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Propositions 100, 101, 103, 104 and 106

Senate Committee on Insurance, Claims and Corporations

Senate Committee on Judiciary

Assembly Committee on Finance and Insurance

CALIFORNIA LEGISLATURE

SENATE COMMITTEE ON INSURANCE, CLAIMS AND CORPORATIONS

ALAN ROBBINS, CHAIRMAN

SENATE COMMITTEE ON JUDICIARY

BILL LOCKYER, CHAIRMAN

ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE

PATRICK JOHNSTON, CHAIRMAN

PROPOSITIONS 100, 101, 103 104 AND 106

Joint Hearing Pursuant to Section 3506
of the Elections Code
September 16, 1988
Los Angeles State Building

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SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE

SENATE JUDICIARY COMMITTEE

ASSEMBLY FINANCE AND INSURANCE COMMITTEE

PROPOSITIONS 100, 101, 103, 104 and 106

Chairmen:

SENATOR ALAN ROBBINS
SENATOR BILL LOCKYER
ASSEMBLYMAN PATRICK JOHNSTON

JOINT HEARING PURSUANT TO SECTION 3506 OF THE ELECTIONS CODE

September 16, 1988

L. A. State Building

CHAIRMAN ALAN ROBBINS: If I could ask everyone to please take a seat. We've had our contingent from Sacramento who were on the airplane with the electrical problems arrive. Most of the people who've tried to make it through the traffic jams in Los Angeles and all of the problems caused by the Metro Rail construction have either arrived or are en route.

Let me explain very briefly what we're going to do in terms of the schedule. I'll have some opening remarks. I presume Assemblyman Johnston will have some opening remarks on behalf of the Assembly. This is a joint hearing of the Senate Insurance, Claims and Corporations Committee, the Senate Judiciary Committee, and the Assembly Finance and Insurance Committee covering, as far as the Senate committees are concerned, the five insurance-related ballot issues. As far as the Assembly committee is concerned, their portion of the hearing covers Propositions 100, 101, 103, and 104. That deals with a turf issue in the State Assembly which Patrick can explain further if he wishes to.

ASSEMBLYMAN PATRICK JOHNSTON: I don't.

CHAIRMAN ROBBINS: We will have ten minutes from the proponents and ten minutes from the opponents of each measure followed by the insurance commissioner. Anyone else who wishes to testify will have the opportunity to do so at the Senate hearings we're going to have further on September 27 at 9:30 a.m. at the State building in Van Nuys where we will not have quite the traffic problems that we did here. We will have everyone out of here, if we have everyone's cooperation, by noon.

Having said that, let me give a brief overview of how we got to where we are today. The insurance crisis has been building for a number of years in California. We know the causes. I think virtually everyone in this room knows the causes: drunk drivers, rampant insurance fraud, fraud on insured motorists, excessive litigation. All these factors have combined to drive up the cost of automobile insurance. The unfortunate situation, however, is that the person who's barely making a working living who lives in Sun Valley is confronted with an insurance bill of $1,500 or $2,000 and he can't afford to pay it. In the past, many people have gone without insurance. The approval by the courts, the Robbins-McAlister Financial Responsibility Act that requires proof of insurance to be in the vehicle at all times, has resulted in the clampdown on uninsured motorists. Unfortunately, that has yet to result in a reduction in premiums. The issue has been before the Legislature. Unfortunately, we have a situation where, to put it very simply, the trial lawyers have the ability to block any legislation that causes them any problems. The insurance companies have the ability to block any legislation that causes them any problems. And as a result, both of those veto powers have blocked any meaningful efforts in the Legislature that would have brought down insurance rates. There have been negotiations during the past year towards a compromised solution. None of those worked.

It's very simply the opinion of the Chair that the only real solution would have been one that required some sacrifices by the trial lawyers, some sacrifices by the insurance companies, put together in a package bill that would have reformed the system, brought down the cost of the system, and mandated that there be premium reductions to pass that savings through to the people who buy the insurance policies. It was my personal hope that when the heat was placed on everyone by the circulation of the initiatives that that would have resulted in the compromise. It did not. Even as we approached the qualification of the initiatives for the ballots and the petitions began to be turned in, there was still the possibility of compromise. But since both sides were advised by their professional advisors that they were about to win a victory in November, neither was willing to compromise; and unfortunately, there was not the political will in the Legislature to force through a compromise over the opposition of the two groups.

That brings us to where we are today. There are five initiatives on the ballot. Each proponent will have ten minutes to explain their position today. The opponents will have ten minutes to explain their opposition. The insurance commissioner will then speak. Purely as a personal opinion, I think it can be said that each of the initiatives was drafted by a fairly narrow interest looking at it from their own perspective. Each of the initiatives was drafted to avoid doing any harm to the people who are drafting it at the expense of others within the industry. No one of the five initiatives contains what I think is an essential element of balance of both reforming the system and providing for a pass through of the savings involved. I'm sure in the debate today we will get into what happens when you have an unbalanced initiative since I'm sure each of the initiatives will be willing to agree that the others are an example of what constitutes an unbalanced initiative. I don't think that November will be the end of the battle. I think there will probably be multiple initiatives passed; it will then go to the courts; the courts will then spend several years trying to sort out the mess of which initiatives takes precedence and which provision of which initiative becomes law. Probably during that same time the Legislature will get the problem back in its lap again and we'll take a stab at trying to put all that together, whatever passes in November, in the form of something that works, and submitting it to the people for ratification. But until then, the people of the State of California are going to be subjected to tens of millions of dollars of commercials and it's questionable whether that will result in a higher level of education of the public on the subject. But if nothing else, it will profitable for those who make and market the television and radio commercials.

My colleague from the State Assembly, the Chair of the Assembly Finance and Insurance Committee, the Assemblyman who represents Stockton in the State Assembly, Assemblyman Patrick Johnston. Pat, would you like to make some opening remarks?

ASSEMBLYMAN JOHNSTON: Thank you, Mr. Chairman. I think we probably ought to move very quickly into the discussion of the specific initiatives. I would join Senator Robbins and my colleagues who are here -- Assemblywoman Wright and Assemblyman Lancaster -- who are with us now and we expect others. As we go about looking at these initiatives, I'm hopeful that the process will be more instructive than the advertising campaign has been thusfar that I have observed. And I would agree with Senator Robbins that initiatives by their very nature, are normally drafted by a group of zealots and their attorneys seeking to make changes in the law which, by a majority vote of the people, restrict further action by the Legislature. By a two-thirds vote, we would have to change, amend, or add to whatever solution these initiatives claim to achieve in the area of auto insurance. The difficulty with that is that, as we will see, I believe, each proponent has proposed at best half a solution. They leave out rate regulation if it does not suit them, or they leave out elements that would drive down the actual cost of providing automobile insurance if that does not suit them. Consequently, it is an unbalanced approach in my judgment in every case.

The difficulty then is that, if one of these passes or several of them do and the courts resolve what shall take hold, the Legislature may have to add the piece that is left missing by the successful initiative and each proponent has saw fit while asking only a majority vote of the citizens of this state to restrict our hands. I think that's unfortunate but I do look forward to this debate so that everyone present and everyone who comes in contact with the reported version of this hearing may achieve a greater degree of knowledge about these specific initiatives. Thank you.

CHAIRMAN ROBBINS: We will take the initiatives in numerical order. We will begin with Proposition 100; proponent, Insurance Consumer Action Network, Steve Miller.

MR. STEVE MILLER: Good morning, Mr. Chairman.

CHAIRMAN ROBBINS: It is eight minutes of ten.

MR. MILLER: Pardon me?

CHAIRMAN ROBBINS: It's eight minutes of ten.

MR. MILLER: Thank you. Good morning, Mr. Chairman and Members. Now in the five years that I've been before the Legislature representing consumers on insurance issues, this is the first time that consumers know there'll actually be a vote on the bill that we're presenting to you because indeed this measure of the Insurance Reform and Consumer Protection Act of 1988, the ICAN Good Driver Initiative, is indeed on the November ballot.

The measure is the result of our frustrated efforts to achieve reform in the Legislature. The initiative was written by the Attorney General, John Van de Kamp, and his staff, Lloyd Connelly, who has worked in the lead on insurance reform in the Legislature on behalf of consumers and Insurance Consumer Action Network. It offers what is the most comprehensive, best-crafted solution to the insurance problem in the interest of consumers. It's the only initiative that's supported by the local Mothers Against Drunk Driving chapters statewide, League of California Cities, the California Police Chiefs Association, virtually all the law enforcement organizations, the Congress of California Seniors, Consumer Federation of America, and the National Insurance Consumer Organization.

The initiative would provide good drivers with an immediate rollback of 20 percent, below the rates that they were paying January 1, 1988, for automobile insurance, guarantee good drivers a permanent 20 percent discount than the rates of insurance that they're paying. It would repeal the privilege status of the insurance industry and remove its antitrust exemption. As you well know, the insurance industry is the only industry in California that enjoys an exemption from the antitrust laws that allows them to get together legally -- fix prices, divvy up markets, agree upon conduct between themselves that is anti-competitive. It is the only initiative that deals with the area of health insurance. Californians, this year alone, have seen staggering increases in the cost of individual and group health insurance. Proposition 100 caps those staggering increases, requires insurance companies to justify future increases, and obtain prior approval for the significant changes. It's the only initiative that protects seniors by embodying Lloyd Connelly's failed legislation, AB 1108, to provide specific protection for seniors against the worst abuses of predatory insurance companies using scare tactics to prey upon seniors in selling worthless and duplicative insurance policies. It's the only initiative that does something real about automobile insurance fraud, something that's costing all Californians a half a billion dollars a year. The insurance industry would maintain the status quo where they're required to make a modest expenditure to support the Department of Insurance investigation efforts, yet there are no resources for the prosecution of automobile insurance fraud.

Proposition 100, the Good Driver Initiative, forces the insurance companies to put real resources into the investigation and prosecution of automobile insurance fraud, to get rid of it. It's the only initiative that establishes an independent consumer advocate and state government appointed by the Attorney General to challenge the commissioner, to hold the commissioner accountable, so when the commissioner has the responsibility to have before her the insurance companies seeking a rate hike, the independent advocate would challenge the information that the insurance companies present. It's the only one that preserves the rights of injured accident victims to get the full compensation. It is the only initiative that restores the insurance claimants' rights to fair dealing by the insurance companies.

Mr. Chairman, Members, that's why the insurance industry is spending $43 million here in California today to sell their bogus reform and defeat the real reform contained in Proposition 100. Our goal, after all, is the saving of dollars to consumers. Our goal was validated when last week in Sacramento on the CBS affiliate Channel 2, as part of their Town Hall program on this subject, they asked four experts, four insurance actuaries from Midwest insurance companies, to analyze each of the initiatives before you and conclude what the savings to consumers would be. It was Proposition 100 that the actuaries said to that TV station, would offer consumers in California the greatest savings, a savings of 30 to 37 percent off the cost of automobile insurance alone. The other initiatives, the Insurance Industry's initiative, the actuary said represented a savings of 6 percent; the others were in the 20s. Proposition 100 accomplishes its goals of lowering the cost to consumers. And I noticed on the ballot argument and before you today, you have a representative of a farm bureau yet it is ironic that only Proposition 100 would have prevented this sort of conduct that one insurance company, CHUB, did in the Midwest to farmers by selling them worthless insurance policies. And then when they asked for drought relief on their crops and when the farmers wanted to collect, CHUB said, "Oh, we never processed your applications." If Proposition 100 passed, they couldn't get away with it. If Proposition 104 passes, on the other hand, it provides the complete immunity.

There's a senior leader who couldn't be here today that asked me to take a moment and read a letter to the Committee; and with your indulgence, I'd like to do that in the time I have remaining.

CHAIRMAN ROBBINS: Please leave a few minutes of your ten minutes so that we can ask you a couple of questions.

MR. MILLER: I'd be happy to.

My responsibilities -- I'm reading a letter from --

CHAIRMAN ROBBINS: And don't hesitate to stop and take a breath if you talk.

MR. MILLER: Thank you.

CHAIRMAN ROBBINS: It's allowed.

MR. MILLER: Well, ten minutes is a relatively brief time to describe the comprehensive reforms contained in Proposition 100.

CHAIRMAN ROBBINS: I would hate to see you turn blue from not breathing while talking. (Laughter)

MR. MILLER: Thank you. The letter is from Nathaniel Redick. He's a member of the California Senior Assembly and a leader on senior issues.

He writes a letter to me:

> "Dear Mr. Miller: My responsibilities as a member of the California Senior Legislature, on behalf of senior citizens in the South Bay, make it impossible for me to attend Friday's hearing. I would appreciate your submitting this letter to the Committee members.
>
> "I'm an active member of the Congress of California Seniors; I'm a retired law enforcement officer; I served for 28 years in the United States Army. The Congress of California Seniors and numerous Los Angeles County seniors organizations have endorsed Proposition 100. More than two dozen of my Senior Legislature colleagues have endorsed Proposition 100. It is the only, I repeat only, insurance reform initiative that addresses the critical problem of Medi-Gap insurance abuses. It's the only initiative which guarantees a 20 percent reduction of premium rates for good drivers but does not similarly reward convicted drunk drivers and wreckless drivers. I trust Members of the Committee appreciate the vast majority of seniors will qualify as good drivers under Proposition 100.
>
> "The two initiatives sponsored by the insurance industry would have a negative impact on California seniors. The Coast-Polanco insurance measure would increase demands on Medi-Cal and overwhelm already over-burdened public hospitals. Both Coast Insurance, Polanco, and No-Fault would further strain the social security system. California seniors are, for the most part, on fixed incomes. They simply cannot afford the rapidly increasing costs of automobile and Medi-Gap health insurance.
>
> "We view Proposition 100 as the only reasonable approach to protecting the rights of insurance consumers of all ages while permitting insurance carriers to compete in the free market under the regulations adhered to by all other industries. We seniors are not as physically powerful as in years gone by but we are Olympic-class voters. Our strength at the poll is awesome.
>
> "I urge the Members of this Joint Committee to join California Seniors in supporting Proposition 100 and in urging "no" votes in Propositions 101, 103, 104, and 106."

Signed, Nathaniel Redick, California Senior Assembly.

Mr. Chairman, Proposition 100 was written to protect consumers, not to punish insurance companies. It is a well-balanced approach to the problems of insurance reform and the needs of

California consumers. I submit the initiative to you; I'm delighted to be here; and I'm happy to answer your questions.

CHAIRMAN ROBBINS: Thank you. I appreciate your description of Proposition 100 as a well-balanced initiative. I'm sure it will stand up to that test. Some people, Steve, not me, some people think that the California Trial Lawyers Association was very involved in the drafting of Proposition 100. Perhaps you could dispel that by explaining what sacrifices trial lawyers make under Proposition 100.

MR. MILLER: Mr. Chairman, this initiative was written by myself, Insurance Consumer Action Network, John Van de Kamp and his staff, and Lloyd Connelly and his staff member. After this initiative was written, it was submitted to the trial lawyers who, by the way, had their own initiative at the time and was circulating it for signatures. We asked the trial lawyers to drop their initiative and support ours. This is not a children's crusade. This is an effort for real insurance reform. This is the year for insurance reform. The consumer groups in this state do not have the resources to take on the insurance industry and their $43 million of policy holder money. We're delighted to have the trial lawyers as allies in this campaign. But the notion that they contributed in any fashion to the writing of the initiative is simply false.

CHAIRMAN ROBBINS: Like I said, some people said that; I certainly wouldn't. (Laughter) You can dispel the notion on the lack of balance by answering the second part of the question: What are the sacrifices that the trial lawyers make under Proposition 100? How does it impinge upon them?

MR. MILLER: Mr. Chairman, with all do respect, it's the wrong question. The question is not what is the sacrifice of a profession but what is the need of consumer protection. We have an insurance industry in California that's out of control. Auto insurance rates alone, according to your own study in the two-year period, skyrocketed by 40 percent yet not even the insurance companies are coming forward with any information of any cost factor that's increased anything like that. There's been substantive tort reform enacted over the last several years -- Proposition 51 on the last ballot, a number of tort reform measures passed the Legislature -- yet the insurance consumers are still waiting for a break in their insurance premiums.

Mr. Chairman, that's what Proposition 100 is about. It was written by consumers to give relief to consumers. Every issue contained in that initiative is there because it's the right public policy.

CHAIRMAN ROBBINS: Assemblyman Johnston.

ASSEMBLYMAN JOHNSTON: I live in Stockton and perhaps people here from Los Angeles haven't seen the same television ads about Proposition 100's effect on territorial rating that we see in the rural, northern part of the state. But I am unclear what the effect is of the standard by which a company is to underwrite insurance and whether or not geographic factors are still to be a predominant factor or a minor factor.

MR. MILLER: Mr. Chairman, the advertising that you're seeing around the state -- and by the way, not in Los Angeles -- is part of the big lie that the insurance industry is funding with the $43 million.

ASSEMBLYMAN JOHNSTON: Okay. Well, why don't you tell me what it does?

MR. MILLER: There is nothing in the measure that abolishes territorial rating. It does say that the individual driving record ought to matter more. It places the priority in creating the rate for automobile insurance on the individual's driving record. That's first.

ASSEMBLYMAN JOHNSTON: Well, you tell me what the effect is for somebody in this room who is a driver in Los Angeles and what the effect would be on someone like myself who's in Stockton.

MR. MILLER: All drivers throughout the state are guaranteed a 20 percent break in their insurance if they're good drivers.

ASSEMBLYMAN JOHNSTON: How many do you estimate will be good drivers?

MR. MILLER: The Department of Motor Vehicles claims it's something on the order of 50 percent or more would qualify ...

ASSEMBLYMAN JOHNSTON: Does that mean that the other 50 percent may pay more?

MR. MILLER: If someone does not qualify as a good driver, they may indeed pay more.

ASSEMBLYMAN JOHNSTON: Okay.

MR. MILLER: But the measure believes that it's important to provide ...

ASSEMBLYMAN JOHNSTON: All right. Well, let's move on to the territorial part.

MR. MILLER: Well, let me define, first of all, what a good driver is: It's someone who in the most recent three-year period has not received more than one DMV point count, has never been convicted of drunk driving, has never been convicted of insurance fraud, or hit-and-run. Now what the initiative does about territory is say to the insurance companies that after you take a look at driving record first, and after all, that's the most valid predictor of loss, it's how an individual operates their own motor vehicle. After the insurance companies do that, any other characteristics that they choose to use, they may do so if they're able to justify them by clear and convincing evidence. Territory is one of those factors.

In drafting the initiative, we recognize that it's just logical -- it's common sense -- that someone who lives in the more densely populated inner-city areas is at greater risk than someone who lives in Stockton, who lives in the rural area. So we wrote the initiative that way to save the insurance companies. You haven't had to prove it so far.

ASSEMBLYMAN JOHNSTON: But I thought I remember a TV commercial of Proposition 100 that has a woman talking about the good-driver discount and say, "It won't be based on where you live but on your driving record."

MR. MILLER: It says "based on your driving record". Your driving record matters more than where you live.

ASSEMBLYMAN JOHNSTON: Okay. So what's the conclusion for people? Are the rates going to go down, up, stay the same on the issue of geographic factors?

MR. MILLER: The issue of geographic factors alone, everyone who qualifies as a good driver gets a discount.

ASSEMBLYMAN JOHNSTON: No, no. Don't turn back to good driver.

MR. MILLER: There is no upward revision in rates with respect to geography, nothing whatsoever.

ASSEMBLYMAN JOHNSTON: All right. So are we to conclude then that the reference to geographic factors is simply a nice statement that you don't believe will matter?

MR. MILLER: I don't understand your question.

ASSEMBLYMAN JOHNSTON: Well, a lot of my colleagues believe that there's redlining in the neighborhoods of Los Angeles and other urban centers.

MR. MILLER: Indeed there is.

ASSEMBLYMAN JOHNSTON: And there is.

MR. MILLER: That's right.

ASSEMBLYMAN JOHNSTON: Does your initiative affect that?

MR. MILLER: It abolishes redlining for the good driver. It says that if you're a good driver, you're entitled to get insurance ...

ASSEMBLYMAN JOHNSTON: No, no. There are two different parts. Stop telling me about good driver --

MR. MILLER: Mr. Chairman, redlining ...

ASSEMBLYMAN JOHNSTON: -- when we're talking about geographic factors.

MR. MILLER: Mr. Chairman, redlining means the unwillingness of an insurer to sell at all in a geographic area. Territorial rate setting is the variable based on geographic factors. Now if the initiative abolishes redlining ...

CHAIRMAN ROBBINS: And preserves territorial rating.

MR. MILLER: It preserves territorial rating if the insurers can justify it. If they're able to open up their books in an open and public process and justify ...

ASSEMBLYMAN JOHNSTON: Is there any reason why my constituents should worry that under Proposition 100 their rates would go up to subsidize the urban drivers in Los Angeles?

MR. MILLER: No reason at all.

ASSEMBLYMAN JOHNSTON: Okay. Is there any reason for a Los Angeles driver to expect that their rates will go down because of a recalculation of the significance of a geographic factor?

MR. MILLER: Mr. Chairman, the reason that the independent actuaries that Channel 10 in Sacramento hired concluded that Proposition 100 offered up to a 37 percent savings was not only, on a statewide basis, by the way, was not only because there was a 20 percent rollback for good drivers but because they recognize that the tough standards by which insurance companies will be held accountable will drive down rates just as they have in every state where ________ was in effect.

ASSEMBLYMAN JOHNSTON: Okay. Is that an answer to some other question that somebody's going to ask?

MR. MILLER: The answer is (laughter) ...

CHAIRMAN ROBBINS: Okay. Let me (applause), let me do a few things. First of all, first of all, let me tell you that we don't want to have the hearing extended by having extensive demonstrations of support or opposition in any manner, including by the semi-organized rooting section in front of the room. (Laughter) In order to keep our time constraints going, I think it will need to move onto the opponents. If you need another 15 seconds or so ...

MR. MILLER: You mean the other opponents besides the ones that are up here?

CHAIRMAN ROBBINS: If you need another 15 seconds ...

MR. MILLER: Thank you.

CHAIRMAN ROBBINS: Okay. The other opponents, Assemblywoman Cathie Wright and Betty Smith representing the California Farm Bureau ...

ASSEMBLYWOMAN CATHIE WRIGHT: May I speak from here or you want me down front?

CHAIRMAN ROBBINS: They'll get a better view of you on TV if you'll take a seat down there.

ASSEMBLYWOMAN WRIGHT: Oh. I don't know if that's my good side or not.

CHAIRMAN ROBBINS: Is Betty Smith here from the California Farm Bureau? Okay.

Cathy, you have ten minutes to counter what Mr. Miller said.

ASSEMBLYWOMAN WRIGHT: Well, I feel very comfortable, Mr. Chairman, because I've always been on opposite views with Mr. Miller through my eight years in the Legislature so this is not anything new.

CHAIRMAN ROBBINS: But we may -- both of us up here may pummel you with questions to pierce holes in any arguments that are filled with hypocrisy.

ASSEMBLYWOMAN WRIGHT: T' en I will have to get some technical advice, in that case.

Mr. Chairman and Members, for my constituents and for most people in California, Proposition 100 offers a rate reduction on one hand and takes it away on the other. It offers the so-called, the driver discount of 20 percent. And it would raise rates for my constituents as much as 38 percent by taking away the ability of the insurance companies to offer lower rates to those who live outside the urban areas. And if that weren't bad enough, it doesn't even guarantee the 20 percent rate reduction.

An insurance company who can prove that its rates would be inadequate can opt out of the rate reduction. This was admitted by Mr. Miller. You heard him here today and also in the Los Angeles Times two days ago. Proposition 100 will act as a means to protect the incomes of the trial lawyers. And it's very obvious because even in our analysis that you have before you, it says quite clearly that, as far as the fees are concerned, there are no restrictions. It puts into law exactly what they're doing right now so that doesn't change anything. And the trial lawyers have to take some of the blame. If they don't want to take it all, they have to take certainly some of it. And yet this Proposition 100 does not even touch that.

And some of the words of the initiative, it says that the insurance company could use territorial rating if it can show it's justified by clear and convincing evidence before the insurance commissioner. Now we all know politics and it would take an extremely courageous commissioner to conclude that territorial rating is justified if Proposition 100 were to pass. The pressure to subsidize rates in Los Angeles by overcharging the constituents and two-thirds of the other drivers in California would be too great. And another thing, when they're talking about the good-driver deal, and Mr. Miller quotes that you only have to have one point on the DMV in three years, one point is one ticket. So one ticket in three years it would take to qualify you as a good driver. I don't think 50 percent of the State of California are good drivers under that category.

Is it particularly true, if, as I suspect the insurance company can show, that they can't give the 20 percent rate reduction because their rates would be inadequate and in this, thus, they would have to quit business here in the State of California. I assure you they're going to find a means and a ways to continue to rate as it is and not do the reduction, yet we do have insurance companies that do offer good-driver reductions.

No, Proposition 100 is not the solution to the automobile insurance crisis. It would be a nightmare for my constituents and most other people in California. The only way to bring down rates is to reduce the costs of providing insurance. Proposition 100 does nothing to reduce the costs. It only mandates a costly new state bureaucracy and provides the trial lawyers not only with the income protection but with the many new opportunities for litigation paid for by my constituents and every other insurance policy holder in the state.

CHAIRMAN ROBBINS: Let me ask you, Cathie -- I'm not a proponent of 101 or 100 or an opponent. Without the effort to push for Proposition 100 and Proposition 103, what do you see would be pushed sufficient heat and pressure on the insurance companies to get them to go along with making the kinds of compromises, concessions they need to make to have something meaningful take place?

ASSEMBLYWOMAN WRIGHT: Well, I tell you, I thought that during the session in Sacramento, when you became a friendly author for the Assembly to amend a no-fault amendment into your bill, it was better drafted, I thought, than the no-fault that's on the ballot. But I think it's a combination of everyone sitting down at the table, which we haven't been able to accomplish yet, and working out where everyone gives. Proposition 100, everybody gives but the trial lawyers; and Proposition 103, I think there we have a situation where it's a hoax on the people because after 1991 it sunsets. And so consequently, for myself for voting, I would probably vote for the no-fault and hope that we can bring some sense to this whole thing. And I would also vote for the restrictions on the trial lawyers' income.

CHAIRMAN ROBBINS: Any other questions for Assemblywoman Wright? Thank you.

ASSEMBLYWOMAN WRIGHT: I got off easy.

CHAIRMAN ROBBINS: You got off easy because your colleagues wanted to be kind and gentle to you. (Laughter) And maybe they'll be gentle to the next speaker, another Member of the State Assembly. We're going to proceed to Proposition 101 referred to as the Polanco Initiative.

ASSEMBLYMAN BILL LANCASTER: Mr. Chairman.

CHAIRMAN ROBBINS: Bill?

ASSEMBLYMAN LANCASTER: Before we move to 101, I was going to request of the opposition a comment, if they had one, relative to the understanding that I have learned recently, that 100 actually, in effect, guarantees a profit to the insurers in this state by the language of the initiative itself. Now that, I think, probably commented upon by the insurance commissioner; but as we're now leaving 100, I felt compelled to ask the question of the opponents. But if they are not here to answer these questions, I think the question definitely should be asked the insurance commissioner at the time that they testify relative to the effect of, 100, on guaranteeing a profit to the insurers.

CHAIRMAN ROBBINS: Cathie, do you want to add a brief comment or you want to just allow the commissioner to respond?

ASSEMBLYWOMAN WRIGHT: There is a Mr. Katz in the, should be in the audience, unless he missed his flight, that would be able to answer that question for Mister -- I don't know if he arrived or not.

CHAIRMAN ROBBINS: Why don't we -- it doesn't seem he's arrived so why don't we move onto 101?

ASSEMBLYWOMAN WRIGHT: Okay. Fine.

ASSEMBLYMAN LANCASTER: I'll ask the question of the commissioner ...

ASSEMBLYMAN JOHNSTON: I wanted to mention that we've been joined by Assemblyman Tom Bane of Los Angeles County.

CHAIRMAN ROBBINS: By State Senator Ed Davis who is both a member of the Judiciary Committee and the Insurance Committee.

ASSEMBLYMAN RICHARD POLANCO: Good morning, Mr. Chairman and Members. I'll begin by telling you that I am not a lawyer nor am I a business agent or have I been of the insurance industry and would like to share with you the fact that I have followed this particular issue since the mid, late 1970s when a grass-roots organization here in Los Angeles County, United Neighborhood Organization, marched in a very disciplined, very well-organized manner onto the Board of Supervisors, bringing this issue for the first time to public view. Here we are, 1988, very little has changed. I should say rates have not changed or ...

CHAIRMAN ROBBINS: It changed.

ASSEMBLYMAN POLANCO: But they've gone up, I should say.

I had the opportunity as a Member of the Legislature to introduce a package of bills that relate to insurance reform. One, the bill AB 230, which incorporated in its latest version the provisions of Proposition 101, as well as the bill that would have called for the election of an insurance commissioner -- and at that point in time, I did not see the advocacy groups out in support -- a companion bill to give more teeth to that election -- elected insurance commissioner -- as well as a bill that would have created the opportunity or mandate for DMV to come up with a solution for identifying uninsured motorists at the point of DMV, that is to say, to have the capability to show whether or not proof of financial responsibility at the time of registrating the vehicle and/or renewing the license could be verified. And if not, they would not be issued. That bill got to the Governor's desk and it was vetoed.

We in the Legislature have not been able to address this particular issue. And you hit it right on the nail, Mr. Chairman, when you say the two very effective and very powerful lobby groups -- the trial lawyers on one hand, the insurance companies on the other -- do an effective job. And as a result, we stay at the status quo.

Proposition 101 will not allow for that status quo to continue. Proposition 101 will mandate a 50 percent cut on the bodily injury and uninsured motorist premiums for all consumers. This cut is not left to chance. Under Proposition 101, each insurance company must submit a report to the insurance commissioner showing how they will implement the immediate rate reduction. Failure to comply, there is a provision in the initiative, will empower the insurance commissioner to suspend and/or revoke certificates of authority.

Under Proposition 101, we tie the rate increases for the next four years to the physician's service component, which has been at about 7.5 percent over the last 10 years. Under Proposition 101, when a person is involved in an accident, your car insurance, that medical portion, will become the secondary source of recovery. This provision is very important and essential to the reform. The elimination of the current opportunity for attorneys to collect more than once on the same injury will have a direct impact on costs. This provision is important also because it will control for the fraud that cost consumers well over a billion dollars last year. It is estimated that 30 to 40 percent of claims have some form of fraud. Proposition 101 protects the rights of victims to recover all economic loss, such as expenses for medical bills, 100 percent loss of wage, past and future, as well as loss of business opportunity costs for domestic services are paid in full.

Under Proposition 101, we will limit attorney contingency fees to 25 percent of economic loss in the fender-bender minor accident lawsuits. Under Proposition 101, this rate reduction shall apply to all on-road motor vehicles, personal and commercial. Unlike Proposition 100, which, in my opinion, has developed a very elitist definition as to who is going to be eligible for the rate reduction, our definition will include over 2 million vehicles that are registered as commercial that are used for private purposes. It will not discriminate against that senior citizen who may have driven for the last 30 to 40 years and then fall into that threshold and have that one moving point and be denied the opportunity for the rate increases.

We do not disguise this initiative with the issue of good discounts. It will not terminate the good-discount program. All that is taking place with the good discounts that are being offered, we're putting them into statute. By that, I mean if you're a good driver today, you get a discount. If you're a senior and you've had training program, you get a discount. If you're an "A" student, you're getting a discount.

Proposition 101 has bipartisan support. It is supported by Republicans and Democrats. It has the support of Senator --

ASSEMBLYWOMAN WRIGHT (?): That's a good sign.

ASSEMBLYMAN POLANCO: -- Seymour of the area of Anaheim; Senator Bergeson; Vice Chairman of the Assembly Committee on Finance and Insurance, Mr. Ross Johnson; as well as Democrat speaker, Speaker Pro Tem, Mr. Mike Roos; as well as Dave Elder from Long Beach who's a member of the Finance and Insurance Committee.

We believe Proposition 101 has the endorsements of a cross section of the business community as well as the support from one insurance company who is writing about 200,000 policies or over 200,000 policies here in the State of California. When you look at the amount of volume and you compare the 230,000 to 13.2 million, it's a rather considerable, small insurance company. We have some support from labor organizations, law enforcement, and we have the support of those individuals who allowed us the opportunity, 700,000, to bring this issue before you.

Let me add that it is important ...

CHAIRMAN ROBBINS: Every one of the 700,000 read and studied the initiative? (Laughter)

ASSEMBLYMAN POLANCO: Everyone who signed the initiative gave us the opportunity to put the issue on the ballot.

The issue of auto insurance cannot be resolved on the backs of the trial lawyers alone. It cannot be resolved on the backs of the insurance industry alone. It is an issue that needs to take from both. We do this with Proposition 101, and in so doing we provide a significant rate reduction. We stabilize those rate increases for the next four years, to the year 1992. My colleague says that it's a hoax. It is not a hoax. This model has not been tried anywhere else in this country. And to allow the continuation of the current system that allows for so much abuse is what will take place without a meaningful restructuring of the current system.

This is an initiative that is opposed by the big Eastern insurance companies. It is an initiative that is opposed by the California Trial Lawyers. One only has to pull their policy out to see and calculate exactly what took place or what the cost savings. We heard earlier from Mr. Steve Miller that the radio program actuaries showed a 37 percent rate reduction. I asked last night in Oakland how can that be when your initiative will require a 20 percent rate reduction? How do you get above the 20 percent reduction? And we have asked that TV station to please provide us with information as to how that comes about. Had we done this in the political arena, we would be tarred and feathered and it is unfortunate that they have not been willing to come out.

To give you an idea on the actual cost savings for the minimum financial responsibility that we the State of California mandate upon individuals who are going to be driving, a $1,800 policy quote that I used last night for an Oakland-based rate shows Bodily Injury, $648, the cost savings under Proposition 101, $324; the Uninsured Motorist cost, $216, the cost savings there, $108; for a total cost savings of $432, right to the bottom line of each consumer. The impact that this will have on the quote shifting to the Medi-Cal system is $3 million.

When you look at the $2.6 billion cost savings that is going to accrue to California consumers, you tell me if we are not making the right decision. When you look at the impact that it's going to have on the worker comp premium for California corporations and businesses, we have calculated this out to .2 percent. And you look at the potential 30 percent rate reduction that those companies will accrue, you tell me if this doesn't make sense. When we take out the opportunity to build more than once on the same accident and we eliminate that opportunity, we begin to address what is causing the rates to go up.

Again, ladies and gentlemen and colleagues, this is a well-balanced, a very focused -- we didn't get into territorial rating; we didn't get into the issue of antitrust, which I would support the repeal, have supported; I'm on record. We didn't get into the flex-rating situation. And we didn't get into it because I believe we would be victims of much of the campaign that the other two propositions are experiencing. With that, I conclude my statement.

ASSEMBLYWOMAN WRIGHT: Mr. Chairman.

CHAIRMAN ROBBINS: I hear the voice -- Cathie.

ASSEMBLYWOMAN WRIGHT: Yeah. I just have one question that bothers me and that is the fact of why the sunsets?

ASSEMBLYMAN POLANCO: Sunsets because this particular model is a new model. It's not been tested. You cannot find it anywhere else and we ...

ASSEMBLYWOMAN WRIGHT: That's what you said before but what I'm asking then, if you're going to do pilot programs, usually when we try a pilot program, we select one area of the state -- either a county or a city, or a group of cities -- and we use them for a model. And then if it works well, and we've ironed out all the bugs, then we go ahead and we go statewide with it. But you're taking a pilot program and you're going to go statewide with it? And if it fails, what?

ASSEMBLYMAN POLANCO: No, it won't fail. It will not fail. It will not fail because we are controlling what is causing rates to go up. What is that? The fraud. What is that? The opportunity to collect more than once on the contingency fees which has a direct impact on the calculations of premiums. What else ...

ASSEMBLYWOMAN WRIGHT: No, fraud -- contingency is the same thing. You're saying fraud and then you're saying it's a drain on the contingency fund.

ASSEMBLYMAN POLANCO: Fraud in the sense that you have attorneys and doctors and chiropractors who have cozy relationships that are involved, and it's not new. We read about them maybe every two or three months.

ASSEMBLYWOMAN WRIGHT: It's a percentage, though.

ASSEMBLYMAN POLANCO: It is estimated that 30, 40 percent of the claims that are paid have a form of fraud, Ms. Wright. So let me answer ...

ASSEMBLYWOMAN WRIGHT: Dollar-wise to the individual --

ASSEMBLYMAN POLANCO: A billion dollars.

ASSEMBLYWOMAN WRIGHT: -- how much does it cost...

ASSEMBLYMAN POLANCO: A billion dollars total.

ASSEMBLYWOMAN WRIGHT: How much does it cost an individual for all this fraud?

ASSEMBLYMAN POLANCO: A billion dollars total, all California consumers.

ASSEMBLYWOMAN WRIGHT: Among how many policy holders?

ASSEMBLYMAN POLANCO: Among 13.2 million.

ASSEMBLYWOMAN WRIGHT: Well, that isn't the bulk of the cost then, is it?

ASSEMBLYMAN POLANCO: But the bulk of the cost is ...

ASSEMBLYWOMAN WRIGHT: And who's part and parcel of that so-called fraud?

ASSEMBLYMAN POLANCO: Let me finish. Let me finish. Let me finish. The bulk of the cost is, when you have a system that allows you to collect more than once to the same source.

ASSEMBLYWOMAN WRIGHT: But who does that? Who takes you to court and helps you --

ASSEMBLYMAN POLANCO: Sure.

ASSEMBLYWOMAN WRIGHT: -- collect more than once?

ASSEMBLYMAN POLANCO: Trial attorneys.

ASSEMBLYWOMAN WRIGHT: Thank you.

CHAIRMAN ROBBINS: Okay. (Laughter) I think that point was made.

Let me ask a question, Richard, because I'm trying to identify, in each case, without giving preference to anyone, who was responsible for the drafting and qualification of each initiative?

ASSEMBLYMAN POLANCO: This was drafted with the input from Mr. George Joseph, with the input from Mr. Harry Snyder who I Telefaxed over copies wanting his particular input on this particular initiative. I sat down then with Leg Counsel and I sat down with Mr. Harry Miller and we proceeded with making the provisions in AB 230 become the provisions of an initiative.

CHAIRMAN ROBBINS: Okay. Mr. Miller is ...

ASSEMBLYMAN POLANCO: Oh, excuse me. Harry Snyder -- not Mr. Miller -- Harry Snyder is the -- I'm sorry -- was the person that I faxed the information to. I think I gave the wrong -- I think I said Mr. Miller ...

CHAIRMAN ROBBINS: There's a lot of Harrys around. It gets confusing.

ASSEMBLYMAN POLANCO: Harry Snyder is the individual from Consumer's Union who had access to this at the drafting stages.

CHAIRMAN ROBBINS: Harry Miller wasn't involved in the drafting?

ASSEMBLYMAN POLANCO: Harry Miller was not involved in the drafting until the provisions became part of AB 230, at which point in time it was in a bill form, at which point in time he at that time was the only insurance company that came forward, testified before Mr. Patrick Johnston's committee in support. The industry took an opposition position.

CHAIRMAN ROBBINS: Okay. Am I correct that his company donated a substantial sum of money to help ...

ASSEMBLYMAN POLANCO: 90 percent.

CHAIRMAN ROBBINS: Pardon?

ASSEMBLYMAN POLANCO: 90 percent. You are absolutely correct. We have not hidden that fact.

CHAIRMAN ROBBINS: Okay. I'm not ...

ASSEMBLYMAN POLANCO: And we have made it up front and we welcome Mr. Miller's support and we welcome the support of all the others who have also contributed, 15,000 individuals.

ASSEMBLYWOMAN WRIGHT: You should keep saying Mr. Miller's first name. We may get confused.

ASSEMBLYMAN POLANCO: I'll say his first name.

CHAIRMAN ROBBINS: Okay. We have two Mr. Millers and two Harrys involved. That will keep everyone fully confused. Tom?

ASSEMBLYMAN TOM BANE: Yes. Mr. Polanco, you said it required a 50 percent discount. Was it on liability and uninsured motorists' coverage?

ASSEMBLYMAN POLANCO: That's correct.

ASSEMBLYMAN BANE: They require any discount on physical damage, portion of the premium?

ASSEMBLYMAN POLANCO: It does not address the physical damage or the other side. It does not affect that.

ASSEMBLYMAN BANE: Is there any restrictions against an insurance company raising the premium on those items in order to offset what cut they're taking on a liability portion?

ASSEMBLYMAN POLANCO: There's no restriction but I'm of the belief, Tom, that what we have done is address what is causing the rates to go up. If you look at the other lines, you know and you will see that that, those lines are the profitable lines. We have taken and addressed the issues of what is causing rates to go up.

ASSEMBLYMAN BANE: Well, Mr. Polanco, if you require them to drop their rates in one category of the insurance policy and don't require them to keep the other rates standard, won't they just add the premium to the other classifications so that when a person gets a policy, they're going to pay the same price anyway?

ASSEMBLYMAN POLANCO: Mr. Bane, there would not be need to come up with the surplus funds under this particular initiative and there will not be the need to raise the rates on the other side because we have taken the serious flaws and the loopholes that currently exist that address the issue of what is causing the rates to go up. To answer your question, no, I don't believe that they will.

ASSEMBLYMAN BANE: You don't believe they will. You have faith insurance companies are not going to try to offset the loss of payment in one category by raising it on another? We may disagree on that.

You mentioned some members who had, supporting the bill. Did any of those members put out a district-wide mailing in support of this legislation in their districts?

ASSEMBLYMAN POLANCO: Yes, they did.

ASSEMBLYMAN BANE: And who paid for that, Mr. Polanco?

ASSEMBLYMAN POLANCO: The campaign paid for that.

ASSEMBLYMAN BANE: What campaign?

ASSEMBLYMAN POLANCO: The campaign that the consumers' group that we formed, the coalition group, consumer organization ...

ASSEMBLYMAN BANE: How much did it cost that campaign to put out a district-wide mailing for Senator Seymour?

ASSEMBLYMAN POLANCO: Let me get the political consultant.

ASSEMBLYMAN BANE: Just give me an ...

ASSEMBLYMAN POLANCO: I don't know, sir. I'm not going to answer it with an estimate.

ASSEMBLYMAN BANE: A district-wide mailing in my district costs about \$15,000. The Senate district must cost about \$30,000.

ASSEMBLYMAN POLANCO: \$10,000.

ASSEMBLYMAN BANE: Did that have a bearing, the reason you endorsed your initiative?

ASSEMBLYMAN POLANCO: No, not at all.

ASSEMBLYMAN BANE: That \$10,000 a district-wide mailing?

ASSEMBLYMAN POLANCO: Not at all. I think that ...

ASSEMBLYMAN BANE: Did you put out a district-wide mailing for Mr. Elder?

ASSEMBLYMAN POLANCO: Yes, we did.

ASSEMBLYMAN BANE: How much did that cost?

ASSEMBLYMAN POLANCO: $5,000.

ASSEMBLYMAN BANE: $5,000? That's an awfully cheap mailing, Mr. Polanco. I don't believe your figure because mailings cost more than that. So does that have any bearing on the fact you put out a free mailing for these people that might have influence endorsing your initiative?

ASSEMBLYMAN POLANCO: Mr. Elder voted for the initiative on AB -- when it was in the form of a bill. You should ask them that particular question.

ASSEMBLYMAN BANE: No, I'm asking you, Mr. Polanco.

ASSEMBLYMAN POLANCO: I'm not going to answer it. I can't tell you what their motive was. I would say that their motive was based, that it is balanced, that it takes from trial lawyers, that it takes from the insurance companies, and it gives a significant rate reduction that injured parties are compensated, that it makes corrections to a current system that's rotten to the core, that allows for abuse.

CHAIRMAN ROBBINS: But Richard, Richard, Richard, it's a balanced initiative that was qualified for the ballot, 90 percent of the financing for which was paid for by insurance companies.

ASSEMBLYMAN POLANCO: Yes.

CHAIRMAN ROBBINS: Okay.

ASSEMBLYMAN POLANCO: Sure. But if that's going to be the question, ask the question. Don't ...

ASSEMBLYMAN BANE: No, no, no, I just wanted ...

ASSEMBLYMAN POLANCO: Don't take me for a ride.

ASSEMBLYMAN BANE: ... started quoting members as to they endorse your initiative and I just wanted to bring out that you paid for a statewide mailing or district-wide mailings in their districts and encouraging them to do that. I made my point. Thank you.

CHAIRMAN ROBBINS: Okay.

ASSEMBLYMAN JOHNSTON: I've got a question.

CHAIRMAN ROBBINS: Okay. I'm trying to hold each of the speakers to ten minutes. We're at slightly over that point, Mr. Polanco. But if one of the two Assembly members still seeking recognition has an urgent question to ask him ...

ASSEMBLYMAN LANCASTER: I do, Mr. Chairman. Thank you. I appreciate ...

ASSEMBLYWOMAN WRIGHT: You can have some of my time. I didn't take ten minutes.

ASSEMBLYMAN LANCASTER: I appreciate very much the opportunity. I understand you need to move along. But I think something was kind of glossed over in the testimony that ought to be brought out in fuller detail.

One of the concerns that was expressed before the Finance and Insurance Committee on this issue when the bill was heard was the automatic shifting of the cost to providing health care to: One, the Medi-Cal; two, to workers compensation; and three, to the private insurers, such as the Blues or the HMOs. And this measure does, in my opinion -- I think it's been adequately documented and the insurance commissioner can comment on that later -- it does establish, I believe, a shift of cost to the health insurance sector. And by doing so, we are creating more of a problem to a big problem we already have in providing health coverage in the State of California. I wanted to bring that out because I think it's important that you had the opportunity to comment if you'd like to.

ASSEMBLYMAN POLANCO: I will.

ASSEMBLYMAN LANCASTER: But also, I think that's a factor in Prop. 101 that I think the public should be aware of because I do believe that it does occur.

ASSEMBLYMAN POLANCO: Today, the current system allows for these entities that you mentioned to be billed more than once, to be collected upon more than once. The Medi-Cal, the Department of Health Services that operates the Medi-Cal program, estimate and gave us figures, total tort in the State of California last year, $30 million, all tort. 10 percent is auto related. 10 percent of the $30 million is $3 million. That is the impact that the State is going to have.

ASSEMBLYMAN LANCASTER: That's on Medi-Cal?

ASSEMBLYMAN POLANCO: On the Medi-Cal. On the worker comp, that system doesn't change. The employer today pays for worker compensation coverage. The impact is .2 percent to that company. That company will see whether that is as significant as the rate of a potential one-third rate reduction on their bodily injury and that other portion, uninsured motorist, and/or if they are self-insured.

ASSEMBLYMAN LANCASTER: The question is: Can the people who provide the care recover these monies? And that's where ...

ASSEMBLYMAN POLANCO: Let's look at the universe we are in. We are talking about the average payout of $6,500. We are talking about 90 percent of the cases being settled under $10,000. We are talking about cases that are not, for the most part, involved in the hospitalization aspect. Most of what's taking place for treatment is in the chiropractor's office and/or the physician's office. So your question, Mr. Lancaster, to the health plans, I have asked time and time again to Kaiser and to that industry, "Send me your figures. Show me what that subrogation shift is going to be." To this date, they have not.

When you look at the California Highway Patrol's annual reports on the total accidents, you begin to see that we are talking about 240,000 to 280,000 accidents in the State of California that on a yearly basis have been reported. That is the universe in which we need to look at this particular problem.

The hospitalization issue of cost, I believe, again -- let me restate -- we are talking about these mills that currently exist. We are talking about service being provided in a physician's office or a chiropractor's office, not in a hospital setting. I'm convinced the impact is going to be insignificant compared to the $2.6 billion cost savings that consumers will receive.

CHAIRMAN ROBBINS: You've answered the question and you've presented your initiative; and, like Proposition 100, you've explained that it's a balanced initiative that will bring down premiums without substantially impinging on anyone on the negative side. Let me ask ...

ASSEMBLYMAN JOHNSTON: Mr. Chairman.

CHAIRMAN ROBBINS: Patrick.

ASSEMBLYMAN JOHNSTON: I must add to Mr. Lancaster's question. I think the issue here is you reduced the cost of the product, at least a portion of the insurance product, by 50 percent. The question is: How good are the benefits? And I find your initiative most confusing on the issue of collateral source. And in the ballot argument against your initiative, it suggests that sick leave and vacation, as well as workers' compensation and other health insurance policies, will all have to kick in first before any benefits could be collected as a result of a policy written if your initiative becomes law. And I thought I read that you had promised cleanup legislation if, in fact, that's what your initiative does.

ASSEMBLYMAN POLANCO: Let me address the issue of, the question that you've just raised.

Number 1, it has never been the intent, nor is it the intent of this initiative, nor can you find language, that specifically states that your vacation, sick leave, and at one time, wages was talked about.

ASSEMBLYMAN JOHNSTON: The problem language is economic losses means objectively verifiable pass and future monetary losses not compensable from any other sources.

ASSEMBLYMAN POLANCO: Mr. Johnston, again, let me say that that definition is, in our opinion, in my opinion, as the author -- and yes, there will be cleanup legislation to clarify that. I attempted to do exactly that and I will continue to address that particular issue. The intent was never for the issue of wages and/or sick leave or vacation pay. That's, that's suicide; that's crazy; that's ridiculous; and it is another tactic for confusion. Consumers are already confused.

Again, you cannot find specifically that that is such, that that would be the case. And I will offer a piece of legislation to clarify that particular issue, yes, which is customary, as you know, with initiative process after a bill or initiative is approved by the voters, it ends up in getting cleaned up.

ASSEMBLYMAN JOHNSTON: In getting cleaned up.

ASSEMBLYMAN POLANCO: Yes.

CHAIRMAN ROBBINS: Richard, come take a seat up on this side. Nettie.

I think a couple of Members of the Committee have used a few of your ten minutes, but I know that you will speak with brevity.

MS. NETTIE HOGUE: That's fine because some of the issues have actually been addressed that I was going to address.

Mr. Chairman and Members, my name is Nettie Hogue. I am the staff attorney at Consumers Union. Forgive me, I'm losing my voice. I'm pleased to be able to address you today. Consumers Union is opposed to Proposition 101; and just for the record, in terms of clearing up our review of that proposition, a draft did go by our eyes. We never signed off, endorsed, or approved the proposition in its entirety.

We view Proposition 101 as a sort of a hybrid system, somewhere between no-fault and tort and having the worst aspects of both. Noneconomic injury is reduced; and at the same time, the litigant consumer is still forced to go into the tort system to prove fault and then go through a double hurdle to prove serious and permanent injury in order to recover. For those reasons, the recovery that would be allowed to consumers after 101 passed, it is not commensurate with and does not give the benefits that the rate reduction would promise.

We have three principal reasons for opposing it. First of all, we believe that the way the initiative is drafted, those minimum benefits that are promised, i.e., a minimal rate reduction, are not guaranteed. Secondly, we believe that Proposition 101's shift to public finance systems and to private health insurance is unjustifiable and creates a timb bomb for increasing and escalating rates in the health insurance field in the future, something that we can ill afford.

In addition, we believe that the initiative reduces recovery for the injured individual in an unacceptable manner for two reasons: The treshold is too Draconian. It's more Draconian than any threshold, permanent and serious, presently on the books anywhere in the country. In fact, this is a totally untested system that we believe will not bring any benefits to the consumer.

Additionally, some drafting glitches, which I'd like to look at just for a second, mean that you promised 25 percent noneconomic injury; recovery is reduced even more; indeed, in some situations, may not even be present. In addition to that, the recovery for attorneys is reduced to unacceptable levels because of the same thing. I'll go through these points and clarify them briefly.

First of all, the initiative doesn't guarantee the promised rate reductions. As was pointed out, there's no guarantee that other portions of a consumer's premium will not increase to recoup the promised reductions. In addition to that, although information is required to be filed with the commissioner to justify and substantiate the rate reduction, there's nothing in the initiative which requires all of those rates to be filed.

Conspiculously absent from the required filing is the reduced rates for uninsured motorist's vehicle. Thus, there's no way for the commissioner to assure that the initiative provisions are being met. And in the unregulated environment of insurance in this state, that's a fatal flaw.

Finally, the language supports a reading that the rate reduction could be based on a statewide aggregate basis rather than the individual insured's premium levels. We all know that argument's been tried in the past and it would be fatal to the initiative's promised reductions.

Finally, an individual can only recover 25 percent of noneconomic losses unless the injury is serious and permanent. Serious and permanent are both required and both definitions are very, very hard to meet. An individual is only seriously injured if they can't substantially resume all of their normal activities. But permanent disability requires no hope, basically. As long as there's hope for recovery with increased surgery or time for recovery, there's no possibility of being permanently injured. Consumers should look at this provision very carefully.

Additionally, the way noneconomic injuries are tied to economic recovery is a fatal flaw in the initiative. The definition requires that noneconomic losses will be based on economic loss. 25 percent of economic loss can be recovered. But as Mr. Johnston pointed out, economic loss in this initiative is loss not compensable from other sources. Therefore, the typical consumer who had 100 percent coverage, perhaps with a small deductible from his health insurance, would have no noneconomic loss because he would have no economic loss not compensable from other sources. 25

percent of 0 is 0. This may not have been an intended consequence but we've struggled with the initiative thousands of times and we can't get around it. This same provision flaws the attorneys' fee reductions because attorneys' fees are 25 percent of economic recovery.

Once again, an individual who has any kind of collateral source will have significant reduction and noneconomic benefits. To the extent that the initiative's intention was to reduce economic, noneconomic recovery, some sort of justifications may be argued. But in this instance, when noneconomic recovery is totally reduced, we find the initiative completely unacceptable.

I'd like to just touch briefly on the shift to a public finance system because it's an important question that has grave policy concerns and is really buried in the ambiguous language of the initiative.

We have asked for similar figures from the health insurance industry and we're told that in fact in 1987 Medi-Cal recovered $17 million in subrogation. We were also told that the Blue Cross -- I'm sorry -- excuse me -- Blue Shield -- recorded $1 million in subrogation. Kaiser's figure was at $7 million to $10 million. That may not sound significant in the overall picture. But last spring, we all saw a 20 percent increase in our health insurance costs. Health insurers know that the way to control costs is through subrogation. Subrogation is going to be an increasing practice and it's going to be a very important measure in keeping costs low in health insurance. None of us want to transfer minimal savings in our health insurance for an increase in -- I mean in our auto insurance for an increase in our health insurance costs. Additionally, it doesn't seem fair to transfer that burden to the population that's struggling to insure itself from illness.

I have no futher remarks. If there's any questions, I'd be glad to ...

CHAIRMAN ROBBINS: Senator Torres has a question for you.

SENATOR ART TORRES: Yes, Ms. Hogue, you've indicated in your testimony that you don't feel this initiative provides for any benefits for consumers in California. And before you answer that question, I just want to say to you and everyone in the audience that I have not -- I'm not supporting any initiative at this point. But I'm concerned about that blanket statement. And is that your correct testimony?

MS. HOGUE: I'm sorry. If I said that, I misstated myself. The benefits are not worth the price tag; and indeed, in one situation, because of the definition of noneconomic benefits, I believe noneconomic recovery will be reduced significantly more than was intended by the initiative, and in some cases, maybe reduced to zero.

SENATOR TORRES: Well, then which of the initiatives reduces auto insurance premiums?

MS. HOGUE: I would say every initiative purports to reduce auto premiums.

SENATOR TORRES: That's not what I asked. Which of the initiatives reduces auto insurance? Which initiative guarantees a reduction in auto insurance premium?

MS. HOGUE: You've heard testimony that 100 would guarantee a reduction for good drivers. In addition, on one of our comments on 101, is that there are other measures which will, if not drastically decrease costs, will help to decrease the increase. The rate regulation ...

SENATOR TORRES: Those are, those are issues that I have heard for 14 years in trying to deal with auto insurance rates. And every time I've asked for legislation, a reform in the process, in exchange for a guaranteed reduction in auto insurance premium, no one has come forward.

My question is: Which of these initiatives guarantees reduction in auto insurance premiums? Because that's what people want to know.

MS. HOGUE: The language of 100, 103, and 101 purport to guarantee those reductions.

SENATOR TORRES: "Purport" is not guarantee. "Purport" is a, is a mobile term. My question is: Which of these initiatives guarantees, without a doubt, that if this initiative becomes law, our insurance rates will go down, period; not purportedly, not maybe, not could have, not should have, but will go down.

MS. HOGUE: Mr. Torres, these aren't my ...

CHAIRMAN ROBBINS: Is that a question or a speech?

SENATOR TORRES: No, it's not a speech. It's a question because Consumers Union, I believe, is supposed to be for consumers. And I believe that my voting record is mostly along the line of Consumers Union. And that's why I'm asking you, who represents me, or at least purport to represent me (laughter), which of these initiatives should I tell my father is going to reduce his auto insurance premium on January 1, 1989?

MS. HOGUE: Consumers Union is endorsing 100 and 103, and we are recommending that consumers vote for those. I agree with you; none of these is the best solution. I'm looking at ...

SENATOR TORRES: None of these guarantee a reduction in auto insurance premiums, do they?

ASSEMBLYWOMAN WRIGHT: That's right.

MS. HOGUE: Not forever in the long-run.

SENATOR TORRES: Not one of them guarantee a reduction in auto insurance premiums, and I hope the voters get that message. Thank you, Mr. Chairman.

CHAIRMAN ROBBINS: That's sort of a rhetorical-question ending. Thank you ...

ASSEMBLYWOMAN WRIGHT: Mr. Chairman.

CHAIRMAN ROBBINS: Last question for this witness because we do need to move it on.

ASSEMBLYWOMAN WRIGHT: Not necessarily, maybe, would be the witness that would answer it but maybe one of our consultants on the committee would.

Mr. Polanco, when he was here, made the statement that he will be doing cleanup legislation, should his initiative pass; yet, in our analysis here, it says that this particular bill, as some of the others do too, can only be amended if it furthers the purpose and is approved by two-thirds of the vote of the Legislature. And then it only becomes effective, if, by voter approval. So I don't see how he could do cleanup legislation unless he was going to improve on the purpose of the bill, not necessarily on the language of the bill.

CHAIRMAN ROBBINS: I'll construe that as a comment.

MS. HOGUE: Okay.

CHAIRMAN ROBBINS: And go onto 103, if I may. I'm just trying to move things along. We have three more initiatives to cover and the insurance commissioner and I promised everyone to get out of here by noon.

Proposition 103, I recognize Harvey Rosenfield coming forward, shirt sleeves rolled up.

MR. HARVEY ROSENFIELD: Mr. Chairman, I have some materials.

CHAIRMAN ROBBINS: Sure. Please -- will someone help him distribute them?

Alister, you're going to be speaking against this. Why don't you come and take a seat also?

MR. HARVEY ROSENFIELD: Mr. Chairman and Members of the Committee, my name is Harvey Rosenfield. I'm Chair of Voter Revolt to cut insurance rates. It's the Proposition 103 initiative.

I'm particularly glad to be here because this is one of the few opportunities we're going to have to educate the public and the Legislature about our initiative. We won't be doing television commercials. We're entirely citizen funded. 165,000 people volunteered to put Proposition 103 on the ballot. Of the $800,000 we've raised so far, the average contribution is $12. So you won't be seeing a lot of the commercials. And frankly, I don't think the voters are going to miss the fact that there's not more commercials. I think they're probably getting pretty tired and distrustful of the commercials that they're seeing, and rightly so.

A year ago, before the State Legislature, the opponents of Proposition 103, the California Trial Lawyers Association and the insurance industry, stood united in a series of legislative compromises which purported to protect consumers but did not. They did nothing about auto insurance or any kind of insurance, for that matter. We opposed them. And as a result of our opposition and filing Proposition 103 in November of last year, their deal shattered. And within three weeks of our initiative, Mr. Polanco, with the backing of one major insurance company, filed his initiative. And the insurance industry, the remainder of it, with their substantial resources, got behind Proposition 104. Both of those initiatives contained provisions which will wipe out some or all of the provisions of Proposition 103. That's why they are really not intended to be reforms; they're intended to protect the people who are behind them by surreptitiously canceling out real consumer reform, Proposition 103.

When the California Trial Lawyers Association saw what the insurance companies were proposing to do in the kind of lawyer bashing that always accompanies insurance industry propaganda, they filed bankrolled Proposition 100 which it contains a clause which protects them against the insurance industries' initiatives. So we're here today as part of an unseemly circus of initiatives by special interests. And it is somewhat ironic that the one citizen initiative, the voter revolt initiative, with no money and no funding, is struggling for a hearing among the public and really overwhelmed by these other initiatives.

Let me tell you a little bit about what Proposition 103 does, and you have some materials there that discuss these in greater detail and also indicate the broad state and national support our initiative has received.

First of all, we rolled back all automobile insurance rates by, and all business insurance rates and all homeowner insurance rates and all the medical malpractice insurance rates, all property casualty insurance rates, by 20 percent of November 1987 levels, for one year. Everything is rolled back 20 percent. There is only one way that any company in the State of California can avoid giving consumers a 20 percent cut next year, and that is, if they can show that they're threatened with insolvency. After the end of that one-year rollback period, we require the insurance companies to come in, open their books, and justify once and for all every single rate increase that they propose to engage in for consumers and to show exactly what the situation is with respect to claims, lawsuits, and the other allegations that they assert are responsible for higher insurance rates.

We also eliminate the antitrust exemption. We eliminate unlawful activities by insurance-related companies. We eliminate the prohibition on agents giving discounts to consumers on their insurance policies. All of these laws passed, thanks to the insurance industry's Sacramento lobby over the decades. We up end this ridiculous system under which people's rates for automobile insurance are based on their ZIP Code. Instead, we require: First, the companies look at driving safety record; second, miles driven annually; third, years of driving experience; and only after that do we permit them to consider any factor which they can prove to the insurance commissioner substantially related to risk of loss.

Finally, we have a great deal of accountability in our initiative. Perhaps the most important, particularly relevant, since I've had a chance to look at the current insurance commissioner's so-called "testimony" about our initiative, is we provide that the people of California will get to elect the insurance commissioner. So instead of having appointees that come from the insurance industry and treat the insurance department like a vocational training ground for careers in the insurance industry when they're finished, will have a chance to have the people determine who's representing their interests on insurance matters.

CHAIRMAN ROBBINS: Let me ask you on that point, Harvey, if we (applause) -- it's stipulated Harvey brought some friends with him. (Laughter)

MR. ROSENFIELD: I'm actually here on behalf of about a half a million people who signed our initiative.

CHAIRMAN ROBBINS: Please, don't have them all come in the room and applaud. (Laughter)

The provision for an elected insurance commissioner, what do you do in order to deal with the question of, that the insurance companies would then elect, would be the only people who would be interested to make donations and would elect the commissioner?

MR. ROSENFIELD: Well, they said that about insurance reform initiatives on the ballot too but we've proven that citizens can get together and use the democratic initiative process to put something of their own on the ballot. I think that the accountability built into the state disclosure laws, as sometimes ignored as they are, combined with the mandate that, if you don't do a good job and a fair job for both consumers and insurers you're not going to be reelected to the post, guarantees accountability and fairness and protection for consumers. And that's the way it's worked in other states which have the elected insurance commissioner.

I'm not going to take up much more of my ten minutes except for to say that, because of this initiative, which is responsible for the remaining initiatives by the pin-stripe suit battalion represented here today, we have substantial public support, not many commercials but a great deal of public empathy and support. We've got hundreds of people volunteering, going door to door, and perhaps most telling when -- if Mr. Torres had asked the question of Ralph Nader, who could not be here today, and said to Mr. Nader, "Which initiative guarantees consumers real protection, real reductions," Mr. Nader, who's exclusively supporting 103, would have said, "Proposition 103."

SENATOR TORRES: Proposition 103 guarantees --

MR. ROSENFIELD: That's right.

SENATOR TORRES: -- that auto insurance premiums will go down once it takes effect?

MR. ROSENFIELD: That's correct.

SENATOR TORRES: Show me the language where it says that auto insurance premiums will go down in your initiative.

MR. ROSENFIELD: If you look in, if you look in Section -- I think it's 3, which discusses rollbacks, under "rollback and reduction of premium", Section 3, A, B -- A through E -- is the only way out of that for the next year is if the company can prove that it's threatened with insolvency. Otherwise, everybody gets a 20 percent discount.

ASSEMBLYWOMAN WRIGHT: Oh, that's easy.

ASSEMBLYMAN LANCASTER: Mr. Chairman.

CHAIRMAN ROBBINS: Assemblyman Lancaster?

MR. ROSENFIELD: I've concluded my remarks. I'll be glad to answer questions.

ASSEMBLYMAN LANCASTER: I'm trying to follow the rules. I think it's important to understand what your measure does do, is it does require a 20 percent rollback in rates, not only in auto but in commercial, and all other homeowners, all rates, as I understand it, in the state that deals with that subject matter.

Now in order to accomplish that goal, you have to go into the surpluses that are retained by the companies for the purpose of paying off future claims. When you do that, you possibly create the problem of insolvency. And if, in fact, the company does become insolvent, what happens is, because under California law, all other insurers, people who buy insurance policy, is surcharged, as we are doing now, by the way, on certain companies that did go insolvent. And so consequently, we run the risk under this, frankly, of creating insolvency on the industry. And when you do that, the rest of us, who happen to be with the company that remain solvent, will pick up the costs. So I want to point all this out because it's important.

What you're asking for is an automatic reduction at 20 percent on all these lines. That's a heavy reduction guaranteeing only, paid for by the surpluses that are retained because the insurance commissioner requires it now of the other parts of the industry.

MR. ROSENFIELD: Let me explain to you, Mr. Lancaster. As I said, the initiative contains a provision which protects against insolvency. Under our initiative, it's physically impossible for any company to go out of business.

ASSEMBLYMAN LANCASTER: Let us put it this way: If the company, surpluses are utilized to pay the 20 percent reduction, the only way they can make up that surplus loss is by increasing the rate.

MR. ROSENFIELD: Actually, there's another way they can do it. They can stop, they can reduce their profit margins; they can cut their outrageous expenses. We did a study last week which showed that, for every dollar of premium they take in, they only pay out 56 cents. When they tell you as a policy maker that they're losing money, they're talking about reserves and they're talking about losses that they say they're going to incur in the future but haven't yet incurred. All we're going to do is force them to be a little bit more efficient, a little bit more competitive, and that will reduce the rates without forcing them into any financial difficulties.

ASSEMBLYMAN LANCASTER: My problem is I may have to pay a higher rate on my insurance to make up for their insolvency that's created by this rate reduction.

CHAIRMAN ROBBINS: Okay. I think those views have been exchanged. Senator Davis?

SENATOR ED DAVIS: I feel compelled to ask you this because I think you essentially said that, if we elect an insurance commissioner, that if he's not good, that people throw him out in four years, then he'll probably be responsive of the needs of the people, even though if he's elected with insurance company money or anyone else or a consumer advocate's money.

I want to ask you as a consumer advocate, do you really believe that politicians, when they're elected, are going to represent all the people (laughter) and not represent special interest? Can you really say that?

MR. ROSENFIELD: The empirical evidence suggests otherwise but that's what the, that's what our democracy is all about.

SENATOR DAVIS: Well, it's a nice theory.

MR. ROSENFIELD: That was a good theory. That's what the Founding Fathers came up with, and it seems to me we might as well try as close as we can to adhere to it.

SENATOR DAVIS: The only problem with that ...

MR. ROSENFIELD: What the voters received were the 120 members of the California Legislature.

SENATOR DAVIS: Yeah, I took, you know, Political Science 101 too. (Laughter) But it also had another provision in it that we have checks and balances. And so you set someone up who becomes a totally self-contained czar; and the Governor has no control over him; the Legislature has no control; the courts have little control. And your proposition lacks the, the cross-checks. And I frankly would just be absolutely frightened of a czar going in and controlling any business or industry -- manufacturing cars or insurance or anything else. And I would think as a great consumer advocate that you should have those same fears and suspicions.

MR. ROSENFIELD: I have them and we have that same problem now. We're just shifting accountability from the appointed insurance commissioner who responds only to the Governor to a commissioner that will respond to the consumers who are paying these outrageous rates.

CHAIRMAN ROBBINS: Okay. We brought that in exactly at ten minutes. Alister, you're on behalf of the California Chamber going to speak in opposition. You're welcome to stay seated, Harvey. Alister got to sit while you were up here. Or you're welcome to take a seat in the audience, whichever you prefer.

MR. ROSENFIELD: Sit it out. (Laughter)

MR. ALISTER McALISTER: Thank you, Mr. Chairman. I'm Alister McAlister, today, here representing both the Chamber of Commerce and speaking on their behalf and on my own behalf since I'm one of the signators to one of the anti-103 arguments on the ballot.

The Chamber believes that there's only one way to really solve and reform the problems of insurance and liability in this state, and that would be to address the underlying, root causes. The underlying root causes happen to deal with the runaway liability system, a system and the very high cost, of course, of repairs and medical costs and those kinds of things but especially relates to the tort system.

When I was in the Legislature for many years, I tried to reform the tort system with almost a total lack of success; it wasn't for a lack of trying. But obviously, the political consensus was not there. But if you're ever going to really get at the roots of these problems and if you're ever going to really get to the point, or even have any hope of reducing insurance rates, you're going to have to have extensive reform of the system.

Now this initiative is essentially nothing but a snakeoil proposition, an arithmetically illiterate proposition, that appeals to populous sentiments but ultimately will mean almost nothing but disaster. What does it do? It purports to roll back all rates to November of '87 levels and then you have another reduction by 20 percent, freeze them til 1989, and thereafter then, have a 20 percent reduction from whatever the rates would be thereafter. Of course, no one knows, looking at this proposition, what they would be -- have another 20 percent reduction for all so-called "good drivers", which, if you look into the fine print, you'd discover that good drivers is so interpreted that it could even include a drunk driver, a person who's had, because the definition says that "good driver is every person who's been licensed to drive a vehicle for the previous three years and during that period not more than one conviction for a moving violation," which has not eventually been dismissed. A good driver could include a person, in fact, with numerous drunk driving arrests who hadn't actually had a conviction and could include one who'd had one conviction during that time.

God save the people who don't come within that good-driver category after you've done all that. I don't how much you're going to increase their rates. 100 percent? 200 percent? Who knows? No one else does. But it would be awful.

Now I don't think all this would likely happen. If it did, of course, you'd abolish the insurance industry in this state, I mean if it really happened. I suspect, if there were going to be court challenges, that we'd find much of this invalid. But no one can know that for sure what will happen. The law is written, it says that, if there's a substantial likelihood of insolvency during this period, this initial period, when the rates are reduced, that the carrier can go to the commissioner and ask for salvation.

Now no one really knows what that means either. This, of course, wouldn't have the kind of effect that you would need on the big national companies because presumably, even though you're clobbering them, if they write 10 or 20 percent of their business in this state, you can say, "Well, let the people in Nevada and Vermont and New York subsidize them," so they're not going to be threatened by insolvency. It could certainly affect those whose business is primarily located here.

Why reduce a company just to the very level of insolvency, though, and then say, "Well, we'll let you limp along. We won't let you make any money but you're not threatened with insolvency because we'll let you break even."

I mean it's fraught with ambiguities and uncertainties. All we know is, though, that you really couldn't do business on this basis. Because of that, it probably never would really take effect like that. But if it did, God help the insurance industry and the rest of the business community. One of the big reasons the Chamber of Commerce is against this is that they see an initiative like this as laying the foundation and the groundwork for further initiatives in which you can take whatever business group is currently unpopular, whoever that might be, and reduce their rates 20, 40, 50, whatever you want to do, and then say, "Oh, well, but if you're insolvent, that's all right. And can go to court; you can go to the commissioner."

We don't like the elected insurance commissioner. There are a couple of things we don't like. One, we think democracy is great if you're talking about policy makers, people who are elected to make policy. I was elected for 16 years to make policy. You ladies and gentlemen up there on the dais there are elected to make policy; you're policy makers. We don't think it's such a great idea for administrators. We think administrators should not be politicized. It's great to politicize the people who are politicians; it's not so great to politicize the administrator.

You want to know what happens in that kind of a system? Read a recent article that the American Spectator published on the Florida system. Read it and weep and you'll see what happens when you have not only the insurance commissioner in that state but also their comptroller who regulates the banks. Read about it and conclude then whether you think it's a great system and it works well. We know it's a horrid system.

CHAIRMAN ROBBINS: I'll take the pause as an invitation to questions for Members of the Committee. Hearing none, I'll take that as a signal that your remarks were cogent and complete. And we'll move onto -- Harvey, you'll get a chance to speak on the next proposition as well. So we'll move onto Proposition 104.

I think we tried the format of both at once. Let's now try just the proponents of Proposition 104. Senator Ed Davis is to be one of them. Jeffrey O'Connell, University of Virginia who, I presume, is the other person approaching the table. Is the other one -- and I presume you've worked out a way to divide the ten minutes between you. Please leave some time in the ten minutes for questions by the committee members. Ed, which of you are going to speak first?

SENATOR DAVIS: Okay. I'll leave the best for last. The professor knows everything about it.

I've been in the Legislature for eight years now and I've served on both the Insurance Committee and the Judiciary Committee. And during that length of time, I have had tort reform legislation every year. Every year, tort reform has been killed in the Legislature because you can't get tort reform through the California Legislature because of the ability of trial lawyers and you can't get a lot of other reform. That's why you don't have any reform in the workers' compensation system. It's just a natural thing in the democracy. And so this is an attempt, and this is the only proposition, that really has tort reform involved in it. And everthing else are propositions by people in some other kind of a business that are trying to reform the insurance industry. 100 is sponsored by the trial lawyers and the bankers and consumer advocates. And they're telling the insurance companies how to do insurance companies. Doing an insurance company is a lot more complex than being a banker for many different reasons, and their solution just won't work. It's not reform; it's merely an alleged reduction in rates. 103 puts in a czar. An imperial czar can become totally imperious and ruin the whole system. 106, sponsored by the people who have me here today, the insurance industry, has insurance companies telling lawyers how to run the fiscal affairs of a law office -- and I disagree with that. I did not sign arguments in favor of that. But 104 is purely insurance reform by insurance companies and I support it very strongly.

Most of the others simply order insurance companies to cut their rates. Now the problem is insurance companies are paying out more than they take in, in auto insurance in California. Now that was admittted by the 103 proponents the other day in a press conference in Sacramento. And they say, if you just cut your rates, your're going to -- if you cut, just order people to cut rates, it's like ordering a grocer to cut his prices and eventually that grocer is going to have to go out of business. If we're going to have an insurance industry in this state, we have to enable them to sell their product at a lower price. Now that's what no-fault does. No-fault, in its total simplicity, it takes just one portion of insurance, the personal injury portion, and it says that "unless the injury is permanent and serious, it will not be litigated in the courts." And it provides that the person who insures the individual is injured that he will take care of the doctor's bills, the hospital bills, and the loss of wages, and, if necessary, funeral benefits. It mandates a reduction in premium that's substantial, 20 percent for two years, and nothing after that, in answer to Senator Torres's question sometime ago. But it does, it does do that. And it is fundamental reform. It will take the profit out of -- it will take the excessive cost out of personal injury accidents because, as soon as there's a personal-injury accident, in some areas, there's frequently people wearing neck braces and two doctors are hired and two lawyers are hired. And then eventually, the insurance company is hiring another lawyer. And whatever comes out of that whole process, through the tort system, I can tell you one thing, as a former policeman, it winds up usurping most of the activities of the courts in California, at least the Superior Courts. It'll free up of the Superior Courts, thus tort reform for the litigation of a lot of important criminal affairs, and other important civil matters that the courts have to take care of.

The small-time fender/bender accidents will no longer be a matter of shaking down an insurance company. They just will have to be compensated within 30 days by the company. If they are not compensated within 30 days for their loss of wages, their hospital costs, their doctors' costs, then you go to the insurance commissioner and arbitration if you need a lawyer. The insurance company will have to pay for the lawyer. There's a lot of fraud in the present system. Our local District Attorney, Ira Reiner, indicates that there is an appreciable amount of fraud, up to one-third of every dollar spent in Los Angeles, he says, for auto claims is due to fraud. And in 1966 the Department of Insurance Fraud Bureau reported that of the 9,700 suspected staged accidents in California, 8,000 were in Los Angeles County. And so no matter which way you look at it, unfortunately, the cost of auto insurance is essentially a cost of administrating a tort system, a faulted tort system, for individuals who are attempting, in some cases, to get a lot more than they would, other than just taking care of their own costs.

I think that I will close by saying that this is real tort reform, nothing else. None of these other propositions are tort reform in any way, shape, or fashion. This is not conceived by some emotional zealots. This is conceived by insurance companies who have made a business, a profitable business, or they wouldn't be in business, but who lose money in California, auto insurance.

When you travel to England and talk to insurance companies there, and talk to the individuals who composed the Lloyd's system, you'll find that we're the laughing stock of the world. California's tort system is the laughing stock of the world. And certainly, it supports a lot of medical people and a lot of lawyers and it helps, in a minor way, a lot of individuals. But this system will clean it up appreciably. This system has worked effectively in both Florida and New York. There are all kinds of other no-fault systems that are inadequate, that have not done the job. And I'll now turn you over to the professor who really is an expert in this whole system and --

ASSEMBLYWOMAN WRIGHT: Mr. Chairman?

SENATOR DAVIS: -- studied it very thoroughly.

ASSEMBLYWOMAN WRIGHT: Mr. Chairman.

CHAIRMAN ROBBINS: Assemblywoman.

ASSEMBLYWOMAN WRIGHT: Yeah, I'd like to ask two questions, if I may, and maybe when the professor speaks, he can even answer them, not necessarily, you know, that the Senator has to do it.

CHAIRMAN ROBBINS: Ask him briefly because the Senator only left him two-and-a-half minutes.

ASSEMBLYWOMAN WRIGHT: Oh, dear. Okay. Very briefly.

One, is there anywhere within the proposition that would allow for a table as to exactly what you would be awarded under certain casualty? And if it is, does it have any kind of a built-in for inflation or are you just going to pay whatever the person who presents the bill for? And if that is the case, then what prevents fraud?

SENATOR DAVIS: Well, I'll ask the professor to take his time now and he can encompass the answer.

MR. JEFFREY O'CONNELL: I think the key answer to that is that the bill purports to pay for actual medical bills and wage loss, and it has a deductible against wage loss so that you don't get paid as much away from work as at work. You're right, it doesn't have an inflation factor. It pays up to $30,000 of benefits without an inflation factor. But I would presume that, if you paid $30,000, guaranteed $30,000 benefits in wage loss and medical expenses, you're going to pay the full loss of 90 percent of the people in California who are injured by auto accidents and you're going to greatly aid the people whose losses go over $30,000.

Let me tell you that I have a feeling of watching my "child" here. I wrote the book which proposed no-fault insurance 25 years ago. And I will tell you that the insurance industry was by no means friendly of that idea, nor have all of them been friendly through the years. And when this bill was first presented to me, I looked at it with great skepticism because I was skeptical about what the insurance industry was coming up with and I was very conscious of the Chairman's question: What is the insurance industry giving here? And I'll tell you what they're giving. This is a very impressive no-fault law. I have lived with no-fault laws for 25 years. I've drafted them and I've reviewed them all over the world.

If California were to enact this law, it would have one of the two or three best no-fault laws in the United States; it would promptly pay people expeditiously for accidents compared to what they get under the tort system; it would greatly reduce transaction costs; it would be a superb bill compared to the cancerous tort system we now have. Now it's not a perfect bill. I think the provision calling for the promptitude of payment of benefits is a little loose; I think the provision for the tort threshold is a little tight. But all of that is nothing; it's detail. None of these provisions should in any way prevent the Californians from voting.

You know, if I were from California, I would take this no-fault bill and run before the insurance industry changes its mind. (Laughter)

CHAIRMAN ROBBINS: Well, considering that they've spent, committed $43 million to assure its passage, I think the chances of their changing their mind is not very good.

Assemblyman Johnston, you had a question for Jeffrey.

ASSEMBLYMAN JOHNSTON: You said this is one of the two or three best no-fault bills in the country.

MR. O'CONNELL: Yes.

ASSEMBLYMAN JOHNSTON: What would be the other ones?

MR. O'CONNELL: Well, the two -- the one that is the best, I think, is Michigan's. Michigan provides unlimited medical. And that's really a marvelous benefit, although it's very expensive. And it has a threshold somewhat, actually, not as tight as California's. The closest analogy is New York. New York provides $50,000 of no-fault and a similar threshold, not as tight as yours. Florida has a similar threshold and only $10,000 benefits.

ASSEMBLYMAN JOHNSTON: I'm glad you said New York because that's prominent in the advertising by the proponents of 104. I find it unfortunate, frankly, that the insurance industry that drafted this proposal and are spending the money to pass it have no one at the table presenting it, with all due respect to you, Professor, and certainly to my friend and colleagues, Senator Davis. They're not here to defend their proposition, except to fill up the first three rows with their buttons.

But nevertheless, on the issue of New York ...

CHAIRMAN ROBBINS: There are people sitting behind the buttons.

ASSEMBLYMAN JOHNSTON: Of New York no-fault. Isn't it true in New York that they have a medical cost containment schedule?

MR. O'CONNELL: They have a medical cost containment schedule.

ASSEMBLYMAN JOHNSTON: Is there one in this initiative?

MR. O'CONNELL: No, there isn't. There's a, there's a -- that is a matter I'm suggesting to you of such detail. Once you assume that the tort threshold in this bill is much tighter than the New York bill, there's a give and take. The New York bill has better features ...

ASSEMBLYMAN JOHNSTON: Oh, you mean less benefits.

MR. O'CONNELL: What's that?

ASSEMBLYMAN JOHNSTON: Tighter threshold means less benefits.

MR. O'CONNELL: Less tort suits, less tort suits.

ASSEMBLYMAN JOHNSTON: Right. Meaning less payout to injured victims of automobile accidents. It's a different way of saying the same thing, isn't it?

MR. O'CONNELL: If they can prove a tort suit.

ASSEMBLYMAN JOHNSTON: Right. If you make it more difficult to prove, then you have less benefit payout.

Secondly, isn't it true that New York is a prior-approval state? That is to say, that in order to raise insurance premiums, the insurance commissioner or the insurance superintendent, I think it's called in New York, must approve those?

MR. O'CONNELL: And it is true. And let me tell you this: New York had a prior-approval statute, and they had the tort system and it was a disaster; and they went to no-fault.

ASSEMBLYMAN JOHNSTON: But they do have prior-approval of rates, do they not?

MR. O'CONNELL: They had prior approval. And when they had it alone, it was a disaster.

ASSEMBLYMAN JOHNSTON: What regulatory mechanism is in this initiative to control or review rates?

MR. O'CONNELL: Let me tell you, you have very tight regulation of auto insurance in Massachusetts, in New Jersey, with bad no-fault ...

ASSEMBLYMAN JOHNSTON: What's the answer to my question, Professor?

MR. O'CONNELL: There isn't much. And apparently, when you have tight regulation, it doesn't make much difference.

ASSEMBLYMAN JOHNSTON: Well, I find it interesting that you compare this initiative as does the advertising campaign to New York's; and yet, on two key features that is controlling medical costs, which are a big component in the cost of insurance, and secondly, rate regulation, which New York has one of the tightest, this initiative doesn't speak to it, does it?

MR. O'CONNELL: That's just right, because what I'm saying, sir, is that those features are not nearly as important as guaranteeing $30,000 of no-fault benefits with a tight threshold. The rest is detail.

ASSEMBLYMAN JOHNSTON: Are you aware, Professor, that there were significant discussions which Senator Robbins and I, as well as many others, participated in, and Consumers Union, which also finds, at least Consumer Reports in this month's issue, finds as you do that Michigan is perhaps the best state in their judgment with a no-fault statute, that the New York, the New York model for no-fault, absent, by the way, prior approval, but instead a flex-rating and an absent medical cost containment, was offered to the insurance industry and they rejected it out of hand?

MR. O'CONNELL: In my opinion, they should have taken it. But I would say to you this: Don't reject 106 because of that.

ASSEMBLYMAN JOHNSTON: Well, let me just suggest to you that it is preposterous for the proponents of this initiative, whatever merits it may have, to say that it will institute a New-York-type no-fault; it ignores major features of New York's statutes.

MR. O'CONNELL: And let me try to answer that. I know the no-fault world. And generally speaking, this is a lot more similar to New York than any other no-fault law; and that is, in my opinion, a fair comparison, despite, as you rightly point out, some differences in detail.

SENATOR DAVIS: If I might just comment ...

ASSEMBLYMAN JOHNSTON: All the ones that trouble the insurance industry like rate regulation.

SENATOR DAVIS: I'd just like to say to my friend Pat that I have a profound belief in competition reducing the cost of things. And with good competition in California, I think it's a better regulatory mechanism than having an insurance commissioner make those judgments.

ASSEMBLYMAN JOHNSTON: It may be, Senator, but we mandate that everybody has to carry automobile insurance. So we have the police power of the state, which you're most familiar with, behind the requirement that people buy insurance. So what insurance companies do, where they sell and for how much, inevitably then becomes our responsibility as well.

SENATOR DAVIS: If you believe in the free market about the history of the world ...

CHAIRMAN ROBBINS: And I believe in the free market and I also believe in time limits.

SENATOR DAVIS: There's a philosophical difference.

CHAIRMAN ROBBINS: One, I promised Assemblyman Lancaster one quick question or comment and then we're going to go onto the opponents.

ASSEMBLYMAN LANCASTER: A clarification, if I can, Mr. O'Connell -- is that correct?

MR. O'CONNELL: That's right, sir.

ASSEMBLYMAN LANCASTER: Under this particular measure, there is a required no-fault benefit payment program.

MR. O'CONNELL: Yes.

ASSEMBLYMAN LANCASTER: Certain type for accident victims, certain type, in funeral benefits, things of this nature?

MR. O'CONNELL: Yes.

ASSEMBLYMAN LANCASTER: Now that is an increase primarily in the coverage for each individual probably in California. How can you guarantee a 7 to 17 percent rate reduction yet require additional coverage? And that's what 104 does require, that the motorists bring about additional ...

MR. O'CONNELL: That's a fair question, and the trade is this: You wipe out payment for pain and suffering in the great mass of cases and you wipe out lawyers' fees on both sides. And New York and others have proven, if you do that, you can pay a lot more people no-fault benefits.

ASSEMBLYMAN LANCASTER: But the fact of the matter is that each motorist in this state will be required to secure additional coverage in order to make the no-fault concept work, such as accident, medical expense, funeral benefits -- all of these things are built into 104. So, you see, I'm bringing this out because I frankly am a little tired of these arguments that all of these things are going to be bring about rate reduction. I don't necessarily agree with that because we do require additional things, even under 104.

MR. O'CONNELL: And you're absolutely right to be skeptical. All I can say to you is there is a trade. You give up the tort suits to get the no-fault benefits.

CHAIRMAN ROBBINS: And the next part of the trade is to go onto the opposition. Thank you very much, Professor.

Harvey, you get a second shot since you're also an opponent of Proposition 104.

MR. ROSENFIELD: Thank you. I'll be brief.

The first -- Harvey Rosenfield, Proposition 103. The first thing, in the point that I made in my statement a few moments ago, that every California voter has to know about Proposition 104, and, that is, it's a fraud. It's being disguised as a no-fault initiative and I'll come to the merits of no-fault in a second. But this insurance industry initiative disguised as no-fault is actually a Trojan horse which contains Darth-Vadar-like provisions that cancel out each and every reform in Proposition 103, the Voter Revolt Initiative.

CHAIRMAN ROBBINS: Harvey, are you trying to help them or hurt them? In this town, if you refer to it as a Trojan horse, half the people like it. (Laughter) And, and most of the population under 21 relates to all the characters in "Star Wars".

MR. ROSENFIELD: We're urging voters to practice safe insurance and vote no on 104. (Laughter) Every, every -- it's really disappointing to hear someobody like Professor O'Connell, who I've never -- I don't know much about but had hoped that he carry with him a certain academic objectivity, endorsing, as was pointed out just a moment ago, an initiative which it purports to be the New-York-style no-fault system or the Florida style but actually negates the very other, the very measures in the New York and Florida laws which guaranteed protection to consumers and that is the prior-approval system.

You see, the unfortunate choice for the voters in California is not whether they want no-fault or not. They're not getting -- the insurance industry isn't giving us that option. They're saying, if you support no-fault and vote for Prop. 104, you cancel out every single other consumer reform on the ballot.

Now let's talk about the rate reductions in Proposition 104. They advertise a 7 to 17 percent rate reduction. But, in fact, those reductions are based upon a policy that many drivers in California cannot buy. It is rate reductions on a, what we call, the "golden policy". And so it's like the insurance companies are saying to the California voters, "We're going to sell you a car for 20 percent off, but it's a Rolls Royce and you have to buy it." These reductions, in some cases, will mean increases of up to 35 percent for California drivers. And I'm not just making that number up. That was from a secret session of the insurance industry's agents in which an executive from the insurance industry was recorded, and this was reprinted in the Los Angeles Times, as stating to the agents that "under some circumstances, no-fault insurance will cost more, particularly for urban drivers."

Finally, on the point about taxpayer ...

CHAIRMAN ROBBINS: Senator Davis.

SENATOR DAVIS: Isn't it true, that according to your own literature, that was not an executive of an insurance company but that was an insurance agent, which is entirely different than the executive of an insurance company. You've got an agent who sells insurance from various kinds of companies who answered your questions correctly or incorrectly but it does not represent the views of the insurance segment.

MR. ROSENFIELD: An executive of an insurance agent's association.

SENATOR DAVIS: That's right. Not the insurance company. Entirely different proposition.

MR. ROSENFIELD: Well, the agents are supporting 104 and I hope you'll forgive me for lumping the agents into the category of insurance industry executives.

In terms of taxpayer costs, we have, according to the State Legislative Analyst, $25 million a year as a result of Proposition 104.

And finally, and to the merits of no-fault, it hasn't been proven to work in any state. In fact, according to a 1985 Department of Transportation, U.S. Government study, rates in no-fault states were up to 40 percent higher than in states without no-fault. So what are consumers going to get for Proposition 104 if they vote for it in the November ballot? They're going to get an industry without any regulation, without any constraint on its practices and on its prices, and an initiative which actually will result in increased rates with no protection for consumers.

The last time the insurance industry stood before the California public and promised rate reductions was in Prop. 51. In fact, I think it was Alister McAlister, then a legislator, who was a television spokesman for the insurance industry. They promised us 15 percent rate reductions and we've had zippo, nada. The consumer vote on 104 is no. Thank you very much for your time.

CHAIRMAN ROBBINS: Thank you, Harvey. We're going to bring this train into the station on time. We have Proposition 106 which, in this portion of it, is just a Senate hearing, not an Assembly hearing. Let me ask the proponents and opponents of Prop. 106 to come forward.

ASSEMBLYMAN LANCASTER: May I ask a question, Mr. Chairman?

CHAIRMAN ROBBINS: Sure.

ASSEMBLYMAN LANCASTER: I take it then that the insurance commissioner's testimony will be after the testimony of 106?

CHAIRMAN ROBBINS: The insurance commissioner will be after 106. What I'm going to do is ask, since it's just a Senate hearing, to ask the proponents and opponents to each do five minutes and then we'll get to the insurance commissioner at a quarter of and have the rest of the time for her.

MR. O'CONNELL (?): Thank you for the opportunity.

CHAIRMAN ROBBINS: Is the opponents to Prop. 106 here? Judith Rowland, California Center on Victimology? Well, that will make it even briefer.

MR. FRANK SCHUBERT: Thank you, Mr. Chairman and Members, my name is Frank Schubert and I'm President of the Association for California Tort Reform here supporting Proposition 106. Prop. 106 is the simplest and most straightforward of all the initiatives on the ballot in November. It promises legal reform, reform of our system of civil justice that is so out of control. Right now in California, we have an escalation in the filing of personal injury lawsuits that is beyond belief. In the last six years, the filing of tort lawsuits, motor vehicle lawsuits, personal injury suits have increased seven times faster than population in our state. I guess the question that we have to ask ourselves as consumers is this: Are we seven times more dangerous than we were six years ago? Do we have seven times more motor vehicle accidents? Do we have seven times more hazardous products on our marketplaces? No.

What we have in California is a glut of lawyers who do what they do best, filing lawsuits. We have citizens who are being begged, beseeched, to file suit every day through television commercials in every media market. You all see them, "File suit. If you've been injured, come to me. There's no cost to you. I'll take care of you."

But Mr. Chairman and Members, there is a cost to all of us. There's a cost in terms of the price that we pay as a society for our civil justice system. There's a cost in terms of lost opportunity for manufacturers and businesses who produce goods and services; there's a cost in terms of tax dollars that go to support the filing of these cases.

Proposition 106 is going to reduce frivolous lawsuits and is going to enact a very fundamental shift in balance in our tort system by giving injured victims more of an award than their lawyers. Our initiative will take about a billion dollars a year out of the pockets of trial lawyers and put it into the pockets of injured victims. And if that's all it does, if it doesn't reduce lawsuits by one, the shift of a billion dollars to people who need it is worthwhile and it's why we ought to do it. We limit fees in California in a variety of circumstances involving lawyers because they have a statutory monopoly. You cannot practice law here without a license; you have to go through rigorous training, expensive training; you're regulated by your own peers at the State Bar. And in the American and California public policy tradition, we have an obligation to watch what those people do who have a statutory monopoly. Proposition 106 is a reasonable proposal that limits fees. We've limited fees in contingency cases involving minors, involving medical malpractice actions, involving workers' compensation cases, involving cases against the federal government under the Tort Claims Act, in social security cases, in Veteran's Administration cases, in cases involving Indians. A wide variety of fee limitations exists in current law. This initiative is not against the free marketplace because we don't have a free marketplace with regard, the provision of legal services. What we have is a system that is out of control. It's time for the People of California to take back control of their civil justice system.

I would just close by quoting one of the most respected jurists ever to serve this country, the former Chief Justice of the United States Supreme Court. And he said this: "America is the only system in the common-law world, so far as I am aware, that permits contingency fees. Some lawyers engage in active, overt, blatant solicitation of clients. Still, others secure contingent-fee contracts without fairly and fully advising the client whether liability is contingent. That practice risks betrayal of the client's interest at the outset of the relationship. If the legal profession does not soon deal with this grave and growing problem, it is inviting statutory or judicial regulation and supervision of all contingent-fee contracts."

Mr. Chairman and Members, the time is now for the People of California to take control of their civil justice system by voting "yes" on Proposition 106.

SENATOR DAVIS: Mr. Chairman.

CHAIRMAN ROBBINS: Senator Davis, let me ask one quick question first.

The funds to qualify Proposition 106 were paid for by the insurance industry; is that a fair statement?

MR. SCHUBERT: That's completely accurate.

CHAIRMAN ROBBINS: Why do you feel the insurance industry has qualified Proposition 106?

MR. SCHUBERT: Well, I don't know what the insurance industry is up to. I do know that this measure was written by our organization about a year and a half ago as a measure sponsored by the largest organization in the civil justice system and also by the State Chamber of Commerce which supports 106.

CHAIRMAN ROBBINS: Senator Davis?

SENATOR DAVIS: Just to say that Prop. 104 also has limitation and contingency fees that I think is much more rational, or it winds up with 15 percent over 100,000 instead of 10.

MR. SCHUBERT: Sure.

SENATOR DAVIS: And I was telling you that I believe that many indigent defendants will not get represented by counsel when you go 10 percent over because of the very cost of running a law office and in many cases investing money in filing fees and expert witnesses and so forth. And I support the insurance industry of 104; I don't support this. However, because people disrespect lawyers as much as politicians, I think this is going to pass. And I do think it will do some real mischief in the ability of people who don't have the affluence to hire their own lawyer, being properly represented.

MR. SCHUBERT: Let me respond to those, if I may. There is a precious difference between Prop. 104 and 106 in that 104 does limit recovery; 106 does not limit recovery. And so the difference in a scale is appropriate.

With regard to the idea that people will not be able to get representation, I understand the concern. I guess I would just say this, that we have fee limitations in a variety of contexts, which I've listed earlier, and they've been around for a long time. And I've never seen a single report or study that documents the idea that people can't get representation, and particularly in California. Maybe that would be true in Montana or Wyoming or Idaho. But when we've got more lawyers in this state than the nations of England and Japan and Italy and France and West Germany, I think it's kind of hard to believe that.

ASSEMBLYWOMAN WRIGHT: Mr. Chairman, may I ask a question?

CHAIRMAN ROBBINS: Last question.

ASSEMBLYWOMAN WRIGHT: What would happen if any other of the insurance initiatives passed and 106?

MR. SCHUBERT: We'd be in court trying to figure it out. But the basic rule is that the one with the most votes wins and controls.

ASSEMBLYWOMAN WRIGHT: But 106 really doesn't deal with insurance rates.

MR. SCHUBERT: Well, what happened, we believe ...

ASSEMBLYWOMAN WRIGHT: That's why I'm wondering what would happen with them.

MR. SCHUBERT: We believe that what would happen is the attorneys' limit scale on 106 would apply and the insurance initiative regulation and the other initiatives would apply. Now I will admit that the trial lawyers think they've cancelled everybody out; the insurance industry says they've cancelled everybody out. They may or they may not have. But we think that, because this is such a specific matter, the courts will impose the fee limit scale of 106 and whatever regulations adopting the other measures.

ASSEMBLYWOMAN WRIGHT: It could happen: It could make one of the other initiatives more credible if indeed the limitation around the attorneys' fees.

MR. SCHUBERT: Well, any voter can vote for 106 and vote for any of the other insurance initiatives and feel that they've accomplished a great deal.

CHAIRMAN ROBBINS: All right. Thank you very much.

MR. SCHUBERT: Thank you, Senator.

CHAIRMAN ROBBINS: I'll ask again if there's anyone who wants to speak in opposition to Proposition 106. Since there's not, what we'll do is incorporate in the transcript we're going to make up, since it will be distributed, the argument in opposition to Proposition 106 from the ballot.

I'd like to ask our insurance commissioner to please come forward. I'd like to thank the Members of both Houses for having been so cooperative to get us to this point on schedule. And Roxani, we appreciate that you've put a good deal of effort into it. You've had the benefit of being able to listen to the arguments on all five of the propositions so far and the Committee would be pleased to have your comments.

COMMISSIONER ROXANI GILLESPIE: Thank you very much. I would like to start out by saying that the Department of Insurance is a regulatory agency. We take no positions whatsoever on any of these initiatives. And what we have done is we have prepared answers to the specific questions that were posed to us by the legislative staff and they are: Solvency, insurance solvency for each initiative, and then the considerations of the budget of the Department of Insurance if any of these initiatives should pass. So we are talking about a very restricted area at this point and nothing more.

Taking each initiative, the first one is 100. And 100, even though it does not contain any economies whatsoever to the insurance system, it's not a solvency concern to the Department of Insurance. Our problem is just the opposite. We're afraid that it's going to be anti-competitive and have an inflationary effect on rates because it guarantees insurers a profit for the first time in their lives and different from any other law that I have ever seen before.

ASSEMBLYMAN LANCASTER: Mr. Chairman.

CHAIRMAN ROBBINS: Assemblyman Lancaster.

ASSEMBLYMAN LANCASTER: I hate to interrupt, Roxani, but this is a point I tried to bring earlier with the opponents of 100 because I read it the same way, that you actually have a built-in, guaranteed -- of what rate, I don't know -- profit.

COMMISSIONER GILLESPIE: Yes.

ASSEMBLYMAN LANCASTER: To the insurers in the state under 100. That's the way I read it also.

COMMISSIONER GILLESPIE: That is the way I read it.

ASSEMBLYMAN LANCASTER: And so, of course, you cannot answer this question, I guess, but it brings up the policy question: How do you get an automatic rate reduction and still guarantee a profit? I don't know how it works.

COMMISSIONER GILLESPIE: That is what I am trying to pose in my testimony here because we -- assuming that all of these initiatives may pass -- so we are preparing ourselves and looking at each one and saying, "How are we going to implement them?"

100 says that there's going to be a rollback for good drivers. But then it says that each insurer can come to the Department of Insurance and ask for an exemption if it is making -- I'm sorry -- if its rates would be inadequate as a result of that rollback. And then the initiative goes on to say that a rate would be inadequate, and I will read it: "A rate is considered inadequate if it fails to give a reasonably efficient insurer the opportunity to earn a net, after-tax return on equity comparable to other businesses presenting a similar degree of risk."

I am not sure exactly what that means. But I feel that it is much less competitive than the current law which says "that a rate is considered inadequate if the rate is unreasonably low for the insurance provided and the continuing use of such a rate, endangers the solvency of the insurer." We would have to do a great deal, a lot of work, to be able to administer this language in a fair and equitable manner.

In order to prepare ourselves, we have looked at rates of return. We have taken insurers and property casualty insurers and compared them to two groups that are watched by Fortune 500, by Fortune Magazine, and the compilation of their list, and that is, banks and diversified financial institutions. On the 15-year period in question, we find that banks have an average rate of return of 11 percent; the insurers, 11.2 percent; and diversified financial institutions, 12.4 (percent). So would we have to put all this mechanism together in order to bring the rates down to where our return would be just a little trifle less than it is now? I don't know.

Another way of looking at it is looking at automobile insurers all by themselves, and we have taken the ten largest auto insurers. When we look at their rate of return, we find that the average in a five-year period is 10.3. But then when you isolate the California automobile insurers, their rates are -- I'm sorry. Their rate of return is lower; it's only 8 percent. What, where does that leave us as far as any possible rollback?

We also analyzed the companies on the basis of Mr. Bane's bill that just went to the Governor. And on that basis, which is 5 percent return on premium in a six-year period, we find that only one company qualifies as having made an excess profit out of the ten largest autombile insurers. So this leaves us with very grave questions of concerns.

Moving onto 101 ...

ASSEMBLYMAN LANCASTER: Before we can leave 100, Mr. Chairman, just one quick question. This allows banks to sell this kind of insurance. Right now, they cannot do that under

California state law.

COMMISSIONER GILLESPIE: They can only sell credit-related insurance.

ASSEMBLYMAN LANCASTER: Does this mean, in effect, is it possibly you would have to guarantee the banks' profit on that type of activity?

COMMISSIONER GILLESPIE: They can also invest, so selling is different from underwriting. I had not thought about that, Mr. Lancaster, but you've really posed an interesting question. I simply had not thought about it.

ASSEMBLYMAN LANCASTER: The language in the initiative -- Mr. Chairman, I'll be quick -- brings up this whole area of a possible guarantee of a profit to those people that are in the selling of this type of profit.

COMMISSIONER GILLESPIE: I did not read it as "selling". I read it as "underwriting".

ASSEMBLYMAN LANCASTER: It's underwriting. Well ...

COMMISSIONER GILLESPIE: Yes. And they can invest in underwriting operations up to a limited extent on it, only about 10 percent.

ASSEMBLYMAN LANCASTER: Which puts the superintendent of the banks, I guess, into this picture too someplace.

COMMISSIONER GILLESPIE: Oh, I think the Superintendent of Banks would be in this picture.

Moving onto 101, there the apparent source of the rate reduction is a economies in the system because of the fact that claim payments would be reduced because of reduced payouts and noneconomic losses. Also, there is a shifting of costs from the insurance or from autombile insurance to other type of insurance, such as workers' compensation and health and accident insurers. So all this combined definitely brings the rates down, does not cause a solvency concern. This is not a comment on this initiative but merely that it seems to take care of itself without endangering solvency.

The next one is Proposition 103 and that causes very major solvency concerns. There are no economies in the insurance system that are provided for it. And there are some very strong rate rollbacks that are provided. If you take all property casualty insurers and assume that this were to pass and assume that there would be absolutely no rate increases but that the rate rollbacks provided for by this initiative would all occur, we would lose -- we would cause the insolvency of five property casualty insurance companies within the first year of its operation. In the second year of its operation, we would lose 30 more and we would have 40 whose surplus would be so curtailed that the State would have them to order a reduction in their writings.

Now these 75 affected insurers who wrote 20 percent of the total California property casualty business in 1987, and what I think people should realize is that most of these companies that are the most severely affected are California companies with California operations providing a substantial number of jobs. The total cost of insurance insolvency also is paid by policy holders, by surcharges on their premiums. There is no black hole.

The extent to which this initiative, if it were to pass, and if things were to happen as the initiative is written, has been the subject or a very extensive study by the Department because we believe that people who are looking at this would really like to see these rollbacks. They would like to see the first rollback and the second rollback. So we have done scenarios whereby these rollbacks would indeed occur as the initiative says and there would be no rate increases. What we have found is that, of the ten major automobile writers in California, you would have four who would become insolvent within the first year of operation. We have an additional one that would become insolvent in the first year of operation.

Again, as you might guess, the ones that this would happen to are the California insurers because they're the ones who have the biggest share of California business. And the total loss of underwriting capacity as a result of these insolvencies would be at least 10 percent -- I'm sorry -- at least 40 percent of California auto insurance market.

All this demonstrates that, if Proposition 103 were to pass and there were to be no rate increases but things were to function as the initiative seems to want, then there would basically be very little alternative, except for the State you have to consider to come in and take over at least some insurance operation as an insurer because they obviously would not be sufficient capital from the private sector to pick up the tab. And we have a state that has tried this approach. It's New Jersey. New Jersey has the highest number of people that are in the state fund. New Jersey citizens also pay the highest premiums in the country; and the New Jersey drivers, 50 percent of them who are in this state fund, pay higher premiums than anybody else. They pay higher premiums than the ones who are in the private sector because they're trying to make up for a $2 billion deficiency that this fund had. We have an example of what can happen in a scenario that is not dissimilar to what 103 would like to do even though 103 took its time.

Finally, 104. 104 has lower claim payouts. They're actuarily justified and there would be no solvency concerns. Again, this is not a statement in favor of 104; it's merely an answer about solvency.

I am done with the solvency issues. And the other question that I have -- yes, sir.

CHAIRMAN ROBBINS: Let me suggest, Roxani, we have a couple of minutes for questions by the Committee members that that's probably a good break point. What we can do is put the subject of the -- impact on the budget on, for a hearing of, to go for a hearing on September 27 and allow any Committee member who wishes to the opportunity to ask the commissioner a brief question.

ASSEMBLYMAN LANCASTER: A comment, Mr. Chairman.

CHAIRMAN ROBBINS: That's allowed too.

ASSEMBLYMAN LANCASTER: The insolvency issue on Prop. 103 is one that's particularly troublesome to me because you're primarily dealing with California companies. And what I guess what you're saying is, if we create too bad a circumstance on this issue of solvency, because, as I understand 103, it requires the surplus to pay for the rate reduction. And when the surplus is gone, then I presume you can come in and say in effect, "You have to increase your rates or do something in order to fill out this surplus because the surplus is required to pay future claims." Is that correct?

COMMISSIONER GILLESPIE: Yes.

ASSEMBLYMAN LANCASTER: So you have the responsibility that state law requires you to make sure that the company has a pot of money available to pay future claims. That is what 103 could remove from the picture off the table. And that is why the insolvency issue is so critical under 103.

CHAIRMAN ROBBINS: Let me, on that note, thank the commissioner and the Committee members. Let me say one comment in closing in that we've tried to look at each of the initiatives. What we have given the People of the State of California is there will be five insurance initiatives on the ballot in November. There will be upwards of $50 million spent on those. In the opinion of at least this one legislator, I would be very surprised if any one has reduced auto insurance premiums as a result of this in 1989. Thank you for participating.

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Argument Against Proposition 106

Don't be misled! Proposition 106 is the most insidious insurance industry-sponsored initiative on this ballot.

The insurance industry wants caps on legal fees.

But whose fees? NOT the fees paid to lawyers who work for insurance companies, NOT manufacturers' lawyers, NOT large corporation lawyers, NOT criminals' lawyers.

The ONLY lawyer whose fees would be limited would be YOURS—the lawyer YOU HIRE to help you recover damages from a drunk driver, an insurance company that won't pay you what it owes you or a shoddy manufacturer.

YOUR lawyer, NOT THEIRS!

Written by insurance company lawyers to confuse California voters and obscure the real issues—insurance reform and accountability—Proposition 106 would cripple the ability of crime and accident victims to retain qualified legal counsel.

Proposition 106 would hurt, among others, drunk driving victims who would be hindered from seeking justice from the offenders.

Proposition 106 is unfair! It cleverly restricts YOUR ability to fight for your rights, but does nothing to limit the amount insurance companies can pay THEIR attorneys to fight you.

Proposition 106 puts a straitjacket on the average Californian's ability to challenge insurance companies that refuse to pay benefits on legitimate claims. It also allows unscrupulous insurance companies' lawyers to bully victims and their families (who use the contingency fee system) through intimidation and delaying tactics.

Why are insurance companies behind Proposition 106?

Because the insurers who are bankrolling this initiative know that if they *stack the deck against policyholders by restricting legal challenges, they can increase their profits.* After all, the fewer claims they pay, the higher their profits. In 1987 alone, they made a record $13.7 billion! They should lower your rates without restricting your rights.

If Proposition 106 passes, Californians would lose valuable rights in exchange for empty promises. Don't be taken in by the insurance companies' secret strategy to divert your attention from the real issues—their outrageous premiums and obscene profits—by making the victim's attorney their scapegoat.

Proposition 106 is another "fine-print" insurance scam restricting the rights of policyholders to hold insurance companies accountable—even if those actions involve legitimate claims against drunk or negligent drivers.

Will this initiative save you money? NO! The insurance companies admit it. *But this initiative could cost you money!* If you lack proper recourse in demanding that your insurance company reimburse you fairly for your losses, you may never receive the compensation to which you are entitled. *You may be letting a drunk driver off the hook!*

Proposition 106 is discriminatory and unfair. It stacks the deck in favor of insurance companies AT YOUR EXPENSE by allowing them to hire whatever legal talent they want at whatever fee they want to pay while innocent victims would lose such rights.

If you think the fight against insurance companies is unfair today, just consider what will happen if Proposition 106 passes.

The free-choice system is essential for parents, victims and consumers. Don't put your loved ones and yourself in *needless jeopardy!* Vote *NO* on *PROPOSITION 106.*

JUDITH ROWLAND
Executive Director, California Center on Victimology

TOM BRADLEY
Mayor of Los Angeles