

## **Auto Insurance Discount Initiative Okayed to Collect Signatures**

August 15, 2011 by Samuel Sorich

On August 12, 2011, California Secretary of State Debra Bowen announced that supporters of a proposed initiative on automobile insurance rates may begin to collect signatures to put the measure before California voters. Supporters of the initiative have until January 9, 2012, to submit the 504,760 valid signatures needed to put the initiative on the June 5, 2012, statewide ballot.

The initiative, named the "2012 Automobile Insurance Discount Act," would allow insurers to use continuous automobile insurance coverage with any admitted insurer or insurers as a rating factor for private passenger automobile insurance.

Under existing California Department of Insurance regulation 2632.5(d)(11), an insurer may use continuous coverage as a rating factor when an individual is currently insured for automobile insurance with his or her insurer or an affiliate insurer. The existing regulation prohibits an insurer from basing the continuous coverage rating factor on coverage provided by another non-affiliated insurer. The proposed initiative would override this existing regulatory prohibition.

### **Background**

Actuarial analyses indicate that, in general, drivers who maintain continuous automobile insurance coverage have a lower risk of future insured losses. Over the past several years, there has been controversy in California over how this lower risk should be considered as a rating factor for private passenger automobile insurance.

### **Proposition 103**

Proposition 103, which was passed by California voters in 1988, enacted Insurance Code Section 1861.02.

Section 1861.02(a) provides that private passenger automobile insurance rates must be determined, in decreasing order of importance, by 1) driving record; 2) number of miles driven; 3) years of driving experience; and 4) optional factors that the insurance commissioner may adopt by regulation.

Section 1861.02(c) provides that the absence of automobile insurance, in and of itself, shall not be a criterion for determining automobile insurance rates. Proposition 103 declared that its provisions "shall not be amended by the Legislature except to further its purposes."

### **Quackenbush Regulation**

In 1996, Insurance Commissioner Chuck Quackenbush exercised his power to adopt optional rating factors under Section 1861.02(a) and adopted a regulation that allowed insurers to use "persistency" as a rating factor.

The regulation did not define “persistence.” The term was interpreted differently by various insurers. Some insurers interpreted “persistence” to mean the number of years a customer has continued insurance coverage with his or her current insurer. Other insurers defined “persistence” more broadly to include continuous coverage with any insurer.

### **Low Regulation**

In 2002, Insurance Commissioner Harry Low adopted a regulation that limited the scope of the persistence rating factor. The Low regulation, which is incorporated in the Department of Insurance’s existing regulatory section 2632.5(d)(11), requires that in applying the persistence rating factor, an insurer may consider only the length of time a driver has been continuously covered with his or her current insurance company or an affiliate of that company.

### **SB 841**

In 2003, the Legislature sought to override the Low regulation by expanding the scope of the persistence rating factor.

The Legislature passed SB 841, which amended Insurance Code Section 1861.02(c) to provide that an insurer may use continuous coverage with a driver’s current insurer or another insurer as an optional rating factor to determine the driver’s insurance premium. In passing SB 841, the Legislature declared that the bill “furthers the purpose of Proposition 103 to encourage competition among carriers so that coverage overall will be priced competitively.” Governor Gray Davis signed SB 841 into law on August 2, 2003.

In September 2005, the California Court of Appeal ruled in *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354 that SB 841 was invalid because it did not further the purposes of Proposition 103. The ruling was based on two points.

1. SB 841’s application of continuous coverage as a rating factor violated the proposition’s provision in Insurance Code Section 1861.02(c) prohibiting the use of the absence of prior insurance “in and of itself” as a criterion for determining rates.
2. The Legislature’s attempt to specify an optional rating factor was inconsistent with the proposition’s provision in Insurance Code Section 1861.02(a)(4) delegating the exclusive authority to adopt optional rating factors to the insurance commissioner.

The court disregarded the Legislature’s declaration that SB 841 furthered Proposition 103’s purpose of encouraging competition.

The Court of Appeal’s ruling preserved the Low regulation which limits the application of the continuous coverage rating factor to coverage with a driver’s current insurer or an affiliate of the current insurer. That regulation remains in effect today.

### **Proposition 17**

In 2010 there was an unsuccessful attempt to override the existing regulation with a voter initiative. Proposition 17 would have allowed a driver to demonstrate continuity of coverage by providing proof of coverage from his or her prior insurer or insurers. Proposition 17 failed to gain voter approval at the June 8, 2010, statewide primary election.

### **Proposed Initiative**

The proposed initiative, which was approved for signature gathering on August 12, 2011, also seeks to override the existing regulation but does not use the same language that was contained in Proposition 17.

The proposed initiative would enact a new Insurance Code section that expressly allows a private passenger automobile insurer to use continuous coverage as an optional rating factor.

The initiative defines “continuous coverage” to mean “uninterrupted automobile insurance coverage with any insurer or insurers, including coverage provided pursuant to the California Automobile Assigned Risk Program or the California Low Cost Automobile Program.”

The initiative specifies certain circumstances that qualify for continuous coverage, including a lapse in coverage due to an insured’s active military service or a lapse in coverage of up to 18 months in the last five years due to loss of employment resulting from a layoff or furlough.

The initiative grants a proportional discount to a driver who is unable to demonstrate continuous coverage; the discount reflects the number of years in the immediately preceding five years for which the driver was insured.

Barger & Wolen will continue to report on the state of this new initiative.