



Formerly The Foundation for Taxpayer & Consumer Rights

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June 11, 2008

Honorable Jared Huffman
State Capitol, Room 4139
Sacramento, CA 95814

Dear Assemblyman Huffman:

We have written, and had numerous discussions with, you and your staff about how AB 2800 is an illegal amendment to Proposition 103. Proposition 103 already commands insurers to lower rates for drivers who reduce their mileage, which is the purported goal of this bill. But your bill merely lets companies' charge lower rates to customers who install a spyware device in their car (and higher rates to those who don't), even if the driver makes no progress in reducing their actual miles driven. That will not help move this issue forward and we have repeatedly asked you to suspend action on this bill.

We urge again you to withdraw the bill before next week's Senate hearing for four key reasons:

1) AB 2800 is an illegal amendment to voter-approved Proposition 103 and will be challenged in court at great cost to taxpayers. Proposition 103 gives sole authority to set new insurance rating factors to the Insurance Commissioner. AB 2800 would invade that authority by creating a new rating factor based on whether or not a driver agrees to install an insurer's spyware in his or her car. Proposition 103 may only be amended by the Legislature to further its purposes. AB 2800 fails that test. (*FTCR v. Garamendi*, *Proposition 103 Enforcement Project v. Quackenbush*, *Amwest v. Wilson*)

Any amendment to alter Proposition 103 in this manner can only be done by a vote of the people. New regulations, however, can encourage less driving through lower insurance rates without violating Proposition 103.

2) AB 2800 threatens motorists' privacy by allowing insurance companies to require Californians to place satellite-linked spyware in their cars or pay higher insurance rates. The mileage program is nominally "voluntary," but it will be required in practice for any driver who wants to pay lower rates.

Several insurers have made it clear that their preferred mileage verification method is placing a data-collection device in cars and nothing in your legislation prevents that; indeed you removed an earlier provision that placed limits on the type of data insurers could collect. Progressive Insurance Company already has a program called "MyRate" in a few test-market states that offers incentives to drivers who install a device to collect information on their driving habits.

Data collected includes "how aggressively you drive," as well as time and mileage. In the Terms and Conditions of the program, Progressive assures participants that the information will not be used to make claims decisions without the driver's permission, or to cancel a policy. However, the Terms and Conditions may be changed at any time at Progressive's discretion.¹

Nothing in AB 2800 prohibits insurers from collecting the additional information about consumers' driving habits that Progressive is already compiling in other states.

Consider the privacy ramifications of insurer access to data including acceleration and braking rates, average speed, time of day one is driving and the location of the car at all times.

Will insurers look to avoid providing coverage to janitors who work the late shift, as the tracking device indicates, if the company decides nighttime driving is riskier?

Will an insurer invoke the black box recorder to deny a claim based on the fact that the driver had come to a screeching halt two other times in the past month? Some in the insurance industry argue that acceleration and deceleration habits should be monitored in order to set premiums.

Progressive Insurance is already using these devices to monitor how aggressively customers drive (whatever that means) and we wonder what other data insurers might choose to collect.

A 2005 insurance industry study found that:

Drivers living within a mile of a church are the safest -- they're 10 percent less likely to crash than their fellow drivers...Alternately, drivers residing within a mile of a restaurant are 30 percent more likely to be in an accident. [*Associated Press* 12/07/05]

Will insurers seek to alter auto premiums for customers based on where they are driving, after this bill places data collection devices in cars?

Even worse for privacy, drivers' location information might be subpoenaed from insurers in a criminal action or a civil trial, such as a rancorous divorce.

While your bill aimed at reducing greenhouse gas emissions does nothing to force insurers to more aggressively incentivize mileage reduction, it will inevitably force consumers to accept data tracking devices in their cars in order to keep their rates low.

3) Even if your bill contained strict privacy guarantees, it would still set back the issue of mileage-based insurance rates for years.

If signed into law, the bill would face an immediate court challenge that we believe would result in the invalidation of the law as a violation of Proposition 103. No matter what happened in court, the entire issue will be delayed until the legal questions are settled. The regulatory process on this issue, which the Department of Insurance has already begun in part at your request, will almost certainly be stalled. The Insurance Commissioner will be hard-pressed to implement new mileage verification rules if he does not know which of two different statutes – the current law or AB 2800's amendments – to implement. As a result, the progress that could be made on

¹ <http://auto.progressive.com/progressive-car-insurance/myrate-default.aspx>

greenhouse gas reductions would be stalled because the path you are pursuing causes unintended consequences that throw up roadblocks to reform.

4) AB 2800 is unfairly discriminatory.

The insurance industry has historically redlined areas, typically minority or lower income, that they preferred not to insure. Proposition 103 limited insurers' use of proxies for race or income by requiring driving record, miles driven and experience – rather than ZIP Code, education or occupation – be the most important factors for determining rates.

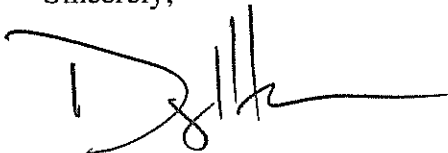
Your legislation offers insurers a new way to redline. Insurers will target marketing for their "voluntary" mileage-verification program much in the way they target their broader marketing and avoid lower income communities. Those drivers not in the right marketing demographic may never get offered the discount plan. Your bill will allow insurers to charge these customers different rates.

Unless risk is reduced, insurance is a zero sum game: drivers who install the devices pay less, drivers who don't pay more.

There is no difference between a person who has a device in his car tracking the 5,000 miles he drives a year, and a person who drives the same 5,000 miles but stops by his agent's office once a year to verify those miles instead. Under your legislation, however, those two drivers pay different rates. A discount for every driver who places a data device in his car means a surcharge for every driver who is never informed of the program option, chooses to protect her privacy and refuses the device or drives an older car that cannot support the device. Under this program, it is likely that a device-user could drive more miles annually and still pay less than a motorist who actually cuts back on their mileage to save gas but doesn't have a device. That is simply unfair.

No consumer should pay more for rejecting insurers' desire to monitor every move they make as they drive. And California taxpayers should not be saddled with the cost of the legal battle this bill will inevitably bring about. It is our belief that insurers should be lowering rates for people who drive less. Proposition 103 requires it, and the Department of Insurance has set in motion a process to ensure it. AB 2800 will sabotage that progress. We urge you to withdraw the bill immediately.

Sincerely,



Douglas Heller



Carmen Balber

cc Senator Mike Machado
Chair, Banking, Finance & Insurance Committee