



October 28, 2009

The Honorable Jerry Brown
Attorney General
State of California
1300 "I" Street, Suite 1740
Sacramento, California 95814

Via Facsimile

Re: Public Records Act Request re Mercury Insurance Company Initiatives

Dear Attorney General Brown:

We write to inquire into communications between representatives of Mercury Insurance Company or any other entity and you and your staff that led you to rewrite the Title and Summary for Mercury's proposed initiative in such a way as to conceal the fact that it will result in higher auto insurance premiums for many drivers.

Request #1

Pursuant to California Government Code § 6253(b) of the Public Records Act, and SEC. 3 Art. 1 of the California Constitution, Consumer Watchdog hereby requests copies of any records pertaining to the preparation of the Title and Summary for the following initiatives (each known as the "Continuous Coverage Auto Insurance Discount Act"): Initiative 09-0017 (received by your office on June 12, 2009); 09-0021 (received by your office on July 13, 2009); and initiative 09-0028 (received by your office on September 2, 2009).

In particular, we request that you provide any records related to any communications or contact between You and any Outside Entity concerning the preparation of the Title and Summary for the initiatives listed above. "You" means yourself in any capacity, the Department of Justice, or any employee of the Department of Justice. "Outside Entity" means any person, including but not limited to the representatives of corporations, agencies and organizations, such as Mercury General Corporation or its affiliates or lobbyists, who is outside of the Department of Justice and communicated with you concerning these initiatives.

The records we seek include, but are not limited to:

1. All communications in any format or media, including, but not limited to, email communications, written correspondence and recorded voice messages;
2. Any record of meetings, including appointment calendars; and
3. All communications, including, but not limited to, email communications, written correspondence and recorded voice messages and any record of meetings, including

appointment calendars, between You and representatives of Mercury General Corporation related to any matter, including matters not related to these initiatives, between May 1, 2009 and October 28, 2009.

Request #2

In addition to the records requested above, we also request copies of all Titles and Summaries prepared by your office since October 1, 1995 for any proposed measure where one or more variations or amendments to the proposal were submitted to your office.

We note the dramatic changes you made to the Title and Summary of Mercury's latest proposed initiative after having correctly summarized a prior version of the measure. The first Title and Summary you prepared for the Mercury initiative clearly explained, in accordance with appellate court rulings and the views of the Insurance Commissioner, that it would allow insurance companies to both raise and lower rates:

ALLOWS INSURANCE COMPANIES TO INCREASE OR DECREASE THE COST OF AUTO INSURANCE BASED ON A DRIVER'S COVERAGE HISTORY. INITIATIVE STATUTE. Allows insurance companies to raise the cost of auto insurance based on the absence of prior automobile insurance coverage. Allows insurance companies to lower the cost of auto insurance for drivers who have continuously maintained auto insurance coverage, even if they change insurance companies. Allows insurance companies to consider "claims experience" when calculating the amount of any such reduction or when determining which drivers will be eligible for it. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: The measure would have no significant fiscal impact on state and local governments. [Title and Summary for Initiative 09-0021 Issued on August 13, 2009; underlining added]

Shortly after you issued that Title and Summary, Mercury ceased collecting signatures for it and resubmitted the proposal for your review with one substantive change: it no longer contained the provision concerning "claims experience." But the revision made no substantive change to the surcharge/discount provision of the measure. However, in the Title and Summary you issued yesterday, you dramatically altered the explanation provided to the public about the measure by withholding the fact that the initiative will allow insurance companies to raise the cost of auto insurance on previously uninsured drivers. Instead, you only discuss "discounts":

ALLOWS AUTO INSURANCE COMPANIES TO BASE THEIR PRICES IN PART ON A DRIVER'S HISTORY OF INSURANCE COVERAGE. INITIATIVE STATUTE. Changes current law to permit insurance companies to offer a discount to drivers who have continuously maintained their auto insurance coverage, even if they change their insurance company, and notwithstanding the ban on using the absence of prior insurance for purposes of pricing. Establishes that lapses in coverage due to nonpayment of premiums may prevent a driver from qualifying for the discount. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: This measure would probably have no significant fiscal effect on state and local governments. [Title and Summary for Initiative 09-0028 Issued on October 27, 2009; underlining added.]

Your second analysis is not only in conflict with your prior Title and Summary, but also in direct conflict with the ruling of the California Court of Appeal, which established that virtually identical legislation enacted by the legislature in 2003 (SB 841) would have necessarily and illegally allowed insurers to increase the cost of insurance for previously uninsured drivers. The Court explained:

"The premiums for policyholders who, because of their characteristics, do not qualify for a particular discount must be *surcharged* in an amount *equal to the total of the discounts* given to the policyholders that qualified for the discount." [Emphasis in original] 132 Cal. App. 4th 1352, 1367-1369

We are well aware that you and your office were under intense pressure from Mercury to remove any reference to increased rates from the Title and Summary. However, in decades of monitoring the initiative process we are unaware of your office ever making such a radical change in a Title and Summary in response to a non-substantive amendment to the relevant provision, and thus wish to examine all previous Titles and Summaries you have issued for similar measures that were amended or resubmitted.

Regarding Requests #1 and #2

If you determine that any of these records are exempt from disclosure, we ask that you reconsider the determination in light of Proposition 59's (at California Constitution Article I, §3[b][2]) requirement that a "statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access and narrowly construed if it limits the right of access." Proposition 59 may modify or overturn authorities on which you have relied in the past.

Any public records withheld from production for inspection should be separately identified and should be accompanied by the claimed justification for withholding as provided by Gov. Code § 6255, stating the nature of the document withheld, the specific exemption under which the document is being withheld, and the public interest served by withholding said document. We reserve the right to appeal your decision to withhold any materials.

Should you contend that a portion of a particular document is exempt from disclosure due to confidentiality, we also request pursuant to Gov. Code § 6253(a) that the exempt portion be redacted and the remaining portion be produced for our inspection.

Consumer Watchdog is prepared to pay reasonable search and duplication fees in connection with this request. However, agencies have discretion to waive fees in order to provide greater access to public records pursuant to Gov. Code § 6253(e). (*See North County Parents Organization for Children with Special Needs v. California Dept. of Educ.* (1994) 28 Cal.Rptr.2d 359, 361.) As the information that is the subject of this request is of primary benefit to the public to inform how the Attorney General and Department of Justice came to transform its analysis of a proposed ballot measure, we ask that you waive all search and duplication fees.

Consistent with Gov. Code § 6253(c), we expect to hear from you within ten days. If you have any questions concerning the scope of our Public Records Act request, please contact the undersigned at (310) 392-0522 ext. 303.

Sincerely,



Harvey Rosenfield



Douglas Heller