



DAVE JONES
Insurance Commissioner

November 7, 2011

The Honorable Jeff Miller
State Capitol, Room 4144
Sacramento, CA 95814

Re: June 22, 2011 Letter from Insurance Commissioner Dave Jones

Dear Assemblymember ~~Miller~~ ^{Jeff}.

I write to correct a mistake in a letter dated June 22, 2011 that I sent you. On March 15, 2011, you sent me a letter offering suggestions for automobile rate reforms. Among the items discussed in your letter was a proposal to change the automobile rate process so insurers could provide premium discounts to customers who pay their bills electronically or correspond with the insurer paperlessly.

My letter in response to your March 15 letter confirmed the requirement in Proposition 103 that automobile rating factors must bear "a substantial relationship to the risk of loss." Ins. Code § 1861.02(a)(4). Recognizing this, and in reliance on incorrect advice from my legal staff, my letter suggested that the Legislature may adopt *discounts*, in contrast to rating factors. That suggestion was erroneous. A discount is a term that is synonymous with a rating factor. Proposition 103 authorizes differentiation among individual consumers' premiums solely on the basis of rating factors – *i.e.*, factors adopted by the Commissioner by regulation.

As you correctly noted in your March 15 letter, only the Insurance Commissioner, and not the Legislature, may adopt automobile rating factors. As the Court of Appeal held in *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, 1372:

[T]he voters limited the Insurance Commissioner's authority both substantively and procedurally. Substantively, the Insurance Commissioner may adopt only those optional rating factors having a 'substantial relationship to the risk of loss.' Procedurally, the Insurance Commissioner may do so only in the context of a formal rulemaking proceeding with established rights of public participation and judicial review. 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. [Citations omitted]

From a policy perspective, this is not the time to attempt to add additional rating factors to the rate calculation. Just last year, final approvals were issued to the latest class plan filings implementing the 2008 changes to the automobile rating factors. There has been significant dislocation of rates over the last few years as a result of those changes and it is important to allow some time for rates to stabilize, recognizing that loss experience will still dictate rate changes.

In recognition of statutory restrictions, I would consider including some form of expense discount in the expense calculation component of the regulations. As I explained in my June 22 letter: "Generally speaking, an insurer that generates lower expenses due to lower transactions costs can pass those savings onto all of its insureds through a lower expense loading in its rates. While this expense savings does not go directly to the insured creating the savings, at least there is a cumulative beneficial effect."

We have asked industry representatives for their suggestions in this regard. However, given that there already is reduced expense loading in place for insurers that deal directly with the public and reduced fees for customers who pay in fewer installments, the additional expected savings would likely be limited.

I understand your desire to create discounts that would provide an incentive for customers to pay electronically and use paperless communications.

I apologize for the erroneous suggestion in my June 22 letter that the Legislature could create discounts for electronic payments and paperless communication under Proposition 103. Please feel free to contact me with any questions or concerns at (916) 492-3609.

Sincerely,


DAVE JONES
Insurance Commissioner