



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

May 5, 2020

The Honorable Tom Daly
Chair, Assembly Insurance Committee
1020 N Street, Room 369
Sacramento, CA 95814

RE: Assembly Bill 2167 (Daly and Cooley) – OPPOSE

Dear Assembly Member Daly,

I write to respectfully inform you that I **OPPOSE** your **Assembly Bill 2167**, as amended May 4, 2020. This bill would establish the "Insurance Market Action Plan" (IMAP) Program that essentially allows an insurer to file an IMAP with and require expedited approval from the Insurance Commissioner for rate flexibility if the insurer commits to issuing/renewing more homeowner's policies in high risk counties, as specified. The creation of this program would severely harm consumers by attempting to amend and circumvent a well-established rate approval process that is reasonably fair, inclusive, and transparent for all parties involved.

Over the past year, I have heard a consistent yet dire message from local businesses, leaders, and homeowners that the combination of increasing insurance premiums and non-renewals from insurance companies is threatening to disrupt real estate markets, undermine local property values, and unravel the fabric of local communities. Since the devastating 2017 fires, the California Department of Insurance (Department) has received more than 220 homeowner rate filing increases and seen non-renewals increase by thousands across the wildland urban interface. No community is immune, and I have personally met with thousands of residents from 34 counties since taking office, including in Calaveras, El Dorado, Fresno, Los Angeles, Placer, Riverside, San Bernardino, Santa Clara, Solano, Sonoma, and Tuolumne. Insurance companies increasing rates and non-renewing their policyholders, many of whom have loyally paid their premiums to their insurance company for many years without any claims, seems especially unfair when there is neither a mandate for guaranteed insurance coverage, nor consideration for pre-fire mitigation or "fire hardening" that homeowners and local leaders have undertaken to protect against loss due to wildfires. Furthermore, this bill will hurt homeowners, hard-working families, and businesses at a time during the extraordinary COVID-19 pandemic when they cannot continue to afford premium increase after premium increase. Given the unknown ramifications of this pandemic for the time ahead, now is not the time to weaken long-standing consumer protection laws in place today.

AB 2167 seeks to amend significant cornerstone provisions of Proposition 103 in a way that weakens existing important consumer protections and discourages consumer participation in the process. This bill lacks clear benefits to consumers. Questions to ask proponents of this measure include: How will this bill make insurance more affordable? How will this bill address the prevalence of underinsured homeowners? Why is 85% an appropriate threshold for insurers and how will this increase the number of policies written in the wildland urban interface?

As you know, Proposition 103, passed by California voters in November 1988, instituted a system of prior rate approval that requires every property and casualty insurer that wishes to change its rates in California to obtain the Insurance Commissioner’s prior approval. Thus, every insurer that wishes to change the rates that it charges in California must first submit a prior approval application to the Insurance Commissioner, who is charged with ensuring that no rate shall be approved or remain in effect which is excessive, inadequate, unfairly discriminatory, or otherwise in violation of the Insurance Code. Based upon the information provided by the insurer, the Insurance Commissioner applies ratemaking formulas to determine the minimum and maximum permitted earned premium, and approves the rate if it falls between them, as specified in existing ratemaking regulations. California voters also cautioned that the provisions of Proposition 103 shall not be amended by the State Legislature except to further its purposes by a statute passed in each house with two-thirds of the membership concurring.

As proposed, **AB 2167** would do the following:

- **Create a “fast track” around the current established decades-long Proposition 103 rate approval process at the Department without clear evidence that the existing process does not work.** There has not been clear evidence presented to the Department that there is a major problem with the current ratemaking process. As a result, the Department has major concerns about amending the current ratemaking process as outlined by your bill, which only serves to set a precedent that chips away at property and casualty ratesetting protection under the Insurance Commissioner’s authority in Proposition 103.
- **Allow an insurer to compel expedited approval from the Insurance Commissioner for rate flexibility, if the insurer commits to issuing or renewing more homeowner’s policies in high risk counties, which could lead to excessive rates for consumers without any guarantee of increased insurance availability.** Expedited reviews increase the chances that something important in the review process gets overlooked and waiving actuarial documentation leads to an increased chance of excessive rates being initially filed and carried forward leading to excessive IMAP rates overtime.
- **Circumvent the authority of the Insurance Commissioner and existing regulations when determining whether reinsurance should be included as a factor in setting rates.** For more than 30 years, the Insurance Commissioner’s regulations implementing the “excessive, inadequate or unfairly discriminatory” prohibition have excluded from the ratemaking formula for most insurance lines any pricing for reinsurance costs, which are unregulated by the Department because those costs can be “gamed.” Reinsurance is a complex transaction typically covering multiple lines of insurance and/or multiple states and exposures such that parsing out costs specific to California homeowner expenses may be difficult if not impossible. As a result, ratemaking is required to be performed on a direct basis. Furthermore, passing through an insurer’s reinsurance premium costs as proposed in this bill would ultimately be very costly for consumers, especially during these unprecedented times with the COVID-19 pandemic.
- **Circumvent the authority of the Insurance Commissioner and existing regulations for regulating the use of “complex catastrophe models” when projecting future losses.** It is unclear what criteria define a complex catastrophe model and who would determine the best scientific information available when assembling and applying these models. Would there be an assessment of accuracy or consistency? By disregarding the decades-old formulaic ratemaking regulations which properly limit the use of modeled losses, it does not seem likely that this will further the purpose of Proposition 103, nor would it benefit consumers, increase California’s

availability of insurance, and prevent unfair discrimination of pricing or unjustified regional subsidies in high-risk areas.

- **Weaken consumer participation in the ratemaking process by restricting intervenors' broad power to enforce any provision of Proposition 103 by limiting their ability to participate in the process to rate calculation issues only.** Proposition 103 authorized a process for consumer participation in the administrative process in *any* proceeding for setting insurance rates, and permitted consumer intervenors to recover advocacy and witness fees and expenses under certain circumstances. The success of Proposition 103 in stabilizing and reducing insurance rates is attributable in no small part to consumer participation. Consumers have repeatedly made substantial contributions to the decision making process, which have led to better decisions that ultimately save money for consumers. As a result, weakening consumer participation and limiting intervenors' ability to participate in the Department's rate approval process as proposed in this bill is contrary to the goal of fostering consumer participation in the administrative ratesetting process and does not further the purpose of Proposition 103; instead, it arguably does the exact opposite due to the importance of consumer intervention and the value consumer groups add to the rate making process, which has been affirmed by the courts.¹

Without evidence that the current ratemaking process does not work, I have tremendous concerns that this bill unnecessarily amends the existing ratemaking process without any evidence that this new process would change the risk profile, increase mitigation efforts and statewide availability, and prevent unfair discrimination in pricing or unjustified regional subsidies in high-fire risk areas. This bill would undoubtedly increase consumer rates over time while at the same time weakening consumer participation in the process. I believe this bill does not further the purposes of Proposition 103, but would instead weaken or remove already established ratemaking processes and procedures that have been in place for more than 30 years to protect consumers from excessive, inadequate, and unfairly discriminatory insurance rates.

For these reasons, I write to **OPPOSE** your **Assembly Bill 2167**. Please contact me or Michael Martinez, Senior Deputy Commissioner and Legislative Director, at (916) 492-3565 if you have questions. Thank you for your consideration of my significant concerns with your bill.

Sincerely,



RICARDO LARA
Insurance Commissioner

cc: The Honorable Ken Cooley
The Honorable Chad Mayes, Vice Chair, Assembly Committee on Insurance
Members, Assembly Committee on Insurance
Mark Rakich, Chief Consultant, Assembly Committee on Insurance
Paul Riches, Principal Consultant, Assembly Committee on Insurance
Bill Lewis, Consultant, Assembly Republican Caucus
Darci Sears, Policy Consultant, Office of the Assembly Speaker
Ronda Paschal, Deputy Legislative Secretary, Office of the Governor
Charlene Manning, Finance Budget Analyst, Department of Finance

¹ See the California Supreme Court's decisions in *State Farm Mutual Automobile Insurance Co. v. Garamendi*, 32 Cal.4th 1029, 1035 (2004) and *Calfarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805, 836 (1989). See also *Economic Empowerment Foundation v. Quackenbush*, 57 Cal. App. 4th 677, 686 (1997) and *Association of California Insurance Companies et al. v. Poizner* 180 Cal.App.4th 1029, 1051-52 (2009).