

STATE OF CALIFORNIA

JOHN GARAMENDI, Insurance Commissioner

DEPARTMENT OF INSURANCE

801 K STREET, SUITE 1809
SACRAMENTO, CA 95814

April 14, 1993

The Honorable Art Torres
Chair, Senate Committee on Insurance,
Claims, and Corporations
California State Senate
State Capitol, Room 2080
Sacramento, CA 95814

Re: SB 957 (Johnston), as proposed to be amended

Department of Insurance Position: OPPOSE

Dear Senator Torres:

I am writing to express the OPPOSITION of the Department of Insurance to SB 957, as it is proposed to be amended. SB 957 would have the effect of repealing one of the primary provisions of Proposition 103 -- the benefit of a 20% discount for objectively defined Good Drivers. We are willing to discuss, and have so advised the author and sponsor, alternative approaches to the problem as explained by the sponsor. However, the approach contained in the bill is, in our view, unconstitutional.

The sponsors have argued to the Department that certain drivers, such as a driver involved in a "minor" at fault bodily injury accident, are unfairly impacted because they no longer qualify as Good Drivers. In certain cases, we can agree with the sponsors point. Indeed, we have offered to assist in crafting a definition of "bodily injury accident" which would allow greater flexibility for insurers to rate drivers in this category. We have expressed our willingness to consider other approaches. However, the amendment to Proposition 103 proposed by SB 957 would effectively eliminate one of the initiative's primary provisions.

It is important to understand that the "Good Driver Discount Plan" enacted by Proposition 103 -- see Insurance Code Section 1861.02, subdivision (b) -- was a response to the perception by the drafters of the initiative that the traditional "actuarially credible" data used by insurance companies to determine who receives preferred rates, and who does not, were unfair. The initiative, therefore, states that a good driver, as defined, is entitled to a 20% discount from the rate which would otherwise

Page 2

April 15, 1993
The Honorable Art Torres

apply. SB 957 would essentially empower the Commissioner to waive this requirement. Neither the Commissioner nor the Legislature has the authority to do so.

As you know, an initiative cannot be amended by the Legislature, except where the initiative itself grants that authority. Further, it is clear that the grant to the Legislature of authority to amend an initiative can be conditioned. (See California Common Cause v. Fair Political Practices Commission (1990) 221 Cal.App.3d, 647, 652.) Proposition 103 expressly prohibits amendment of its terms by the Legislature "except to further its purposes" We fail to see how such a key provision of Proposition 103 can be effectively rendered ineffective consistent with the requirement that amendments must further its purposes.

Let's be clear about what SB 957 will do. The bill purports to offer the opportunity for lower rates for some drivers. But this necessarily implies higher rates for other drivers. Insurers' rating plans -- the manner in which they determine which drivers pay how much -- are necessarily "zero sum games": for every winner there is a loser. Indeed, this is the very argument which insurers made in opposing the rating plan provisions in Proposition 103. I point this out not to suggest that some readjustments may not be in order; rather, I want to shed some light on the argument that all this bill would do is lower rates for some. This latter point is simply not true. It is simply not possible, consistent with the express benefit conferred by Proposition 103, to dilute the 20% rule as proposed by SB 957.

While the Department remains willing to discuss the issues which give rise to SB 957, we must remain opposed to it in its present form.

Sincerely,



Mark A. Rakich
Senior Counsel
Chief, Legislative Bureau

MAR/aso

cc: Members, Senate Committee on Insurance, Claims,
and Corporations
Kathleen Snodgrass