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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO
10

11 CHRISTINA L. WILSON, an individual, California) registered voter, California taxpayer, and Proponent) 12 of Proposition 17,) Petitioner,) 13 vs.) 14) DEBRA BOWEN, in her official capacity as) 15 Secretary of State,) 16 Respondent.) 17)	Case No. VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE ELECTION MATTER: PROPOSITION 17 [Elections Code § 9092; Government Code § 88006
18 KEVIN HANNAH, in his official capacity as) Acting State Printer; HARVEY ROSENFELD;) 19 ELISA ODABASHIAN; TOM SOLTZ; JOHN) GARAMENDI; and JOHN VAN DE KAMP) 20) Real Parties in Interest.) 21)	Date: Time: Dept: Judge:

22
23 Petitioner petitions this Court for a peremptory writ of mandate directed to
24 Respondent DEBRA BOWEN, Secretary of State of the State of California, and by this
25 petition alleges:

26 1. Petitioner CHRISTINA L. WILSON, is an individual, a California registered
27 voter, a California taxpayer and the Proponent of Proposition 17.
28

1 2. Respondent DEBRA BOWEN is the Secretary of State of the State of California
2 and is responsible for, among other things, the preparation of the June 8, 2010, Primary
3 Election State Ballot Pamphlet (“Ballot Pamphlet”). (Gov. Code § 88000.)
4

5 3. Proposition 17 has qualified to be on the June 8, 2010, Primary Election State
6 Ballot and would authorize insured drivers to transfer their discount for maintaining
7 continuous coverage with their current automobile insurer (known as a persistency
8 discount), if they choose to change to another automobile insurer. The transferred discount is
9 called a “continuity discount” in Proposition 17. (A true and correct copy of Proposition 17
10 is designated Exhibit 1 to Petitioner’s Appendix of Exhibits.)
11

12 4. Real Party in Interest KEVIN HANNAH is the Acting Printer of the State of
13 California (hereinafter “State Printer”) and is responsible for the printing of the Ballot
14 Pamphlet to be distributed to the voters of the State of California. The copy deadline for the
15 Ballot Pamphlet is March 15, 2010.
16

17 5. Real Parties in Interest HARVEY ROSENFELD, ELISA ODABASHIAN and
18 TOM SOLZ are the authors of the Argument against Proposition 17. (A true and correct
19 copy of said Argument is designated Exhibit 2 to Petitioner’s Appendix of Exhibits and
20 incorporated herein by reference.)
21

22 6. Real Parties in Interest JOHN GARAMENDI and JOHN VAN DE KAMP are the
23 authors of the Rebuttal to the Argument in Favor of Proposition 17 (“Rebuttal Argument”).
24 (A true and correct copy of said Rebuttal Argument is designated Exhibit 5 to Petitioner’s
25 Appendix of Exhibits and incorporated herein by reference.)
26

27 7. This action is brought pursuant to California Government Code section 88006
28 which provides that this Court may issue a writ of mandate to prevent the publication of

1 false or misleading information in the Ballot Pamphlet for the June 8, 2010 statewide
2 election. This action is also brought pursuant to Elections Code section 9092 which
3 provides that this Court may issue a writ of mandate to prevent an error or omission in the
4 printing of a ballot or sample ballot in California for the June 8, 2010 statewide election.
5

6 INTRODUCTION

7 Under current law, insurance companies are authorized to grant a "persistence"
8 discount to their existing automobile policy holders. However, those individuals who seek a
9 new policy of insurance, whether currently insured or uninsured, are prohibited by
10 Department of Insurance regulations from receiving a persistence discount during the initial
11 term of a new policy. Proposition 17 does not change that. Proposition 17 allows
12 individuals who currently have a persistence discount, but change insurers, to take their
13 entitlement to that discount with them. Current Department of Insurance regulations
14 preclude that. The statements of Real Parties in Interest challenged in this petition attribute
15 to Proposition 17 consequences that flow from denying uninsured drivers a persistence
16 discount when they first seek insurance. It is the existing regulations, not Proposition 17,
17 from which these consequences flow.
18
19

20 FIRST CAUSE OF ACTION

21 (Argument Against Proposition 17)

22 8. Petitioner incorporates paragraphs 1 through 7 as though fully set forth herein.

23 9. The Argument (Appx. Exh. 2, unnumbered p. 1) contains the following false and
24 misleading statement:

25 **Proposition 17 changes our laws to favor big insurance**
26 **companies like Mercury Insurance, the initiative's**
27 **sponsor, while *hurting responsible drivers who have done***
nothing wrong. (Emphasis in original)

1 This statement is false and misleading. Proposition 17 does not do anything to hurt
2 responsible drivers who have done nothing wrong. Existing regulations deny insured
3 drivers the opportunity to transfer a persistency discount provided by their current insurer to
4 another insurer, thus limiting their opportunity to shop for insurance. (Cal. Code Regs., Tit.
5 10, § 2632.5(d)(11)(B).) Proposition 17 merely allows the currently insured to transfer
6 their persistency discounts to another insurer.

7 RECOMMENDATION: The entire statement should be stricken.

8 10. The Argument (Appx. Exh. 2, unnumbered p. 1) contains the following false
9 and misleading statement:

10
11 **The insurance backers of Prop 17 won't tell you the whole**
12 **story, but the California Department of Insurance does. It**
13 **says Prop 17 "will result in a surcharge" for California**
14 **drivers. (Emphasis in Original.)**

15
16 **That's why Consumers Union, nonprofit publisher of**
17 **Consumer Reports, opposes Prop 17.**

18 This statement is false and misleading because the selected quote - "will result in a
19 surcharge" - is contained in a communication on the Department of Insurance's website
20 responding to a question posed to the Department of Insurance by the State Legislative
21 Analyst. The communication concludes that the precise impact of transferring persistency
22 discounts on any insurer's customers is complicated and dependent upon the specific data
23 insurers file when they seek approval of a new class plan from the Insurance Commissioner.
24 (Appx. Exh. 3.)

25 RECOMMENDATION: The statement "It says Prop 17 'will result in a surcharge'
26 for California drivers" should be stricken and revised to read: "It says the impact
27 Proposition 17 will have on each of an insurer's customers is difficult to predict."

28 11. The Argument (Appx. Exh. 2, unnumbered p. 1) contains the following false and
misleading statement:

Prop 17 requires Californians who cancel auto insurance
to pay a financial penalty to restart their coverage.

1 This statement is false and misleading because it is existing California Code of
2 Regulations, Title 10, section 2632.5(d)(11)(B) which denies the uninsured a persistency
3 discount for discontinuance of coverage upon the subsequent purchase of a new policy.

4 RECOMMENDATION: The entire statement should be stricken.

5 12. The Argument (Appx. Exh. 2, unnumbered p. 1) contains the following false and
6 misleading statement:

7 *No on 17: It penalizes responsible drivers.* (Emphasis in original.)

8 **Prop. 17 allows insurance companies to raise rates on
9 customers with perfect driving records, just because they
10 canceled insurance for as little as ninety-one days over the
11 past five years.**

12 This statement is false and misleading because existing California Code of
13 Regulations, Title 10, section 2632.5(d)(11)(B) denies the uninsured a persistency discount
14 where there is a lapse or cancellation of coverage upon subsequent purchase of a new
15 policy. The lost persistency discount mandated by existing regulations necessarily impacts
16 the customer's premium. Proposition 17 softens this prohibition by allowing the continuity
17 discount; i.e., the transfer of the persistency discount, to be available where there is lapse of
18 insurance for up to ninety days for any reason other than nonpayment of premium.

19 RECOMMENDATION: The entire statement should be stricken.

20 13. The Argument (Appx. Exh. 2, unnumbered p. 1) contains the following false and
21 misleading statement:

22 *No on 17: It punishes our troops.* (Emphasis in original.)

23 **This initiative raises rates on Californians who serve in
24 the military and stop driving while living stateside.
25 PENALIZING THESE SOLDIERS BY FORCING THEM
26 TO PAY MORE when they restart their car insurance is
27 wrong.**

28 This statement is false and misleading because existing California Code of
Regulations, Title 10, section 2632.5(d)(11)(B) denies uninsured drivers, including military
personnel, a persistency discount during the initial term of a new policy. Proposition 17

1 softens that prohibition by making military personnel serving overseas eligible for a
2 continuity discount even when they have allowed their insurance to lapse.

3 RECOMMENDATION: The entire statement should be stricken.

4 14. The Argument (Appx. Exh. 2, unnumbered pp. 1-2) contains the following false
5 and misleading statement:

6 *No on 17: It hurts middle class families.* (Emphasis in original.)

7
8 **In these tough times, many Californians are being forced**
9 **to choose between driving and other necessities. If**
10 **someone with a perfect driving record is late on just one**
11 **payment, Prop 17 allows insurance companies to**
12 **CHARGE DRIVERS HUNDREDS OF DOLLARS MORE**
13 **when they restart coverage.**

14 This statement is false and misleading because existing California Code of
15 Regulations, Title 10, section 2632.5(d)(11)(B) denies all uninsured drivers, whatever their
16 economic status, a persistency discount during the initial term of a new policy.

17 RECOMMENDATION: The entire statement should be stricken.

18 15. The Argument (Appx. Exh. 2, unnumbered p. 2) contains the following false and
19 misleading statement:

20 *No on 17: Californians will pay more for car insurance.*
21 (Emphasis in original.)

22 **Proposition 17's penalties are currently illegal in**
23 **California, but in states where insurance companies are**
24 **allowed to surcharge drivers, the result is HIGHER**
25 **PREMIUMS:**

- 26 ● Nevadans can pay 73% more.
- 27 ● Texans, 84% more.
- 28 ● Floridians, 227% more.

The statement that "Californians will pay more for car insurance" is false and
misleading because the Department of Insurance acknowledges there is no way to predict
what impact the continuity discount may have on rates is complex and dependent on the
specific rate and class plan each individual insurance company proposes to the

1 Commissioner. Further, the statement "Proposition 17's penalties are currently illegal in
2 California" is false and misleading because denial of a persistency discount is not illegal in
3 California but *mandated* by existing regulations for the initial term of a new policy sought
4 by an uninsured driver. While transfer of the discount from one insurer to another is
5 currently prohibited in California, it is not the transfer that creates the "penalty," but the
6 denial of the persistency discount to the uninsured under existing regulations. Proposition
7 17 simply makes the persistency discount portable – but it is the regulations that determine
8 who is eligible, or ineligible for the discount in the first place.

9 RECOMMENDATION: The entire statement should be stricken.

10 16. The Argument (Appx. Exh. 2, unnumbered p. 2) contains the following false and
11 misleading statement:

12
13 *No on 17: It leads to more uninsured motorists, costing us
14 all more.* (Emphasis in original.)

15 **Because of the recession, insurance experts predict almost
16 20% more uninsured motorists on the road. According to
17 the California Department of Insurance, Proposition 17's
18 financial penalty:**

19 *"Discourages [people] from buying insurance, which may
20 add to the number of uninsured motorists and ultimately
21 drives up the cost of the uninsured motorist coverage for
22 every insured."* (Emphasis in original.)

23 **MORE UNINSURED DRIVERS hurts the bottom line for
24 taxpayers and the state.**

25 This statement is false and misleading. It is taken from a report prepared by the
26 Department of Insurance in 2002 on the estimated impact of a separate portable persistency
27 discount. Unlike the unequivocal statement above that Proposition 17 "leads to more
28 uninsured motorists, costing us all more," the Department's quote is equivocal and reaches
no definitive conclusion. This equivocation is consistent with the Department's own data
that shows for the period 1996 to 2002 when portable persistency was permitted in

1 California, the number of uninsured drivers decreased from 28.06% to 13.10%. (Appx.
2 Exh. 4)

3 RECOMMENDATION: The statement "No on 17. It leads to more uninsured
4 motorists, costing us all more" should be amended to read "No on 17. It *may lead* to more
5 uninsured motorists, costing us all more"

6 17. The Argument (Appx. Exh. 2, unnumbered p.2) contains the following false and
7 misleading statement:

8 **State courts stopped Mercury from overcharging**
9 **motorists in 2005. But Prop 17 would legalize those**
10 **surcharges. That's why Mercury has already spent \$3.5**
11 **million on 17 - so it can increase profits at the expense of**
California's middle class.

12 The statement is false and misleading because the issue before the Court in 2005 was
13 not whether Mercury, or any other insurer, was overcharging motorists. Rather, the issue
14 before the Court was whether legislation authorizing insureds to transfer their persistency
15 discounts to another insurer failed to comply with Proposition 103's procedural amendment
16 requirements.

17 RECOMMENDATION: The statement "State courts stopped Mercury from
18 overcharging motorists in 2005. But Proposition 17 would legalize those surcharges" should
19 be stricken.

20 18. The Argument (Appx. Exh. 2, unnumbered p. 3) contains the following false and
21 misleading statement:

22 **We shouldn't give insurance companies more power to**
23 **raise our rates, especially during a recession.**

24 Proposition 17 confers no power on the insurance companies to unilaterally raise
25 rates. Rate plans are filed with, and must be approved by, the Insurance Commissioner.
26 Proposition 17 does not modify how rates are submitted and approved.

27 RECOMMENDATION: The entire statement should be stricken.

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SECOND CAUSE OF ACTION
(Rebuttal to Argument in Favor of Proposition 17)

19. Petitioner incorporates paragraphs 1 through 18 as though fully set forth herein.

20. The Rebuttal to the Argument in Favor of Proposition 17 (Appx. Exh. 5, p. 1) contains the following false and/or misleading statement:

FACT: Prop 17 will increase car insurance premiums for millions of Californians who have done nothing wrong. It forces you to buy insurance - even if you stop driving - or you will get hit with surcharges of \$1000/year (based on Mercury's numbers) when you start driving again ... even if you are a good driver. (Emphasis in original.)

Existing law, not Proposition 17, denies the uninsured a persistency discount during the initial term of a new policy. It is the existing regulations that cause premiums to be impacted by an insured who stops his or her insurance and then restarts it at a later time, thereby disrupting the continuity of insurance that supports the persistency discount. Real Parties also offer no explanation what numbers from Mercury form the basis for the \$1000/year statement. Is it a single or multiple automobile or truck policy? Was the analysis based on what Mercury could charge under California law or what it could charge under the laws of Nevada, Texas, Florida or any other state that does not have the mandatory rating factors dictated by Proposition 103? Finally, Proposition 17 does not force Californians to do anything and it certainly does not force the purchase of any insurance from any particular insurer.

RECOMMENDATION: The entire statement should be stricken.

21. The Rebuttal to the Argument in Favor of Proposition 17 (Appx. Exh. 5, p. 1) contains the following false and/or misleading statement:

FACT: If you have a break in coverage for 91 days or more during the past five years, you'll be charged more, no matter how legitimate the reason: illness, attending college, lost your job, even military service.

Under existing regulations "An insurer shall not apply a persistency credit for a new policy issued to an individual, unless that individual is currently insured." (Cal. Code of Regs., Tit. 10, § 2632.5(d)(11)(B).) However, Proposition 17 allows an individual to qualify

1 for the continuity discount even with a lapse of insurance for up to ninety days for any
2 reason other than non-payment of premium, and for the entire length of time a person serves
3 overseas in the military. The statement falsely implies that Proposition 17 is more restrictive
4 than existing regulations, when, in fact, Proposition 17 grants drivers rights they do not
5 currently possess.

6 RECOMMENDATION: The entire statement should be stricken.

7 22. The Rebuttal to the Argument in Favor of Proposition 17 (Appx. Exh. 5, p. 1)
8 contains the following false and/or misleading statement:

9
10 **FACT: 17 overturns a law passed by California voters in
11 1988 to make insurers compete fairly for customers.**

12 Proposition 17 does not *overturn* Proposition 103. Existing Department of Insurance
13 Regulations allow individuals who are insured to receive a persistency discount but deny
14 individuals who are uninsured a persistency discount during the initial term of a new policy.
15 Proposition 17 does not change that. Proposition 17 simply allows an individual to transfer
16 a persistency discount allowed by one insurer to another insurer.

17 RECOMMENDATION: The statement "FACT: 17 overturns a law passed by
18 California voters in 1988 to make insurers compete fairly for customers" should be revised
19 to read:

20 **FACT: 17 amends a law passed by California voters in 1988 to
21 allow insured individuals to transfer their persistency discounts
22 to other insurers.**

23 WHEREFORE, Petitioner prays for relief as follows:

24 1. That the court issue on or before March 15, 2010 a peremptory writ of mandate
25 commanding respondent DEBRA BOWEN, the real parties in interest and their officers,
26 agents and all persons acting by, through or in concert with them to delete and/or amend the
27 statements listed in this petition from the Argument Against Proposition 17 and the Rebuttal
28 to the Argument in Favor of Proposition 17 for the June 8, 2010 Primary Election ballot.

2. That petitioner be awarded attorneys fees;

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3. That petitioner be awarded costs of suit; and

4. That petitioner be granted such other and further relief as the Court may deem just and equitable.

Dated: February 25, 2010

Respectfully Submitted,

Nielsen, Merksamer, Parrinello,
Mueller & Naylor, LLP.

By: 
Richard D. Martland, Attorney for
Petitioner, CHRISTINA L. WILSON

VERIFICATION

I, Christina L. Wilson, declare as follows:

I am the Petitioner in this action. I have read the foregoing Verified Petition for Peremptory Writ of Mandate and know its contents. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

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

Executed this 24 of February, 2010, at Sacramento, California.


CHRISTINA L. WILSON

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6 Attorneys for Petitioner, CHRISTINA L. WILSON, an
individual, California registered voter, California
7 taxpayer, and Proponent of Proposition 17

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10
11 CHRISTINA L. WILSON, an individual, California)
registered voter, California taxpayer, and Proponent)
12 of Proposition 17,)

13 Petitioner,)

14 vs.)

15 DEBRA BOWEN, in her official capacity as)
Secretary of State,)

16)
17 Respondent.)

18 KEVIN HANNAH, in his official capacity as)
Acting State Printer; HARVEY ROSENFELD;)
19 ELISA ODABASHIAN; TOM SOLTZ, JOHN)
20 GARAMENDI; and JOHN VAN DE CAMP)

21 Real Parties in Interest.)
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24)
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27)
28)

Case No.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR
PEREMPTORY WRIT OF
MANDATE**

**ELECTION MATTER:
PROPOSITION 17**
[Elections Code § 9092;
Government Code § 88006]

Date:
Time:
Dept:
Judge:

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1. Proposition 17 changes our laws to favor big insurance companies like Mercury Insurance, the initiative’s sponsor, while <i>hurting responsible drivers who have done nothing</i> <i>wrong.</i>	6
2. The insurance backers of Prop 17 won’t tell you the whole story, but the California Department of Insurance does. It says Prop 17 “ <i>will result in a surcharge</i> ” for California drivers	7
That’s why Consumers Union, nonprofit publisher of Consumer Reports, opposes Prop 17.	
3. Prop 17 requires Californians who cancel auto insurance to pay a financial penalty to restart their coverage.	8
4. No on 17: It penalizes drivers	8
Prop 17 allows insurance companies to raise rates on customers with perfect driving records, just because they canceled insurance for as little as ninety-one days over the past five years.	

5. No on 17: It punishes our troops 9

This initiative raises rates on Californians who serve in the military and stop driving while living stateside.
PENALIZING THESE SOLDIERS BY FORCING THEM TO PAY MORE when they restart their car insurance is wrong

6. No on 17: It hurts middle class families 9

In these tough times, many Californians are being forced to choose between driving and other necessities. If someone with a perfect driving record is late on just one payment, Prop 17 allows insurance companies to **CHARGE DRIVERS HUNDREDS OF DOLLARS MORE** when they restart coverage

7. No on 17: *Californians will pay more for car insurance* 10

Proposition 17's penalties are currently illegal in California, but in states where insurance companies are allowed to surcharge drivers, the result is **HIGHER PREMIUMS:**

- Nevadans can pay 73% more.
- Texans, 84% more.
- Floridians, 227% more

8. No on 17: *It leads to more uninsured motorists, costing us all more* 11

Because of the recession, insurance experts predict almost 20% more uninsured motorists on the road. According to the California Department of Insurance, Proposition 17's financial penalty:

“discourages [people] from buying insurance, which may add to the number of uninsured motorists and ultimately drives up the cost of the uninsured motorist coverage for every insured.”

MORE UNINSURED DRIVERS hurts the bottom line for taxpayers and the state.

9. State courts stopped Mercury from overcharging motorists in 2005. But Prop 17 would legalize those surcharges. That's why Mercury has already spent \$3.5 million on 17 - so it can increase profits at the expense of California's middle class. 12

10. We shouldn't give insurance companies more power to raise our rates, especially during a recession. 12

B. The following statements in the rebuttal to the argument in favor of Proposition 17 (Appx. Exh. 5), are false and misleading. 13

FACT: Prop 17 will *increase* car insurance premiums for millions of Californians who have done nothing wrong. It forces you to buy insurance - even if you stop driving – or you will get hit with surcharges of \$1000/year (based on Mercury’s numbers) when you start driving again ... even if you are a good driver.

2. FACT: If you have a break in coverage for 91 days or more during the past five years, you’ll be charged more, no matter how legitimate the reason: illness, attending college, lost your job, even military service 13

3. FACT: 17 overturns a law passed by California voters in 1988 to make insurers compete fairly for customers 14

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1 **I. INTRODUCTION.**

2 Proposition 17 enables insured drivers to transfer their discount for maintaining
3 continuous automobile insurance coverage with their current insurer (known as a persistency
4 discount) to another insurer if they choose to change insurers. Currently, such a transfer is not
5 allowed under the Insurance Commissioner's regulations. Rather, the current regulations
6 allow for a persistency discount where an insured has continuous coverage with their current
7 insurer only.

8 As discussed below in more detail, Proposition 17 makes the persistency discount,
9 portable. It does not create a *new* discount. Thus, any reductions in premiums for drivers who
10 qualify for the persistency discount, or the fact that those who do not maintain continuous
11 coverage do not qualify for the discount and pay more for an insurance policy, *is the result of*
12 *existing regulations – not Proposition 17*. Moreover, Proposition 17 adds new provisions to
13 existing law that require insurers to offer the persistency discount even after lapses of
14 coverage for 90 days and for military service overseas; and Proposition 17 expressly does not
15 limit an insurer's ability to offer additional grace periods for lapses. As a result, repeated
16 statements in the ballot arguments by real parties Rosenfield, Odabashian, Soltz, Garamendi
17 and Van De Camp that *Proposition 17* will increase rates for motorists are false and
18 misleading. *Any such increases are the result of existing regulations.*

19 This can be seen from the Department of Insurance persistency study relied upon in
20 the opposition arguments. In that study, for example, the Department shows that a State Farm
21 persistency discount which is based on continuous coverage with State Farm only will cause
22 22.40% to 22.90% higher premium for new policyholders. (See Appx. Exh. 6.) There is a
23 similar increase under State Farm's 2008 rate filing. (See Appx. Exh. 8.)

24 Under Proposition 103, rates and premiums are to be determined on the basis of three
25 mandatory rating factors - driving safety record, annual miles driven and number of years
26 driving experience. In addition, the Insurance Commissioner is authorized to adopt other
27 "optional" rating factors provided they have a substantial relationship to risk of loss. (See
28

1 Insurance Code section 1861.02(a)(4).) Although insurers had been using persistency for a
2 period of time, in 1996 the Insurance Commissioner adopted regulations identifying
3 “persistency” as an optional rating factor. However, the regulations did not define the term
4 “persistency.” As a result, insurers adopted differing interpretations. Some insurers
5 interpreted persistency to mean the length of time the consumer maintained continuous
6 coverage with one company (referred to as loyalty persistency) and others interpreted
7 persistency to mean the time a consumer maintained continuous coverage by different insurers
8 (referred to as portable persistency).

9 In 2002, the Insurance Commissioner issued a regulation which provided “An insurer
10 shall not apply a persistency credit for a new policy issued to an individual, unless that
11 individual is currently insured. Nor shall any insurer apply persistency at any time, when
12 based in whole or in part upon automobile coverage provided by a non-affiliated insurer.”
13 (California Code of Regulations, Title 10, § 2632.5(d)(11); Appx. Exh. 7.) The effect of the
14 regulation was to make the persistency discount non-portable. In 2003, the Legislature passed
15 Senate Bill 841 which stated “An insurer may use persistency of automobile insurance
16 coverage with the insurer, an affiliate, or another insurer as an optional rating factor.” In
17 2005, the Court of Appeal for the Second Appellate District voided Senate Bill 841 as not
18 complying with Proposition 103’s amendment requirements, thus leaving the Insurance
19 Commissioners 2002 regulation as governing the use of the persistency rating factor. (See
20 *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th
21 1354, 1372.)

22 Proposition 17 amends the provisions of Proposition 103 to expressly permit the use of
23 portable persistency. Real Parties’ principal argument against Proposition 17 is based on the
24 premise that Proposition 17 unfairly “penalizes” those who for, whatever reason, allow their
25 automobile insurance policies to lapse. It is not Proposition 17, however, that creates this
26 problem but current regulations. As noted previously, under current regulations insurance
27 companies cannot grant a persistency discount for the initial term of a new policy to an
28 individual who is not currently insured by the insurer or an affiliate of the insurer. California
Code of Regulations, Title 10, section 2632.5(d)(11)(B) provides in part:

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An insurer shall not apply a persistency credit for a new policy issued to an individual, unless that individual is currently insured.

Thus, an individual who allows a policy of automobile insurance to lapse for any reason, for any length of time, will be “penalized” in the sense the discount will be denied during the initial term of the new policy from any insurer, and therefore the premium will be higher than for those who receive the discount. Proposition 17 *does not* change current regulations in this regard.

California Code of Regulations, Title 10, section 2632.5(d)(11)(B) further provides:

Nor shall any insurer apply a persistency credit, at any time, when based in whole or in part upon automobile insurance coverage provided by an non-affiliated insurer.

This sentence deals with the portability of a persistency discount provided to a currently insured individual. According to this sentence, an individual who maintains automobile insurance and has earned a persistency discount, is precluded from qualifying for that discount if the individual seeks to transfer insurance to another insurance company that is not affiliated with that individual’s current insurer. Proposition 17 *does* change this current regulation by allowing the insured to take the persistency discount (designated a “continuity discount” in Proposition 17) with them when they change insurance companies. In addition, *unlike the current regulation* applicable to those who allow their policies to lapse, discussed above, Proposition 17 also allows the continuity discount to be available even when the individual is currently uninsured as long as the lapse in coverage was for no more than ninety days in the past five years for reasons other than nonpayment of premium, or if the policy has lapsed for any length of time because the insured is serving overseas in the military. Proposition 17 also expressly provides it is not intended to limit an insurers ability to offer additional grace periods for lapses in coverage with respect to the continuity discount. (See Appx. Exh.1, pp. 2-3, Section 4, new Insurance Code § 1861.024.)

In short, the “penalties” which real parties attribute to Proposition 17; i.e., an uninsured driver seeking a policy of automobile insurance will not be eligible for a

1 persistency discount and thus may pay more for an insurance policy than an insured who has
2 the persistency discount, is attributable to existing regulations and not Proposition 17. All
3 Proposition 17 does is allow those insureds who have persistency discounts to transfer them.
4 The parade of horrors articulated in the argument against Proposition 17 all flow from
5 restrictions in existing regulations that preclude the uninsured from receiving a persistency
6 discount. That is not the fault of Proposition 17, and that is why the statements made in real
7 parties' argument are false and/or misleading.

8 The argument is clever in that most of the false or misleading statements cannot be
9 corrected by a simple substitution of one or two words. They require a complete rewrite.
10 Recognizing that courts are loathe in these special election proceedings to order major
11 changes in ballot arguments, whereas here, there is an attempt to base the entire argument on
12 a false premise.; i.e., the parade of horrors is the result of Proposition 17, the integrity of the
13 ballot pamphlet is at significant risk.

14 **II. STANDARD OF REVIEW.**

15 **A. The Government Code and Elections Code Authorize The Granting Of** 16 **A Writ Of Mandate To Correct, Amend, And Delete Statements In** 17 **The Ballot Pamphlet.**

18 Government Code section 88006 and Elections Code section 9092 (formerly § 3576)
19 mandate that this Court issue a writ of mandate to delete or amend materials to be included in
20 the ballot pamphlet which are false or misleading. Both Elections Code section 9092 and
21 Government Code section 88006 require that a peremptory writ of mandate issue "upon clear
22 and convincing proof that the copy in question is false [or] misleading" and that "issuance of
23 the writ will not substantially interfere with the printing and distribution of the ballot
24 pamphlet as required by law." These statutes are unambiguous on their face and unmistakable
25 in their intent - which is to protect the electorate from deceptive copy in the official ballot
26 pamphlet.

27 In order to preserve the integrity of the election process, courts have been extremely
28 solicitous of these provisions. Recognizing that the essential purpose of ballot arguments is to
give voters truthful information concerning ballot measures, courts have long held that the

1 voter pamphlet is a limited public forum and therefore the government has a compelling
2 interest in prohibiting material that is false and misleading. *Cf. Gebert v. Patterson* (1986)
3 186 Cal.App.3d 868 (voter pamphlet is “limited public forum” requiring equal access); see
4 also *Patterson v. Board of Supervisors* (1988) 202 Cal.App.3d 22 (statutes prohibiting ballot
5 arguments that are false, misleading and inconsistent with purposes of city sponsored voter’s
6 pamphlet did not violate First Amendment). Voter pamphlets provide a unique vehicle of
7 expression and it is only through deletion of false and/or misleading statements that the
8 integrity of the official pamphlet and the election can be preserved.

9 In fact, the courts fully appreciate the voter’s pamphlet has a “substantial impact on
10 the equality and fairness of the electoral process” since they are assembled, published and
11 distributed by the State and therefore appear to the public to be approved by the State. (See
12 *Patterson, supra*, 202 Cal.App.3d at 30; emphasis added.) As the California Supreme Court
13 stated in *Knoll v. Davidson* (1974) 12 Cal.3d 335, 352:

14 The voter’s pamphlet, which accompanies the sample ballot, purports
15 to be an authoritative document that appears to give an imprimatur of
16 official approval to statements of qualifications included therein. It is
17 quite likely that this document would carry greater weight in the
minds of the voters than normal campaign literature . . .

18 In addition, voter pamphlets are extremely significant to the judicial process as they
19 may constitute the “only legislative history of an initiative measure adopted by the voters.”
20 (See *Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 866, cert. denied (1981) 450
21 U.S. 918 [where ballot pamphlets constitute the only legislative history of an initiative
22 measure adopted by voters, they may properly be resorted to as a construction aid to
23 determine probable meaning of uncertain language].)

24 Given the importance of ballot pamphlets to the election process, it is absolutely
25 critical that this court exercise its mandatory duty to delete or amend all misleading, false and
26 biased statements. Only through the exercise of these powers will the electorate be able to
27 evaluate Proposition 17 and will irresponsible attacks on the public’s right to know the truth
28 be deterred.

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B. Ballot Arguments May Not Be False Or Misleading.

The ballot pamphlet contains partisan arguments. Yet, because the pamphlet is considered an official state document, the arguments “can have a substantial impact on the equality and fairness of the electoral process.” (*Patterson, supra*, 202 Cal.App.3d at 30.)

Unlike other vehicles for partisan political argument, the pamphlet is printed by a governmental body and distributed to all registered voters. The arguments set forth therein are likely to ‘carry greater weight in the minds of the voters than normal campaign literature’ . . .

(*Id.*, quoting *Gerbert v. Patterson* (1986) 186 Cal.App.3d 868, 874.)

Elections Code section 9092 thus authorizes the court to amend or delete any portion of a ballot pamphlet’s copy that is shown by “clear and convincing proof” to be “false” or “misleading.” (See *Patterson, supra*, 202 Cal.App.3d at 30-34.)

While the arguments are not constrained by a requirement of impartiality, the Legislature has imposed the limitation that arguments cannot be false or misleading. Vigorous advocacy and expression of opinion are permissible, but the official ballot pamphlet cannot be used as a vehicle to communicate false or misleading information to the voters. As real parties’ ballot arguments seek to do just this, and in other respects violate the requirements of the Elections Code, this Court is authorized to delete false and/or misleading statements in the Opposition Argument and in the Rebuttal to the Supporting Argument. (See *Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 578; *Knoll v. Davidson, supra*, 12 Cal.3d at 352; *Board of Supervisors v. Lonergan, supra*, 27 Cal.3d at 866.)

III. ARGUMENT.

A. The following statements in Appendix, Exhibit 2 are false and misleading for the reasons specified:

- 1. Proposition 17 changes our laws to favor big insurance companies like Mercury Insurance, the initiative’s sponsor, while hurting responsible drivers who have done nothing wrong.¹ (Emphasis in original.)**

¹ Appx. Exh. 2, 1st unnumbered page

1 Proposition 17 does not do anything to hurt responsible drivers who have done nothing
2 wrong. Proposition 17 rewards responsible drivers who maintain insurance. Under current
3 law, a driver who does not maintain automobile insurance is denied the opportunity to receive
4 a persistency discount on a new policy of insurance. (Cal. Code Regs., Tit. 10,
5 § 2632.5(d)(11)(B).) Under current law, even a driver who does maintain automobile
6 insurance is denied the opportunity to receive a persistency discount if he or she applies to
7 another insurance company for insurance. (Cal. Code Regs., Tit. 10, § 2632.5(d)(11)(B).)
8 Proposition 17 seeks to reward those drivers who maintain insurance by allowing them to
9 switch insurers without losing their eligibility for a persistency discount. Proposition 17
10 confers no additional benefit on any automobile insurer, large or small, except to allow drivers
11 the ability to transfer their status as a current "insured" from one company to another for
12 purposes of receiving the persistency discount.

13 **RECOMMENDATION:** The entire statement should be stricken.

14
15 **2. The insurance backers of Prop 17 won't tell you the whole**
16 **story, but the California Department of Insurance does. It**
17 **says Prop 17 "will result in a surcharge" for California**
18 **drivers. (Emphasis in original.)**

19
20 **That's why Consumers Union, nonprofit publisher of**
21 **Consumer Reports, opposes Prop 17.²**

22 The selected use of this quote is misleading. It is taken from a response by the
23 Department of Insurance to a question posed by the Legislative Analyst in the Analyst's
24 review of Proposition 17. The question was: "Does anything in the insurance regulations or
25 state law require insurance to be a zero-sum game?" The Department of Insurance answered
26 "yes," stating that a discount for one driver "will result in a surcharge for other drivers."
27 However, the Department of Insurance in that same communication concluded (See Appx.
28 Exh. 3):

² Appx. Exh. 2, 1st unnumbered page

1
2 Automobile rating is extremely complicated, and there is no
3 way of predicting the precise impact a specific factor (in this
4 case, continuous prior insurance) will have on each of the
5 insurer's customers until the insurer submits specific data to the
6 Department of Insurance. Insurers periodically file new rate
7 plans which may *reduce or increase* the average premium for
8 their customers and/or new class plans which apply specific
9 rating factors to their customers and may *reduce or increase*
10 premiums. (Emphasis added.)

11 In the light of this caveat, the use of "will" is misleading.

12 RECOMMENDATION: The statement "It says Prop 17 'will result in a
13 surcharge' for California drivers" should be revised to read: "**It says
14 the impact Proposition 17 will have on each of an insurer's
15 customers is difficult to predict.**"

16 **3. Prop 17 requires Californians who cancel auto insurance to pay a
17 financial penalty to restart their coverage.³**

18 As noted above, in the Introduction, it is California Code of Regulations, Title 10,
19 section 2632.5(d)(11)(B), not any provision of Proposition 17, that denies the uninsured the
20 right to a persistency discount for discontinuance of coverage upon the subsequent purchase
21 of a new policy.

22 RECOMMENDATION: The entire statement should be stricken.

23 **4. No on 17: It penalizes drivers.**

24 **Prop 17 allows insurance companies to raise rates on
25 customers with perfect driving records, just because they
26 canceled insurance for as little as ninety-one days over the
27 past five years.⁴**

28 Proposition 17 does not change current regulation, which as noted above in the
Introduction, denies uninsured drivers a persistency discount for the initial term of a new
policy. In other words, where there is a lapse or cancellation of coverage and a subsequent
purchase of a new policy, section 2632.5(d)(11)(B) prohibits the customer from obtaining a

³ Appx. Exh. 2, 1st unnumbered page

⁴ Appx. Exh. 2, 1st unnumbered page

1 persistency discount. The loss of the persistency discount mandated by existing regulations
2 necessarily impacts the customer's premium.

3
4 However, Proposition 17 does provide that eligibility for its continuity discount cannot
5 be denied because of a lapse of insurance of up to ninety days for any reason other than
6 nonpayment of premium. Further, Proposition 17 expressly does not limit an insurer's ability
7 to offer additional grace periods for lapses.

8 RECOMMENDATION: The entire statement should be stricken.

9 **5. No on 17: It punishes our troops.**

10 **This initiative raises rates on Californians who serve in the**
11 **military and stop driving while living stateside.**
12 **PENALIZING THESE SOLDIERS BY FORCING THEM**
13 **TO PAY MORE when they restart their car insurance is**
14 **wrong.⁵**

15 Existing law denies all uninsured drivers, including military personnel, a persistency
16 discount during the initial term of a new policy. Proposition 17 changes that prohibition by
17 permitting continuity discounts for military personnel serving overseas who have allowed
18 their insurance to lapse. For military personnel serving stateside, Proposition 17's provision
19 that expressly provides that it is not intended to limit insurers' ability to offer additional grace
20 periods for lapses means that military personnel who cancel coverage while serving stateside
21 may still be eligible for the persistency discount when they resume coverage. Currently, such
22 military personnel serving stateside have no such eligibility. Thus, Proposition 17 *strenghtens*
23 protections for military personnel.

24 RECOMMENDATION: The entire statement should be stricken.

25 **6. No on 17: It hurts middle class families.**

26 **In these tough times, many Californians are being forced to**
27 **choose between driving and other necessities. If someone**
28 **with a perfect driving record is late on just one payment,**
Prop 17 allows insurance companies to CHARGE
DRIVERS HUNDREDS OF DOLLARS MORE when they

⁵ Appx. Exh. 2, 1st unnumbered page

1 **restart coverage.⁶**

2 Existing law denies all uninsured drivers, whatever their economic status, a
3 persistency discount during the initial term of a new policy. Proposition 17 does not change
4 that prohibition.

5 Proposition 17 does not address the insurability of an individual who misses any
6 payments; i.e., whether the policy is cancelled on that basis. Assuming a policy is cancelled for
7 failure to make one payment, Proposition 17 does not authorize insurance companies to increase
8 rates. Rate setting is the responsibility of the Insurance Commissioner. With respect to the
9 persistency discount, if failure to pay a premium results in the cancellation of the policy, existing
10 law, not Proposition 17, prohibits the insurer from providing the persistency discount for the
11 initial term of the new policy.

12 **RECOMMENDATION:** The entire statement should be stricken.

13 **7. No on 17: Californians will pay more for car insurance.**
14 (Emphasis in original.)

15 **Proposition 17's penalties are currently illegal in California,**
16 **but in states where insurance companies are allowed to**
17 **surcharge drivers, the result is HIGHER PREMIUMS:**

- 18 ● Nevadans can pay 73% more.
- 19 ● Texans, 84% more.
- 20 ● Floridians, 227% more.⁷

21 As noted in the Introduction above, under current law persistency discounts are not
22 available to the uninsured who seek a new policy. Proposition 17 does not change that and,
23 therefore, it is false to state that "Proposition 17's penalties are illegal in California." These
24 are not penalties "imposed" by Proposition 17. Rather the denial of the persistency discount
25 to uninsureds during the initial term of a new policy is mandated by current regulations.

26 As noted above in paragraph 2, the California Department of Insurance acknowledges
27 that there is no way to predict the precise impact of a specific rating factor. Thus, the

28 _____
29 ⁶ Appx. Exh. 2, 1st and 2nd unnumbered pages

30 ⁷ Appx. Exh. 2, 2nd unnumbered page

1 statement "Californians will pay more" is misleading. Further, for those Californians who
2 *may* pay more, they *will be* the uninsured who have no persistency discount to transfer. Thus,
3 the term "Californians" is over-broad. California regulations differ from other states.
4 California regulations require that the "weight" (effect on premiums) given to each optional
5 rating factor must be less than the weight given the third mandatory factor (years of driving
6 experience). Additionally, all premium increases are subject to approval by the Insurance
7 Commissioner.

8 RECOMMENDATION: The entire statement should be stricken.

9
10 **8. No on 17: *It leads to more uninsured motorists, costing us all more.***
(Emphasis in original.)

11 **Because of the recession, insurance experts predict almost**
12 **20% more uninsured motorists on the road. According to**
13 **the California Department of Insurance, Proposition 17's**
14 **financial penalty:**

15 *"discourages [people] from buying insurance, which may add*
16 *to the number of uninsured motorists and ultimately drives up*
17 *the cost of the uninsured motorist coverage for every insured."*
(Emphasis in original.)

18 **MORE UNINSURED DRIVERS hurts the bottom line for**
19 **taxpayers and the state.⁸**

20 The quote from the California Department of Insurance does not pertain to Proposition
21 17. It is taken from a report prepared by the Department of Insurance in 2002 on the
22 estimated impact of a separate portable persistency discount. Unlike the unequivocal
23 statement that Proposition 17 "leads to more uninsured motorists, costing us all more," the
24 Department's quote, when accurately stated, is equivocal and reaches no definitive
25 conclusion. The Department's equivocation is consistent with the information on its website
26 which shows that during the period 1996 to 2002 when a portable persistency discount was
27 permitted, the rate of uninsured motorists dropped from 28.06 percent to 13.10 percent.
28 (Appx. Exh. 4.) Further, the Department's current position that there is no way to predict the

⁸ Appx. Exh. 2, 2nd unnumbered page

1 impact Proposition 17 will have on the rates for the uninsured (Appx. Exh. 3) warrants
2 amending the sentence.

3 RECOMMENDATION: The statement "No on 17. It leads to more uninsured
4 motorists costing us all more" should be amended to read: "**No on 17. It may lead to more
5 uninsured motorists, costing us all more.**"
6

7 **9. State courts stopped Mercury from overcharging motorists in
8 2005. But Prop 17 would legalize those surcharges. That's
9 why Mercury has already spent \$3.5 million on 17 - so it can
10 increase profits at the expense of California's middle class.⁹**

11 In 2003, the Legislature enacted a law which allowed insurers to offer persistency
12 discounts to new policy holders based on their continuous coverage with other insurers. In so
13 doing, the Legislature declared that "competition is furthered when insureds are able to claim
14 a discount for regular purchases of insurance from any carrier offering this discount
15 irrespective of whether or not the insured has previously purchased from a given carrier
16 offering the discount." In 2005, the Court of Appeal voided the law on the basis that the
17 Legislature lacked the authority to enact the legislation because it did not further the purpose
18 of Proposition 103 as required of any *legislative* amendment to the proposition. (See
19 *Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354,
20 1361 fn. 6.) The issue before the court was not whether Mercury overcharged customers but
21 whether the legislation before the court violated Proposition 103's procedural amendment
22 requirements.

23 RECOMMENDATION: The statement "State courts stopped Mercury from
24 overcharging motorists in 2005. But proposition 17 would legalize those surcharges" should
25 be stricken.
26
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⁹ Appx. Exh. 2, 2nd unnumbered page

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10. We shouldn't give insurance companies more power to raise our rates, especially during a recession.¹⁰

Proposition 17 confers no power on insurance companies to unilaterally raise rates. As noted above in the Department of Insurance's response to the Legislative Analyst, rate plans are filed with and must be approved by the Insurance Commissioner. Proposition 17 does not modify how rates are submitted and approved.

RECOMMENDATION: The entire statement should be stricken.

B. The following statements in the rebuttal to the argument in favor of Proposition 17 (Appx. Exh. 5), are false and misleading for the reasons specified.

1. FACT: Prop 17 will *increase* car insurance premiums for millions of Californians who have done nothing wrong. It forces you to buy insurance - even if you stop driving - or you will get hit with surcharges of \$1000/year (based on Mercury's numbers) when you start driving again ... even if you are a good driver.¹¹

As noted previously, existing law, not Proposition 17, denies the uninsured a persistency discount during the initial term of a new policy. Real Parties offer no explanation what numbers from Mercury form the basis for the \$1000/year statement. For example, was the policy one for one automobile or several? Was the analysis based on what Mercury could charge under California law or what it could charge under the laws of Nevada, Texas, Florida or any other state that does not have the mandatory rating factors dictated by Proposition 103? Given the vast scope of the false and misleading statements in Real Parties' argument against Proposition 17 and this rebuttal to the argument in favor of Proposition 17, the basis for this statement should be disclosed.

RECOMMENDATION: Strike the entire statement.

¹⁰ Appx. Exh. 2, 3rd unnumbered page

¹¹ Appx. Exh. 5

1 **2. FACT: If you have a break in coverage for 91 days or**
2 **more during the past five years, you'll be charged more,**
3 **no matter how legitimate the reason: illness, attending**
 college, lost your job, even military service.¹²

4 This statement makes no reference to Proposition 17. However its inclusion among all
5 the other statements that do make reference to Proposition 17 and the reference to Proposition 17
6 in the quote from USAA, is intended to attribute the statement to Proposition 17. The statement
7 is literally correct but misleading because of the context in which it appears. The statement is
8 correct that, under current law, if an individual has just a one day break in coverage that
9 individual could be unable to receive a persistency discount during the initial term of a new
10 policy. As noted previously, the regulations of the Department of Insurance provide: "An
11 insurer shall not apply a persistency credit for a new policy issued to an individual, unless that
12 individual is currently insured." (California Code of Regulations, Title 10, section
13 2632.5(d)(11)(B).)

14 The implied attribution to Proposition 17 is misleading in that Proposition 17 allows
15 an individual to qualify for the continuity discount with a lapse of insurance for up to ninety
16 days for any reason other than non-payment of premium and for the entire length of time a
17 person serves overseas in the military.

18 RECOMMENDATION: Strike the entire statement.

19 **3. FACT: 17 overturns a law passed by California**
20 **voters in 1988 to make insurers compete fairly for**
 customers.¹³

21 Proposition 17 does not *overturn* Proposition 103. Proposition 103 allows individuals
22 who are insured to receive a persistency discount. Proposition 17 does not change that.
23 Proposition 17 simply allows an individual to transfer a persistency discount allowed by one
24 insurer to another insurer. The three mandatory rating factors imposed by Proposition 103 are
25 left unchanged as well as every other provision of Proposition 103. Thus, the phrase
26 "overturns" is incorrect. Further, Proposition 17 does not create unfair competition unless one
27

28

12 Appx. Exh. 5

13 Appx. Exh. 5

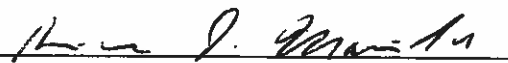
1 believes that granting customers a persistency discount is unfair to those insurers who may,
2 but do not, provide persistency discounts, an untenable marketing concept.

3 RECOMMENDATION: The statement "FACT: 17 overturns a law passed by
4 California voters in 1988 to make insurers compete fairly for customers" should be revised to
5 read: **FACT: 17 amends a law passed by California voters in 1988 to allow insured**
6 **individuals to transfer their persistency discounts to other insurers.**

7 Dated: February 25, 2010

8 Respectfully submitted,

9 Nielsen, Merksamer, Parrinello,
10 Mueller & Naylor, LLP.

11 By: 
12 Richard D. Martland
13 Attorney for Petitioner

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9 Attorneys for Petitioner, Christina L. Wilson

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 CHRISTINA L. WILSON, an individual, California)
13 registered voter, California taxpayer, and Proponent)
14 of Proposition 17,)

15 Petitioner,)

16 vs.)

17 DEBRA BOWEN, in her official capacity as)
18 Secretary of State,)

19 Respondent.)

20 KEVIN HANNAH, in his official capacity as)
21 Acting State Printer; HARVEY ROSENFELD;)
22 ELISA ODABASHIAN; and TOM SOLTZ,)

23 Real Parties in Interest.)

Case No.

**PETITIONER'S APPENDIX OF
EXHIBITS AND DECLARATION OF
RICHARD D. MARTLAND IN
SUPPORT OF REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF VERIFIED PETITION FOR
PEREMPTORY WRIT OF
MANDATE**

**ELECTION MATTER:
PROPOSITION 17**
[Elections Code § 9092;
Government Code § 88006]

Date:
Time:
Dept:
Judge:

24 Petitioner, CHRISTINA L. WILSON, an individual, California registered voter,
25 California taxpayer, and Proponent of Proposition 17, respectfully requests that the Court
26 take judicial notice of the attached list of documents pursuant to Evidence Code sections 452
27 and 453.

28 Dated: February 25, 2010


Richard D. Martland, Attorney for Petitioner

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DECLARATION OF RICHARD D. MARTLAND

I, RICHARD D. MARTLAND, declare as follows:

1. I am the attorney for Petitioner CHRISTINA L. WILSON, an individual, California registered voter, California taxpayer, and Proponent of Proposition 17. I submit this Declaration in Support of Petitioner's Request for Judicial Notice.

2. Exhibits 1 through 8 of Petitioner's Request for Judicial Notice (attached) are true and correct copies of the documents identified as Exhibits 1 through 8.

I declare under the penalty of perjury that the foregoing is true and correct and that if called upon to do so, I could and would so testify.

Executed this 25 day of February 2010, at Sacramento, California.


Richard D. Martland

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Christina L. Wilson v. Debra Bowen

PETITIONER'S APPENDIX OF EXHIBITS

Exhibit 1 - Proposition 17

Exhibit 2 - Argument Against Proposition 17

Exhibit 3 - Dept. of Insurance Website response to Legislative Analyst's Question

Exhibit 4 - Department of Insurance Website re Rate of Insured Motorist

Exhibit 5 - Rebuttal to Argument in Favor of Proposition 17

Exhibit 6 - Department of Insurance Tabulation of State Farm Surcharge on New Policy Holders

Exhibit 7 - California Code of Regulations, Title 10, Section 1632.5

Exhibit 8 - State Farm 2008 Filing on file with the Department of Insurance

EXHIBIT 1

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

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

S/O

SUBJECT TO COURT
ORDERED CHANGES



SECTION 1. Title

This measure shall be known as the Continuous Coverage Auto Insurance Discount Act.

SECTION 2. The People of the State of California find and declare that:

(a) Under California law, the state Department of Insurance regulates insurance rates and determines what discounts auto insurance companies can give drivers.

(b) However, an inconsistency in California's insurance laws allows insurers to provide a discount for drivers who continue with the same insurer, but prohibits them from offering this discount to new customers. Drivers who maintain insurance coverage are not able to keep a continuous coverage discount if they change insurers.

(c) This measure corrects that inconsistency and ensures that all drivers who continually maintain their automobile insurance are eligible for this discount even if they change their insurance company.

(d) This measure does not change the provisions in current law, which require insurers to base their rates primarily on driving safety record, miles driven annually, and driving experience. This measure simply allows all companies to offer the expanded continuous coverage discount to new applicants who have maintained their auto insurance.

(e) Extending the continuous coverage discount to people who change insurance companies will provide drivers with more options and choices, increase competition and drive down rates for all responsibly insured drivers.

(f) The vast majority of states allow insurers to offer a discount to ALL drivers who maintain on-going auto insurance. This measure will simply bring California into line with other states like Texas, New York, Oregon, Washington and Florida.

SECTION 3. Purpose

The purpose of this measure is to provide an additional discount for drivers who are continuously insured for automobile liability coverage.

SECTION 4. Section 1861.024 is added to the Insurance Code to read:

Section 1861.024. (a) Notwithstanding subdivision (c) of Section 1861.02 and in addition to discounts permitted or required by law or regulation, an insurer may offer applicants or insureds an additional discount for a policy to which Insurance Code Section 1861.02(a) applies, applicable to each coverage provided by the policy, based on the length of time the applicant or insured has been continuously insured for bodily injury liability coverage, with one or more insurers, affiliated or

subdivision (a) of Section 1861.02

Subdivision (a) of
Section 1861.02

not. The insurer may consider the years of continuous coverage preceding the policy effective or renewal date. This discount is called a continuity discount. Children residing with a parent may be provided the same discount based on their parents' eligibility for a continuity discount.

- (b) The applicant or insured may demonstrate continuity of coverage, for a policy to which ~~Insurance Code Section 1861.02(a)~~ applies, by providing proof of coverage under the low-cost automobile insurance program pursuant to Article 5.5 (commencing with Section 11629.7) of Chapter 1 of Part 3 of Division 2, or by proof of coverage under the assigned risk plans pursuant to Article 4 (commencing with section 11620) of Chapter 1 of Part 3 of Division 2, or by proof of coverage from the prior insurer or insurers or other objective evidence. Proof of coverage shall be copies of policies, billings or other documents evidencing coverage, issued by the prior insurer or insurers or other objective evidence. Continuity of coverage shall be deemed to exist even if there is a lapse of coverage due to an applicant's or insured's absence from the United States while in military service, or if an applicant's or insured's coverage has lapsed for up to 90 days in the last five years for any reason other than nonpayment of premium. This provision does not limit an insurer's ability to offer additional grace periods for lapses.

SEC.

~~SECTION 5.~~ Section 1861.02 of the Insurance Code is amended to read:

- (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.
- (b)(1) 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.

SUBJECT TO COURT
ORDERED CHANGES

④ (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.

④ (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.

④ (C) However, all of the following conditions shall be applicable to the insurance authorized by subparagraphs (A) and (B):

④ (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.

④ (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.

④ Any insurer that violates clause (i), (ii), or (iii) shall be subject to the penalties set forth in Section 1861.14.

④ (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. ~~However, notwithstanding subdivision (a), an insurer may use persistency of automobile insurance coverage with the insurer, an affiliate, or another insurer as an optional rating factor. The Legislature hereby finds and declares that it furthers the purpose of Proposition 103 to encourage competition among carriers so that coverage overall will be priced competitively. The Legislature further finds and declares that competition is furthered when insureds are able to claim a discount for regular purchases of insurance from any carrier offering~~

~~this discount irrespective of whether or not the insured has previously purchased from a given carrier offering the discount. Persistency of coverage may be demonstrated by coverage under the low cost automobile insurance program pursuant to Article 5.5 (commencing with Section 11629.7) and Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2, or by coverage under the assigned risk plans pursuant to Article 4 (commencing with Section 11620) of Chapter 1 of Part 3 of Division 2. Persistency shall be deemed to exist even if there is a lapse of coverage of up to two years due to an insured's absence from the state while in military service, and up to 90 days in the last five years for any other reason.~~

- Ⓢ (d) An insurer may refuse to sell a Good Driver Discount policy insuring a motorcycle unless all named insureds have been licensed to drive a motorcycle for the previous three years.
- Ⓢ (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 those regulations prior to that date, provided that no such application shall be approved prior to that date.

SEC.
Ⓢ SECTION 6. Conflicting Ballot Measures

- Ⓢ In the event that this measure and another measure or measures relating to continuity of coverage shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SEC. measure of
Ⓢ SECTION 7. Amendment

- Ⓢ The provisions of this act shall not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring.

SEC.
Ⓢ SECTION 8. Severability

- Ⓢ It is the intent of the People that the provisions of this Act are severable and that if any provision of this Act, or the application thereof to any person or circumstance, is held invalid such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.

SUBJECT TO COURT
ORDERED CHANGES

EXHIBIT 2

ARGUMENT AGAINST PROPOSITION 17

Consumer advocates agree: Vote NO ON PROPOSITION 17 – It's a deceptive insurance company initiative to raise auto insurance premiums for millions of California's struggling middle class families.

Proposition 17 changes our laws to favor big insurance companies like Mercury Insurance, the initiative's sponsor, while *hurting responsible drivers who have done nothing wrong.*

The insurance backers of Prop 17 won't tell you the whole story, but the California Department of Insurance does. It says Prop 17 "*will result in a surcharge*" for California drivers.

That's why Consumers Union, nonprofit publisher of *Consumer Reports*, opposes Prop 17.

Prop 17 requires Californians who cancel auto insurance to pay a financial penalty to restart their coverage.

-> *No on 17: It penalizes responsible drivers.*

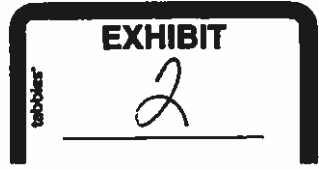
Prop 17 allows insurance companies to raise rates on customers with perfect driving records, just because they canceled insurance for as little as ninety-one days over the past five years. Drivers must pay this unfair penalty even if they did not own a car or need insurance in the past.

-> *No on 17: It punishes our troops.*

This initiative raises rates on Californians who serve in the military and stop driving while living stateside. PENALIZING ^{THESE} SOLDIERS ^{BY} FORCING THEM TO PAY MORE when they restart their car insurance is wrong.

-> *No on 17 It hurts California's middle class families.*

SUBJECT TO COURT ORDERED CHANGES



In these tough times, many Californians are being forced to choose between driving and other necessities. If someone with a perfect driving record is late on just one payment, Prop 17 allows insurance companies to CHARGE DRIVERS HUNDREDS OF DOLLARS MORE when they restart coverage.

-> *No on 17: Californians will pay more for car insurance.*

Proposition 17's penalties are currently illegal in California, but in states where insurance companies are allowed to surcharge drivers, the result is HIGHER PREMIUMS:

- Nevadans can pay 73% more.
- Texans, 84% more.
- Floridians, 227% more.

-> *No on 17: It leads to more uninsured motorists, costing us all more.*

Because of the recession, insurance experts predict almost 20% more uninsured motorists on the road. According to the California Department of Insurance, Prop 17's financial penalty:

"discourages [people] from buying insurance, which may add to the number of uninsured motorists and ultimately drives up the cost of the uninsured motorist coverage for every insured."

MORE UNINSURED DRIVERS hurts the bottom line for taxpayers and the state.

-> *No on Prop 17: It's an insurance company bailout.*

The San Francisco Chronicle reports that Mercury's Prop 17 is "a controversial insurance measure" from a company that "engaged in practices that may be illegal, including deceptive pricing and discrimination against consumers such as active members of the military."

**SUBJECT TO COURT
ORDERED CHANGES**

State courts stopped Mercury from overcharging motorists in 2005. But Prop. 17 would legalize those surcharges. That's why Mercury has already spent \$3.5 million on 17 – so it can increase profits at the expense of California's middle class.

We shouldn't give insurance companies more power to raise our rates, especially during a recession.

VOTE NO on PROP 17

Learn more at <http://www.StopTheSurcharge.org>

Harvey Rosenfield, Founder

Consumer Watchdog

Elisa Odabashian, Director, West Coast Office and State Campaigns

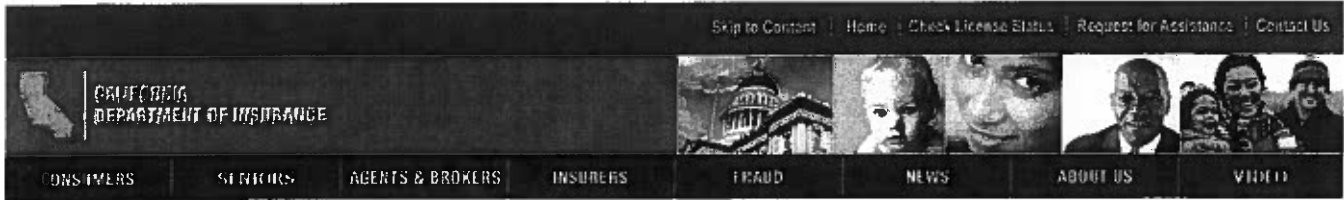
Consumers Union

Jon Soltz, Chairman

VoteVets.org

**SUBJECT TO COURT
ORDERED CHANGES**

EXHIBIT 3



Website Maintenance Scheduled

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-Enter Search Term-



Consumers Overview / Continuous Coverage Discount Initiative Impact on Rates

Consumers Overview

- Buying Insurance
- Health Related Insurance Information
- Licensee Information
- Studies and Reports
- Legal Information
- Information Guides
- Dealing With Catastrophes
- Health Issues
- Seniors Issues
- Market Conduct Exam Reports
- Public Programs
- Talk to Us

Quick Links

-For Consumers-

CONTINUOUS COVERAGE DISCOUNT INITIATIVE IMPACT ON RATES

OVERVIEW

An initiative measure has qualified for the ballot that may change how premiums are calculated for a large number of California automobile owners. It does so by proposing to allow automobile insurance companies to do something that under current law they cannot do, which is, offer a discount to new policyholders who were previously insured by another insurance company if they have maintained their automobile insurance coverage without a break in coverage of more than 90 days within the last five years before switching to the new company. Current law permits automobile insurance companies to offer a discount to existing policyholders who maintain their automobile insurance coverage; if a person switches or was not insured previously they cannot receive the discount. The Legislative Analyst, in preparing the ballot analysis of the measure, asked the Department of Insurance, "Does anything in the insurance regulation or state law require insurance to be a zero-sum gain?"

IMPACT ON INSURANCE RATES

California automobile rating is unique in many ways. However, the nature of applying discounts and surcharges is not unique and reflects a basic principle of insurance ratemaking. This basic ratemaking principle is "zero-sum" in the following sense: Every automobile insurer must have an approved "rate plan" that establishes its average premium. Within that rate plan, every "discount" requires a corresponding "surcharge" so that every factor influencing a rate will balance evenly over an insurer's book of business. In California, this principle is codified in Title 10 of the California Code of Regulations, Section 2632.7(c). The California Court of Appeal also recognized this principle in *Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, 1367-69.

The Continuous Coverage Auto Insurance Discount Act, as revised and submitted on September 2, 2009, is subject to this principle. That is, if an insurer offers a continuous coverage discount for some drivers it will result in a surcharge for other drivers. This is because automobile insurance discounts and surcharges must offset one another so that each rating factor applied by an insurer is evenly balanced within the insurer's rating plan. This assumes that the insurer chooses to offer a continuous coverage discount and does not submit a new rate plan that would change its average premium.

Automobile rating is extremely complicated, and there is no way of predicting the precise impact a specific factor (in this case, continuous prior insurance) will have on each of the insurer's customers until the insurer submits specific data to the Department of Insurance. Insurers periodically file new rate plans which may reduce or increase the average premium for their customers and/or new class plans which apply specific rating factors to their customers and may reduce or increase individual premiums.



EXHIBIT 4

CA DEPARTMENT OF INSURANCE

[HTTP://WWW.INSURANCE.CA.GOV/0400-NEWS/0200-STUDIES-REPORTS/1200-UNINSURED-MOTORIST/](http://www.insurance.ca.gov/0400-NEWS/0200-STUDIES-REPORTS/1200-UNINSURED-MOTORIST/)

NEWS: ESTIMATED RATE OF UNINSURED MOTORISTS

The estimated rate of uninsured motorists is based upon vehicle registration data maintained by the California Department of Motor Vehicles (DMV) and data for private passenger liability insurance reported to the California Department of Insurance (CDI) by Insurers. Other methods of evaluating rates of uninsured vehicles, such as studies based upon accident claims, may result in different estimates.

Year	Registered Vehicles		Insured Vehicles		Rate of Uninsured Motorists
	Number *	% Change **	Number	% Change **	
1995	20,197,092		14,164,574		29.87%
1996	20,323,829	0.6%	14,620,180	3.2%	28.06%
1997	20,727,274	2.0%	16,557,565	13.3%	20.12%
1998	21,043,560	1.5%	17,604,603	6.3%	16.34%
1999	21,593,468	2.6%	18,512,755	5.2%	14.27%
2000	22,266,982	3.1%	19,107,564	3.2%	14.19%
2001	22,793,631	2.4%	19,806,658	3.7%	13.10%
2002	23,331,631	2.4%	20,003,536	1.0%	14.26%
2003	23,987,027	2.8%	20,550,067	2.7%	14.33%
2004	24,672,633	5.7%	21,113,403	5.5%	14.43%

* Based on DMV Currently Registered Vehicles by ZIP codes interpolated to July 1 for the given year. The number of Registered Vehicles includes an estimated number of vehicles that are unregistered.

** Percentage change from the previous year.

The links below provides estimated percentages of uninsured motorists by county in California for each of the three-year periods below. Any questions or comments regarding the methodology of the data collection presented in these tables may be forwarded to Luciano Gobbo, Research Program Specialist II - Statistical Analysis Division at (213) 346-6308.

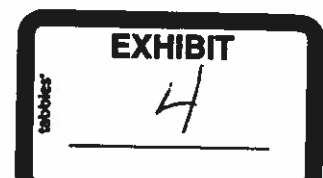
County Tables (PDF format only)

[1996 to 1998](#)

[1997 to 1999](#)

[1998 to 2000](#)

[1999 to 2001](#)



[2000 to 2002](#)

[2001 to 2003](#)

[2002 to 2004](#)

You will need the Adobe Acrobat Reader to view the PDF formatted links. Use the print icon in Adobe Acrobat Reader to print a PDF file. DO NOT use the browser's print icon. To download a FREE Acrobat Reader, follow [this link](#) to Adobe's website or click on the "Get Acrobat Reader" button.

[Back to Top](#)

EXHIBIT 5

REBUTTAL TO ARGUMENT IN FAVOR OF

PROPOSITION 17

The proponents of Proposition 17, funded by Mercury Insurance Company, are trying to put one over on you. All they talk about is "discounts" and "competition." Here's what they don't want you to know:

FACT: Prop 17 will increase car insurance premiums for millions of Californians who have done nothing wrong. It forces you to buy insurance – even if you stop driving – or you will get hit with surcharges of \$1,000/year (based on Mercury's numbers) when you start driving again... even if you are a good driver.

FACT: If you have a break in coverage for 91 days or more during the past five years, you'll be charged more, no matter how legitimate the reason: illness, attending college, lost your job, even military service.

That's why USAA, which serves our troops and their families, says: "Based on the potential harm to military personnel, we cannot support Prop. 17. They're doing their duty to their country. But they could get pounded by this kind of law."

FACT: 17 overturns a law passed by California voters in 1988 to make insurers compete fairly for customers.

FACT: Prop 17 is 99% funded by Mercury, which was caught "charging discriminatory rates to motorists who were not at fault in accidents, were members of the armed forces or worked in certain professions." (Los Angeles Times, 2/15/10)

When was the last time an insurance company put something on the ballot to lower your rates? Never.

For your own protection, vote NO on 17.

John Garamendi, former Insurance Commissioner, State of California

John Van de Kamp, former Attorney General, State of California

**SUBJECT TO COURT
ORDERED CHANGES**

Rebuttal to Argument in Favor of Proposition 17

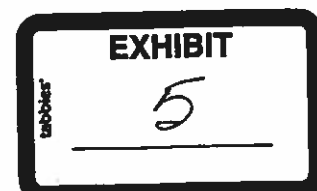


EXHIBIT 6

Justification of Loyalty Persistency Discount

Exhibit D

Page 1

EXHIBIT

Company	Loyalty Persistency Category *	Average Annual Premium per Vehicle	Indicated Discount	Indicated Discount Percentage	Indicated Surcharge	Indicated Surcharge Percentage		
State Farm Mutual Auto Ins Co	0 years	\$986	\$221	22.40%	\$221	22.40%		
	3 years						\$226	22.90%
	6 years						\$53	5.40%
Farmers Ins. Exchange	0 years	\$1,008	\$25	2.45%	\$404	40.07%		
	3 years						\$29	2.90%
	6 years						\$30	3.56%
SAFECO Ins Co	0 years	\$846	\$96	11.34%	\$172	20.34%		
	3 years						\$35	4.00%
	6 years						\$35	4.00%
GEICO Insurance Companies	0 years	\$879	\$0	0.00%	\$15	2.00%		
	3 years						\$17	2.00%
	6 years						\$84	10.48%
United Svcs Auto Association **	0 years	\$770	\$0	0.00%	\$0	0.00%		
	10+ years						\$17	2.00%
USAA Casualty Ins. Co. **	0 years	\$860	\$0	0.00%	\$0	0.00%		
	10+ years						\$17	2.00%
Nationwide	0 years	\$806	\$74	8.24%	\$45	5.64%		
	3 years						\$74	8.24%
	6 years						\$84	10.48%
California State Auto Association	0 years	\$899	\$74	8.24%	\$92	10.27%		
	3 years						\$74	8.24%
	6 years						\$84	10.48%

* Basic categories are 0 years, 3 years and 6+ years of persistency. Some companies were modified as data was not available in these categories.
 ** The significance is the indicated 2% difference between persistent and non-persistent insureds.

EXHIBIT 7

Subchapter 4.7. Private Passenger Automobile Rating Factors

Article 1. Scope

§ 2632.1. Scope.

This subchapter sets forth the criteria to be used for setting rates and premiums for private passenger automobile insurance as defined in California Insurance Code Section 660; said criteria do not apply to private passenger automobiles insured pursuant to commercial policies. This subchapter also sets forth criteria pertaining to good driver discounts, the availability of good driver discount policies from insurers, and the determination of chargeable principally at-fault accidents.

NOTE: Authority cited: Sections 1861.02, 12921 and 12926, Insurance Code; and *Calfarm Insurance Company v. Deukmejian*, 48 Cal.3d 805 (1989). Reference: Sections 1861.02(a) and (b), 1861.025 and 1861.05, Insurance Code.

HISTORY

1. Certificate of Compliance as to 3-17-94 order including repealer and new article 1 and section transmitted to OAL 7-12-94 and filed 8-23-94; operative 9-22-94 (Register 94, No. 34). For prior history, see Register 94, No. 11.

Article 2. Definitions

§ 2632.2. Rating Factors.

(a) The term "rating factor" is defined as any factor, including discounts, used by an insurer which establishes or affects the rates, premiums, or charges assessed for a policy of automobile insurance.

(b) Notwithstanding subsection (a), the following matters are not rating factors and nothing in this section shall prevent or limit an insurer from considering such matters, with the prior approval of the Commissioner, in the development of rates and premiums:

- (1) type or limits of coverage or deductibles;
- (2) for automobile collision coverage, as described in California Insurance Code Section 660, the value, the cost of repair, or the auto symbol of the insured vehicles. The term "auto symbol" as used in these regulations means any symbol based on vehicle price, repair cost, or damageability which is used to calculate any rate or premium for private passenger automobile insurance;

(3) for automobile physical damage coverage, as described in California Insurance Code Section 660, or comprehensive coverage, as described in California Insurance Code Section 11580.07, the make, model, value, cost of repair, or the auto symbol of the insured vehicles.

NOTE: Authority cited: Sections 1861.02, 12921 and 12926, Insurance Code. Reference: Section 1861.02(a), Insurance Code.

HISTORY

1. Certificate of Compliance as to 3-17-94 order including repealer and new article 2 and section transmitted to OAL 7-12-94 and filed 8-23-94; operative 9-22-94 (Register 94, No. 34). For prior history, see Register 94, No. 11.

§ 2632.3. Class Plan.

The term "class plan" means the following:

(a) the schedule of rating factors and discounts, and their order and manner of analysis as required by Section 2632.7, in the development of rates and premiums charged for a policy of automobile insurance.

(b) in accordance with Section 2632.2, the analysis or consideration of types or limits of coverage or deductibles, make, model, value, cost of repair, and auto symbols of the insured vehicles.

NOTE: Authority cited: Sections 1861.02, 12921 and 12926, Insurance Code. Reference: Sections 1861.02 and 1861.05, Insurance Code.

HISTORY

1. Certificate of Compliance as to 3-17-94 order including repealer and new section transmitted to OAL 7-12-94 and filed 8-23-94; operative 9-22-94 (Register 94, No. 34). For prior history, see Register 94, No. 11.

Article 3. Rating Factors

§ 2632.4. Use of Rating Factors.

(a) No insurer shall use a rating factor which is not set forth in these regulations and no insurer shall adopt any rating factor based in whole or in part upon the race, language, color, religion, national origin, ancestry, age, political affiliation, or sexual orientation of any person.

(b) No insurer shall use a rating factor, discount, types of limits of coverages or deductibles, make, model, value, cost of repair, or auto symbol of the insured vehicle in the development of rates in a manner that does not bear a substantial relationship to loss.

NOTE: Authority cited: Sections 1861.02, 12921 and 12926, Insurance Code. Reference: Sections 1861.02(a) and 1861.05, Insurance Code.

HISTORY

1. Certificate of Compliance as to 3-17-94 order including repealer and new article 3 and section transmitted to OAL 7-12-94 and filed 8-23-94; operative 9-22-94 (Register 94, No. 34). For prior history, see Register 94, No. 11.
2. Amendment of subsection (a) filed 7-5-96; operative 8-4-96 (Register 96, No. 27).

§ 2632.5. Rating Factors.

(a) Every insurer offering or issuing a policy of automobile insurance shall establish a class plan for the calculation of rates that specifies rating factors in accordance with this section and which complies with the good driver discount requirements of California Insurance Code Section 1861.02 and all other statutes providing discounts in automobile insurance rates and premiums.

(b) Each insurer may only use the characteristics of one driver to rate each vehicle except as provided for in section 2632.5(d)(13) and section 2632.5(c)(2). If there are more vehicles on a policy than drivers, the insurer shall assign either a rate for an undesignated driver or the lowest rate for all driver related factors to the excess vehicles.

(c) An insurer's class plan, and all rates and premiums determined in accordance therewith, shall utilize the following rating factors (the "Mandatory Factors") for bodily injury liability, property damage liability, medical payments, uninsured motorist, collision, and comprehensive coverages:

(1) "First Mandatory Factor," as used in subchapter 4.7, is the insured's driving safety record per California Insurance Code Section 1861.02(a)(1). This factor means the following for the driver rated on the insured vehicle:

(A) the public record of traffic violation convictions available from the California Department of Motor Vehicles, together with similar public records of traffic violation convictions that are available from other jurisdictions (hereinafter sometimes referred to as the "Motor Vehicle Report" or "MVR"). To determine a driver's safety record for purposes of California Insurance Code Sections 1861.02(a)(1) and 1861.025, each insurer shall verify a driver's current driving safety record as contained in the MVR for every driver listed on the policy at the time of policy application, and for each new driver added to the policy at the time the driver is added, and no less frequently than every 36 months thereafter, if the policy remains in effect. No insurer shall rate or underwrite a renewal policy based upon an MVR older than 36 months at the time the policy is renewed. However, nothing in this section shall be construed to preclude an insurer from obtaining, for the time periods set forth in this regulation, a report from an insurance-support organization or other third party which establishes that a new MVR would contain only the information already found on the MVR the insurer most recently obtained. When an insurer has such a report for a particular driver, the insurer is not required to obtain a new MVR for that driver. Additionally, nothing in this section shall be construed to preclude an insurer from granting a discount based on a driving record longer than 36 months as long as the insurer verifies a driver's record as set forth in this section;

(B) the principally at-fault accidents, as determined pursuant to section 2632.13;

(C) all convictions for violations of Vehicle Code Sections 23140, 23152, or 23153 must be treated as the highest surchargeable violation; however, other Vehicle Code convictions may receive equal treatment.

(2) "Second Mandatory Factor" as used in Subchapter 4.7, is the number of miles he or she drives annually, per California Insurance Code Section 1861.02(a)(2).

Except as provided in section (c)(2)(F) this factor means the estimated annual mileage for the insured vehicle during the 12 month period following the inception of the policy. Insurers may not retroactively or prospectively adjust premiums based on actual miles driven unless notice is provided to the policyholder prior to the effective date of the policy. Estimated annual mileage shall be determined only as follows and except as otherwise set forth in this section, an insurer shall use the applicant's estimated annual mileage:

(A) For new business or vehicles added during the term of the policy:

(i) During the application process, or when a vehicle is being added or replaced during the term of the policy, the applicant shall provide the miles he or she expects each vehicle to be insured will be driven during the 12 month period following policy inception. The insurer may also require or request, as set forth in sections (C) and (D) below, information from the applicant during this process necessary to support the estimate.

(ii) If an applicant does not provide the estimated annual miles he or she expects to drive or the information required pursuant to (C) below or if the information provided does not support the applicant's estimated annual miles, an insurer may issue a policy using a reasonable objective mileage estimate based upon the information provided pursuant to sections (C), (D) and (E) below or, if a reasonable estimate cannot be determined, using a default annual mileage figure which has been filed with and approved by the Commissioner pursuant to California Insurance Code Section 1861.02. Before doing so, the insurer shall inform the applicant of the mileage figure which it will use to rate the policy.

(iii) For the purposes of this section, when one or more vehicles are added during the term of the policy, "applicant" shall be construed to mean "policyholder" when the context so requires.

(B) For renewal business:

(i) During the renewal process, an insurer shall, at least every three years, request a policyholder to provide the estimated annual miles he or she expects each vehicle to be insured will be driven during the 12 month period following policy renewal. The insurer may also require or request, as set forth in sections (C) and (D) below, information from the policyholder necessary to support the estimate. The request may be made with the renewal notice. An insurer may, if not requesting updated information, use the mileage figure from the expiring policy or use a reasonable objective mileage estimate solely based upon the information set forth in (C), (D) and (E) below.

(ii) If, during the renewal process the insurer receives none or only some of the information requested in (i) above:

1. The insurer may renew the policy using either the mileage figure from the expiring policy or using a reasonable objective mileage estimate based upon the information set forth in (C), (D) and (E) below, whichever it determines is the most reasonable.

2. The insurer may, if it lacks sufficient information to determine a reasonable estimate, renew the policy using a default annual mileage figure which has been filed with and approved by the Commissioner pursuant to California Insurance Code Section 1861.02.

(iii) Before renewing a policy, the insurer shall provide the applicant written notice that highlights the mileage figure for the expiring policy and the mileage figure for the renewal policy.

(C) An insurer may require an applicant or policyholder to provide the following information:

1. If the vehicle is used for commute purposes, the location of the workplace, school, or other destination where the vehicle will be driven and, if applicable, an estimate of the number of miles the vehicle will be driven in the course of employment;

2. The number of days per week the vehicle will be used for commuting;

3. An estimate of the number of miles to be driven for pleasure or other purposes;

4. The approximate total number of miles driven for any time period within, but not to exceed, the previous 24 months;

5. The reason for any differences between the estimate for the upcoming 12 months and the miles driven the previous 12 months; and

6. The current odometer reading of the vehicle to be insured.

(D) An insurer may request but shall not require an applicant or policyholder to provide the following information:

1. Service records which document the odometer reading of the vehicle to be insured.

2. The use of technological devices provided by the insurer or otherwise made available to the insured that accurately collect vehicle mileage information.

(E) An insurer may obtain and use smog check odometer readings from the California Bureau of Automotive Repair, the California Department of Motor Vehicles, or any other governmental agency that maintains odometer readings to estimate annual miles driven.

(F) The Commissioner finds that basing the Second Mandatory Rating Factor on verified actual miles driven, rather than on estimated miles driven, may enable policyholders to reduce their premiums by driving less and create incentives for innovation in automobile insurance rating in California with numerous attendant benefits. Therefore, notwithstanding sections (c)(2)(A), (B), (C), (D) and (E), an insurer may offer an automobile insurance program that uses verified actual mileage rather than estimated mileage to determine the Second Mandatory Factor.

An insurer may offer a verified actual mileage program instead of, or in addition to, an estimated mileage program offered pursuant to sections (c)(2)(A), (B), (C), (D) and (E). An insurer offering both estimation and verification methods for determining mileage for the second mandatory rating factor may require an insured who chooses verified mileage for one vehicle to choose verified mileage for all vehicles insured under the same policy.

(i) For any verified mileage program an insurer offers pursuant to section (c)(2)(F), the Second Mandatory Factor shall be verified by one or more of the following methods as specified by the insurer in its class plan:

1. by odometer readings of the insured vehicle or vehicles, made by an employee of the insurer, an agent of the insurer; or a third-party vendor retained by the insurer;

2. by odometer readings recorded by an automotive repair dealer, as defined by section 9880.1 of the Business and Professions Code, in the ordinary course of the business of servicing a vehicle, provided to the insurer by the policyholder or by a vendor retained by the insurer.

3. by odometer readings obtained from smog check stations licensed by the California Bureau of Automotive Repair, from the California Department of Motor Vehicles, or any other governmental agency that maintains public records of vehicle odometer readings. Any odometer readings obtained pursuant to this section shall be provided to the insurer by the policyholder, the California Bureau of Automotive Repair, the California Department of Motor Vehicles, any government agency that maintains odometer readings, or a vendor retained by the insurer.

4. by odometer readings reported to the insurer by the insured or by an agent of the insured.

5. by a technological device pursuant to section (c)(2)(D)2.

a. Except as provided in subsection b.:

● An insurer shall only use a technological device to collect information for determining actual miles driven under the Second Mandatory Factor.

● An insurer shall not use a technological device to collect or store information about the location of the insured vehicle.

b. Nothing in this section shall prevent a motor club or insurer from using a technological device to collect information about the location of the insured vehicle as part of an emergency road service, theft service, map service or travel service.

6. by any other method approved by the Commissioner.

(ii) An insurer employing verified actual mileage pursuant to section 2632.5(c)(2)(F) may retroactively or prospectively adjust premiums based on actual miles driven provided notice is given to the policyholder prior to the effective date of the policy.

(iii) An insurer that offers both a mileage estimation program and a verified actual mileage program may provide a discount to a policyholder who participates in a verified actual mileage program. Any discount provided under section (c)(2)(F) shall be based on demonstrated cost savings or actuarial accuracy associated with obtaining and using actual miles driven rather than estimated mileage. If an insurer offers a discount, under section (c)(2)(F) all policyholders in the verified actual mileage program, regardless of the method of verification used, shall qualify for a discount.

(iv) If an insurer offers both an estimated mileage program and a verified actual mileage program, participation by a policyholder in a program to determine actual mileage shall be voluntary. An insurer offering an estimated mileage program shall not require any policyholder to participate in a program to provide verified actual mileage.

(v) An insurer employing verified actual mileage pursuant to section (c)(2)(F) shall make available all verification methods it offers to all insureds equally. No insurer shall offer or use a verification method that is not uniformly offered to the public.

(vi) An insurer offering both a mileage estimation program and a verified actual mileage program shall include both programs in one class plan.

(vii) An insurer employing verified actual mileage pursuant to section (c)(2)(F) may offer the policyholder an option to purchase coverage for a specified price per mile ("Price Per Mile Option") provided the Price Per Mile Option complies with all applicable laws.

(viii) An insurer employing verified actual mileage pursuant to section (c)(2)(F) may combine Percent Use, Academic Standing, Gender, Marital Status, and Driver Training with the Second Mandatory Rating Factor. If an insurer elects to do so, the insurer shall demonstrate in its class plan that the rating factors used in combination, when considered individually, comply with the weight ordering requirements of Section 2632.8.

(G) All mileage rating rules that direct the selection of a mileage rating relativity shall be filed with and approved by the Commissioner in a class plan filing. This includes use of multiple mileage rating bands and use of default and/or average mileage rating relativities.

(H) In no event shall an insurer require a policyholder to provide information from a prior insurer to confirm mileage estimated or driven.

(I) Nothing in this section shall be construed to affect the ability of an insurer to decline to issue, cancel, or nonrenew a policy in accordance with any other applicable provision of California law.

(3) "Third Mandatory Factor" as used in Subchapter 4.7, is the number of years of driving experience the insured has, per California Insurance Code Section 1861.02(a)(3). This factor means number of years of experience that the driver rated on the insured vehicle has been licensed to drive in any jurisdiction. To the extent that a policy provides coverage for motorcycles or motor-driven cycles, as defined in California Vehicle Code Sections 400 and 405, this factor shall refer to the number of years that the driver rated on the insured vehicle has been licensed to drive such vehicles in any jurisdiction.

(d) In addition to the rating factors set forth in subdivision (c), an insurer's class plan, and all rates and premiums determined in accordance therewith, may utilize the following optional rating factors (the "Optional Factors"):

- (1) Type of vehicle;
- (2) Vehicle performance capabilities, including alterations made subsequent to original manufacture;
- (3) Type of use of vehicle (pleasure only, commute, business, farm, commute mileage, etc.);
- (4) Percentage use of the vehicle by the rated driver;
- (5) Multi-vehicle households;
- (6) Academic standing of the rated driver;

(7) Completion of driver training or defensive driving courses by the rated driver;

(8) Vehicle characteristics, including engine size, safety and protective devices, damageability, repairability, and theft deterrent devices;

(9) Gender of the rated driver;

(10) Marital status of the rated driver;

(11) Persistency:

(A) At policy renewal, persistency credit may be applied by an insurer or affiliate for the current named insured. Persistency credit may also be applied when issuing a separate new automobile policy for a person who is not the named insured on a policy, but is otherwise currently insured.

(B) An insurer shall not apply a persistency credit for a new policy issued to an individual, unless that individual is currently insured. Nor shall any insurer apply persistency, at any time, when based in whole or in part upon automobile insurance coverage provided by a non-affiliated insurer.

(C) This subsection shall not be construed to expand or restrict an insurer's ability to obtain evidence of a person's driving safety record. However, when such evidence concerns proof of prior insurance, this subsection shall apply.

(D) For purposes of this subsection, "currently insured" means a person who is presently covered for automobile insurance by the insurer or affiliate, other than as an unnamed person who is covered under a permissive user or similar provision.

(E) As used in this subsection, "affiliate" has the same meaning as defined in California Insurance Code section 1215.

(12) Non-smoker;

(13) Secondary Driver Characteristics. For drivers not assigned as a primary or secondary driver to another vehicle, this factor may be composed of a combination of the following factors: Safety Record, Years Licensed, Gender, Marital Status, Driver Training, and Academic Status;

(14) Multi-policies with the same, or an affiliated, company;

(15) Relative claims frequency. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the zip codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims frequency. In the event that the data for a zip code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed;

(16) Relative claims severity. This factor shall contain a maximum of twenty categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the zip codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims severity. In the event that the data for a zip code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed.

(e) Except as expressly provided in this subsection and in section 2632.5(c)(2)(F)(viii) the three mandatory factors may not be combined with any other factor. Optional rating factors for Percent Use, Academic Standing, Gender, Marital Status, and Driver Training may be combined with number of years of driving experience. If an insurer elects to combine number of years of driving experience with Percent Use, Academic Standing, Gender, Marital Status, or Driver Training, the insurer shall demonstrate in its class plan that the rating factors used in combination, when considered individually, comply with the weight ordering requirements of Section 2632.8.

NOTE: Authority cited: Section 1861.02, Insurance Code; and *CalFarm Insurance Company v. Deukmejian* (1989) 48 Cal. 3d 805. Reference: Sections 1861.02, 1861.025, 1861.05, 11628 and 11628.3, Insurance Code.

HISTORY

1. New section filed 12-15-89 as an emergency; operative 12-15-89 (Register 90, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-14-90.
2. New section filed 4-13-90 as an emergency; operative 4-15-90 (Register 90, No. 17). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-13-90.

3. New section filed 8-6-90 as an emergency; operative 8-6-90 (Register 90, No. 43). A Certificate of Compliance must be transmitted to OAL by 12-4-90 or emergency language will be repealed by operation of law on the following day.
 4. New section refiled 8-13-90 as an emergency; operative 8-13-90 (Register 90, No. 43). A Certificate of Compliance must be transmitted to OAL by 12-12-90 or emergency language will be repealed by operation of law on the following day.
 5. Readoption of 8-6-90 emergency order filed 11-30-90 as an emergency; operative 11-30-90 (Register 91, No. 4). A Certificate of Compliance must be transmitted to OAL by 4-1-91 or emergency language will be repealed by operation of law on the following day.
 6. Readoption of 8-13-90 emergency order filed 12-12-90 as an emergency; operative 12-12-90 (Register 91, No. 4). A Certificate of Compliance must be transmitted to OAL by 4-11-91 or emergency language will be repealed by operation of law on the following day.
 7. Editorial correction of HISTORY 6 correcting operative date (Register 91, No. 21).
 8. Readoption of 11-30-90 emergency order filed 3-29-91 as an emergency; operative 3-29-91 (Register 91, No. 21). A Certificate of Compliance must be transmitted to OAL by 7-29-91 or emergency language will be repealed by operation of law on the following day.
 9. Readoption of emergency order filed 7-26-91 as an emergency; operative 7-26-91 (Register 92, No. 4). A Certificate of Compliance must be transmitted to OAL 11-25-91 or emergency language will be repealed by operation of law on the following day.
 10. Readoption of emergency order filed 11-27-91 as an emergency; operative 11-27-91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 3-26-92 or emergency language will be repealed by operation of law on the following day.
 11. Readoption of emergency order, including repealer of italicized text, filed 3-25-92; operative 3-25-92 (Register 92, No. 20). A Certificate of Compliance must be transmitted to OAL 7-23-92 or emergency language will be repealed by operation of law on the following day.
 12. Editorial correction restoring article 3 heading (Register 92, No. 20).
 13. Readoption of emergency order filed 7-22-92 as an emergency; operative 7-22-92 (Register 92, No. 30). A Certificate of Compliance must be transmitted to OAL 11-19-92 or emergency language will be repealed by operation of law on the following day.
 14. Readoption of emergency order filed 11-19-92 as an emergency; operative 11-19-92 (Register 92, No. 47). A Certificate of Compliance must be transmitted to OAL 3-19-92 or emergency language will be repealed by operation of law on the following day.
 15. Readoption of emergency order filed 3-26-93 as an emergency; operative 3-26-93 (Register 93, No. 13). A Certificate of Compliance must be transmitted to OAL 7-26-93 or emergency language will be repealed by operation of law on the following day.
 16. Readoption of emergency order filed 7-22-93 as an emergency; operative 7-22-93 (Register 93, No. 30). A Certificate of Compliance must be transmitted to OAL by 11-19-93 or emergency language will be repealed by operation of law on the following day.
 17. Readoption of emergency order filed 11-18-93 as an emergency; operative 11-18-93 (Register 93, No. 47). A Certificate of Compliance must be transmitted to OAL by 3-18-94 or emergency language will be repealed by operation of law on the following day.
 18. Readoption of emergency order filed 3-17-94 as an emergency; operative 3-17-94 (Register 94, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-14-94 or emergency language will be repealed by operation of law on the following day.
 19. Certificate of Compliance as to 3-17-94 order including repealer and new section transmitted to OAL 7-12-94; disapproved by OAL 8-23-94 (Register 94, No. 34).
 20. New section filed 2-23-95 as an emergency; operative 2-23-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-95 or emergency language will be repealed by operation of law on the following day.
 21. New section including amendment of subsection (c)(22) refiled 7-5-95 as an emergency; operative 7-5-95 (Register 95, No. 27). A Certificate of Compliance must be transmitted to OAL by 11-2-95 or emergency language will be repealed by operation of law on the following day.
 22. Repealed by operation of Government Code section 11346.1(g) 11-3-95 (Register 96, No. 37).
 23. Editorial correction of subsection (c)(22) and HISTORY 21 (Register 95, No. 49).
 24. New section refiled 12-5-95 as an emergency; operative 12-5-95 (Register 95, No. 49). A Certificate of Compliance must be transmitted to OAL by 4-3-96 or emergency language will be repealed by operation of law on the following day.
 25. Repealed by operation of Government Code section 11346.1(g) (Register 96, No. 27).
 26. New section filed 7-5-96; operative 8-4-96 (Register 96, No. 27).
 27. Editorial correction of subsection (d)(10) and adding new HISTORY 22 and HISTORY renumbering (Register 96, No. 37).
 28. Repealer of subsection (d)(14) and new subsection (d)(14) filed 5-5-97 as an emergency; operative 5-5-97 (Register 97, No. 19). A Certificate of Compliance must be transmitted to OAL by 9-2-97 or emergency language will be repealed by operation of law on the following day.
 29. Reinstatement of subsection (d)(14) as it existed prior to 5-5-97 emergency amendment by operation of Government Code section 11346.1(f) (Register 97, No. 38).
 30. Repealer of subsection (d)(14) and new subsection (d)(14) filed 9-15-97; operative 9-15-97 (Register 97, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-13-98 or emergency language will be repealed by operation of law on the following day.
 31. Reinstatement of subsection (d)(14) as it existed prior to 9-15-97 emergency amendment by operation of Government Code section 11346.1(f) (Register 98, No. 10).
 32. Repealer and new subsection (d)(14) filed 3-5-98; operative 3-5-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 10).
 33. Editorial correction inserting word inadvertently omitted from subsection (b) (Register 99, No. 41).
 34. Editorial correction of subsection (b) (Register 2002, No. 17).
 35. Amendment of subsection (d)(11) and new subsections (d)(11)(A)-(E) filed 8-27-2002; operative 9-26-2002 (Register 2002, No. 35).
 36. Amendment of subsection (c)(1)(A) and NOTE filed 2-27-2006; operative 4-28-2006 (Register 2006, No. 9).
 37. Amendment of subsections (d)(15)-(e) filed 7-14-2006; operative 8-13-2006 (Register 2006, No. 28).
 38. Amendment of subsection (c)(2) and new subsections (c)(2)(A)-(H) filed 12-29-2006; operative 2-27-2007 (Register 2006, No. 52).
 39. Amendment of subsections (b), (c)(2) and (c)(2)(E), new subsections (c)(2)(F)-(c)(2)(F)(viii), subsection relettering and amendment of subsection (e) filed 10-15-2009; operative 10-15-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 42).
- § 2632.6. Discounts.**
- (a) Insurers may offer discounts to premiums for any of the following:
 - (1) completion of driver training or defensive driving courses;
 - (2) any other discount provided by law.
 - (b) Notwithstanding subsection (a), no discount shall be offered or used by any insurer that is not uniformly promoted and offered to the public.
 - (c) The insurer's class plan shall specify the nature of the discounts and the manner in which they will be promoted and offered to the public.
- NOTE: Authority cited: Sections 1861.02, 11628, 12921 and 12926, Insurance Code. Reference: Sections 1861.02, 1861.05 and 11628, Insurance Code.
- HISTORY
1. Certificate of Compliance as to 3-17-94 order including repealer and new section transmitted to OAL 7-12-94 and filed 8-23-94; operative 9-22-94 (Register 94, No. 34). For prior history, see Register 94, No. 11.
- § 2632.7. Analysis of Rating Factors.**
- (a) The determination of the initial relativities to associate with a rating factor shall be established by performing a sequential analysis. The sequential analysis shall remove the variation in loss costs already explained by prior factors.
 - (b) The sequential analysis shall analyze the rating factors one at a time, in the following order:
 1. The first mandatory factor;
 2. The second mandatory factor;
 3. The third mandatory factor;
 4. Any and all optional factors used by the insurer in accordance with subsection 2632.5(d). The order of analysis of the optional factors shall be determined by the insurer, with the exception that frequency band and severity band shall be analyzed last.
 - (c) The initial relativities, as developed, shall be balanced to a weighted average of 1.0 for multiplicative factors or balanced to a weighted average of 0.0 for additive factors. The weighting factor for the weighted average shall be the number of exposures from the data chosen for use in section 2632.8(b).
 - (d) The results of the sequential analysis shall be submitted to the Department in a computer file in a format specified by the Commissioner. Individual policy holder's name and street address need not be submitted provided the insurer includes a unique identifying number which permits tracking of the information should questions concerning data quality arise.
- NOTE: Authority cited: Section 1861.02, Insurance Code; and *CalFarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805. Reference: Sections 1861.02 and 1861.05, Insurance Code.
- HISTORY
1. New section heading and text filed 9-26-94 as an emergency; operative 9-26-94 (Register 94, No. 39). A Certificate of Compliance must be transmitted

EXHIBIT 8

<i>SERFF Tracking Number:</i>	<i>SFMA-125683030</i>	<i>State:</i>	<i>California</i>
<i>Filing Company:</i>	<i>State Farm Mutual Automobile Insurance</i>	<i>State Tracking Number:</i>	<i>08-9596 CP</i>
<i>Company Tracking Number:</i>	<i>PV-23628CP</i>		
<i>TOI:</i>	<i>19.0 Personal Auto</i>	<i>Sub-TOI:</i>	<i>19.0001 Private Passenger Auto (PPA)</i>
<i>Product Name:</i>	<i>PV-23628CP</i>		
<i>Project Name/Number:</i>	<i>PV-23628CP /PV-23628CP</i>		

Filing at a Glance

Company: State Farm Mutual Automobile insurance

Product Name: PV-23628CP

SERFF Tr Num: SFMA-125683030 State: California

TOI: 19.0 Personal Auto

SERFF Status: Assigned

State Tr Num: 08-9596 CP

Sub-TOI: 19.0001 Private Passenger Auto
(PPA)

Co Tr Num: PV-23628CP

State Status: Accepted

Filing Type: Auto Class Plan

Co Status:

Reviewer(s): Geff Greenfield

Authors: Laura Culbertson, Julie
Davis

Disposition Date:

Date Submitted: 06/06/2008

Disposition Status:

Effective Date (New):

Effective Date (Renewal):

Effective Date Requested (New): 10/06/2008

Effective Date Requested (Renewal): 10/06/2008

General Information

Project Name: PV-23628CP

Project Number: PV-23628CP

Reference Organization: N/A

Reference Title: N/A

Filing Status Changed: 06/10/2008

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Corresponding Filing Tracking Number:

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Status of Filing in Domicile: Not Filed

Domicile Status Comments: N/A

Reference Number: N/A

Advisory Org. Circular: N/A

Deemer Date: 09/08/2008

We respectfully request your approval of a revision to our Independent Private Passenger Auto program, which results in a rate level decrease of 3.2%. The details of and support for the change are outlined in the attached Filing Memorandum and supporting exhibits. Upon your approval of these filings, State Farm will be 100% compliant with the Auto Rating Factor regulations.

The rate level changes contained in this filing specifically consider the expected effect that any prior changes in policy language will have on our future underwriting experience. The changes detailed in this filing reflect our best efforts to recognize our actuarially suggested income needs and have premiums that are as competitive as possible.



STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
CALIFORNIA

Sequential Analysis for Persistency (Tenth Factor Analyzed)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
<u>Persistency</u>	<u>Incurred Loss Ratio</u>	<u>Average Relativity</u>	<u>Present Relativity</u>	<u>Indicated Change</u>	<u>Indicated Change Adjusted for Off-Balance</u>	<u>Indicated Change Reflected in Prior Factors</u>	<u>Sequential Indicated Change</u>	<u>Sequential Indicated Change Adjusted for Off-Balance</u>	<u>Indicated Relativity Without Expense Flattening</u>	<u>Indicated Relativity With Expense Flattening</u>	<u>Proposed Relativity</u>
6+ Years	57.3%	0.972	0.967	0.978	0.979	1.000	0.979	0.985	0.952	0.957	0.967
3 - 5 Years	61.1%	1.056	1.061	1.032	1.033	1.043	0.990	0.996	1.057	1.051	1.061
< 3 Years	67.2%	1.150	1.179	1.113	1.114	1.019	1.093	1.100	1.297	1.267	1.179
TOTAL	58.9%										

1.179 = 1.100 / 0.933
 1.179 = 1.100 / 0.933
 1.179 = 1.100 / 0.933