Facts vs. Falsehoods about Proposition 103 and Residential Insurance Availability and Affordability in California.

California voters enacted Proposition 103 to address an insurance availability and affordability crisis in the mid-1980s that was similar to the one confronting consumers in California today. Back then, insurance companies claimed that lawsuits and higher losses in primarily Black and Hispanic neighborhoods were responsible for skyrocketing auto, home and small business insurance premiums, and the companies' refusal to sell insurance in certain neighborhoods around the state.[1] Because the insurance industry was subject to no transparency, regulation or accountability at the time, consumers and state lawmakers were powerless to protect themselves against these destabilizing actions by the industry.[2] (We now know that the industry fabricated the 1980s crisis to offset financial losses.[3])

That's why California voters – Democrats, Republicans and Independents – joined together to pass Proposition 103 in November 1988, ushering in over thirty years of the lowest growth in auto insurance premiums nationwide (and $154 *billion* in savings for motorists alone),[4] stabilizing the marketplace and eliminating the industry's most egregious discriminatory practices.[5] It's little wonder that the industry has never stopped campaigning against Proposition 103 in the courts, in the legislature and at the ballot box.

That brings us to the latest "crisis" – this one in the residential marketplace. Insurance companies have repositioned their perennial efforts to overturn Prop 103's protections as a response to the realities of a changing climate. Lobbyists for insurance companies have testified before the insurance committees of the Senate and Assembly that they must pull out of neighborhoods across California – many of which have not been determined to be in wildfire risk zones – because they're in financial trouble and can't get approval for the rate increases they need. The insurers say that unless they are allowed to force policyholders to pay for

---

[1] For background on the historical problems in California's unregulated insurance market prior to Proposition 103, see *King v. Meese* (1987) 43 Cal.3d 1217, 1221; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1260-1266.
[2] See, e.g., Auditor General of California, *The Department of Insurance Needs to Further Improve and Increase Its Regulatory Efforts* (June 1987) (available at https://www.auditor.ca.gov/pdfs/oag/p-650.pdf); Commission on California State Government Organization and Economy, *A Report on the Liability Insurance Crisis in the State of California*, July 1986; Consumers Union, *Bark But No Bite: Toothless Regulation by the Department of Insurance Has Left California Consumers Unprotected*, July, 1987.
[3] *The Manufactured Crisis*, *Liability-insurance companies have created a crisis and dumped it on you,* CONSUMER REP. 51, Aug. 1986, at 544.
[4] Consumer Federation of America, *Auto Insurance Regulation: What Works – 2019*, February 2019 (copy attached). (https://consumerfed.org/wp-content/uploads/2019/02/auto-insurance-regulation-what-works-2019.pdf).
[5] For a complete analysis of Proposition 103's provisions, see H. Rosenfield, *Auto Insurance: Crisis and Reform*, 29 Univ. of Memphis L. Rev. 69.

reinsurance, and to use black box models or even Artificial Intelligence to set home insurance rates, the availability and affordability crisis currently plaguing California will get worse.

These statements are false. Prop 103's safeguards against unjustified rates and discriminatory practices are especially necessary in the current insurance crisis to protect California consumers, businesses and the state's economy. Eliminating them will do the exactly the opposite: exacerbate the affordability crisis by raising rates more quickly on more Californians. They will do nothing to improve the availability of insurance in California.

California insurance companies are prospering, not failing.

The insurance industry says it is in financial trouble because of claims from the severe wildfires that struck the state in 2017-18. It constantly asserts that 2017-18 losses were so high that they wiped out 26 years of underwriting profits.[6] This is incorrect:

1. Insurers fail to acknowledge that PG&E and Edison made $12.1 billion in insurance subrogation payments for damage from fires the utilities caused in those years, including the massive Camp Fire.[7] Adjusting the industry's estimated losses to reflect the utilities' cash payments dramatically reduces the industry's loss ratios (the percentage of every premium dollar that the insurance companies paid out). And in the three years following – 2019 through 2021 – their losses then reached near-historic lows.[8]

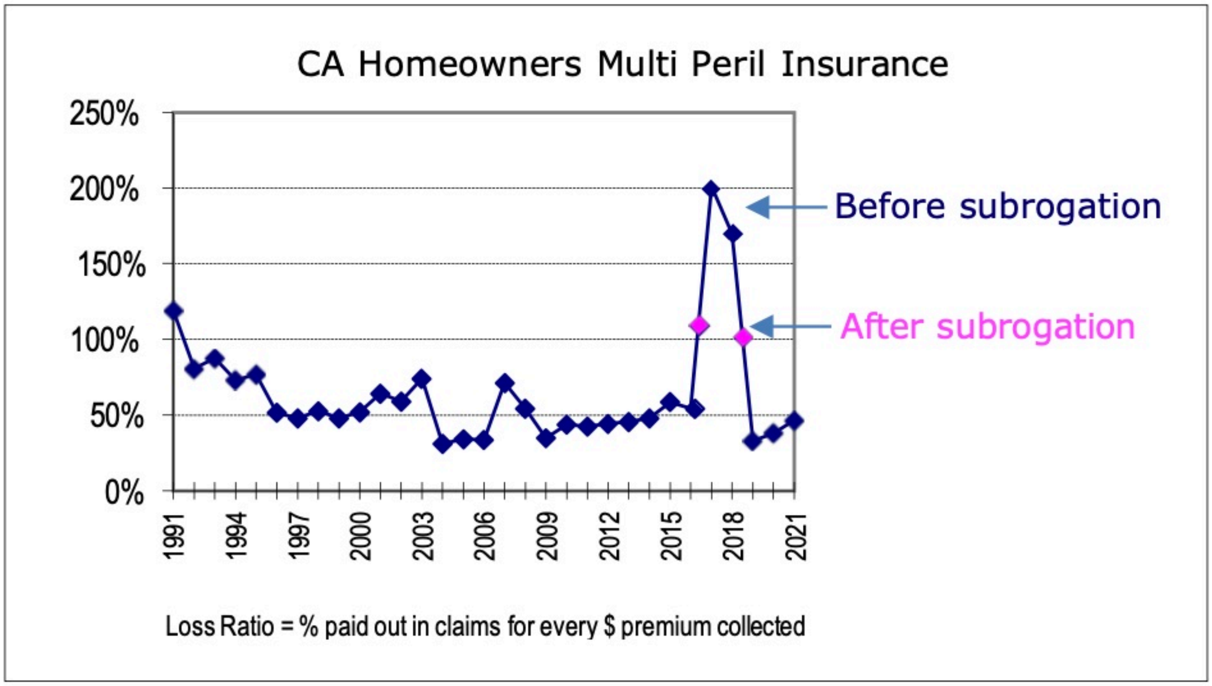
The following table, based on data published by the CDI, shows that between 1991 and 2021, homeowner insurance companies in California reported losses in excess of premiums in only three years. Before adjustment for the utilities' subrogation payments, the insurance companies earned $64.9 billion more in premiums than they reported in claims during that period. The loss ratios drop from an average 63 cents for every premium dollar paid out over the 30-year period, to 52 cents per premium dollar when subrogation payments are accounted for.

---

[6] Testimony of Seren Taylor, Personal Insurance Federation of California, before the Senate Insurance Committee, March 1, 2023.

[7] See: Press Release, *PG&E Executes Definitive Agreement Resolving Insurance Subrogation Claims Relating to 2017 and 2018 Wildfires*, September 23, 2019 (https://investor.pgecorp.com/news-events/press-releases/press-release-details/2019/PGE-Executes-Definitive-Agreement-Resolving-Insurance-Subrogation-Claims-Relating-to-2017-and-2018-Wildfires/default.aspx); Press Release, *SCE Resolves All Insurance Subrogation Claims For The Thomas, Koenigstein Fires And Montecito Mudslides*, September 23, 2020 (https://newsroom.edison.com/releases/sce-resolves-all-insurance-subrogation-claims-for-the-thomas-koenigstein-fires-and-montecito-mudslides).

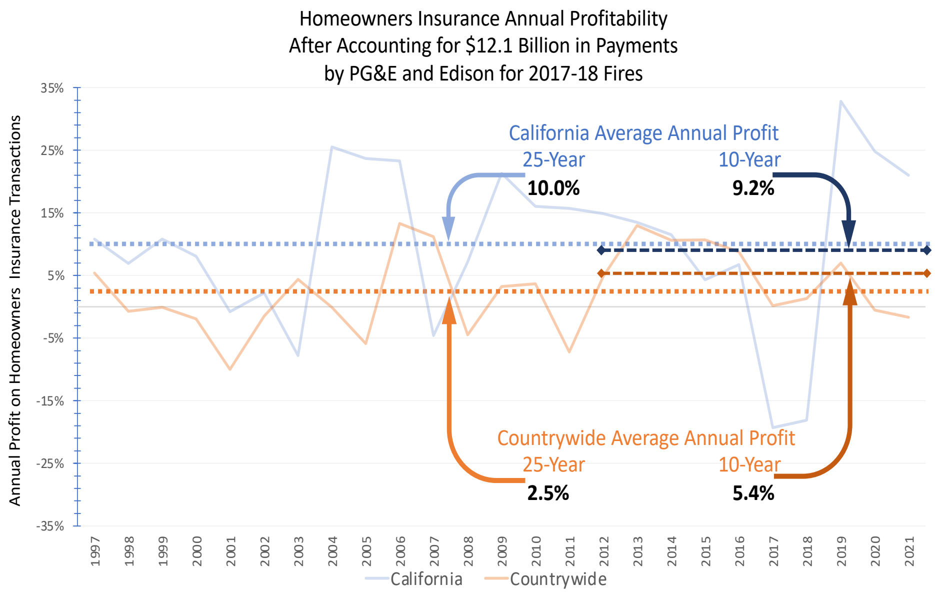
[8] California Department of Insurance, *1991-2021 California P&C Historical Premium and Loss, Homeowners Multiple Peril* (https://www.insurance.ca.gov/01-consumers/120-company/04-mrktshare/2021/upload/PrmLssChartHistorical2021wa.pdf).



2. The picture is even rosier for California residential insurance companies when you look at their profits. Insurers have always made money not just on underwriting, but also on income from their investment of their customers' premiums. The industry's claims about its losses over 26 years ignores its investment bounty. California homeowners' insurance companies were more profitable than the national average over the last 20 years: they earned an average 8.8% return on net worth in California, compared to 6.2% nationally.[9]

However, after accounting for the $12.1 billion in subrogation payments from the utilities, the industry's average annual profit on insurance transactions in California between 1997 and 2021 were *four times* the national average, as illustrated by the table below compiled by the Consumer Federation of America:

[9] National Association of Insurance Commissioners, *Report on Profitability by Line By State 2021*.



Source: Profit on Insurance Transactions as reported by National Association of Insurance Commissioners, Report on Profitability by Line by State
Note: Reduction of annual losses to reflect wildfire settlement subrogation payments by PG&E ($11 Billion) and Southern California Edison ($1.1 Billion) was allocated equally to 2017 and 2018 and added to both California and Countrywide data
Prepared by Consumer Federation of America

It must also be noted that as interest rates increase, the investment income earned by insurance companies also increases. Under Proposition 103, the insurers' investment income must be considered when setting a company's rates – an important consumer protection.

> ***Bottom Line:*** Statements by insurance companies doing business in California that they have "lost money" on homeowners insurance for the last 26 years are false.

Insurance companies are getting the rate increases they need.

Voter-approved Proposition 103 requires that insurers open their books and justify their applications for rate changes in a public process, in which consumer representatives have the right to review and challenge improper rates.[10] Insurance companies must publicly disclose all the data necessary to support their rate requests.[11] The Commissioner must then decide whether to approve or reject such rate applications before they take effect. Proposition 103 also

---

[10] Insurance Code sections 1861.05 and 1861.10.
[11] Insurance Code section 1861.07.

requires the Commissioner to protect the solvency of the insurance companies when considering rate increases.

Insurance industry representatives say Proposition 103's "prior approval" process is preventing them from charging the rates they need. But contrary to the industry's propaganda, this process has not blocked approval of insurance company requests for rate increases in homeowners, condo and renters insurance. Public records show that the Insurance Commissioner has approved, on average, 94% of the premium increases that home insurance companies applied for between 2021 and 2023; the average requested increase was 10.88% and the average increase approved by the Commissioner was 10.23%.[12]

Insurance companies like to say that Proposition 103 discourages them from requesting the full amount of the rates they need. That's also incorrect. The Prop 103 prior approval regulations ensure that insurance companies can charge the rates they need to pay claims, and earn a *fair* profit. But Proposition 103 prohibits rates that insurance companies cannot justify. And insurance companies have privately acknowledged that they frequently deliberately low-ball the rate increases they request in order to maintain rates that are competitive with those of other companies.

Proposition 103's regulation of rates in a public process is especially crucial during the crisis the industry has created in the California marketplace. It is noteworthy that five years ago, Milliman, one of the insurance industry's favorite actuarial firms, predicted that losses from the 2017 California wildfires could equal the "combined losses of the entire 39-year period that preceded it."[13] We now know that that prediction was wildly exaggerated. The industry's proposals would expose every Californian and the state's entire economy to massively inflated and unjustified premiums.

> ***Bottom Line:*** Statements by insurance companies doing business in California that Proposition 103 is preventing them from charging adequate rates are false.

Allowing insurance companies to use "black box" algorithms to make underwriting decisions and set insurance rates will legalize discrimination and immediately cause insurance rates to skyrocket.

Insurance companies have long assessed risks based on objective, empirical data from previous losses. California law requires insurance companies to justify their rates using the prior 20 years of data concerning catastrophes – which of course now includes claims from the 2017-2018 wildfires. The Proposition 103 regulations thus balance years in which losses were high with

---

[12] Analysis of data compiled by CDI and published on its website: https://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0100-rate-filing-lists/rate-filing-approvals/index.cfm.
[13] Milliman, *The California Wildfire Conundrum*, November 27, 2018.

years in which they were low to estimate insurers' future claims. Using objective, empirical data that is subject to public scrutiny protects consumers from overcharges.

Now, insurance companies want to replace empirical data with algorithmic "models" – and eventually Artificial Intelligence[14] – to determine who can buy a policy, and at what price. Use of such models is barred, with one exception, under Proposition 103 – for three compelling reasons.

1. Insurance companies have not shown that algorithmic projections more accurately predict insurance companies' future losses than existing empirical methods. To the contrary, algorithmic models have been shown to be inconsistent, with widely differing projections produced for the same conditions, often by the same company.[15] Weather models failed to predict the massive rainstorms that California has experienced this year so far,[16] and predictions about the impact of the rainfall on drought conditions and wildfire risk later this year vary wildly.

2. Algorithms notoriously contain race, class and gender based biases.[17] That's another reason why Proposition 103 regulations do not permit most uses of models for ratemaking.[18] Allowing insurance companies to use them would enable insurance companies to re-introduce the many forms of pernicious discrimination previously employed by the industry and barred by Proposition 103[19] (territorial rating and redlining, for example), by cloaking them in the guise of science. Artificial Intelligence will only exacerbate the potential abuses. The result: higher prices for some Californians, while others are denied insurance altogether.

3. Allowing insurance companies to use computer models to set rates would violate a core requirement of prior approval rate regulation in California: transparency. Prop 103 works because it requires insurance companies to open their books to public scrutiny and submit data and actuarial analyses to justify the rates they charge. But the insurance companies and the Wall Street firms that are promoting algorithmic models in California – such as Milliman, CoreLogic, and Verisk – conveniently claim that their products are "proprietary" and cannot be

---

[14] See, for example, McKinsey & Co., *Insurance 2030—The Impact Of AI On The Future Of Insurance*, March 12, 2021 (https://www.mckinsey.com/industries/financial-services/our-insights/insurance-2030-the-impact-of-ai-on-the-future-of-insurance).

[15] Testimony of Allan I. Schwartz, January 21. 2021, before the California Department of Insurance, p. 13.

[16] Los Angeles Times, *'Dry' California got big rains. Was it really an epic weather forecasting fail?*, January 23, 2023 (https://www.latimes.com/california/story/2023-01-23/dry-winter-was-predicted-why-did-california-storms-bring-so-much-rain).

[17] Consumer Watchdog, *Unseen Hand: How Automatic Decision-making Breeds Discrimination and What Can Be Done About It*, March 29, 2023 (https://consumerwatchdog.org/privacy/unseen-hand/).

[18] 10 CCR 2644.4(e), promulgated in 2007, authorized the use of catastrophe models for projected losses for earthquake insurance and the Fire Following Earthquake exposure for other lines of insurance because significant earthquakes are extremely infrequent and cause severe damage.

[19] Insurance Code sections 1861.02 and 1861.03.

subject to public scrutiny.[20] The industry's desire to replace objective and verifiable data with "black box" models would place potentially erroneous assumptions and discriminatory impact beyond detection. The insurance companies want to use algorithmic models because it would be impossible to independently verify whether a requested rate is justified.

Fact: Insurance companies claim that they use models in every state but California, but that hasn't protected other states from similar insurance crises: for example, in Colorado, Oregon, and Texas, insurance companies are also nonrenewing policyholders and refusing to sell to new homeowners after recent catastrophic weather events.[21] Indeed, it is noteworthy that not one California insurance company has committed to ending non-renewals, or to providing coverage to a single additional residence, if they are allowed to use algorithms to set rates.

> ***Bottom Line:*** Allowing insurance companies to use models to set rates will lead to unjustified rate increases, and *reduce,* not expand, access to affordable home, condo and renter insurance, and allow insurance companies to engage in unlawful discrimination – without detection.

Forcing consumers to pay for unregulated reinsurance will trigger massive price increases for home and condo owners and renters.

The price of reinsurance – backup coverage that insurance companies buy from other companies – is not regulated; it's sold largely by global firms that are completely unaccountable in the U.S., let alone California. Thus reinsurance companies are able to boost rates indiscriminately and arbitrarily. Allowing insurance companies to pass on these unregulated costs to consumers will not make insurance more available – it's guaranteed to make it even less affordable.

In 2020, Robert Hunter, a nationally recognized insurance expert, actuary, former Texas Insurance Commissioner and former Administrator of the National Flood Insurance Program wrote California legislative leaders to warn that if insurance companies are permitted to make consumers pay for the cost of reinsurance, Californians' homeowners' rates are likely to

[20] See, for example, the letter from Personal Insurance Federation of California and other industry lobbying associations to the California Department of Insurance, April 11, 2022, stating that "most wildfire risk modelers will be unwilling to make their [models] public," at page 2.

[21] Press Release, *Oregon Division Of Financial Regulation: Insurance Companies Not Using State Wildfire Risk Map*, August 12, 2022 (https://dfr.oregon.gov/news/news2022/Pages/20220812-wildfire-risk-map.aspx); Colorado Sun, *Colorado's Wildfire Risk Is So High Some Homeowners Can't Get Insured. The State May Create Last-Resort Coverage*, December 30, 2022 (https://coloradosun.com/2022/12/30/colorado-property-insurance-wildfire-risk/); KOIN, *Insurance Companies are Dropping Home Coverage in Oregon Due to Wildfire Risk*, December 1, 2022 (https://www.koin.com/news/wildfires/insurance-companies-are-dropping-home-coverage-in-oregon-due-to-wildfire-risk/); E & E News, *Growing Insurance Crisis Spreads To Texas*, April 17, 2023 (https://www.eenews.net/articles/growing-insurance-crisis-spreads-to-texas/).

immediately increase by 40% and that Californians would be subject to additional rate hikes of 50% or more after each significant disaster anywhere in the United States or overseas.[22]

The experience of states with climate-driven weather events in other states further confirms this. In Florida, for example, reinsurance rates are expected to increase another 40-50% in June, after similarly large rate increases over recent years. [23] Despite these increases, it's getting harder to buy insurance in Florida, not easier. The number of Floridians forced to buy coverage from the state-run homeowner insurer of last resort doubled in the last year, and a new taxpayer-funded $2 Billion reinsurance backstop was just enacted.[24]

Moreover, reinsurance policies are often inside deals negotiated between subsidiaries and affiliates of the same insurance company. As a result, the price that an insurance company pays to buy reinsurance is often grossly inflated. Fraudulent inter-affiliate reinsurance transactions designed to artificially boost the insurance company's financials were at the heart of the infamous AIG Insurance criminal scandal that came to light in 2006.[25]

Because they are unregulated, reinsurance premiums routinely skyrocket after a weather or other event anywhere in the planet as companies take advantage of scarcity to increase prices. For example, industry experts estimated that reinsurance rates across the United States rose 45-100% in 2022, "increases largely driven by the costs of last year's Hurricane Ian in Florida."[26] Thus a single weather event in one state on the other side of the continent created "one of the hardest reinsurance markets in living memory." Similarly, the California Earthquake Authority is permitted to buy – and pass through – reinsurance to its customers. Approximately more than half of the premiums CEA policyholders pay is a straight pass-through of unregulated re-insurance costs.[27]

Allowing insurance companies to include their cost of reinsurance in the rates Californians pay would give insurance companies the incentive to *maximize* the reinsurance premiums they pay

---

[22] Letter from Robert Hunter, Consumer Federation of America, July 28, 2020 (copy attached).
[23] Channel 8, *Florida Property Reinsurance Rates Expected to Jump 40% to 50% in June*, February 17, 2023 (https://www.wfla.com/news/florida/florida-property-insurance-rates-expected-to-jump-40-to-50-in-june/).
[24] Associated Press, *Florida Gov. DeSantis Signs Property Insurance Legislation*, May 26, 2022 (https://www.usnews.com/news/best-states/florida/articles/2022-05-26/florida-gov-desantis-signs-property-insurance-legislation).
[25] CBS Money Watch, *Former AIG Head Admits Role In $500M Accounting Fraud*, February 10, 2017 (https://www.cbsnews.com/news/aig-maurice-hank-greenberg-accounting-fraud-settlement/).
[26] AIRMIC, *Hardest Reinsurance Renewal In A Generation To Crank Up Insurance Pricing Pressure*, February 27, 2023 (https://www.airmic.com/news/guest-stories/hardest-reinsurance-renewal-generation-crank-insurance-pricing-pressure).
[27] CEA, *Our Financial Strength* (https://www.earthquakeauthority.com/About-CEA/Financials/CEA-Financial-Strength).

in order to generate higher investment income and profits. As the CEO of Cincinnati Re reinsurance company put it: ""In reinsurance it's profit first."[28]

As with the industry's campaign to use secret models, not a single insurance company doing business in California has committed in writing to ending nonrenewals, or even to providing coverage to a single additional residence, if they are allowed to pass-through the price of reinsurance to consumers.

Finally, reinsurance does nothing to reduce the risk of wildfire itself.

For these reasons, Proposition 103 regulations issued by Commissioner Garamendi shortly after the passage of Proposition 103 disallow the pass-through of reinsurance costs in homeowners insurance.

> ***Bottom Line:*** Forcing policyholders to pay for reinsurance will *reduce,* not expand, access to affordable home, condo and renter insurance.

Exploiting "climate change," the insurance industry's proposals would enrich insurance companies but do nothing to address climate change or wildfire risk.

No other industry was better positioned to understand climate change and propose a comprehensive loss prevention program to protect America against it. However, as consumer safety advocate Ralph Nader testified in a 1988 congressional hearing on Proposition 103:

> "Insurance companies are usually indifferent to safety and loss prevention because they have become predominantly cash flow financial institutions. More and more attention is paid to increasing investment income through premium volume. They pay less attention to safety and engineering contributions that could reduce premiums but retain prudent underwriting profits. Insurance companies would much rather charge a premium of $1000 and then pay out $500 in claims, then charge $500 and pay $250, because they would prefer having more money to put in investments and to pursue their financial objectives."[29]

Indeed, the industry has long been criticized for its failure to recognize and address climate change.[30] It continues to invest in fossil fuel companies – an estimated $536 billion of

---

[28] Best's News & Research Service, *Cincinnati Financial CEO: Reinsurance Book Changes Reduce Catastrophe, Property Exposure*, April 28, 2023.
[29] Statement of Ralph Nader before the House Subcommittee On Commerce, Consumer Protection And Competitiveness, U.S. House Of Representatives, December 6, 1988.
[30] See, for example, Environment and Energy Leader, *Report: Insurers Not Ready for Climate Change*, September 2, 2011 (https://www.environmentalleader.com/2011/09/report-insurers-not-ready-for-climate-change).

policyholders' premium dollars in 2019.[31] And it continues to insure fossil fuel infrastructure without considering the public health and economic consequences. Moreover, during the Commissioner's development of new wildfire regulations, the industry opposed mandatory premium discounts for California policyholders who take action to mitigate wildfire risk, as well as the public disclosure of the wildfire risk models they propose to utilize.

Rather than proactively pursue loss prevention to reduce wildfire risk, the insurance industry has followed the strategy it has so often adopted in California and throughout the United States. It has chosen to exploit a crisis to enrich itself by raising rates, abandoning policyholders and entire markets (earthquake, flood, wind damage), and advocating government bailouts and other self-serving solutions that would allow it to escape voter-mandated accountability and protections against price gouging and discrimination.

Here are immediate steps to reduce wildfire risk and lower insurance claims.

Home insurance is a mandatory product for everyone with a mortgage, and thus a necessity for every Californian who cannot afford to lose their largest investment, their home. Every Californian who protects their home from fires should have the right to access home insurance at a fair price. Just as insurance companies are required by Proposition 103 to sell insurance to every good driver.

California voters made the Insurance Commissioner an elected office and gave the Commissioner extensive power to investigate and address issues like climate change. Here are critical actions state officials should take:

• The Commissioner must continue to enforce Proposition 103 through thorough examination of the rates and practices of insurance companies as required by the voters. He must respect the due process rights of groups like Consumer Watchdog to review rate applications and challenge unjustified rate requests. He must observe state rules which bar him from communicating with insurance companies seeking rate increases.

These legal obligations must be met even as the Commissioner's new homeowner mitigation rules will provide a temporary increase in the agency's workload. They required insurance companies to submit new rate applications by April 12 that demonstrate that the companies are providing mandated risk mitigation discounts. These filings will require careful review by agency staff. Proposition 103 specifies that the Commissioner impose a fee on the insurance industry to cover "any administrative or operational costs arising from" Proposition 103.[32] Without

---

[31] CDI, *Climate Risk & Resilience Analysis*, April 2022 (https://interactive.web.insurance.ca.gov/apex_extprd/cdi_apps/r/260/files/static/v58/Analysis%20of%20Insurance%20Company%20Investments%20-CDI-Final-Reportv2.pdf).

[32] Insurance Code section 12979.

adequate resources, the agency's dedicated employees cannot fulfill their mission. Consumer Watchdog urges the Commissioner to obtain the additional resources that the agency clearly needs to meet current challenges.

• The Commissioner should convene an investigation into the problems plaguing condominium Home Owner Associations (HOAs), which are suffering staggering and inexplicable rate increases. Insurance companies admitted to do business in California are apparently working with insurance brokerage firms to underwrite HOA policies through "syndicates" of those insurance companies, rather than directly selling to HOAs. This arrangement appears to have evaded rate review under Proposition 103. As a predicate for determining what regulatory or legislative actions must be taken, a public inquiry by the Commissioner is urgently required.

• Require the insurance industry to divest itself of investments in, and regulate the underwriting of, industries that are exacerbating pollution and climate change. In 2019, Consumer Watchdog and sixty other environmental, social justice and consumer organization petitioned Commissioner Lara to require insurers to disclose their investment and underwriting practices.[33] In 2022, the Commissioner published investment data but has not required insurers to create a plan to transition their investment portfolios to net zero; instead CDI has focused on creating a green bond market, and other changes that do not challenge industry fossil fuel investment practices.

Nor has CDI proceeded to address the insurers' underwriting of fossil fuels. CDI's recent Sustainable Insurance Roadmap says it is aligned with the Net Zero Insurance Underwriting Alliance.[34] The Alliance requires its members to commit to transition all emissions attributable to underwriting portfolios to net zero by 2050. However, the Sustainable Insurance Roadmap is silent on underwriting practices. When insurance companies insure the fossil fuel projects responsible for the increased intensity of wildfires, mudslides and flooding, they are fueling the very disasters for which homeowners need insurance.

To incentivize insurance companies to stop doing so, California lawmakers should consider imposing an annual surcharge on premiums collected by insurance companies from companies that explore for or produce fossil fuels. Connecticut lawmakers are presently considering similar legislation.[35]

• Discounts for risk mitigation. After a three-year investigation, the Insurance Commissioner issued regulations that took effect in October 2022 to require insurance companies to provide

---

[33] See Consumer Watchdog, *Petitionto Protect Consumers and Insurance Companies from Climate Change*, March 21, 2019 (https://consumerwatchdog.org/wp-content/uploads/2019/03/2019-03_FossilFuelPetition.pdf).
[34] CDI, California Sustainable Insurance Roadmap, June 22 (https://www.insurance.ca.gov/01-consumers/180-climate-change/upload/California-Sustainable-Insurance-Roadmap-Progress-Report-June-2022.pdf); *Net-Zero Insurance Alliance* (https://www.unepfi.org/net-zero-insurance/).
[35] See Connecticut Senate Bill No. 1115 (https://legiscan.com/CT/bill/SB01115/2023).

premium discounts to homeowners who take steps to lower wildfire damage to their homes. Insurance companies were required to file rate applications by April 12 that include individual property and community level "mitigation discounts." Properly implemented, the new rules will provide greater affordability and reduce risk for individual homes and in communities.

But the Insurance Commissioner missed an opportunity in the mitigation rules to mandate that insurers consider mitigation not only in pricing decisions, but in underwriting decisions. Homeowners can spend thousands of dollars on wildfire mitigation, reducing their risk, but still be denied or lose their coverage, or get no discount from insurance companies on the premiums they have to pay. Commissioner Lara should update the new regulations to require insurance companies to consider the steps taken by policyholders and their communities to protect their homes and property from fires when making a determination whether to offer or renew a policy, as Consumer Watchdog has advocated.[36]

The Legislature has an important role to play in support of loss prevention and mitigation: it has already established state programs to fund policyholder and community mitigation efforts. But funding has been extremely limited. Wildfires are a serious pollution and public health problem. To demonstrate California's commitment to meeting its climate goals, state policymakers should prioritize the use of the $3.6 billion in discretionary spending (Greenhouse Gas Reduction Fund) that the Senate projects will be collected through California's Cap-and-Trade program in 2023-24 to fund the efforts of homeowners to mitigate wildfire risks, particularly for the communities that are least able to access financial resources to harden their property.

Actions to stop insurance companies from destabilizing the California economy.

• Investigate potential violations of antitrust law by insurance companies. Proposition 103 made the antitrust laws applicable to the insurance industry. The California Attorney General should investigate whether one or more insurance companies, or insurance industry lobbying organizations, are collaborating with each other to boycott certain neighborhoods in California in order to limit competition, increase prices or to promote deregulation.

• Address redlining and market withdrawal. Proposition 103 gave the Insurance Commissioner the power to investigate and bar unfair discrimination by insurance companies in pricing and their refusal to sell or renew residential insurance policies in certain areas. The Commissioner should set clear and uniform rules for analyzing whether withdrawals are consistent and supported by data. The insurance industry should not decide housing policy in California; that responsibility belongs to state and local officials accountable to the voters.

---

[36] Consumer Watchdog, *Insurance Commissioner Lara's Regulation Preserves Loophole Letting Insurers Ignore Wildfire Mitigation for Denial or Non-Renewal of Homeowners Policies*, September 7, 2022 (https://consumerwatchdog.org/insurance/insurance-commissioner-laras-regulation-preserves-loophole-letting-insurers-ignore/).

• For those who cannot afford the price of insurance, the FAIR Plan has become a critical option, and thanks to the Legislature and Insurance Commissioner's actions, better coverage is now available. Still, the FAIR Plan does not serve homeowner associations which require more than $20 million in coverage. The FAIR Plan is presently run by insurance companies, which helps explain its resistance to increasing commercial coverage limits and other expansions that would make the FAIR plan more responsive to consumers. (This resistance to a taking a broader role in supporting the residential marketplace is an indication that the industry wants to remain in the private marketplace, albeit on its own terms). The critical first step is to create a public majority on the FAIR Plan's governing board.

• Survivors of wildfires and other disasters should not have to fight with their insurance companies to obtain the benefits they paid for. What happens after a wildfire or other natural disaster—when policyholders file an insurance claim—can be as traumatic as the event itself. An insurance company's failure to pay a homeowner's insurance claim promptly and fully is unlawful and a gross betrayal of the core purpose for which people buy insurance. Complaints about insurance company mishandling of claims are legion, often leading to time-consuming litigation. The insurance industry's use of claims handling software that fails to account for the actual rebuilding and construction costs in local markets throughout California has been rampant in the aftermath of the wildfires. Many policyholders who experienced losses in the wildfires years ago have yet to receive all the coverage they paid for. The Commissioner should conduct a public investigation of claims abuses and issue regulations strengthening protections against improper claims handling practices.

May 9, 2023