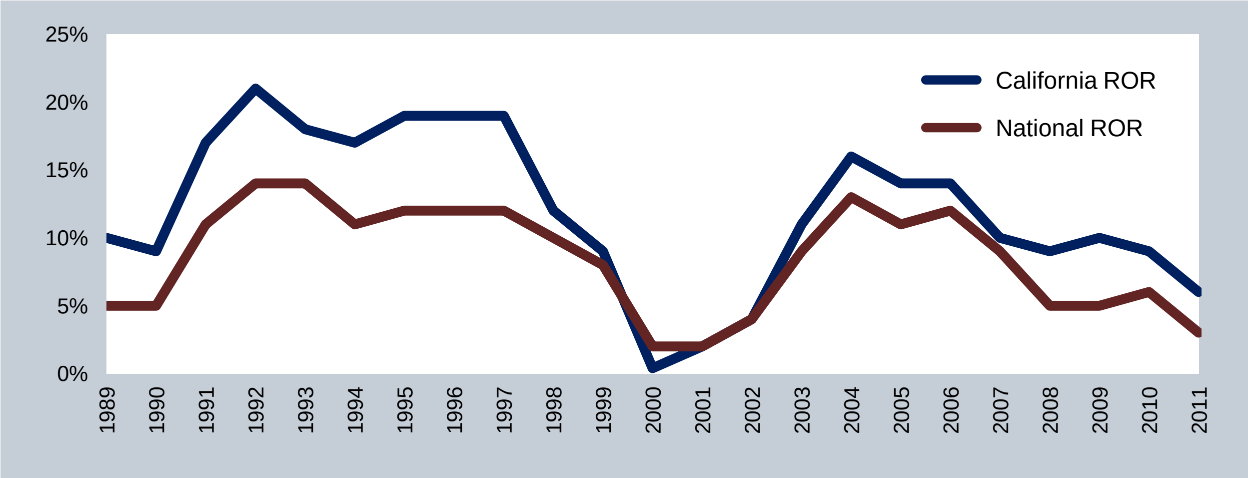
Between 1989 and 2011, California's profit ranked 8th highest in the nation, at 11.9 percent, as compared with a national average of 8.5 percent. Interestingly, as the graph shows, much of this differential was realized in the decade 1989 to 1998, during the time that the insurers fought Proposition 103's rollbacks and while the Insurance Department was making the regulatory system fully functional. It also includes the first term of Insurance Commissioner Chuck Quackenbush, an avowed opponent of Proposition 103, who was elected in 1994 and received an estimated $8 million in campaign contributions from insurance industry sources. Quackenbush later resigned in 2000 after a scandal related to his handling of the insurance claims after the Northridge earthquake. Three of the four highest average rates of return during the two decades occurred under Quackenbush's watch.

Figure 13. Auto Insurer Profits California v. Countrywide

Return on Net Worth	Personal Auto Insurance	
	California	Countrywide
1989-1998	16.0%	11.0%
1999-2011	8.8%	6.8%
1989-2011	**12.1%**	**8.6%**

As the data in Figure 13 (and Figure 14) illustrate, since 1999 California's average returns for auto insurers have been much closer, at 8.8 percent, to the national average of 6.8 percent but still higher than the average. Looking only at the past ten years, California has ranked nearer to the middle of the pack on this measure, yielding the 20th highest profits in the nation.

Figure 14. Rate of Return 1989-2011



While these data suggest that in California there is still room for further rate reductions, the profitability also sheds light on the efficiencies that Proposition 103 has generated in the California market. Subject to the stringent regulation of their rates and exposed to public scrutiny through the law's transparency requirements, as well as the attendant increased competition in the market, insurers in California have done a better job of streamlining operations than in other states. Further, the fact that California's system has allowed insurers to earn profits slightly above average while, uniquely in the nation, lowering rates for consumers is a testament to the marketplace balance that Proposition 103 has promoted.

Factors other than the Regulatory System that may Affect Rates

For our review we sought to identify other factors that may explain, supplement or otherwise relate to the changes in rates in California during the two decades we have analyzed. In addition to the residual market, uninsured motorists and traffic density discussed above, we assessed seatbelt laws in use, whether states had laws allowing or prohibiting legal action against insurers including Unfair Trade (or Insurance) Practices laws and third-party bad faith laws, thefts per thousand people, disposable income per capita, auto repair costs and the type of legal regime in place for automobile accidents (tort vs. no-fault). Specifically, we looked to see if there were other unique aspects of the California marketplace that might be contributing to the state's unique success. These state-by-state comparisons are contained in Appendix 1-I.

We have already discussed the fact that while California is an outlier in traffic density – having the nation's third busiest roads – its rates are much lower than density predicts. Similarly, when we considered the percentage of a state's population in the Metro Area, each of the ten most urbanized states have expenditures among the 12 highest in the nation *except for California.*

California's per-capita income is above the national average, so that should imply higher costs due to injury (because of lost wages) and higher value cars. That would explain higher rates, but again, California's system overcomes that factor. California's car theft rate is above the national average and auto repair costs are slightly below national average, neither of which exhibit sufficient difference to have any explanatory power.

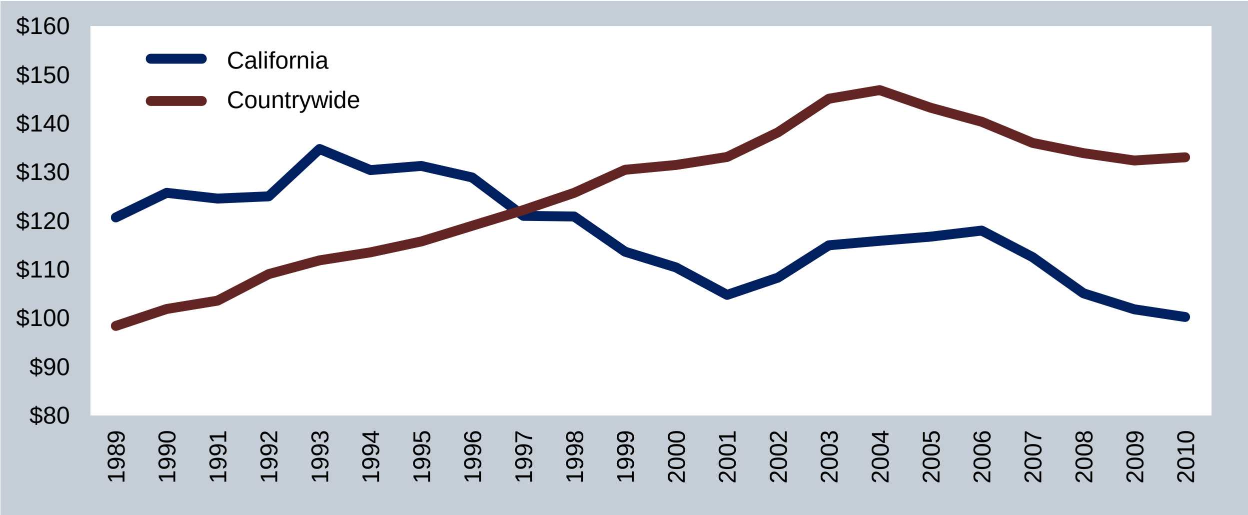
California is a personal responsibility, or tort state, in which driver's are responsible for the accidents they cause, as opposed to a no-fault state. This makes California similar to most states (31 states are tort based and the 6 "add-on" states are essentially tort, too). California has primary seat belt enforcement, again typical of most states, and it follows the most common top speed limit of 70mph. Each of these items would be expected to result in California experiencing expenditure changes similar to other states, rather than the decrease in auto insurance rates since 1989 that is unique to California.

Another factor we have considered is a change in the interpretation of California's "bad-faith" law. The insurance industry and its partisans assert that, rather than Proposition 103 and its strong regulatory oversight of the insurance industry, a 1988 California Supreme Court ruling, *Moradi-Shalal v. Fireman's Fund Insurance Cos*.,[xi] is responsible for the dramatic post-Proposition 103 premium rate savings. *Moradi-Shalal* barred the victims of negligence by an insured driver from bringing lawsuits against the driver's insurance company for refusing to pay claims promptly and fully. The insurers say that by barring such "third party" lawsuits the court decision reduced liability claims and payouts, and thus led to lower rates.

This argument is contradicted by several aspects of the data reviewed for this report. First, since the passage of Proposition 103, premiums for comprehensive coverage (which covers theft or damage to a vehicle not caused by a collision) have declined markedly relative to the national trend. This cannot be explained by *Moradi-Shalal*'s prohibition of so-called third-party bad faith lawsuits as comprehensive coverage is a *first party* coverage subject to the full accountability of the California civil justice system. If California's success in auto insurance premium control had been the result of limits on third party bad faith lawsuits, comprehensive premiums would be entirely untouched by this fact and would be expected to exhibit premium changes similar to the national experience. In fact, the difference between California and the countrywide average change since the passage of Prop 103 is more than 52 percentage points, with comprehensive premiums increasing by 35 percent nationally while declining by nearly 17 percent in California. As shown in Figure 15, California comprehensive insurance premiums that were 23 percent higher than the national average in 1989 are now 25 percent lower than average.

Collision premiums, also a first party coverage, increased less in California (43.6 percent) than nationally (47.1 percent), and liability premiums, which cover third party claims, decreased by 14.3 percent in California and increased by 42.4 percent nationally.

Figure 15. Comprehensive Premium, California v. Countrywide



These data imply that the primary cause of the rate savings are due to Proposition 103 and not consumers' access to the courts.

Additionally, research comparing California with other states also contradicts the industry's argument that the limited change to California's "bad-faith" law was responsible for the dramatic premium savings after Proposition 103. Most states prohibit lawsuits in a manner similar to *Moradi-Shalal,* while a few states allow third-party lawsuits, yet there is no consistent pattern among states that suggests a relationship between insurance rates and the exercise of legal rights by third parties. Indeed, several states that prohibit third-party lawsuits, such as Mississippi and North Dakota, have also encountered very high rates of increase in recent years. Because California stands alone as the only state to see decreases during the past twenty years, even as states with similar legal limits experienced dramatic premium increases, it is clear that regulatory reforms – not civil justice limitations – have been driving savings in California's auto insurance market.

Insurers insist that premium savings have to be driven by reductions in claims and since Proposition 103 regulates rates, rather than costs, the industry argues that legal restrictions that drive down claims payments can be the only explanation for the savings. Aside from the contradicting data above, this industry argument also ignores the critical role Proposition 103 has played in driving down insurance costs.

Proposition 103 also created exceptional incentives for safe driving, incentives much greater than those that exist in any other state.

Proposition 103 magnified the benefits of safe, loss-reducing driving habits by:

1. Giving good drivers a 20 percent discount.

2. Implementing a rating system that requires that the greatest impact on a consumer's final price derives from driving record. The second greatest impact on price must be driving record and the third greatest impact must be years of experience, with all other factors combined having less impact on the price than years of experience. Thus, driving characteristics overwhelm all other factors in importance when it comes to the cost of auto insurance only in California.

3. Prohibiting irrelevant factors that often lessen the importance of driving record. For example, credit scoring cannot be used in California (in many states credit score has more impact on price than driving record).

4. Empowering good drivers when they shop for auto insurance. Insurers are required sell insurance to a good driver and must offer drivers the lowest price from among its entire group of insurance companies. Thus, good drivers have great power when shopping for insurance. In California, good drivers are really "in the drivers seat" when it comes to auto insurance.

A significant number of Californians have realized that they have this power if they drive carefully, leading to lower accident and claim frequencies over time and also leading to more consumers finding and insisting on the best deals for insurance. These incentives to safe driving and easier, smarter shopping are key drivers of Prop 103's astonishing performance over the last quarter century.

In this way, Proposition 103 has lowered the cost of insurance by making it more valuable and affordable to drive safely in California than any other state. But, under Proposition 103, there are several other mechanisms for lowering the costs of insurance that help explain the decades of savings.

Proposition 103's regulatory controls limit the ability of insurers to engage in profiteering, wasteful expenditures and other inefficiencies. Proposition 103:

- Limits the expense ratios of insurance companies, so they cannot pass on the costs of inefficient or bloated administrative systems;

- Limits the amount of executive salaries that can be passed on to customers;

- Prohibits insurers from passing on the costs of lobbying, political contributions, bad-faith lawsuits against the company, regulatory fines or institutional advertising, such as corporate sponsorship of sporting events; and

- Includes incentives to investigate and ferret out auto insurance fraud, such as staged accidents.

Each of these cost-saving elements, in conjunction with the regulatory scrutiny of Proposition 103, set California apart from the rest of the nation and explains the savings realized by consumers over the past two decades. The fact that California's civil justice rules make California very much like the rest of the nation with respect to lawsuits against insurance companies offers no such explanation.

D. Regulatory Standards of Excellence

In identifying California as the most consumer protective insurance regulation system in the nation, we did not solely look at the change in rates. Low insurance rates alone do not tell the entire story. In fact, low rates can sometimes be evidence of insufficient enforcement of fair claims practices or evidence of predatory pricing that leads eventually to inflated prices. California's status as the consumer protection model is earned because the state meets and often defines best practices across a range of categories – *Regulatory Standards of Excellence* – that we reviewed.

The Standards

As part of our review, Consumer Federation of America considered the following list of Best Practices that we have identified as measures of the quality of regulation generally and insurance regulation specifically:

1. **Fair and Transparent Regulation.** Regulations should be easily understood by, responsive and accountable to, and inspire confidence in, the public and regulated companies and individuals.

2. **Fair Competition.** Regulations should promote beneficial competition that results in fair profits for regulated companies, reasonable rates for ratepayers and the equitable treatment of consumers.

3. **Marketplace Equity.** Regulations should reduce the problems associated with using certain criteria – sometimes unjustifiably – to choose whether to insure some policyholders and not others and at what cost. Regulations should also eliminate use of risk classification factors that are not equitable or appropriate.

4. **Freedom of Information.** Regulations should ensure that key information is provided to regulators, regulated entities and the public to allow them to identify market problems and harmful practices.

5. **Public Participation and Accountability.** Regulations should encourage broad and vigorous public involvement in the regulatory process, including institutionalized consumer participation in the review of insurance rates, forms, and underwriting guidelines.

6. **Safe Products and Fair Practices.** Regulations should result in the elimination of harmful products, and unfair and deceptive practices in the marketplace, as well as the provision of meaningful restitution to consumers harmed by these products and practices.

7. **Loss Prevention.** Regulations should promote loss prevention and loss mitigation as the most important way for insurers to manage risk and ensure safety and soundness.

Measuring California against Best Practices

A review of Proposition 103 and its rules illustrates where and how California has met and often exceeded the standards, and why it stands out among all states as the most effective regulatory system.

Fair and Transparent Regulation

Prior to Proposition 103, California had no meaningful regulation of insurance rates; there was no requirement that rates even be filed with the Commissioner, much less be reviewed or justified. Imagine the situation: through the antitrust exemption, insurers could collude to set rates jointly, but the commissioner could not regulate (or even know about) insurer prices. This was a prescription for the pricing abuse and inefficiency that occurred.

As a result, insurers could pass through all costs to consumers, no matter how unjustified. They explained that their rates were "mirrors of society" and they passed through nearly every penny, plus a percentage profit factor. This cost-plus-percentage-of-cost approach gave insurers a perverse incentive; the larger the costs, the bigger the profit the percentage add-on would produce.

Under California's prior approval system, all auto insurance rates (and all property and casualty insurance rates subject to Proposition 103) must now conform to a systematic set of guidelines and methodologies for justifying the rates. Though the rules do not result in a one-size-fits-all result, the regulatory structure is transparent and applied to all companies. These rules set specific numerical or methodological constraints on the ratemaking process to ensure that rates are not excessive or inadequate.

Perhaps most importantly, Proposition 103 authorizes the Insurance Commissioner to say "no" to unjustifiable rate increases. It is important to note that the rules of Proposition 103 require insurance companies to maintain fair rates at all times. A common insurer assertion that companies could reduce rates below current levels is not a viable critique of the system but an admission that companies are violating the law. The Insurance Commissioner, under these rules, can and should take immediate action to order rate decreases when justified.

These "prior approval" regulations include the following:

1. **Limit on Rate of Return.** Under Proposition 103, insurance rates must be based on data that project a rate of return that is based upon an average of returns on various government bonds plus an additional 6 percent. As of November 2013, the maximum rate of return that an insurer could build into its rate is 7.08 percent.

2. **Efficiency Standard.** Expense efficiency standards are determined by line and distribution based on an average of the last three years of industry-wide expense data expressed as a ratio of allowable underwriting expenses to earned premiums. The standard "represents the fixed and variable cost for a reasonably efficient insurer to provide insurance and to render good service to its customers." For example, the current efficiency standard for auto liability insurance sold by captive agents (such as State Farm and Allstate) is approximately 35 percent, meaning that for every $100 of premium charged to policyholders, an allowance is given to insurance companies of about $35 to cover the cost of commissions to agents, other acquisition costs (e.g., advertising, etc.), general expenses (e.g., rent, salaries, etc.), premium taxes and fees paid to the State of California and for the expenses of adjusting and settling claims other than defense and cost containment expenses. For so-called "direct writers" (such as Geico or 21st Century) the efficiency standard is approximately 25 percent. This allowance, however, is further limited to ensure that companies do not pass through excessive executive salaries, lobbying costs, fines and bad faith lawsuits and institutional advertising expenses.

3. **Company Specific Trend.** Loss and premium trends are to be based on an insurer's company-specific data. This provision was weakened during the administration of Insurance Commissioner Steve Poizner from a requirement that companies use the most recent twelve quarters of data to one in which companies can more easily base their trends on more or fewer data points, though companies still must demonstrate the appropriateness of the selected data.

Although the formulae derived for the ratemaking process are complicated, the California structure meets the Best Practice standard because they are systematic, consistent and transparent. Further, the regulations have been developed in a public manner in which, as is further discussed below, the Department of Insurance makes funds available to encourage and facilitate the involvement of consumer groups and other members of the public in the rulemaking process.

Fair Competition

As is discussed above, California is one of the most competitive auto insurance markets in the nation. Unlike the historic reasons for competition in the New England states, which are the only states that score above California in terms of competitiveness, California's competition and, more precisely, evidence of fair competition derives from key components of Proposition 103.

1. **Antitrust Rules Apply to Insurance.** California is the only state that fully applies its antitrust laws to insurance companies.
2. **Unfair Competition Laws Apply to Insurance.** Californians can sue insurance companies that use tactics of unfair competition in the marketplace.
3. **Encourages Competition Among Agents.** Proposition 103 eliminated prior prohibitions against agents rebating part of their commission to consumers. Under California's old "anti-rebate law," which is similar to laws still in effect in many states, agents and brokers were prohibited from reducing their own commissions in order to offer consumers a discounted premium. Agents who violated the law were subject to penalties and the loss of their license. Consumers paid higher prices because of the anti-rebate laws. Such laws reward inefficient agents, because they are shielded from competition by agents who are efficient and willing to cut prices in an attempt to gain market share.
4. **Authorizes Consumers to Join Together and Negotiate with Insurers for Better Rates.** Proposition 103 allows consumers to unite to negotiate the policies and coverage they need, using their joint bargaining power in the marketplace just as large businesses do. This provision of Proposition 103, which aimed to overcome prior prohibitions on insurance purchasing co-ops, has been abused in recent years, however, by insurers in a manner that has led to unfair rating practices discussed in the challenges section below.
5. **Increased Consumer Information and Price Comparisons.** Proposition 103 mandates public access to pricing information, which has vastly improved consumer information in the marketplace.
6. **Set Standards for Efficiency.** It has promoted *efficient* competition by ensuring that policyholders do not have to pay for inappropriate or wasteful insurer expenses such as fines, excessive salaries, professional sports sponsorships and bad-faith lawsuit costs.

Marketplace Equity

California's Rules Aimed at Ensuring Marketplace Equity:

1. **Emphasis on Driving Safety Record.** Proposition 103 diminishes (though does not prohibit) the use of territorial rating and marital status, requiring instead that auto insurance premiums be based primarily upon a motorist's driving safety record, the number of miles he or she drives each year, and the consumer's years of driving experience, weighting those factors in that order. By substituting the driver's own record as the primary determinant of his or her auto premiums, Proposition 103 gives drivers a strong incentive to keep their rates low by driving safely, thus restoring logic and fairness to the system.

2. **20 Percent Good Driver Discount**. Proposition 103 further emphasized driving safety over other factors by requiring that insurers provide an automatic 20 percent discount for good driving to all qualifying consumers – individuals with a virtually clean driving record (one moving violation is permitted) for the preceding three years.

3. **Application of State Civil Rights Laws to Insurance.** The Unruh Civil Rights Act is made applicable to insurance by Proposition 103 in order to prohibit rate classifications that include race, language, color, religion, national origin and ancestry.

4. **Prohibition on the Consideration of a Driver's Prior Purchase of Auto Insurance.** In most states, insurance companies charge significant surcharges to policyholders who did not buy insurance in the past (or for some period in the past), whether they were driving uninsured or not driving at all during the period in which they did not purchase insurance. This creates a substantial barrier to market entry for low-income drivers who are the customers most likely to face surcharges. The practice is prohibited in California making the market more accessible to low-income drivers and others who had been out of the marketplace.

5. **Prohibition on the Use of Credit History.** While credit scores have become a major source of pricing differentials in most states, insurance companies are not allowed to use drivers' credit history when determining eligibility or pricing auto insurance in California.

6. **Prohibition on Use of Education or Occupation Status in Underwriting or Pricing Decisions.** While a common practice by insurers in many states, California does not allow prices for drivers to vary between, for example, an executive with a master degree and a blue-collar worker with a high school degree, all other factors being equal. As is discussed in the challenges section below, however, this protection has been weakened by aggressive and incorrect reinterpretation of Proposition 103 by insurers and a lack of enforcement by regulators.

7. **Elimination of Harmful Competition, such as Selection Competition (Redlining).**[xii] Proposition 103 specifies that any good driver has the right to purchase a Good Driver auto insurance policy from the insurer of his or her choice. By providing all good drivers with this statutory right to a policy, the measure effectively eliminates redlining and allows for classifications that are fairer in that insurers cannot choose to deny coverage to good drivers, based on a non-driving related classification.

8. **Arbitrary Cancellations.** A common experience of California policyholders prior to Proposition 103 was the abrupt cancellation or non-renewal of an automobile insurance policy immediately after the first claim was filed. Proposition 103 prohibits cancellation or non-renewal except under one of the following conditions: (1) non-payment of premium; (2) fraud or material misrepresentation affecting the policy or the insured party; (3) a substantial increase in the hazard insured against.

9. **Best Price Offer.** Prior to Proposition 103 in California and to this day in many states, insurers surreptitiously shift certain customers to higher priced subsidiaries regardless of their driving safety record. Under Proposition 103 any insurer selling private passenger automobile insurance policies must provide consumers with a cost estimate of its lowest priced personal auto policy at the insured limits the consumer requests, for which the consumer is eligible, including the best price available from among all of the company's affiliated insurers.

Freedom of Information

A chief tenet of regulatory excellence is full disclosure of information. Proposition 103 meets this standard in several important ways.

1. **Public Notice of all Rate and Related Filings.** Under Proposition 103, every time an auto insurance company wants to alter its rates, change the forms it uses or change its system of classifying drivers, the Department of Insurance is required to inform the public of the proposed change sixty days prior to any change can be cleared to take effect.

2. **Public Inspection of all Documents.** Proposition 103 provides the clearest and most comprehensive assertion of the public's right to review all insurance documents filed with the state. The unequivocal law, which resists insurers' oft-sought trade secret protection of its material, speaks for itself: "All information provided to the commissioner pursuant to this article shall be available for public inspection…"[xiii]

3. **Full Disclosure of Rates in Effect.** Proposition 103 requires the California Insurance Commissioner to provide consumers with a current rate comparison survey for all

personal lines of insurance. Later enhancements to California's insurance law added rules requiring all insurers to maintain either a toll-free telephone or an internet web site where consumers can obtain a cost estimate, or be referred to an insurance agent or broker who will provide the estimate. Insurer information regarding the toll-free telephone number or web site must be provided to the California Department of Insurance, which subsequently makes this information available on the Department's own Web site and through its consumer toll-free telephone line (800) 927-4357. No other state requires this much consumer information.

Public Participation and Accountability

It is essential that consumers' interests be represented in the often-complex regulatory system and that government regulators be accountable to the public. "Capture" of regulators by regulated entities – the fox guarding the chicken coop – is common, and, whether only a perception or a reality, it undermines the public trust. The opportunity for individual citizens to enforce reforms and challenge insurer actions, and the democratic accountability of those administering insurance reform, are threshold standards for regulatory excellence.

Proposition 103 established a series of measures designed to foster participation and accountability; by specifying such measures, the voters could be assured that the specific purposes and goals of Proposition 103 would be implemented in the most pro-consumer fashion.

1. **Elected Insurance Commissioner.** In all but 12 states, the Insurance Commissioner is an appointee (usually by the governor). Often, the individual is a former insurance industry executive, and the appointment is a form of political patronage, all too often aimed at satisfying insurance industry interests. As a result, state insurance agencies have frequently been criticized for a pro-industry bias that harms consumers. In pre-103 California, independent studies repeatedly criticized the Department of Insurance for its inaction in the insurance crisis, its failure to respond to consumer complaints and its incompetent enforcement of the Insurance Code.

   Proposition 103 required that the Insurance Commissioner be elected, beginning in November 1990. Entrusting the responsibility to implement Proposition 103 to an elected official had several virtues. An elected commissioner is subject to public, rather than political, supervision: only the voters may pass judgment on the commissioner's performance, providing the commissioner with the independence and incentive necessary to establish good public policy. A commissioner who fails to protect the public will not be re-elected to office. This will protect against efforts by insurance companies to install their own candidate for the job.

This is not to say that bad commissioners cannot be elected. The scandal surrounding California Insurance Commissioner Chuck Quackenbush, who resigned in disgrace in 2000, is a stark lesson in what happens when the news media, lawmakers and voters fail to pay close attention to the conduct of state regulators. Obviously, election of an insurance commissioner should be coupled with campaign finance reform. It is notable that in the wake of the Quackenbush scandal, no candidate in California who accepted any insurance industry campaign contributions has been elected to the post.

2. **Funded Intervention by Non-Profit Consumer Advocacy Groups.** Proposition 103 provides Californians with the most effective and inclusive public participation program in the nation. Recognizing the cost and complexity of regulatory participation, Proposition 103 encouraged non-profit consumer advocacy groups to intervene in the expanded regulatory process to protect the interests of the public. Citizen groups that make a "substantial contribution" to a rate hearing or other matter before the Department of Insurance, or to an insurance matter which goes before a court, are entitled to receive reasonable advocacy fees and reimbursement of expenses for such costs as expert witnesses and travel to hearings. Assessments collected from insurers are used to fund this program, except that when the matter involves a single company or insurer group, as in a rate hearing, the statute requires the company itself to reimburse the intervening consumer or citizen group. The reimbursement system enables citizen groups to monitor the Department of Insurance on a stable – and professional – basis. Numerous citizen groups have utilized this system to monitor implementation of Proposition 103. According to its website, the consumer advocacy group Consumer Watchdog has conducted more than 60 rate challenges over the past decade, which saved Californians approximately $2.3 billion on auto, home, earthquake and medical malpractice insurance rates. The group reports having collected approximately $5.7 million in intervenor reimbursements for the lawyers, actuaries, economists, geologists and other experts that have represented the group in these challenges over the years. The estimated cost of these efforts is twenty-five cents in intervenor reimbursements for every $100 saved by consumers. Other consumer groups such as Consumers Union, Consumer Federation of California and Public Advocates have also intervened in various proceedings under this provision of California law.

3. **Private Right of Action.** It is a basic tenet of due process that each party to a proceeding has the right to be fully represented. Such participation is critical in the context of insurance regulation, since insurance premiums represent more than 10 percent of the average American family's annual disposable income, is a necessity for consumers and businesses, and, in the case of auto insurance, is required by law.

Proposition 103 provides individual consumers with the right to seek legal redress either from the Department of Insurance or the courts if insurance companies fail to comply with their responsibilities to the policyholder. If the Department of Insurance fails to respond effectively to a consumer's complaint, consumers will not be "locked out" of the courts with no remedy. Consumers may also challenge the actions (or inactions) of the Commissioner in the courts. This broad legal right of citizens to enforce the law in courts and through administrative procedures is a crucial element of strong consumer protection regulation.

4. **Consumer Representation.** Insurance consumers were to be given the opportunity to establish and join a democratically created and controlled advocacy organization. A staff of advocates, funded by voluntary contributions and grants, would represent consumers on insurance matters before the Insurance Commissioner, the courts, and the state legislature. In order to enable the advocacy organization to obtain the support of consumers, Proposition 103 required insurers to enclose special notices with their premium bills, informing their customers of the opportunity to participate in the program. (Insurers would be reimbursed for any additional expenses caused by insertion of the notice). However, the California Supreme Court excised this provision of Proposition 103 on a technical matter.

Safe Products and Fair Practices

Good regulation encourages more than just fair pricing, it promotes high quality products and practices and provides a mechanism for restitution when a consumer is harmed.

1. **Rate Rollbacks.** Proposition 103 required insurance companies to refund past overcharges, which led to the rebating of $1.43 billion to California insurance customers.

2. **Prior Approval of Forms and Classification Plans**. In addition to having to justify rates, auto insurers in California must submit for approval the system they employ for pricing individual consumers and the official forms they provide consumers that explain the terms of policies. This adds a layer of protection against attempts by insurers to sell insufficient products, deploy illegal pricing schemes or change the terms of a policy during the period of coverage.

3. **Refunds for Overcharges**. California's regulatory standard that no excessive rate *shall remain in effect* establishes a basis on which to require insurance companies to refund consumers if they illegally overcharged policyholders.

Loss Prevention

Good insurance pricing systems like California's encourage loss prevention and claims cost reductions by incentivizing risk-reducing behaviors. Systems that punish people for who they are rather than how they drive do not meet this standard because they provide customers with no incentive to decrease risky behaviors and thereby reduce system-wide loss costs.

1. **Best Prices for Good Drivers.** California's system encourages people to drive safely by basing premiums primarily on driving safety records and giving consumers a 20 percent discount for maintaining safe driving habits.

2. **Prohibition on Use of Certain Non-Driving Related Factors**. Using such factors as credit scoring in pricing auto insurance signals to drivers that they should focus on maintaining the right balance on their revolving credit lines but not on complying with speed limit laws. By prohibiting factors such as credit score and prior insurance purchases, California's rules signal to consumers that safe driving is the best path to lower rates.

3. **Incentivizing Mileage Reduction**. California's unique Pay as You Drive regulations encourage insurance companies to provide drivers with the ability to lower their premium by reducing the number of miles they drive each year. By incentivizing mileage reduction, the California rules provide customers another reason to reduce risk and lower overall claims costs.

Taken together the laws and rules governing California's auto insurance market can be seen as a model for reform in any market. These elements could be incorporated into any state's laws and lead to the kind of marketplace transformation that has been providing benefits to California motorists and communities for 25 years.

E. Challenges and Innovations

In the 25 years since the passage of Proposition 103, California has done something for consumers that no other state could accomplish: lower the cost of auto insurance. It has also increased the competitiveness of the market, limited or eliminated the use of discriminatory, non-driving related rating factors and made insurance more affordable and accessible to low- and moderate income drivers who have been historically most at-risk of driving without insurance because of its cost. Over the decades, however, the law and regulations have been challenged time and again by industry efforts to weaken the oversight provided by Propositions 103. Additionally, there are some problems in the auto insurance market that Proposition 103 was not set up to solve, like affordability for the very poor. This section discusses some of the challenges and problems encountered, especially in recent years and reports on a California innovation to address access to auto insurance for the lowest-income motorists.

Challenges and Problems Encountered

While the process of implementing Proposition 103 has faced several difficulties (notably, initial delays in companies paying rollbacks and the nearly 18 years it took to finally ensure that a motorist's driving safety record was the primary rating factor), Proposition 103 has been operable and ensuring appropriate rates for twenty-five years. This is not to imply that insurers have willingly accepted the changes imposed by the system; just the opposite is true. Industry has lobbied state lawmakers to repeal or amend certain provisions of Proposition 103, despite a state law banning hostile amendments to voter approved measures. In each case, if not defeated in the legislature, the amendments were invalidated in legal challenges, one of which resulted in a landmark ruling from the California Supreme Court.

These failed attempts to undermine Proposition 103 included legislation to achieve the following:

1. Exempt three lines of insurance from Proposition 103's rollback requirement;
2. Permit insurance advisory organizations to resume distribution to insurers of data on projected losses for price-setting purposes, part of an Insurance Services Office (ISO)-sponsored plan;
3. Reinstate ZIP code based auto insurance rates, and
4. Reinstate the practice of allowing surcharges on drivers who have a gap in coverage or no prior insurance. This particular attack on Proposition 103 took several shapes, including an enacted state law that was invalidated by a California Court of Appeal and two unsuccessful ballot initiatives (2010's Prop 17 and 2012's Prop 33).

Although these efforts have been rebuffed either by lawmakers, the courts or citizens directly, it is unlikely that the industry will retreat from its antagonistic posture with respect to the law. Below, we discuss two ongoing concerns related to the rules and interpretation of the law that are negatively impacting consumers in California.

Court-Imposed Weakening of Consumer Rights

Consumers have fought an ongoing battle with insurers attempting to undermine Proposition 103's provisions permitting ratepayers to challenge insurers' illegal conduct in court (particularly in the event that a recalcitrant insurance commissioner fails to enforce the law). Consumers won a victory in 2004 in the Second District Court of Appeals with *Donabedian v. Mercury Insurance*. The court rejected insurers' arguments that only the insurance commissioner can remedy overcharges and other violations of Proposition 103, and upheld the public's right to enforce Proposition 103 under the state's Unfair Competition Law.[xiv] Insurance Commissioner Garamendi argued for plaintiffs in the case, with a friend of the court brief that argued the Department "simply lacks the resources to pursue every allegation." That victory, however, stands beside two other court decisions that have served to weaken consumer rights to hold insurers and the Department accountable.

1. ***Walker v. Allstate.*** Without first seeking action by the California Department of Insurance, a group of lawyers filed a lawsuit in 1998 against major insurers and Insurance Commissioner Quackenbush, charging that the Commissioner had approved excessive rates and requested damages. The case was dismissed by the San Francisco Superior Court on the principle of law that such complaints should first be brought to the administrative agency with expertise in the issue, in this case, the Department of Insurance, for its review. The plaintiffs appealed. The appellate court in San Francisco went beyond the lower court ruling, and held that once the insurance department has approved or failed to disapprove a proposed insurance rate, those rates may not be subsequently challenged in a lawsuit (*Walker v. Allstate Indemnity Co*. (2000) 92Cal.Rptr.2d132). The decision effectively negated a key aspect of Proposition 103, which specifically allows consumers to challenge, and seek judicial review of, any rate in effect in violation of Proposition 103's requirements. In litigation challenging any misconduct, insurers routinely assert a *Walker* defense, arguing that so long as the rate, rule or practice was part of a filing not disapproved by the Commissioner, it cannot be subsequently challenged.

2. ***Mackay v. 21st Century.*** In 2010, a panel of California Appellate justices ruled in favor of insurance companies and against consumers in determining that consumers did not have a right to sue insurance companies for illegal conduct if the company could claim that a regulator or Department of Insurance staffperson had approved a filing that, even

vaguely, incorporated the otherwise illegal practice. This decision is in direct conflict with the aforementioned *Donabedian* decision in support of an unequivocal consumer right to challenge illegal conduct in court. As a result, there is an ongoing concern among consumer advocates that insurers will use the conflict within the appellate courts to exploit the regulatory process in California and attempt to reinstate old and illegal marketing and pricing techniques that are particularly harmful to low and moderate income consumers in the state. Although the Department of Insurance acknowledged this problem by hosting a workshop to consider clarifying rules regarding what would constitute Department approval of a company practice, the Department has not issued a regulation or otherwise addressed the parameters of the agency's oversight beyond the single workshop.

Incorrect Interpretation of the Law's Group Insurance Provision

One element of Proposition 103, known as the Group Insurance Plans section (Insurance Code Section 1861.12), has been abused by insurers, who have been allowed to use this provision to get around California's prohibition on the use of occupation and education status in pricing. The section was included in Proposition 103 as a consumer marketplace-empowerment tool that would overcome prior limitations on citizens banding together to negotiate with insurance companies for better coverage and better rates. The group plan provision aimed to enhance consumers' bargaining power by allowing them to join together – as a neighborhood association, or members of a labor union, or simply as an insurance buying group – in order to reduce insurance company costs and reap the benefits of scale.

Such groups never developed, however, and the provision lay relatively dormant until insurance companies started reinterpreting the provision to create so-called affinity groups. Here the insurers have selected customers who meet certain marketing interests of the insurer (for example, business executives, professionals and college graduates) to receive lower than typical rates by inviting prospective customers to apply for "group discounts" even though, in some instances, these preferred customers do not belong to an actual group; they merely belong to an occupational category, such as lawyer or executive. This fabricated grouping does not empower consumers to get better rates out of consumers, instead it allows insurance companies to segregate the insurance market between preferred (typically professional) classes of customers and non-preferred blue-collar workers. Those motorists who are not members of the selected groups pay higher rates to subsidize those who are members. This is a violation of Proposition 103's system for regulating rating factors.

Consumer groups, including Consumer Federation of America, have called upon the California Department of Insurance to investigate this practice and remedy the negative impacts the insurers' misinterpretation and abuse have wrought, especially among low-income and lesser-educated consumers. Notably, a California Administrative Law Judge has recently expressed concerns with the interpretation of this section in a rate hearing involving Allstate Insurance Company. However, the Department has not pursued clarifying regulations beyond hosting an informal workshop on the issue in 2010.

Innovation: Low Cost Auto Insurance

Proposition 103 has addressed the challenges facing low-income motorists in several effective ways, including the take all good drivers requirement, the minimization of geographic rating and the prohibition on surcharges for gaps in auto insurance coverage. Most importantly, perhaps, it has pushed premiums down dramatically in real terms over the past 25 years. Nevertheless, for the very poor, these successes do not change the fact that when every dollar is budgeted, counted and precious, even the well-regulated marketplace does not provide an affordable policy. The law requiring financial responsibility and the obligation to buy an insurance policy, of course, remains in effect for drivers regardless of their financial condition. This spurred California lawmakers to create an innovative program that offers a bare-bones liability policy to qualifying good and low-income drivers for less than $350 per year.

The California Low-Cost Auto Insurance program was enacted as a pilot program in 1999 and expanded statewide several years later. During this time more than 73,000 Californians, most of whom were previously uninsured, have purchased coverage through the program, with nine to ten thousand drivers typically enrolled at any one time. According to the California Department of Insurance, the program has covered more than $16 million in auto accident claims, many of which would have been uninsured accidents without this program.

In order to keep the premiums low, the policy is only available to good drivers and covers less than the otherwise mandated minimum limits of coverage. California law considers the reduced coverage in the program sufficient for the purpose of meeting the financial responsibility law. The program is self-sufficient and not subsidized by taxpayers, other insurance customers, or the insurance companies. Rather, the price for the program is set by the Insurance Commissioner and annually adjusted to ensure that it is as low as possible without needing subsidies. It should be noted that there are far more eligible drivers in the state than the number who actually buy the coverage, which reflects the need to continue to build awareness among low-income drivers, ensure that insurance agents are fulfilling their obligations to educate consumers about the program and develop new mechanisms of facilitating access to the program for low-income drivers. One such mechanism is the development of a consumer-facing website that will allow low-income consumers to shop and purchase the coverage online, which is expected in the coming year.

F. Conclusion

Whether measured against the rest of the nation or against regulatory standards of excellence, California has provided auto insurance consumers the most effective and protective regulatory system for a quarter century. Drivers in that state have saved more than $100 billion under California's Proposition 103, money that stayed in the state rather than being shipped off to insurance headquarters spread around the country. The success should not simply be marked by savings but also by the increased attention to equity in the marketplace that has reduced discrimination, enhanced competition and increased access to insurance.

Policymakers and regulators in California should take heed of the recent concerns identified in this report and be mindful of ongoing attempts by insurers to relieve themselves of the scrutiny that has proved so successful for consumers over the years. Policymakers and regulators around the county should look to California as a model of what works. They should be guided by the best regulatory practices that California has followed, and often developed, and be cognizant of the fact that the industry's anti-regulation claims and threats have never materialized. Instead, California has remained a competitive, profitable and consumer-protective market.

III. Recommendations and Conclusions

Auto insurance is a unique product in the American marketplace. Consumers are required by law to purchase it (except in New Hampshire), yet they hope to never need it. Companies spend billions of dollars annually advertising their insurance products, but the markets in nearly half the states are more concentrated than competitive and in only one state are anti-trust laws fully enforced against the industry. These factors, along with a politically aggressive industry and generally weak oversight of the industry, have made auto insurance too costly, too-often inaccessible and unaccountable in most states. One state, California, has bucked this trend and, by virtue of a citizen ballot initiative that has been on the books for 25 years and has provided refunds, savings and protections against arbitrary practices and unfair discrimination.

Our survey of state markets for auto insurance provides several insights about auto insurance rates and regulation as well as a series of best practices and model rules that can protect consumers from unnecessarily high rates or unfair practices.

We found:

1. Auto insurance expenditures have increased by 43.3 percent around the country between 1989 and 2010;
2. California was the only state market in which consumers were spending less on auto insurance in 2010 than they were in 1989;
3. States with stronger regulatory systems tend to do a better job than weakly regulated states of limiting rate hikes;
4. Weakly regulated states have the most concentrated and least competitive markets for auto insurance;
5. California's regulatory system, created by the 1988 initiative known as Proposition 103, has provided the most effective consumer protections in the nation; and
6. Rather than rest on its success, California has continued to innovate to seek solutions to lingering problems of affordability for the very lowest-income motorists.

What is it about Proposition 103 that has led to vigorous competition, low rates and a very healthy return for insurers? First, unlike the anti-competitive version of deregulation put into place in many states and frequently advocated for national implementation by insurers, Proposition 103 contains provisions that spur full competition and penalize collusive behavior by insurers. For instance, it imposes antitrust law on the industry, allows banks to sell insurance, allows group sales, and allows agent competition through rebating.

However, Proposition 103 did not just rely on competition to right the insurance marketplace in California. It incorporated full regulatory oversight to assure that competition is effective and sufficient to do the job. California regulations are the state-of-the-art – far and away the best in the nation for consumers. They are fully transparent to insurers and the public. They disallow excessive costs such as undue expenses, fines, punitive damages in bad-faith lawsuits, excessive executive salary costs, lobbying expenditures and brand-enhancing advertising such as corporate sponsorships.

Proposition 103 also built strong incentives for safety into the initiative. Drivers with clean records gain a 20 percent rate discount. They also receive the right to buy insurance from the company of their choice through Proposition 103's Good Driver Protections. These requirements that emphasize safety are very similar to the Bonus-Malus Plan in the European Union, which has been shown to improve driving behavior.

Further, Proposition 103 was a warning to insurers that they cold no longer pass on unreasonable expenses to ratepayers to increase profits. Before Proposition 103, insurers had every incentive to allow costs to rise by an industry-wide "trend," particularly when the trend was agreed to at cartel-like rating bureaus. This cost-plus-percentage-of-cost ratemaking approach was achievable because full competition was not present. Many insurers used the same trends and tried to achieve them. Insurers did not fight fraud seriously, nor was automobile or driver safety a paramount concern.

After Proposition 103, insurers not only lowered rates in California, but, fearing that other states might require rate reductions of 20 percent, they stopped passing through many unjustified costs to ratepayers throughout the nation. Insurers also joined with consumer groups to form the Coalition Against Insurance Fraud and Advocates for Highway and Auto Safety. (On he other hand, insurers also used multiple lawsuits and other strategies to delay full implementation of Proposition 103 for as long as possible, in an effort to convince other states that Proposition 103 was not working.)

As the findings of this study make clear, the insurance regulatory structure in place in many states has failed consumers in a number of ways. In particular, many states do a poor job of ensuring that insurance rates are fair, that rates are adequately reviewed by the regulator, that competition is vigorous, and that consumers are adequately involved in the rate-making process. This report also provides considerable evidence that the deregulatory proposals often promoted by the insurance industry at the state and federal level, especially the elimination of rate regulation, fail to protect consumers and ensure fair rates.

The way that insurance is regulated throughout most of the country is not working for American consumers, and it should change. Policymakers and regulators should turn to the California system as a model for reforms in their own state. The data are clear that this model creates the path to lower rates, more options and a fairer marketplace. The arguments against strong, consumer-oriented regulation do not reflect what actually happens when insurance companies are required to justify their rates, compete for customers and sell insurance on a non-discriminatory basis.

Rather than defer to industry partisans, state policymakers should use twenty five years of experience to their advantage by implementing comprehensive regulatory changes modeled after Proposition 103. In particular, state policymakers should adopt reforms that:

1. Set key ratemaking standards, such as reasonable rates of return, restrictions on the amount of overhead costs that can be passed on to consumers, and guidelines for projecting future rate increases;

2. Establish a standardized and transparent rate-making model that the regulator will use to evaluate the rate requests of insurers;

3. Prevent excessive or unjustified expenses from being passed on to consumers, such as fines, penalties for bad faith behavior, and excessive executive salaries;

4. Require that a driving record is the most important factor in setting rates for drivers, followed by miles driven and years of experience;

5. Eliminate unfair and discriminatory rating factors such as occupation, education and prior purchase of insurance coverage in order to increase market access for low- and moderate income drivers;

6. Balance supply and demand by requiring insurers to offer coverage to good drivers who are compelled by the state to purchase it;
7. Repeal the state anti-trust exemption; and
8. Involve consumers actively in the rate-setting process by funding consumer participation.

When it comes to regulating an industry as large as the auto insurance industry that impacts so many millions of Americans who are required to purchase insurance, we ask of policymakers and regulators the same question we asked when we first began reviewing auto insurance systems around the country more than a decade ago:

Why Not the Best?

What Works: A Review of Auto Insurance Rate Regulation in America and How Best Practices Save Billions of Dollars

Appendix 1-A. Expenditure by State

State	1989 Average	1989 Premium Rank (1 = highest)	1989 State Premium as % of Nationwide	2010 Average Expenditure	1989 to 2010 Percent Change	2010 Premium Rank (1 = highest)	2010 State Premium as % of Nationwide
California	$747.97	3	135.5%	$745.74	-0.3%	21	94.3%
Hawaii	$673.36	7	122.0%	$765.83	13.7%	19	96.8%
New Hampshire	$609.13	12	110.4%	$706.24	15.9%	29	89.3%
New Jersey	$982.93	1	178.1%	$1,157.30	17.7%	1	146.3%
Massachusetts	$728.39	5	132.0%	$890.83	22.3%	12	112.6%
Pennsylvania	$646.03	10	117.0%	$812.15	25.7%	17	102.6%
Connecticut	$740.02	4	134.1%	$965.22	30.4%	8	122.0%
Maine	$434.84	32	78.8%	$582.29	33.9%	47	73.6%
Rhode Island	$725.82	6	131.5%	$984.95	35.7%	7	124.5%
Arizona	$581.42	14	105.3%	$804.05	38.3%	18	101.6%
Ohio	$447.73	27	81.1%	$619.46	38.4%	43	78.3%
Georgia	$531.01	19	96.2%	$749.09	41.1%	20	94.7%
Colorado	$515.31	20	93.4%	$730.42	41.7%	25	92.3%
Dist. Of Columbia	$796.72	2	144.3%	$1,133.87	42.3%	2	143.3%
Illinois	$505.32	21	91.6%	$732.56	45.0%	24	92.6%
Indiana	$426.29	35	77.2%	$624.86	46.6%	41	79.0%
Maryland	$646.18	9	117.1%	$947.70	46.7%	9	119.8%
Vermont	$423.43	36	76.7%	$630.19	48.8%	39	79.6%
South Carolina	$494.25	23	89.5%	$737.74	49.3%	23	93.2%
Minnesota	$460.41	26	83.4%	$693.08	50.5%	32	87.6%
Tennessee	$423.26	37	76.7%	$641.17	51.5%	38	81.0%
Alabama	$426.30	34	77.2%	$651.24	52.8%	37	82.3%
Virginia	$437.87	30	79.3%	$673.62	53.8%	34	85.1%
North Carolina	$388.00	40	70.3%	$599.90	54.6%	45	75.8%
Oregon	$466.29	25	84.5%	$724.42	55.4%	26	91.6%
Wisconsin	$392.46	39	71.1%	$613.37	56.3%	44	77.5%
Idaho	$348.31	44	63.1%	$547.78	57.3%	48	69.2%
Missouri	$430.05	33	77.9%	$678.04	57.7%	33	85.7%
New Mexico	$443.76	28	80.4%	$703.90	58.6%	30	89.0%
Nevada	$586.60	13	106.3%	$930.72	58.7%	11	117.6%
Alaska	$560.27	17	101.5%	$890.35	58.9%	13	112.5%
New York	$665.07	8	120.5%	$1,078.88	62.2%	4	136.4%
Washington	$490.50	24	88.9%	$815.27	66.2%	16	103.0%
Mississippi	$440.80	29	79.9%	$745.17	69.0%	22	94.2%
Michigan	$550.84	18	99.8%	$934.60	69.7%	10	118.1%
Florida	$610.21	11	110.6%	$1,036.76	69.9%	5	131.0%
Texas	$497.35	22	90.1%	$848.11	70.5%	14	107.2%
Iowa	$315.02	48	57.1%	$546.59	73.5%	49	69.1%
Oklahoma	$399.19	38	72.3%	$700.35	75.4%	31	88.5%
Delaware	$574.04	15	104.0%	$1,030.98	79.6%	6	130.3%
Arkansas	$364.68	43	66.1%	$662.42	81.6%	35	83.7%
Kansas	$340.76	45	61.7%	$625.17	83.5%	40	79.0%

What Works: A Review of Auto Insurance Rate Regulation in America and How Best Practices Save Billions of Dollars

Appendix 1-A. Expenditure by State (cont.)

State	1989 Average	1989 Premium Rank (1 = highest)	1989 State Prem as % of Nationwide	2010 Average Expenditure	1989 to 2010 Percent Change	2010 Premium Rank (1 = highest)	2010 State Premium as % of Nationwide
Utah	$385.44	41	69.8%	$717.25	86.1%	28	90.7%
North Dakota	$283.11	50	51.3%	$528.81	86.8%	50	66.8%
West Virginia	$437.09	31	79.2%	$830.10	89.9%	15	104.9%
South Dakota	$273.51	51	49.6%	$525.16	92.0%	51	66.4%
Kentucky	$375.71	42	68.1%	$722.66	92.3%	27	91.3%
Wyoming	$318.28	47	57.7%	$621.08	95.1%	42	78.5%
Montana	$336.04	46	60.9%	$656.47	95.4%	36	83.0%
Louisiana	$571.96	16	103.6%	$1,121.46	96.1%	3	141.7%
Nebraska	$284.86	49	51.6%	$592.69	108.1%	46	74.9%
Countrywide	**$551.95**			**$791.22**	**43.3%**		**100.0%**

Source: NAIC Auto Database Report 2010 and previous editions.

What Works: A Review of Auto Insurance Rate Regulation in America and How Best Practices Save Billions of Dollars

Appendix 1-B. Rating Law Analysis

State	Rating Law	1989 Average Expenditure	2010 Average Expenditure	21-Year Change
Alabama	PA	$426.30	$651.24	52.8%
Alaska	FLEX	$560.27	$890.35	58.9%
Arizona	U&F	$581.42	$804.05	38.3%
Arkansas	F&U	$364.68	$662.42	81.6%
California	PA	$747.97	$745.74	-0.3%
Colorado	F&U	$515.31	$730.42	41.7%
Connecticut	PA	$740.02	$965.22	30.4%
Delaware	F&U	$574.04	$1,030.98	79.6%
Dist. Of Columbia	F&U	$796.72	$1,133.87	42.3%
Florida	F&U	$610.21	$1,036.76	69.9%
Georgia	PA	$531.01	$749.09	41.1%
Hawaii	PA	$673.36	$765.83	13.7%
Idaho	U&F	$348.31	$547.78	57.3%
Illinois	DEREG	$505.32	$732.56	45.0%
Indiana	F&U	$426.29	$624.86	46.6%
Iowa	U&F	$315.02	$546.59	73.5%
Kansas	F&U	$340.76	$625.17	83.5%
Kentucky	FLEX	$375.71	$722.66	92.3%
Louisiana	F&U	$571.96	$1,121.46	96.1%
Maine	F&U	$434.84	$582.29	33.9%
Maryland	F&U	$646.18	$947.70	46.7%
Massachusetts	F&U	$728.39	$890.83	22.3%
Michigan	F&U	$550.84	$934.60	69.7%
Minnesota	F&U	$460.41	$693.08	50.5%
Mississippi	PA	$440.80	$745.17	69.0%
Missouri	U&F	$430.05	$678.04	57.7%
Montana	F&U	$336.04	$656.47	95.4%
Nebraska	F&U	$284.86	$592.69	108.1%
Nevada	PA	$586.60	$930.72	58.7%
New Hampshire	F&U	$609.13	$706.24	15.9%
New Jersey	PA	$982.93	$1,157.30	17.7%
New Mexico	F&U	$443.76	$703.90	58.6%
New York	PA	$665.07	$1,078.88	62.2%
North Carolina	PA	$388.00	$599.90	54.6%
North Dakota	PA	$283.11	$528.81	86.8%
Ohio	F&U	$447.73	$619.46	38.4%
Oklahoma	U&F	$399.19	$700.35	75.4%
Oregon	F&U	$466.29	$724.42	55.4%
Pennsylvania	PA	$646.03	$812.15	25.7%
Rhode Island	F&U	$725.82	$984.95	35.7%
South Carolina	FLEX	$494.25	$737.74	49.3%
South Dakota	F&U	$273.51	$525.16	92.0%
Tennessee	PA	$423.26	$641.17	51.5%
Texas	F&U	$497.35	$848.11	70.5%
Utah	U&F	$385.44	$717.25	86.1%
Vermont	U&F	$423.43	$630.19	48.8%
Virginia	F&U	$437.87	$673.62	53.8%

What Works: A Review of Auto Insurance Rate Regulation in America and How Best Practices Save Billions of Dollars

Appendix 1-B. Rating Law Analysis (cont.)

State	Rating Law	1989 Average Expenditure	2010 Average Expenditure	21-Year Change
Washington	PA	$490.50	$815.27	66.2%
West Virginia	PA	$437.09	$830.10	89.9%
Wisconsin	U&F	$392.46	$613.37	56.3%
Wyoming	DEREG	$318.28	$621.08	95.1%
Countrywide		**$551.95**	**$791.22**	**43.3%**

Rate Change by Rating Law	Prior Approval (PA)	File & Use (F&U)	Use & File (U&F)	Flex (FLEX)	Deregulated (DEREG)
Simple Averages	48.0%	60.4%	61.7%	66.8%	70.1%
Weighted Averages	33.0%	60.9%	58.7%	68.2%	47.9%

Source: Expenditure data from NAIC Auto Database Report 2010 and previous editions.

Appendix 1-C. Herfindahl–Hirschman Index

State	HHI	State	HHI	State	HHI
Maine	633	Colorado	940	Tennessee	1127
Vermont	662	Iowa	946	Mississippi	1138
Connecticut	702	New Jersey	954	South Carolina	1155
New Hampshire	714	Montana	954	Alabama	1163
California	753	Kansas	956	Wyoming	1198
Washington	762	Minnesota	980	Illinois	1216
North Dakota	763	Oklahoma	980	Delaware	1224
South Dakota	784	Missouri	986	Massachusetts	1260
Nevada	788	Pennsylvania	991	Hawaii	1265
Utah	796	Michigan	996	Maryland	1271
Idaho	797	Georgia	1001	New York	1286
Ohio	798	Nebraska	1001	West Virginia	1317
Arizona	827	Virginia	1005	Louisiana	1538
Indiana	883	Arkansas	1018	Alaska	1672
Texas	902	New Mexico	1019	Dist. Of Columbia	1825
Rhode Island	911	Oregon	1028		
North Carolina	922	Florida	1070		
Wisconsin	926	Kentucky	1105	**Countrywide**	**698**

Source: Market Share Data from 2011 Market Share Reports for Property/Casualty Groups and Companies. NAIC, 2012

Appendix 1-D. Average Profit 1989-2011 by State

State	Predominant Rating Law	Average Profit	State	Predominant Rating Law	Average Profit
Alabama	PA	9.6%	Montana	F&U	6.5%
Alaska	FLEX	9.5%	Nebraska	F&U	7.9%
Arizona	U&F	9.9%	Nevada	PA	3.7%
Arkansas	F&U	6.7%	New Hampshire	F&U	13.4%
California	PA	12.1%	New Jersey	PA	7.0%
Colorado	F&U	8.2%	New Mexico	F&U	10.8%
Connecticut	PA	12.2%	New York	PA	9.6%
Delaware	F&U	6.5%	North Carolina	PA	6.8%
Dist. Of Columbia	F&U	13.7%	North Dakota	PA	9.1%
Florida	PA	5.9%	Ohio	F&U	11.6%
Georgia	PA	6.8%	Oklahoma	U&F	6.6%
Hawaii	PA	17.4%	Oregon	F&U	11.9%
Idaho	U&F	12.7%	Pennsylvania	PA	8.6%
Illinois	DEREG	9.7%	Rhode Island	F&U	12.1%
Indiana	F&U	9.7%	South Carolina	FLEX	3.7%
Iowa	U&F	10.1%	South Dakota	F&U	8.4%
Kansas	FLEX	7.6%	Tennessee	PA	7.8%
Kentucky	FLEX	4.7%	Texas	F&U	7.4%
Louisiana	PA	3.9%	Utah	U&F	11.5%
Maine	F&U	14.0%	Vermont	U&F	12.9%
Maryland	F&U	10.7%	Virginia	F&U	11.0%
Massachusetts	F&U	8.0%	Washington	PA	8.8%
Michigan	F&U	4.4%	West Virginia	PA	6.0%
Minnesota	F&U	10.4%	Wisconsin	U&F	10.3%
Mississippi	PA	5.7%	Wyoming	DEREG	9.9%
Missouri	U&F	9.0%			

Source: NAIC Report on Profitability by Line by State 2011 and previous

Average Weighted Profit by Rating Law

Rating Law	Premium (billions)	Average Profit
Prior Approval	$ 63.40	9.4%
File & Use	$ 63.80	7.7%
Use & File	$ 12.60	9.7%
Flex	$ 4.70	4.5%
Deregulated	$ 5.10	9.7%
Countrywide	**$ 149.60**	**8.6%**

Source: NAIC Report on Profitability by Line by State 2011 and previous

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Appendix 1-E. Expenditure and Premium Change Including Breakdown by Coverage, 1989-2010

Year	Average Expenditure		Average Premium		Average Premium - Liability		Average Premium - Collision		Average Premium - Comprehensive	
	California	Countrywide	California	Countrywide	California	Countrywide	California	Countrywide	California	Countrywide
1989	$747.97	$551.95	$875.60	$635.58	$519.39	$339.82	$235.53	$197.33	$120.68	$98.44
1990	$751.32	$571.69	$872.33	$658.83	$501.34	$354.61	$245.19	$202.34	$125.80	$101.88
1991	$783.18	$596.91	$897.32	$686.79	$533.93	$377.15	$238.78	$306.01	$124.61	$103.63
1992	$766.11	$616.18	$887.30	$711.97	$518.30	$395.54	$243.98	$207.34	$125.02	$109.09
1993	$802.63	$637.72	$892.80	$730.39	$523.21	$412.70	$234.83	$205.78	$134.76	$111.91
1994	$789.54	$650.73	$874.84	$740.38	$502.76	$420.23	$241.68	$206.60	$130.41	$113.55
1995	$803.19	$668.27	$886.76	$757.56	$514.53	$428.51	$240.93	$213.32	$131.30	$115.74
1996	$799.04	$691.32	$878.95	$780.11	$511.14	$438.00	$238.64	$222.40	$128.91	$119.01
1997	$773.32	$707.39	$871.36	$798.91	$504.00	$441.28	$246.33	$235.40	$121.04	$122.23
1998	$717.98	$704.32	$823.10	$797.23	$452.23	$426.21	$249.97	$245.28	$120.90	$125.74
1999	$665.65	$685.09	$771.46	$785.49	$404.33	$405.43	$234.81	$249.53	$113.67	$130.53
2000	$666.94	$689.27	$766.90	$788.50	$397.28	$401.19	$244.80	$255.80	$110.44	$131.51
2001	$722.79	$725.57	$812.90	$824.31	$427.78	$420.46	$280.30	$270.73	$104.82	$133.12
2002	$778.00	$780.77	$887.37	$887.87	$460.33	$456.84	$318.65	$292.81	$108.36	$138.22
2003	$837.30	$824.49	$957.82	$941.31	$493.10	$487.93	$349.77	$308.26	$114.95	$145.12
2004	$846.30	$839.55	$971.66	$961.42	$492.20	$500.09	$363.60	$214.43	$115.87	$146.90
2005	$844.50	$829.17	$969.11	$948.97	$487.04	$496.73	$365.31	$308.96	$116.76	$143.28
2006	$840.89	$817.99	$974.59	$937.42	$480.41	$489.20	$376.17	$307.83	$118.01	$140.39
2007	$809.78	$798.49	$951.68	$914.55	$466.25	$477.06	$372.86	$301.47	$112.58	$136.03
2008	$779.54	$790.58	$919.37	$904.42	$451.12	$471.98	$363.12	$298.52	$105.13	$133.92
2009	$755.15	$786.52	$894.46	$901.57	$443.30	$475.09	$349.33	$294.09	$101.83	$132.38
2010	$745.74	$791.22	$883.38	$907.38	$444.90	$484.03	$338.21	$290.29	$100.27	$133.06
1989-2010										
% Change	-0.3%	43.3%	0.9%	42.8%	-14.3%	42.4%	43.6%	47.1%	-16.9%	35.2%
$ Change	-$2.23	$239.27	$7.78	$271.80	-$74.49	$144.21	$102.68	$92.96	-$20.41	$34.62
CA Rank										
1989	**3**		**3**		**2**		**9**		**9**	
2010	**21**		**23**		**30**		**9**		**48**	

Source: NAIC Auto Insurance Database Report 2010 and previous editions.

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Appendix 1-F. 2010 Expenditure by Density - State Comparison

State	2010 Density*	2010 Expenditure	State (cont.)	2010 Density*	2010 Expenditure
Alabama	0.63	$651.24	Nebraska	0.21	$592.69
Alaska	0.29	$890.35	Nevada	0.6	$930.72
Arizona	0.93	$804.05	New Hampshire	0.81	$706.24
Arkansas	0.33	$662.42	New Jersey	1.86	$1,157.30
California	1.88	$745.74	New Mexico	0.37	$703.90
Colorado	0.53	$730.42	New York	1.15	$1,078.88
Connecticut	1.46	$965.22	North Carolina	0.97	$599.90
Delaware	1.41	$1,030.98	North Dakota	0.1	$528.81
Dist. Of Columbia	2.39	$1,133.87	Ohio	0.91	$619.46
Florida	1.61	$1,036.76	Oklahoma	0.99	$700.35
Georgia	0.91	$749.09	Oregon	0.57	$724.42
Hawaii	2.27	$765.83	Pennsylvania	0.84	$812.15
Idaho	0.32	$547.78	Rhode Island	1.28	$984.95
Illinois	0.76	$732.56	South Carolina	0.74	$737.74
Indiana	0.78	$624.86	South Dakota	0.11	$525.16
Iowa	0.27	$546.59	Tennessee	0.75	$641.17
Kansas	0.21	$625.17	Texas	0.75	$848.11
Kentucky	0.61	$722.66	Utah	0.59	$717.25
Louisiana	0.74	$1,121.46	Vermont	0.5	$630.19
Maine	0.64	$582.29	Virginia	1.1	$673.62
Maryland	1.78	$947.70	Washington	0.68	$815.27
Massachusetts	1.5	$890.83	West Virginia	0.5	$830.10
Michigan	0.8	$934.60	Wisconsin	0.52	$613.37
Minnesota	0.41	$693.08	Wyoming	0.34	$621.08
Mississippi	0.53	$745.17			
Missouri	0.94	$678.04			
Montana	0.15	$656.47	**Countrywide**		**$791.22**

* Density = Millions of Miles Driven Per Mile of Road

Source: Federal Highway Administration, Expenditure data from NAIC Auto Database Report 2010.

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Appendix 1-G. Percentage of Drivers Purchasing Coverage Through States' Residual Markets

State	Type of Residual Market	% of DPW in PP Liability Market	State (cont.)	Type of Residual Market	% of DPW in PP Liability Market
Alabama	AIP	0.0%	Montana	AIP	0.0%
Alaska	AIP	0.0%	Nebraska	AIP	0.0%
Arizona	AIP	0.0%	Nevada	AIP	0.0%
Arkansas	AIP	0.0%	New Hampshire	Reinsurance	0.1%
California	AIP	0.0%	New Jersey	AIP	1.9%
Colorado	AIP	0.0%	New Mexico	AIP	0.0%
Connecticut	AIP	0.0%	New York	AIP	2.1%
Delaware	AIP	0.0%	North Carolina	Reinsurance	25.8%
Dist. Of Columbia	AIP	0.2%	North Dakota	AIP	0.0%
Florida	JUA	0.0%	Ohio	AIP	0.0%
Georgia	AIP	0.0%	Oklahoma	AIP	0.0%
Hawaii	AIP	1.2%	Oregon	AIP	0.0%
Idaho	AIP	0.0%	Pennsylvania	AIP	0.2%
Illinois	AIP	0.0%	Rhode Island	AIP	2.1%
Indiana	AIP	0.0%	South Carolina	AIP	0.0%
Iowa	AIP	0.0%	South Dakota	AIP	0.0%
Kansas	AIP	0.2%	Tennessee	AIP	0.0%
Kentucky	AIP	0.0%	Texas	AIP	0.1%
Louisiana	AIP	0.0%	Utah	AIP	0.0%
Maine	AIP	0.0%	Vermont	AIP	0.1%
Maryland	State Fund	3.6%	Virginia	AIP	0.0%
Massachusetts	AIP	4.8%	Washington	AIP	0.0%
Michigan	JUA	0.0%	West Virginia	AIP	0.0%
Minnesota	AIP	0.0%	Wisconsin	AIP	0.0%
Mississippi	AIP	0.0%	Wyoming	AIP	0.0%
Missouri	AIP	0.0%			
Countrywide		**1.1%**			

Types of Residual Markets:

AIP = Automobile Assigned Risk Plan	In an AIP, the person is assigned to an insurance company, with distribution determined by the insurer market share.
JUA = Joint Underwriting Association	In a JUA, the risks are pooled and the profit/loss shared. The person needing coverage goes to servicing carriers.
Reinsurance = Reinsurance Facility	In a Reinsurance Facility, the person goes to the insurer of his/her choice. The insurer can cede all or part of the risk to the Facility.
State Fund	Maryland runs the program and the insurers pay for any losses and bill that to their policyholders.

Source: Source: AIPSO Facts 2011/2012

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Appendix 1-G. Uninsured Motorists by State

State	2009 Est. Uninsured Motorist %	Rank	State (cont.)	2009 Est. Uninsured Motorist %	Rank
Alabama	21.8%	6	Montana	11.4%	30
Alaska	13.0%	25	Nebraska	7.8%	46
Arizona	11.9%	28	Nevada	13.2%	24
Arkansas	16.0%	12	New Hampshire	10.9%	33
California	15.0%	17	New Jersey	11.2%	32
Colorado	15.2%	16	New Mexico	25.7%	2
Connecticut	9.5%	40	New York	5.4%	49
Delaware	10.8%	34	North Carolina	13.5%	23
Dist. Of Columbia	15.3%	15	North Dakota	9.1%	41
Florida	23.5%	5	Ohio	15.7%	14
Georgia	15.7%	13	Oklahoma	23.9%	3
Hawaii	11.2%	31	Oregon	10.4%	38
Idaho	7.9%	45	Pennsylvania	6.6%	48
Illinois	14.9%	18	Rhode Island	17.6%	9
Indiana	16.3%	10	South Carolina	10.7%	37
Iowa	11.5%	29	South Dakota	8.6%	42
Kansas	9.8%	39	Tennessee	23.9%	4
Kentucky	17.8%	8	Texas	14.9%	20
Louisiana	12.9%	27	Utah	8.2%	43
Maine	4.5%	50	Vermont	7.1%	47
Maryland	14.9%	19	Virginia	10.8%	35
Massachusetts	4.5%	51	Washington	16.1%	11
Michigan	19.5%	7	West Virginia	10.8%	36
Minnesota	13.0%	26	Wisconsin	14.6%	21
Mississippi	28.0%	1	Wyoming	8.1%	44
Missouri	13.7%	22	**Countrywide**	**13.8%**	

Source: Uninsured Motorists, 2011 Edition, Insurance Research Council, April 2011

Appendix 1-I. Miscellaneous Data by State

State	% of 2010 Population in Metro areas	Disposable per-capita income (Thousands)	Car thefts per 1,000 vehicles (in 2009)	Average Auto Repair Costs per Claim (2008)	State Auto Insurance Liability Regime	Seat Belt Laws √=Not Primary	Maximum Speed Limit (MPH)
Alabama	73%	$30	2.3	$2,407	Tort		70
Alaska	69%	$39	2.3	$2,521	Tort	√	65
Arizona	90%	$31	4.9	$2,484	Tort	√	75
Arkansas	61%	$29	2.7	$2,614	Add-on		70
California	99%	$37	4.4	$2,243	Tort		70
Colorado	86%	$37	7.9	$2,419	Tort		75
Connecticut	93%	$46	2.1	$2,709	Tort		65
Delaware	79%	$35	2.3	$2,248	No-Fault		65
Dist. Of Columbia	100%	$60	23.1	$1,705	No-Fault		55
Florida	95%	$34	2.7	$2,238	No-Fault		70
Georgia	80%	$31	3.6	$2,256	Tort		70
Hawaii	74%	$37	5.7	$1,959	No-Fault		60
Idaho	67%	$28	1	$2,374	Tort	√	75
Illinois	86%	$37	2.9	$2,295	Tort		65
Indiana	79%	$34	2.2	$2,270	Tort		70
Iowa	57%	$34	1.1	$2,336	Tort		70
Kansas	69%	$35	2.5	$1,392	No-Fault		70
Kentucky	59%	$29	1.7	$2,142	No-Fault		70
Louisiana	75%	$33	2.5	$2,542	Tort		70
Maine	59%	$33	0.9	$2,205	Tort		75
Maryland	96%	$42	4.1	$1,952	Add-on		65
Massachusetts	99%	$44	2.2	$2,135	No-Fault	√	65
Michigan	81%	$30	3.5	$2,262	No-Fault		70
Minnesota	75%	$37	1.8	$2,225	No-Fault		70
Mississippi	45%	$28	2.7	$2,262	Tort		70
Missouri	75%	$33	3.3	$2,292	Tort	√	70
Montana	36%	$30	1.7	$3,191	Tort		75
Nebraska	60%	$35	2	$2,381	Tort	√	75
Nevada	92%	$33	7.3	$2,142	Tort	√	75
New Hampshire	62%	$39	0.8	$1,025	Tort		65
New Jersey	100%	$44	2.5	$2,590	No-Fault		65
New Mexico	68%	$30	3.2	$3,025	Tort		75
New York	91%	$40	1.8	$2,918	No-Fault		65
North Carolina	72%	$31	3	$1,876	Tort		70
North Dakota	50%	$36	1.2	$2,280	No-Fault		65
Ohio	81%	$32	1.9	$2,176	Tort	√	65
Oklahoma	65%	$31	3	$2,686	Tort		75
Oregon	78%	$32	2.9	$2,075	Tort	√	65
Pennsylvania	85%	$35	1.7	$2,375	No-Fault		65
Rhode Island	100%	$37	3	$2,881	Tort		65

Appendix 1-I. Miscellaneous Data by State (cont.)

State	% of 2010 Population in Metro areas	Disposable per-capita income (Thousands)	Car thefts per 1,000 vehicles (in 2009)	Average Auto Repair Costs per Claim (2008)	State Auto Insurance Liability Regime	Seat Belt Laws √=Not Primary	Maximum Speed Limit (MPH)
South Carolina	78%	$29	3.7	$1,942	Tort		70
South Dakota	45%	$29	0.9	$2,478	Add-on		75
Tennessee	74%	$32	2.9	$2,298	Tort		70
Texas	89%	$34	3.7	$2,274	Tort		75
Utah	88%	$29	2.4	$2,237	No-Fault		75
Vermont	34%	$35	0.8	$2,316	Tort	√	65
Virginia	87%	$38	1.7	$1,830	Add-on	√	70
Washington	89%	$38	4.6	$2,153	Add-on		70
West Virginia	57%	$28	1.7	$2,307	Tort		70
Wisconsin	73%	$33	1.7	$2,364	Add-on		65
Wyoming	31%	$39	0.9	$2,947	Tort	√	75
Countrywide	**84%**	**$35**	**3**	**$2,336**			

Source: NAIC Auto Database Report 2010 and previous editions.
Notes: All states use 0.8 BAC for drunk driving. All suspend licenses except MI, NJ, NY, PA, SC

Appendix 2. Text of Proposition 103

On November 8, 1988, Californians passed the Insurance Rate Reduction and Reform Act, better known as Proposition 103. What follows below is the complete, original text of the ballot initiative.

NOTE: Changes made by the state Legislature and the Courts are noted in different text (shaded for additions ~~**BOLD CAPS with strike through**~~ *for deletions). For the complete text noting the repeal of then-existing laws (Section 7), please consult the 1988 California General Election Voter Information Pamphlet or the California Insurance Code at your local law library.*

Insurance Rate Reduction and Reform Act

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. [**The California Supreme Court unanimously upheld the rollback in May of 1989 but struck down the "substantially threatened with insolvency" standard.** ***The court substituted a "fair rate of return" constitutional standard, leaving it to the Commissioner to determine on a company-by-company basis, through the individual rollback exemption hearings, whether the rate rollback would deprive an insurer of a fair rate of return***.]

(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) Those other factors that the commissioner may adopt by regulation and 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 approval shall constitute unfair discrimination.

[Insurance Code Section 1861.02(b) was amended by the state Legislature. Amendments are noted in shaded text, deletions in BOLD CAPS.]

(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~~ Every person who meets the criteria of Section 1861.025 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.

(3) (A) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section

12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance from requiring membership in the motor club as a condition precedent to obtaining insurance described in this subdivision.

(B) This subdivision shall not prevent an insurer which requires membership in a specified voluntary, nonprofit organization, which was in existence prior to November 8, 1988, as a condition precedent to applying for insurance issued to or through those membership groups, including franchise groups, from requiring such membership as a condition to applying for the coverage offered to members of the group, provided that it or an affiliate also offers and sells coverage to those who are not members of those membership groups.

(C) However, all of the following conditions shall be applicable to the insurance authorized by subparagraphs (A) and (B):

(i) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.
(ii) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.
(iii) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.
Any insurer that violates clause (i), (ii), or (iii) shall be subject to the penalties set forth in Section 1861.14.

(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.

[Insurance Code Section 1861.02(d), noted in shaded text below, was added to the Insurance Code by the state Legislature. It was NOT part of the original text of Proposition 103.]

(d) An insurer may refuse to sell a Good Driver Discount policy insuring a motorcycle unless all named insurers have been licensed to drive a motorcycle for the previous three years.

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

[Insurance Code Section 1861.025, noted in shaded text below, was added to the Insurance Code by the state Legislature. It was NOT part of the original text of Proposition 103.]

1861.025. A person is qualified to purchase a Good Driver Discount policy if he or she meets all of the following criteria:

(a) He or she has been licensed to drive a motor vehicle for the previous three years.

(b) During the previous three years, he or she has not done any of the following:
(1) Had more than one violation point count determined as provided by subdivision (a), (b), (c), (d), (e), (g), or (h) of Section 12810 of the Vehicle Code, but subject to the following modifications:

A. For the purposes of this section, the driver of a motor vehicle involved in an accident for which he or she was principally at fault that resulted only in damage to property shall receive one violation point count, in addition to any other violation points which may be imposed for this accident.

B. If, under Section 488 or 488.5 an insurer is prohibited from increasing the premium on a policy on account of a violation, that violation shall not be included in determining the point count of the person.

C. If a violation is required to be reported under Section 1816 of the Vehicle Code, or under Section 784 of the Welfare and Institutions Code, or any other provision requiring the reporting of a violation by a minor, the violation shall be included for the purposes of this section in determining the point count in the same manner as is applicable to adult violations.

(2) Had more than one dismissal pursuant to Section 1803.5 of the Vehicle Code that was not made confidential pursuant to Section 1808.7 of the Vehicle Code, in the 36-month period for violations that would have resulted in the imposition of more than one violation point count under paragraph (1) if the complaint had not been dismissed.

(3) Was the driver of a motor vehicle involved in an accident that resulted in bodily injury or in the death of any person and was principally at fault. The commissioner shall adopt regulations setting guidelines to be used by insurers for the their determination of fault for the purposes of this paragraph and paragraph (1) of subdivision (b).

(c) During the period commencing on January 1, 1999, or the date 10 years prior to the date of application for the issuance or renewal of the Good Driver Discount policy, whichever is later, and ending on the date of the application for the issuance or renewal of the Good Driver Discount policy, he or she has not been convicted of a violation of Section 23140, 23152, or 23153 of the Vehicle Code, a felony violation of Section 23550 or 23566, or former Section 23175 or, a violation of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code.

(d) Any person who claims that he or she meets the criteria of subdivisions (a), (b), and (c) based entirely or partially on a driver's license and driving experience acquired anywhere other than in the United States or Canada is rebuttably presumed to be qualified to purchase a Good Driver Discount policy if he or she has been licensed to drive in the United States or Canada for at least the previous 18 months and meets the criteria of subdivisions (a), (b), and (c) for that period.

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 (Sections 51 through 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).

[Insurance Code Section 1861.03(b) was amended by the state Legislature. Additions are noted in shaded text, deletions in BOLD CAPS.]

(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~~.~~ , (3) any agent or broker, representing one or more insurers, from obtaining from any insurer it represents information relative to the premium for any policy or risk to be underwritten by that insurer, (4) any agent or broker from disclosing to an insurer it represents any quoted rate or charge offered by another insurer represented by that agent or broker for the purpose of negotiating a lower rate, charge, or term from the insurer to whom the disclosure is made, or (5) any agents, brokers, or insurers from utilizing or participating with multiple insurers or reinsurers for underwriting a single risk or group of risks.

(c) (1) 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:

(A) non-payment of premium;
(B) fraud or material misrepresentation affecting the policy or insured;
(C) a substantial increase in the hazard insured against.

[Insurance Code Section 1861.03(c)(2), noted in shaded text below, was added to the Insurance Code by the state Legislature. It was NOT part of the original text of Proposition 103.]

(2) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance, from issuing an effective notice of nonrenewal based solely on the failure of the insured to maintain membership in the motor club. This subdivision shall also not prevent an insurer which issues private passenger automobile coverage to members of groups that were in existence prior to November 8, 1988, whether membership, franchise, or otherwise, and to those who are not members of groups from issuing an effective notice of nonrenewal for coverage provided to the insured as a member of the group based solely on the failure of the insured to maintain that membership if (i) the insurer offers to renew the coverage to the insured on a nongroup basis, or (ii) to transfer the coverage to an affiliated insurer. The rates charged by the insurer or affiliated insurer shall have been adopted pursuant to this article. However, all of the following conditions shall be applicable to that insurance:

(A) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.

(B) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.

(C) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.

Any insurer that violates subparagraphs (A), (B), or (C) shall be subject to the penalties set forth in Section 1861.14.

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.

[Insurance Code Section 1861.05(c) was amended by the state Legislature. Additions are noted in shaded text.]

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. 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.

(d) For purposes of this section, extraordinary circumstances include the following:

(1) Rate change application hearings commenced during the 180-day period provided by subdivision (c). If a hearing is commenced during the 180-day period, the rate change application shall be deemed approved upon expiration of the 180-day period or 60 days after the close of the record of the hearing, whichever is later, unless disapproved prior to that date.

(2) Rate change applications that are not approved or disapproved within the 180-day period provided by subdivision (c) as a result of a judicial proceeding directly involving the application and initiated by the applicant or an intervenor. During the pendency of the judicial proceedings, the 180-day period is tolled, except that in no event shall the commissioner have less than 30 days after conclusion of the judicial proceedings to approve or disapprove the application. Notwithstanding any other provision of law, nothing shall preclude the commissioner from disapproving an application
without a hearing if a stay is in effect barring the commissioner from holding a hearing within the 180-day period.

(3) The hearing has been continued pursuant to Section 11524 of the Government Code. The 180-day period provided by subdivision (c) shall be tolled during any period in which a hearing is continued pursuant to Section 11524 of the Government Code. A continuance pursuant to Section 11524 of the Government Code shall be decided on a case by case basis. If the hearing is commenced or continued during the 180-day period, the rate change application shall be deemed approved upon the expiration of the 180-day period or 100 days after the case is submitted, whichever is later, unless disapproved prior to that date.

[Insurance Code Section 1861.055, noted in shaded text below, was added to the Insurance Code by the state Legislature. It was NOT part of the original text of Proposition 103.]

1861.055. (a) The commissioner shall adopt regulations governing hearings required by subdivision (c) of Section 1861.05 on or before 120 days after the enactment of this section. Those regulations shall, at the minimum, include timelines for scheduling and commencing hearings, and procedures to prevent delays in commencing or continuing hearings without good cause.

(b) The sole remedy for failure by the commissioner to adopt the regulations required by subdivision (a) within the prescribed period or to abide by those regulations once adopted shall be a writ of mandate by any aggrieved party in a court of competent jurisdiction to compel the commissioner to adopt those regulations, or commence or resume hearings.

(c) Nothing in this section shall preclude the commissioner from commencing hearings required by subdivision (c) of Section 1861.05 prior to adopting the regulations required by this section.

(d) The administrative law judge shall render a decision within 30 days of the closing of the record in the proceeding.

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.

[Insurance Code Section 1861.08 was amended by the state Legislature. Additions are noted in shaded text, deletions in BOLD CAPS.]

1861.08. Hearings shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 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)**~~11518.5 and subdivisions (b), (c), and (e) of Section 11517 and solely on the basis of the record**;** as provided in Section 11425.50 of the Government Code.

(d) **SECTION 11513.5 SHALL APPLY TO THE COMMISSIONER;** Notwithstanding Section 11501, Section 11430.30 and subdivision (b) of Section 11430.70 shall not apply in these hearings.
(e) **D**Discovery shall be liberally construed and disputes determined by the administrative law judge. as provided in Section 11507.7 of the Government Code.

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.

[The California Supreme Court invalidated Section 1861.10(c) of Proposition 103 in May 1989. The section is in BOLD CAPS below.]

~~(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.~~

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.

About the Authors

J. Robert Hunter | Director of Insurance

J. Robert ("Bob") Hunter is director of insurance for the Consumer Federation of America. Previously he served as Insurance Commissioner for the State of Texas and as Federal Insurance Administrator under Presidents Ford and Carter (where he ran the National Flood Insurance Program and other federal insurance initiatives). He founded the National Insurance Consumer Organization and served as President of that organization. He is a certified actuary and also had significant private sector insurance experience. He has appeared on many TV and radio shows and is often quoted in newspaper articles on insurance. He has won several awards for his work, most recently being named one of the 25 Living Legends in Insurance by the National Underwriter Magazine. Hunter also has done extensive missionary work in Africa.

Tom Feltner | Director of Financial Services

Tom Feltner is the director of financial services at the Consumer Federation of America, an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. At CFA, Feltner heads coalition building, policy development and advocacy in the areas of automobile insurance reform, high-cost lending and financial services regulation. In this position, he is regularly engaged in state and national efforts to further the consumer interest in the financial services marketplace and protect consumers, particularly lower-income consumers, from abusive practices. From 2003 to 2012, Feltner managed consumer credit policy, communications and government relations for Woodstock Institute, most recently as its vice president. Feltner currently serves on the board of directors of Reinvestment Partners, a Durham, North Carolina-based non-profit, and the State of Illinois Residential Mortgage Advisory Board.

Douglas Heller | Consulting Insurance Expert

Douglas Heller is a nationally-recognized insurance expert and former non-profit executive who serves as an independent consultant to consumer organizations and other public interest causes. He also serves as an appointed consumer representative to the California Automobile Assigned Risk Plan Advisory Committee. From 2004-2012, Heller was the Executive Director of the California-based non-profit Consumer Watchdog.

He is a frequent media commentator on insurance issues and other consumer rights and political reform issues. Heller has authored numerous reports on issues such as energy deregulation, medical malpractice and insurance industry claims handling.

About Consumer Federation of America

The Consumer Federation of America (CFA) is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. Today, nearly 300 of these groups participate in the federation and govern it through their representatives on the organization's Board of Directors.

Endnotes

[i] The sources of premium and expenditure data contained in this report, unless otherwise described, are the National Association of Insurance Commissioner Auto Insurance Database Reports (1990-2010), NAIC Report on Profitability by Line by State (1999-2011) and Best's Aggregates and Averages, various editions.

[ii] Private passenger automobile direct written premiums in 2012, Aggregates and Averages, A. M. Best, 2013 Edition.

[iii] All of the system averages increases shown above appear to be higher than the national 43.3 percent overall increase NAIC data shows. The reason for this is that the 43.3 percent increase is a weighted average of the 51 state data, calculated in the same way as each individual state's increase and is thus the right number to use to compare national increase to a specific state's increase. But, when comparing systems, each state is a data point in the analysis and the simple average of the state numbers is proper to select for the test. The simple average of the 51 state increases is higher that the weighted average (in part because California is so large). The simple average increase of the 51 states is 57.7 percent.

[iv] According to "The Voice of the Personal Lines Consumer," Deloitte Development LLC, 2012, 24% of insurance consumers "Never" shop, 34% "Rarely" shop, 16% shop "every few years," and the balance shop every 2 years.

[v] The HHI is calculated by squaring the market share of each firm competing in a market and totaling the resulting figures.

[vi] Uninsured Motorists, 2011 Edition, Insurance Research Council.

[vii] Historical patterns of the insurance marketplace in New England states where insurance first developed and many smaller insurance companies gained market share, resisting the advent of huge market share insurers like State Farm and Allstate. The top ten list of insurers in New England includes names like the Concord Group, Mapfre Insurance, Safety Insurance and Amica Mutual, names not well known outside of the Northeast.

[viii] A “residual market” is a mechanism for insuring those persons that the normal (“voluntary”) market will not cover. The most typical mechanism is the assigned risk plan, where a person not able to get normal insurance applies for coverage and is randomly sent to an insurance company. The share of the normal market is the basis for the number of assignments a company receives. California uses this mechanism, as do most states. Other mechanisms include Joint Underwriting Associations (where all insurance companies share the risk of a pooled policy), State Funds and Reinsurance Facilities. In this latter system, the consumer can go to the company of his/her choice and the insurer must write the policy. The company is free to cede (send) the risk to a pool that reinsures the risk but the contract remains with the insurer, just as in the normal market. Strictly speaking, this facility approach is not “residual,” since insurers have incentives to cede more than poor risks to the facility.

[ix] Source: California Automobile Assigned Risk Plan. Some of the drop may be due to the sharp increase in CAARP rates during the period, but to the extent that is so, the uninsured motorist population would be expected to sharply rise, which it did not.

[x] Passel, J. and Cohn, D. (2011, February 1). Unauthorized Immigrant Population: National and State Trends, 2010. Pew Research Hispanic Trends Project, retrieved from http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/

[xi] 46 Cal. Rptr. 116 (1988).

[xii] Insurance Commissioner Benjamin R. Schenck of New York said of selection competition: “In insurance there is one form of competition that seldom exists in other products or services. That is selection competition – the ability of an insurer to affect its success, not by the price or quality of its products, but by selecting its customers in a fashion that will give it an advantage over its rivals…Selection competition should have few admirers. It is capable of denying to some people the opportunity to buy insurance at all in a day.” when many forms of insurance have become legal and practical necessities.” Convention of Casualty and Surety Agents, White Sulfur Springs, West Virginia, October 9, 1972.

[xiii] California Insurance Code Section 1861.07

[xiv] B&P §17200, et al.