



Formerly The Foundation for Taxpayer & Consumer Rights

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August 8, 2008

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

Dear Assemblyman Huffman:

For the last six months, we have given you the benefit of the doubt on your anti-consumer collaboration with the insurance industry on AB 2800, which would unconstitutionally amend voter-approved Proposition 103 to allow insurance companies to unfairly raise auto insurance rates and invade the privacy of California's over 21 million auto insurance policyholders.

For months, you have insisted that the purpose of AB 2800 is merely to allow insurance companies to verify a motorist's annual mileage, in order to encourage motorists to drive less with lower premiums.

We have worked hard to explain that Proposition 103 and the Insurance Commissioner's regulations that implement it *already authorize insurance companies to verify a driver's mileage and to charge lower rates to those who drive less*. Under Proposition 103, a motorist's annual mileage is one of three primary factors insurance companies must utilize when setting a motorist's premium (the others being driver safety record and years of driving experience). Indeed, the mandate of Proposition 103 that premiums be reduced for motorists who drive fewer miles is only now going into effect because the insurance industry supporters of your legislation fought a twenty-year battle to delay enforcement of that requirement.

Moreover, we took you up on your offer to withdraw AB 2800 if the Insurance Commissioner initiated regulatory action to improve mileage verification methods. With our strong support, the Insurance Commissioner has opened a proceeding on mileage verification, has held public hearings and received input from a wide variety of insurance companies as well as consumer and other organizations. The Department of Insurance is acting on an expedited time frame, solely in order to help avert the unnecessary legal conflict that would ensue if the legislature were to preempt the Commissioner's authority under Proposition 103.

Yet you have steadfastly and inexplicably refused to acknowledge that Proposition 103 provides ample authority to accomplish your stated goals through the regulatory process, and you have failed to withdraw your bill despite the good faith efforts of the Insurance Commissioner to invoke that process to implement better mileage verification methods.

Because you have rejected these efforts, it is difficult not to reach the conclusion that your agenda is far broader than merely encouraging motorists to drive less. Our suspicion is confirmed by the text of AB 2800 itself, which goes far beyond mileage verification. As drafted, AB 2800 would allow insurance companies to use in-car monitoring devices to track information about when, where and how Californians' drive. In other states, Progressive Insurance Company is already tracking, in their words, "how aggressively" people drive. AB 2800 would give its insurance company supporters the right to track how quickly California drivers accelerate and how fast they drive; whether they come to a full stop at a stop sign; and when they apply their brakes. Under AB 2800, the "black box" could even allow insurance companies to track where motorists go and which neighborhoods they drive through – practices that are forbidden by Proposition 103's newly enforced rules that reward good drivers and suppress ZIP code-based premiums and other unfair and discriminatory surcharge practices. As it is written today, AB 2800 bears no resemblance to the goals you claim to be pursuing; instead, it would open the door to arbitrary insurance rate increases and a slew of unfair and intrusive practices by insurance companies.

Last Friday, a coalition of consumer and privacy protection organizations suggested that you amend AB 2800 to make it consistent with what you insist is the purpose of your bill. Under the proposal, the bill would read: "*An insurer may verify the actual number of miles driven by the insured through any means adopted by the Commissioner pursuant to the requirements of Subdivision (e). No verification method may collect or obtain information other than the actual number of miles driven by the insured and this information may only be obtained for mileage verification.*"

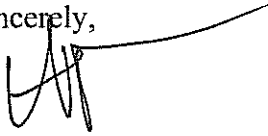
This language achieves the policy goals you maintain are your sole purpose in authoring AB 2800. It also protects consumers against outrageous intrusions into their privacy; prevents unfair premium increases; and comports with the requirement of Proposition 103 that the Insurance Commissioner adopt legitimate mileage verification rules after hearings that are open to full public participation. If mileage verification is truly your objective, then the Commissioner's regulatory proceeding obviates the need for AB 2800. But if for some reason you believe legislation to amend Proposition 103 is necessary to improve mileage verification, then there is no reason why you would not adopt this straightforward proposal.

The alternative is one that serves only the purposes of the insurance company backers of your bill, and not for long at that. When the voters passed Proposition 103, they understood that the mighty insurance lobby would seek to override its reforms by turning to the politicians whose fealty to the industry had necessitated recourse to the ballot box in the first instance. The voters therefore barred amendments to Proposition 103 that do not "further its purposes," and we have secured three major court decisions invalidating such legislation, as you are well aware from the materials we provided to you months

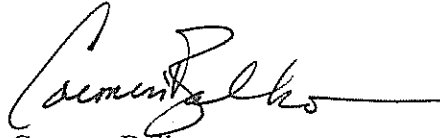
ago. AB 2800 does not "further the purposes" of Proposition 103, and is therefore an unconstitutional infringement on the initiative rights reserved to the People of California. Passage of the bill will result in an immediate challenge to the legislation and will necessarily terminate the regulatory proceeding now underway. Each time the insurance lobby has obtained legislative passage of a hostile amendment to Proposition 103, the amendment has been invalidated by the courts. AB 2800 will meet the same fate.

The millions of Californians who voted for Proposition 103, and who have waited many years for its "good driver" reforms to take effect, are entitled to your respect for the law they passed. We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to be 'Harvey Rosenfield', with a long horizontal line extending to the right.

Harvey Rosenfield

A handwritten signature in black ink, appearing to be 'Carmen Balber', with a long horizontal line extending to the right.

Carmen Balber