



May 4, 2020

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

RE: SB 292 (Rubio) - **OPPOSED**

Dear Chairman Daly:

Consumer Watchdog is **OPPOSED** to SB 292.

In 1988, California voters passed Proposition 103 to closely regulate property-casualty insurance rates. Under Proposition 103, rates for homeowners' insurance (including renters and condo insurance) are subject to consistent and thorough regulatory review and public scrutiny to make sure that insurance is "fair, available, and affordable for all Californians." (Proposition 103, Section 2, Purposes.)

After it passed the Senate, SB 292, sponsored by the insurance industry, was gutted and amended. Like its companion measure, AB 2167, SB 292 now proposes to *override Proposition 103's protections against unjustified, arbitrary and secret rates*. It undermines the authority the voters gave the elected Insurance Commissioner to determine how homeowners' insurance rates are set, *including whether to use "models" to set rates, and if so, what models best serve the public – as opposed to insurance companies*.

SB 292 would allow insurance companies to return to the pre-Proposition 103 days in which rates were set behind closed doors and insurance industry lobbyists and unelected officials controlled the outcome.

SB 292 will raise homeowners' insurance rates for all Californians – at a time when they can least afford it.

SB 292 would allow Insurers to use black box, wildfire-risk models to determine eligibility for, or the premium of, a policy of residential property insurance without prior approval, review or challenge anything related to the black box "proprietary" risk models.

Indeed, SB 292 is an impermissible attack on Proposition 103 cloaked in proclamations about climate change and wildfires. When they passed Proposition 103, the voters barred the Legislature from amending the initiative unless the amendment furthers the purposes of Proposition 103. SB 292 does not further the purposes of Proposition 103, but rather undermines it. It must be rejected.

Proposition 103's Protections

During the 1970s and 1980s, insurance companies in California were free to charge whatever they wanted for insurance. As a result, California's insurance marketplace was rocked with massive swings in the price of home, auto and business insurance premiums that destabilized the economy and created enormous hardship for consumers and businesses. Often, insurance companies sought to blame these rate swings on various "crises" as a diversion from their own responsibility. Additionally, insurance companies were free to engage in blatantly discriminatory tactics that punished entire communities.

In 1988, the voters took action when the Legislature did not. As noted above, Proposition 103 requires any insurance company which seeks to change its rates to submit a rate application to the Insurance Commissioner, and receive the Commissioner's approval for it prior to its use. (Insurance Code section 1861.01 (c).) The rate application must justify the requested rate by showing that it complies with a regulatory formula, issued by the Commissioner that prevents the insurance company from charging rates that are "excessive, inadequate, unfairly discriminatory, or otherwise in violation of" Proposition 103's protections. (Insurance Code section 1861.05 (a)). Discriminatory actions targeting consumers or communities are unlawful.

This rate-making authority includes the use of "catastrophe models," which are nothing more than projections by insurance companies (or their vendors) of what they think future losses might be. *Insurance companies have a financial incentive to exaggerate estimates of future claims* in order to argue that consumers must pay higher premiums. That is why the voters established an impartial, independent and transparent process for regulation of insurance rates.

The rate approval process is subject to other Proposition 103 protections to ensure that the process is orderly, consistent, and open to public review. All information submitted by an insurance company to justify a change in its rates must be made available to the public (Insurance Code section 1861.07); and California consumers may request a public hearing on a rate request. In cases where an insurance company seeks to raise rates by more than 7%, a public hearing is mandatory. The law requires a 180-day review period, but allows extensions, which are often requested by insurance companies. (Insurance Code section 1861.05(c), (d).) Hearings are governed by state laws to ensure fundamental fairness and due process for consumers and insurance companies alike. (Insurance Code section 1861.08.)

To ensure that the law was fully enforced, the voters made the commissioner an elective post and accorded the commissioner with full authority to implement the law. (Insurance

Code section 12979.) This broad authority has been upheld by the California Supreme Court and other courts against many legal challenges by the insurance industry.

SB 292 Dismantles Proposition 103's Protections for Homeowners.

SB 292 undermines the regulation of rates mandated by the voters:

- Proposed Article 2 sidesteps the Commissioner's authority to regulate rate "models." It calls for the creation of both a "commission" and a "Catastrophic Modeling Advisory Committee," each composed of political appointees and various "stakeholders" – like insurance companies – that will develop a "public catastrophe loss model."
- Under proposed Section 10109.14, the Committee is charged with adopting its version of how homeowners' insurance rates will be set, apparently as an alternative to the Proposition 103 rules governing homeowners' insurance rates.
- SB 292 specifically allows insurance companies to evade the public scrutiny of rate making decisions mandated by Proposition 103. Proposed section 10109.14 (b)(7)(C) states that "It is the intent of the Legislature to protect from public disclosure proprietary third-party or in-house modeling data submitted by an insurer for evaluation by or comparison with the public model."
- SB 292 authorizes an insurance company to submit an "Insurance Market Action Plan" that allows the company to seek "adequate" "cost-based rates." These terms are insurance industry jargon for deregulation, allowing insurance company actuaries to substitute their judgment for the Insurance Commissioner's. That is how California insurance law was interpreted *prior to the passage of Proposition 103*.
- SB 292 calls for the creation of an Insurance Market Action Plan (IMAP), which is mandated by AB 2167, the companion bill. As Consumer Watchdog notes in its *letter of opposition* to AB 2167, the voters already gave the Commissioner the authority to create IMAPs. SB 292 and AB 2167 conflict with the authority the voters gave the Insurance Commissioner.

In short, SB 292 would allow insurance companies to sidestep Proposition 103's protections against unjustified rates and insurance company profiteering. Essentially, California taxpayers will be funding an alternative to the current regulatory system for the benefit of the private insurance industry. Interestingly, under SB 292, the "model" produced by its backroom, political process is just a "suggestion." Insurance companies won't be required to use the model unless they choose to do so, i.e., if it allows them to raise rates. The bills are a "heads the insurance industry wins, tails consumers lose" exercise.

Notwithstanding, SB 292's sprawling preamble, the bill does nothing to address climate change, does not require insurance companies to renew all homeowners policies or protect communities in any way against wildfire – or the post-wildfire claims and

coverages abuses that have prevented many Californians from rebuilding their homes. SB 292 is just another in a series of legislative attempts by the insurance industry to escape the accountability the voters imposed through Proposition 103.

SB 292 Does Not Further the Purposes of Proposition 103.

Proposition 103 contained the following limitation on the power of the Legislature: “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[.]”

As the California Supreme Court explained in invalidating another industry sponsored bill to exempt certain insurance companies from Proposition 103:

[T]he voters have the power to decide whether or not the Legislature can amend or repeal initiative statutes. This power is absolute and includes the power to enable legislative amendment *subject to conditions attached by the voters.* (*Amwest Surety Ins. Co. v. Wilson*, 11 Cal.4th 1243, 1251 (1995) (italics in original)).

The Supreme Court made clear that it would not simply defer to the Legislature’s determination that an amendment to Proposition 103 “furthered its purposes.”

In *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, the Court of Appeal reviewed an amendment sponsored by Mercury Insurance to modify the Commissioner’s authority to regulate auto insurance premiums. The Court said:

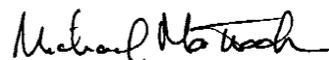
In enacting Sen. Bill 841, the Legislature sought to override the Insurance Commissioner’s authority to set rates and premiums for automobile insurance. ... In providing for an elected rather than appointed commissioner, the voters made the Insurance Commissioner responsive to the voters, not the Legislature. Under Proposition 103, therefore, *it is the Insurance Commissioner rather than the Legislature that is vested with ratemaking authority subject to the appropriate ratemaking process.* (*Id.* at 1372.)

SB 292 proposes an unlawful usurpation of the authority California voters have given the Insurance Commissioner. Accordingly, Consumer Watchdog respectfully requests a **“NO”** vote **on SB 292.**

Best regards,



Harvey Rosenfield, Founder



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Counsel & Advocate