



April 23, 2020

VIA EMAIL

The Honorable Ricardo Lara
Insurance Commissioner
State of California
300 Capital Mall, Suite 1700
Sacramento, CA 95814

Re: *Suspend Approval of All Auto Insurance Rate Increases*

Dear Commissioner Lara:

We urge you to use your authority under Proposition 103 to immediately suspend approval of all applications for auto insurance rate increases until the end of the COVID-19 stay-at-home restrictions, or September 1, whichever comes later. The law requires your immediate action, and the devastating economic consequences of the pandemic compel it.

Californians are not driving. Current insurance rates are based on *pre*-pandemic projections of accidents, losses and claims that obviously do not reflect the unprecedented shutdown of virtually all economic activity in the state. The April 13 Bulletin you issued recognizes this situation and directs auto insurance companies to issue consumers refunds for the months of March and April. You cannot simultaneously order premium refunds to consumers – a move that is justified because people are driving fewer miles and existing rates are likely excessive – and also approve rate increases.

We received notice on Monday that Mercury Insurance Company has agreed that the Department will not proceed with a pending rate hike request to which Consumer Watchdog had objected. Consumer Watchdog has also urged the Commissioner to reject pending rate applications by Mercury's affiliate California Auto Insurance Company (CAIC), Farmers Insurance Exchange, and Esurance Property and Casualty Insurance Company, which were submitted prior to the pandemic. You should reject these rate hikes and the at least 17 other pending auto rate increase applications and put every California auto insurance company on notice that any requests for rate hikes are frozen.

Indeed, California law requires an immediate moratorium on increases. The voter's directive is straightforward: "No rate shall be *approved* or *remain in effect* which is excessive, inadequate, unfairly discriminatory or otherwise in violation of this chapter." (Insurance Code section 1861.05(a).) In light of the statewide shutdown, it is likely that most existing rates are excessive, and therefore unlawful. We do not, *at this time*, suggest that you commence formal proceedings to order companies to reduce overall rates, although such overall rate decreases will likely be necessary in the near future, and premium refunds pursuant to your April 13 Bulletin are necessary now. In the meantime, we urge you to suspend approval of any private passenger auto

insurance applications for rate increases until September 1, 2020, at the earliest. By that time, we will have a better understanding of the longer-term impact on California's economy, and the change in insurance claims and losses that are likely to result from people staying at home and/or driving less due to the COVID-19 crisis. With that information, the Department will be able to order the appropriate rate relief as required by Proposition 103.

It is impossible to determine when economic and physical activity will return to pre-pandemic levels. But it is clear that it will not be anytime soon. The conditions set forth by Governor Newsom on April 14 for modification of the shelter-in-place order have not yet been met. Even assuming that the stay-at-home order is modified to permit the resumption of some activities within the coming months, scientists and other experts suggest that the nation may need to accommodate restrictions for months or even years to come.¹

These regulatory orders are well within your statutory authority, starting with the provisions of Proposition 103, which grant you broad power to protect the public's health and safety; that law and its enabling regulations have twice been unanimously upheld by the California Supreme Court, including the legal mandate that returned over \$2 billion in refunds after the measure passed. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216.) Under Proposition 103 and the rate regulations that implement it, any insurance company that insists it will be unable to operate successfully unless it receives a rate increase will be entitled to a public hearing, at which it can seek to prove its need.

Refunds and rate increases are incompatible. At this unprecedented and calamitous moment in our history, you have the opportunity and responsibility to take decisive action to protect California's consumers.

Sincerely,



Harvey Rosenfield
Author of Prop. 103



Carmen Balber
Executive Director



Pamela Pressley
Senior Staff Attorney

¹ "The Coronavirus in America: The Year Ahead," New York Times, April 19, 2020.