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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In re Petition for Rulemaking To Amend)
)
TITLE 10, SECTION 2632.8 OF THE) File No. _____
CALIFORNIA CODE OF REGULATIONS.)
_____)

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1 Petitioners CONSUMERS UNION OF U.S.; NATIONAL COUNCIL OF LA
2 RAZA; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE OF GREATER LOS
3 ANGELES; SPANISH SPEAKING CITIZENS' FOUNDATION; FOUNDATION FOR
4 TAXPAYER AND CONSUMER RIGHTS; CITY OF LOS ANGELES; CITY OF OAKLAND;
5 and CITY AND COUNTY OF SAN FRANCISCO,
6

7 HEREBY PETITION Insurance Commissioner John Garamendi to conduct
8 rulemaking proceedings pursuant to Government Code Section 11340.6 to amend certain
9 regulations that implement the automobile rating factor provisions of Insurance Code Section
10 1861.02(a). Section 1861.02(a) requires that automobile insurance premiums shall be based
11 primarily upon drivers' safety record, miles driven, and years of driving experience, not where
12 one lives or one's ZIP code. Yet today, insurers continue to force the same driver with the same
13 driving safety record to pay thousands of dollars more for the same coverage merely because she
14 or he lives in a low-income or minority ZIP code. Insurers' practice of ZIP code rating
15 perpetuates redlining and discrimination against California's low-income and minority
16 communities, to the enduring detriment of all Californians. This rulemaking petition proposes a
17 simple amendment to Section 2632.8 of title 10 of the California Code of Regulations, so that
18 insurers may no longer base premiums primarily upon where one lives, and instead must base
19 premiums primarily upon how one drives, consistent with Section 1861.02(a). Petitioners'
20 proposed changes would affect only a few words of the current regulations.
21

22 **I. INTRODUCTION AND SUMMARY**

23
24 1. Insurance Commissioner Garamendi has stated that “[o]ur cities will rot and decay if
25 insurance is not available to people who live there.”¹ California's low-income and minority
26 communities traditionally have been victims of insurance redlining and other discriminatory
27 practices, with dire consequences for economic development in those communities and for
28 California's economic and social well-being as a whole. This is not a newly discovered
29 phenomenon. In 1968, the President's National Advisory Panel on Insurance concluded that
30 insurance redlining was “a long-term, pervasive problem of center city areas,” and the primary
31 cause of economic deterioration in those areas.² Again, in 1994, the National Association of
32

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¹ Robert Rosenblatt, 2 Insurance Firms Accused of “Redlining”, L.A. Times, Apr. 2, 1993, at D1.

² President's National Advisory Panel on Insurance in Riot-Affected Areas, Meeting the

1 Insurance Commissioners found that “the primary problem in urban insurance markets is the
2 inadequate availability of insurance products”.³ Less than two years ago, an investigative report
3 in the *Wall Street Journal* revealed internal memoranda exposing insurers' use of “area
4 underwriting”—ZIP code rating—as a proxy for racial classification to screen out minority
5 customers or charge them higher premiums for inferior benefits.⁴

6
7 2. In 1988, California's voters passed Proposition 103, which added Section 1861.02 to
8 the *California Insurance Code*. Section 1861.02(a) transformed the determination of automobile
9 insurance rates and premiums into one based primarily upon three mandatory rating factors—
10 driving safety record, miles driven, and years of driving experience—not the racial character or
11 income levels of segregated neighborhoods.⁵ According to that section, the Insurance
12 Commissioner may approve other, optional rating factors by regulation; and among the optional
13 factors that have been adopted are one's ZIP code, gender, and marital status. However, any
14 optional factor authorized by the regulations must have less importance than each statutorily
15 mandated factor in determining automobile insurance rates and premiums.

16
17 3. In 1996, Commissioner Quackenbush adopted automobile rating factor regulations
18 that undermined the voters' clear directive in Proposition 103. While his regulations did set forth
19 the weight and importance to be given each of the three mandatory rating factors, they did not set
20 forth and limit the respective weight of each optional factor in determining automobile premiums.
21 Instead, he directed each insurer to disclose one *average* weight to account for all the individual
22 weights of the insurers' optional rating factors collectively. Cal. Code Regs. tit. 10, § 2632.8(a)
23 [hereinafter Regulation § 2632.8]. This one weight was the average of the optional factors'
24 various individual weights. As with any average, the individual weights of the optional rating

25 Insurance Crisis of Our Cities at 1 (Jan. 1968) [hereinafter Insurance Crisis].

26
27 ³ National Association of Insurance Commissioners, Insurance Availability and Affordability
28 Task Force, Urban Insurance Problems and Solutions: Interim Report at 1 (Dec. 6, 1994)
29 [hereinafter Urban Insurance Problems].

30 ⁴ Old Memos Lay Bare MetLife's Use of Race to Screen Customers: It Used Background
31 Checks and Local Maps to Limit Firm's “Colored Business”, Wall St. J., July 24, 2001, at A1
[hereinafter Local Maps to Limit Firm's “Colored Business”].

32 ⁵ A “rating factor” is “any factor, including discounts, used by an insurer which establishes or
33 affects the rates, premiums, or charges assessed for a policy of automobile insurance.” Cal. Code
Regs. tit. 10, § 2632.2(a).

1 factors can and do range from far below average to far above average—some of them *exceeding*
2 the weights of driving safety record, annual mileage, and years of driving experience. In this
3 manner, the current regulations allow the driver's ZIP code or territorial factor(s) to have the
4 greatest weight of all the mandatory and optional factors. Thus, as Figure 1 demonstrates on the
5 following page,⁶ insurers continue to use rating practices that give the greatest weight to one's
6 ZIP code and where one lives—factors that can and do serve as a proxy for race—
7 notwithstanding Proposition 103's mandate that auto insurers base premiums primarily on how
8 one drives, not where one lives.

9
10 4. These practices result in rates that are excessive in, and unfairly discriminate
11 against, low-income and minority communities. The same driver—with the identical car, driving
12 safety record, years of driving experience, annual mileage, and level of liability coverage—may
13 see his or her premiums increase as much as \$6,000, or 360 percent, merely by moving into a ZIP
14 code where higher percentages of people of color and/or low-income persons live. Even “Good
15 Drivers” with unblemished safety records can still find their rates increased by more than 200
16 percent simply by moving to a lower-income community. See Section IV.D. (¶¶ 42-43) below.

17
18 5. This pervasive and ill-camouflaged discrimination affects millions of Californian
19 drivers, and it is allowed to continue only because it is permitted by the current regulations
20 inherited from former Commissioner Quackenbush. Indeed, the Quackenbush regulations have
21 stood in direct conflict with then-Commissioner Garamendi's own exhaustive, impartial, and
22 comprehensive analysis in 1994, entitled Impact Analysis of Weighing Auto Rating Factors to

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28 ⁶ Figure 1 illustrates Regulation § 2632.8 in operation, using California's largest auto insurer,
29 State Farm, as an example. The figures were established in the Department's hearing on State
30 Farm's, Farmers', and Allstate's class plans in 1997-1998. State Farm used ten optional rating
31 factors. The *average* weight of these ten optional factors was 9.82. But the *actual* weight of its
32 optional frequency and severity ZIP code factor was 34.60--far greater than the weights of the
33 three statutory factors, *i.e.* safety record (20.65), annual mileage (13.64), and years of driving
experience (10.51). Likewise, gender and marital status had far greater weight (25.10) in
determining premium than the three mandatory factors. Even persistency, or years insured with
State Farm, had more weight (15.51) than years of driving experience and annual mileage in
determining premiums.

DEMONSTRATION OF CURRENT SECTION 2632.8 IN OPERATION:

Rating factors used by State Farm Mutual Automobile Insurance Company's Current Class Plan for Bodily Injury and Property Damage Liability

Auto Rating Factors

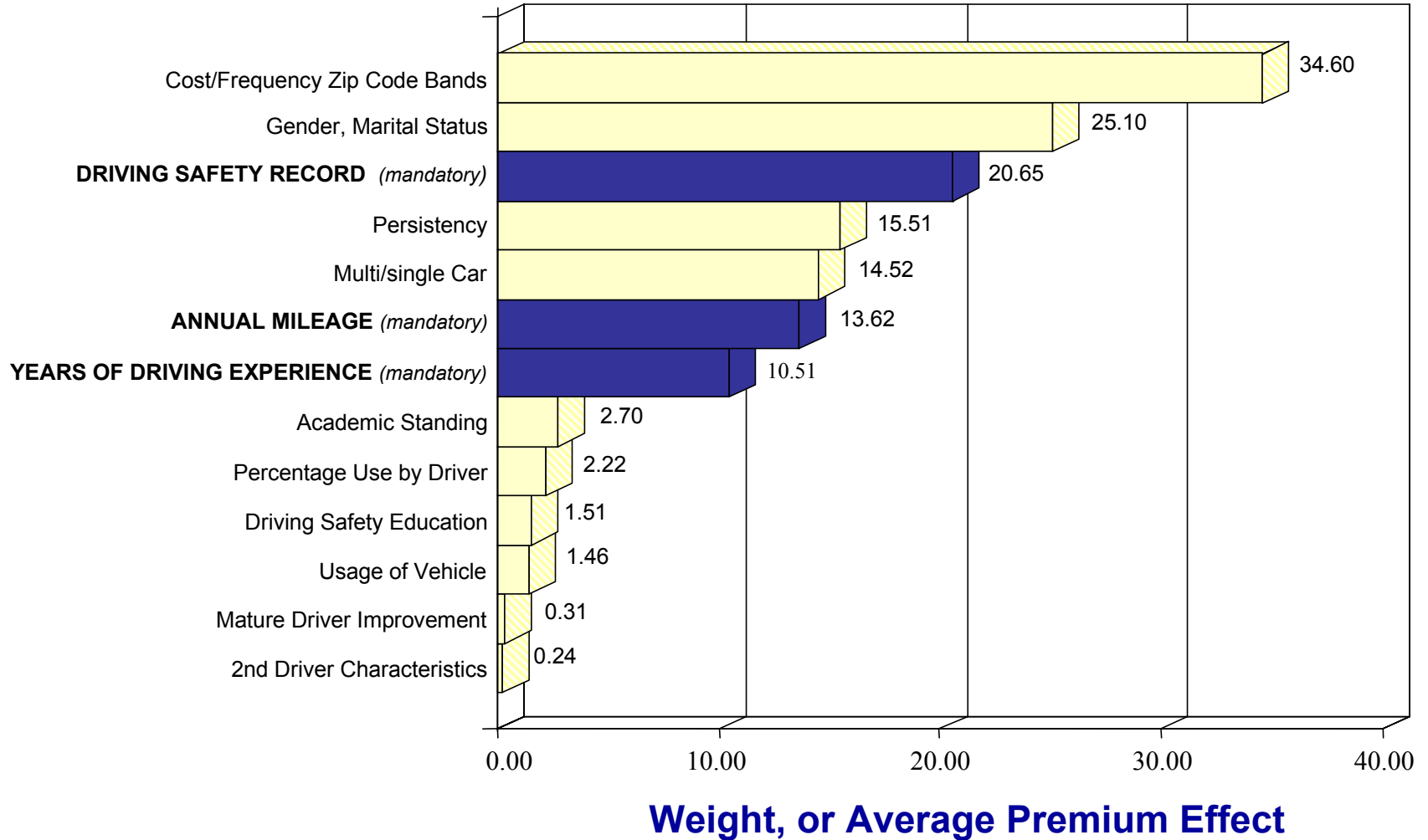


Figure 1

1 Comply with Proposition 103.⁷ Commissioner Garamendi's analysis and conclusions in that
2 study support precisely the relief Petitioners seek herein. See Section IV.E. (¶¶ 47-52) below.
3 There is now an opportunity for the current Commissioner to exercise his authority and
4 reasonable discretion in order to implement Section 1861.02 as California's voters intended, by
5 requiring insurers to base rates primarily on how one drives, not where one lives. Indeed, to
6 allow to continue unabated the practice of weighing drivers' residential ZIP code more heavily
7 than any other rating factor is to condone a harmful form of racial and economic discrimination.⁸

8
9 6. Therefore, in order to properly and effectively implement the mandates of Section
10 1861.02, Consumers Union, the National Council of La Raza, the Southern Christian Leadership
11 Conference of Greater Los Angeles, Spanish Speaking Citizens' Foundation, the Foundation for
12 Taxpayer and Consumer Rights, the City of Los Angeles, the City of Oakland, and the City and
13 County of San Francisco hereby respectfully petition Insurance Commissioner John Garamendi,
14 pursuant to Cal. Gov't Code § 11340.6, to grant this petition and adopt one of the attached
15 proposed regulatory amendments to Regulation § 2632.8.

16 17 **II. PETITIONERS**

18
19 7. Petitioner CONSUMERS UNION OF U.S., INC. is a nonprofit membership
20 organization chartered in 1936 under the laws of the State of New York to provide consumers
21 with information, education and counsel about goods, services, health, and personal finance; and
22 to initiate and cooperate with individual and group efforts to maintain and enhance the quality of
23 life for consumers. Consumers Union's income is derived from the sale of *Consumer Reports*, its
24 other publications and from nonrestrictive, noncommercial contributions, grants and fees. In
25 addition to reports on Consumers Union's own product testing, *Consumer Reports* with
26 approximately 4.6 million paid circulation, regularly carries articles on health, product safety,
27 marketplace economics and legislative, judicial and regulatory actions which affect consumer
28

29 ⁷ California Dep't of Insurance, Impact Analysis of Weighing Auto Rating Factors to Comply
30 With Proposition 103 (Dec. 1994) [hereinafter Impact Analysis].

31 ⁸ The Court of Appeal in Spanish Speaking Citizens' Foundation, Inc. v. Low, 85 Cal. App.
32 4th 1179, 1186 (1st Dist., Dec. 29, 2000), found that the Commissioner had the discretionary
33 authority, if not the mandatory duty, to implement the study's conclusion that using the Single
Omit method to calculate individual weights for each optional factor, and aligning those
individual weights below the weights of each mandatory factor, comply with Section 1861.02(a).
See Section IV.C. (¶ 32) and Section IV.E. (¶¶ 47-52) below.

1 welfare. Consumers Union's publications carry no advertising and receive no commercial
2 support. The West Coast Regional Office of Consumers Union, located in San Francisco,
3 California, has advocated in the courts, before state agencies, and in the legislature for more than
4 thirteen years on behalf of the interests of California insurance consumers. The office has done
5 work to address issues such as automobile insurance rating factors, uninsured motorists, and
6 insurance redlining. The deleterious and discriminatory effects of Regulation § 2632.8 set forth
7 herein have substantial impact upon the Consumers Union's constituents and purposes.

8
9 8. Petitioner NATIONAL COUNCIL OF LA RAZA is a non-profit corporation,
10 exempt from taxation under Section 501(c)(3) of the *Internal Revenue Code*. NCLR has a
11 constituency of 300 community-based, formally-affiliated organizations serving over 4 million
12 Latinos in 37 states, Puerto Rico, and the District of Columbia. In California, NCLR has nearly
13 seventy affiliates and has California branch offices in Los Angeles and Sacramento. NCLR's
14 purposes include improving opportunities for Hispanics; developing and assisting Hispanic
15 community-based organizations; and researching areas of critical concern in which organization
16 and programs are needed and recommending the nature of such responses. Economic issues,
17 including insurance redlining and ZIP-Code rating, are among NCLR's top priority areas, and the
18 National Council of La Raza has actively worked on those issues in California. The deleterious
19 and discriminatory effects of Regulation § 2632.8 set forth herein have substantial impact upon
20 the National Council of La Raza's constituents and purposes.

21
22 9. Petitioner SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE OF
23 GREATER LOS ANGELES, INC., is a nonprofit corporation of 21,000 members, incorporated in
24 the State of California in 1983 and exempt from taxation under Section 501(c)(3) of the *Internal*
25 *Revenue Code*. Since 1964 it has organized against racism, economic exploitation and social
26 inequality, drawing upon the principles of Dr. Martin Luther King, Jr. SCLC implements his
27 vision in Los Angeles by advocating for social change, delivering social services, and intervening
28 in areas of equal rights, housing, health care, economic issues, crime, education, political
29 empowerment, and other human rights issues. On its own behalf and on behalf of its members,
30 Petitioner Southern Christian Leadership Conference has long worked on issues of insurance,
31 including automobile insurance and territorial rating, and has a task force on insurance redlining.
32 The deleterious and discriminatory effects of Regulation § 2632.8 set forth herein have
33 substantial impact upon the Southern Christian Leadership Conference's constituents and
purposes.

1
2 10. Petitioner EAST BAY SPANISH SPEAKING CITIZENS' FOUNDATION, INC. is
3 a nonprofit corporation, incorporated in the State of California in 1965 and exempt from taxation
4 under Section 501(c)(3) of the *Internal Revenue Code*. The purposes of the Spanish Speaking
5 Citizens' Foundation, set forth in its articles of incorporation, include raising the economic,
6 welfare, educational, and social level of Spanish-speaking individuals and communities in the
7 East Bay Area; and eliminating discrimination, economic and otherwise, against them. The
8 organization addresses the myriad needs of over 5,000 Spanish-speaking citizens, and among
9 these needs, the Spanish Speaking Citizens' Foundation seeks to eliminate barriers in the
10 insurance industry that deny Spanish-speaking citizens the full and equal access to insurance that
11 they deserve. Such discriminatory obstacles include insurance redlining, the failure to provide
12 bilingual services, excessive premiums, arbitrary rating practices, and unfair insurance business
13 practices. The deleterious and discriminatory effects of Regulation § 2632.8 set forth herein have
14 substantial impact upon the Spanish Speaking Citizens' Foundation's constituents and purposes.
15

16 11. Petitioner THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS
17 (“FTCR”) is a nationally-recognized, California-based, nonprofit education and advocacy group
18 organized under Section 501(c)(3) of the *Internal Revenue Code*. Founded in 1985, FTCR
19 employs teams of public-interest lawyers, policy experts, strategists, public educators, and
20 grassroots activists to advance and protect the interests of consumers and taxpayers. Founded in
21 1985, FTCR's consumer protection and advocacy work embraces a wide variety of issues
22 affecting the daily lives and pocketbooks of millions of Americans. FTCR has been particularly
23 dedicated to the promotion of insurance reform and the protection of the interests of all insurance
24 consumers in matters before the Legislature, the courts, and the CDI. FTCR is particularly
25 focused on the enforcement and implementation of Proposition 103, and acts to defend and
26 enforce the provisions of the initiative and other consumer protection measures enacted for the
27 benefit of consumers and policyholders. FTCR's President, Harvey Rosenfield, wrote Proposition
28 103 and led the successful campaign to have it enacted in 1988. The staff of FTCR and the
29 outside persons with whom it consults include some of the nation's foremost consumer advocates
30 and experts on insurance ratemaking matters. FTCR has both proposed rulemaking proceedings
31 and intervened in rulemaking matters before the CDI to implement and enforce Proposition 103.
32 Among FTCR's supporters are insurance policyholders as well as members of the public
33 throughout the state of California. These supporters and FTCR's core purposes are directly
harmed by the discriminatory effects of basing automobile insurance rates primarily on zip code

1 as currently allowed by Regulation § 2632.8.

2
3 12. Petitioner CITY OF LOS ANGELES is a charter city established pursuant to the
4 provisions of the California Constitution, article XI, section 3. It was incorporated as a city in
5 California on April 4, 1850. The population of Los Angeles, as of 2000, was 3,694,820 and the
6 city includes an area of 469.3 square miles. As of a Freeholder's Charter, dated July 1, 1925, the
7 form of Government of the City of Los Angeles includes a Mayor, a City Council, and a
8 Commission. The City Council, comprised of fifteen City Council Members, is the governing
9 body of the City, except as otherwise provided in the charter, and enacts ordinances subject to the
10 approval or veto of the mayor. The City of Los Angeles has a long history of particular concern
11 for protecting and promoting the public welfare in the area of automobile insurance practices,
12 including insurance redlining, arbitrary rating practices, and territorial rating. According to the
13 California Department of Insurance, the City of Los Angeles had 1,154,474 registered vehicles in
14 1997. The deleterious and discriminatory effects of Regulation § 2632.8 set forth herein have
15 substantial impact upon the City of Los Angeles and its residents and drivers.

16
17 13. Petitioner CITY OF OAKLAND is a charter city established pursuant to the
18 provisions of the California Constitution, article XI, section 3. The City of Oakland has a long
19 history of particular concern for protecting and promoting the public welfare in the area of
20 automobile insurance practices, including insurance redlining, arbitrary rating practices, and
21 territorial rating. The population of Oakland in 2000 was 399,484. According to the California
22 Department of Insurance, the City of Oakland had 174,568 registered vehicles in 1997. The
23 deleterious and discriminatory effects of Regulation § 2632.8 set forth herein have substantial
24 impact upon the City of Oakland and its residents and drivers.

25
26 14. Petitioner CITY AND COUNTY OF SAN FRANCISCO is a charter city and county
27 established pursuant to the provisions of the California Constitution, article XI, section 6. The
28 City and County of San Francisco, with a population of 776,733 in 2000, has a long history of
29 particular concern for protecting and promoting the public welfare in the area of automobile
30 insurance practices, including insurance redlining, arbitrary rating practices, and territorial rating.
31 According to the California Department of Insurance, the City and County of San Francisco had
32 372,319 registered vehicles in 1997. The deleterious and discriminatory effects of Regulation §
33 2632.8 set forth herein have substantial impact upon the City and County of San Francisco and its
residents and drivers.

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III. JURISDICTION AND LEGAL DUTY

15. Cal. Gov't Code § 11340.6 provides that “[a]ny interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation.” Upon receipt of such a petition, the state agency is required to “notify the petitioner in writing of the receipt and then shall within 30 days deny the petition . . . or schedule the matter for public hearing”.⁹ If the petition is denied, the notice must indicate “why the agency has reached its decision on the merits of the petition in writing”.¹⁰ In addition, Cal. Ins. Code § 1861.10(a) provides that “[a]ny person may initiate . . . any proceeding permitted or established pursuant to this chapter [9], . . . and enforce any provision of this article [10].” The requirements of Cal. Ins. Code § 1861.02 fall within Chapter 9, and enforcement of Cal. Ins. Code § 1861.02 falls within Article 10.

16. Cal. Ins. Code § 1861.02(e), enacted on November 8, 1988, by passage of Proposition 103, specifies that “[t]he commissioner shall adopt regulations implementing this section and insurers may submit applications pursuant to this article, which comply with those regulations”. Additionally, the Insurance Commissioner has inherent power to adopt generic rules and to engage in investigations, issue bulletins or policies, and otherwise implement the laws within his jurisdiction.¹¹ The Insurance Commissioner's “powers are not limited to those expressly conferred by statute; rather, it is well settled in this state that administrative officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as may fairly be implied from the statute granting the powers.”¹² The Commissioner has the statutory and ethical duty under Cal. Ins. Code § 12926 to require compliance with the provisions of the Insurance Code, including Section 1861.02.

IV. STATEMENT OF FACTS

⁹ Cal. Gov't Code § 11340.7(a).

¹⁰ *Ibid.*

¹¹ *See* Cal. Ins. Code §§ 12921 *et seq.*

¹² *20th Century Ins. Co. v. Garamendi*, 8 Cal.4th 216, 245 (1994) (quoting with approval *Calfarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989)) (internal quotation marks, brackets, and italics omitted).

1 **A. TERRITORIAL RATING IN AUTOMOBILE INSURANCE: AN HISTORICAL**
2 **PERSPECTIVE**

3 17. Before the voters enacted Proposition 103 in 1988, automobile insurance companies
4 were free to set rates by whatever method they chose, often rating drivers and setting premiums
5 based upon factors that were completely unrelated to how safely the insured drove—such as the
6 applicant's or insured's record of having or not having prior insurance, the ZIP code where the car
7 was garaged, or personal characteristics beyond the control of the applicant or insured such as his
8 or her age, gender, marital status, and occupation.¹³ Furthermore, insurers would apply such
9 optional factors arbitrarily.¹⁴ As a result, good drivers were unfairly overcharged due to factors
10 that they could not control and many drivers were unable to afford or obtain coverage.
11

12 18. Insurance companies' historical documents illustrate how insurers use territorial
13 rating to discriminate in this manner. An investigative report that recently appeared in the *Wall*
14 *Street Journal* is instructive. The article was entitled “Old Memos Lay Bare MetLife's Use of
15 Race To Screen Customers: It Used Background Checks and Local Maps to Limit Firm's
16 ‘Colored Business’”. In it, the *Journal* revealed how a major insurance company used “area
17 underwriting”—essentially the same as ZIP code rating—as a proxy for using race to screen out
18 minority customers or charge them higher premiums for inferior benefits. Originally, the
19 company had collected data on applicants' or policyholders' race and had used explicitly
20 discriminatory underwriting standards against minorities. When new laws were enacted that
21 prohibited insurers from continuing to use race as an underwriting characteristic, MetLife “simply
22 identified another way to screen out the minority customers it considered bad risks: ‘area
23 underwriting’. MetLife had begun planning for area underwriting after its chief actuary sounded
24

25 ¹³ National Insurance Consumer Organization, A Consumer Triumph: Proposition 103
26 Revisited 5-6, 31-33 (1992) [hereinafter NICO]; Donna Walters, Garamendi Urged To Fight Bias
27 On Marital Status, L.A. Times, July 28, 1993; Edmund Sanders, Insurers Face New Anti-
redlining Rules, Daily News, Apr. 23, 1994; Robert Rosenblatt, supra note 1.

28 ¹⁴ See Impact Analysis, supra note 7, at 15-19, 54 (“[V]ariations in current rating factors and
29 practices appear to be arbitrary.”). In arriving at this conclusion, the study listed the wide variety
30 of methods insurers historically used to rate drivers within various rating factors. The study noted
31 that even when insurers used exactly the same categories within those rating factors, the relativity
32 they attributed to each category varied greatly. Although some variation in relativity between
33 insurers might be expected due to differences in loss experience or marketing practices (see id. at
19), the extent of variation found in Impact Analysis is not likely to be explained solely by these
variations. The study further showed that insurers often attributed proposed relativities to a
category within a factor which were much greater than their actual loss costs (an examination of
their historical data) would have indicated they should use to rate that category. Id. at 19.

1 an alarm about the changing racial composition of cities.” It was a practice designed to curtail
2 business in inner-city and poorer neighborhoods around the country, according to company
3 memos. The company claimed that racial discrimination had been phased out years ago. On the
4 contrary, the documents about area underwriting revealed that race-based practices “remained in
5 effect years longer, and applied to a much wider range of policies [than had been disclosed
6 previously].”¹⁵

7
8 19. The *Wall Street Journal's* findings help to explain why, during the 1980s,
9 California's diverse population became increasingly aggrieved by the common insurer practice of
10 determining automobile insurance premiums primarily by reference to the ZIP code of the driver,
11 otherwise known as territorial rating. In 1968, the President's National Advisory Panel on
12 Insurance concluded that insurance redlining was “a long-term, pervasive problem of center city
13 areas,” and the primary cause of economic deterioration in those areas.¹⁶ “Area underwriting”, or
14 territorial rating, was and is one of several persistent insurance industry practices that have denied
15 racial equality and violated basic principles of fairness in the marketplace.¹⁷ MetLife relied on
16 detailed maps and reference directories with street addresses to conduct “area underwriting”.
17 Today, insurers rely on ZIP codes.¹⁸ The unfairness of territorial rating was obvious: The same

18
19 ¹⁵ Local Maps to Limit Firm's “Colored Business”, *supra* note 4.

20 ¹⁶ President's National Advisory Panel on Insurance in Riot-Affected Areas, Meeting the
21 Insurance Crisis of Our Cities at 1 (Jan. 1968).

22 ¹⁷ See Gary Williams, “The Wrong Side of the Tracks”: Territorial Rating and the Setting of
23 Automobile Liability Insurance Rates in California, 19 *Hastings Const. L.Q.* 845 (1992); Erik
24 Ingram, Territorial Rating Plan Draws Fire, *S.F. Chronicle*, June 23, 1989, at A1; Thomas
25 Mulligan, Garamendi, Auto Insurers Clash on Study, *L.A. Times*, Dec. 4, 1992; Thomas
26 Mulligan, L.A. Again Leads Auto Insurance Rate Survey, *L.A. Times* Feb. 2, 1993; Danny
27 Sullivan, ZIP-codes Still Big Factor in Auto Insurance Premiums, *L.A. Times*, Dec. 14, 1992;
Kenneth Reich, Territorial Rating Attacked; Reforms Could Put State into Insurance Business,
L.A. Times, Nov. 24, 1986, at A1; Rosenblatt, *supra* note 1.

28 ¹⁸ California's courts have long observed the discriminatory practices and effects of insurance
29 redlining in California. E.g., California State Auto. Ass'n Inter-Ins. Bureau v. Downey, 96 Cal.
30 App. 2d 876, 881-82 (1st Dist. 1950) (“Other large groups of drivers who apparently had
31 difficulty in securing or were unable to secure insurance were violators of traffic laws, *members*
32 *of minority groups, particularly the colored drivers*, persons with minor physical disabilities, the
33 young and the old drivers, and, of course, those who had bad accident records.”) (emphasis
added), *aff'd*, California State Auto. Ass'n Inter-Ins. Bureau v. Maloney, 341 U.S. 105 (1951);
County of Los Angeles v. Farmers Ins. Exch., 132 Cal. App. 3d 77, 85 (2d Dist. 1982) (quoting
findings by the Insurance Commissioner in 1979 that inequities may exist); see King v. Meese, 43
Cal. 3d 1217, 1225 (1987) (“Most ‘mainstream’ insurers were allegedly refusing to write policies
in that area [South Central Los Angeles], or would only insure those who already had

1 driver, with same safety record, annual mileage, and years of driving experience, faced drastically
2 different rates depending upon where that driver lived, not how well he or she drove. See, for
3 example, Section IV.D. (¶¶ 34-46) below.¹⁹ Because of persistent segregation in the housing
4 market, this practice further exacerbates the lack of access to insurance in communities that are
5 primarily made up of racial and ethnic minorities and the poor.

6
7 20. This discrimination was exacerbated in 1985, when California implemented a
8 devastating new law requiring all drivers to establish and carry evidence of “financial
9 responsibility.”²⁰ As the California Supreme Court acknowledged, this financial responsibility
10 statute “effectively requir[ed] drivers to carry insurance”.²¹ Drivers who failed to show evidence
11 of financial responsibility faced revocation of their driving license.²² This legal requirement,
12 coupled with the industry's volatile and often-arbitrary rates, led to a crisis situation in which
13 automobile insurance was unaffordable and unavailable to many Californians who needed it.²³
14 Residents of South Central Los Angeles who possessed excellent driver safety records but were
15 unable to obtain or could not afford the necessary automobile insurance sued the State of
16 California. In deciding their case, King v. Meese,²⁴ the California Supreme Court recognized that

17 insurance.”); id. at 1240 (Broussard, J., concurring) (insurance agents and others testified to “the
18 reluctance of insurance companies to insure persons who were previously uninsured, a problem of
19 particular concern since the purpose of the 1984 legislation was to compel such persons to obtain
20 insurance.”).

21 The complaints were legion that insurers often forced good drivers in many ZIP codes to
22 pay more because of their ZIP code than drivers in other ZIP codes in the state with a history of
23 accidents and violations. King v. Meese, 43 Cal. 3d at 1237-38 (Broussard, J., concurring)
24 (“Often a resident of [some] areas with a perfect driving record could obtain private coverage, if
25 at all, only by paying more than a resident of some other areas with a history of accidents and
26 violations.”); id. at 1241-42 (“Rates which took affordability into account, and weighted driving
27 record more than residence, would go far to alleviate the problem caused by the financial
28 responsibility laws.”).

29
30 ¹⁹ For further discussion about how such differences were neither incremental nor minimal,
31 see Williams, supra note 17, at 846-59.

32 ²⁰ See Cal. Veh. Code § 16020.

33 ²¹ King v. Meese, 43 Cal. 3d at 1221, 1231; id. at 1237 (Broussard, J., concurring).

²² Cal. Veh. Code §§ 16028, 16029.

²³ See, e.g., King v. Meese, 43 Cal. 3d at 1224; id. at 1237-40 (Broussard, J., concurring); see
also Williams, supra note 17, at 846-61; NICO, supra note 13, at 5.

²⁴ 43 Cal. 3d 1217 (1987). In this 1985 case, residents of South Central Los Angeles who
possessed excellent driver safety records sued the state because they were either unable to

1 the lack of safeguards in place to ensure that insurance was available at fair and equitable rates to
2 all Californians had led to a feeling of “helplessness amongst those unable to afford or obtain
3 private insurance.”²⁵ As Justice Broussard, joined by Justice Mosk, observed:

4 The Commissioner's assumption that an actuarially sound rate is necessarily a fair
5 and reasonable rate is open to challenge. . . . Rates which took affordability into
6 account, *and weighted driving record more than residence*, would go far to alleviate
7 the problem caused by the financial responsibility laws.²⁶

8 21. By using residential area as the main classification in setting auto insurance
9 premiums, insurers penalized good drivers who lived in under-served neighborhoods.²⁷ Thus,
10 although the unfairness of territorial rating affects all Californians, in practice, it has a
11 disproportionate impact upon the poor—those already least likely to be able to afford automobile
12 insurance—and exacerbates the widespread problem of uninsured and underinsured motorists.²⁸

13 **B. PROPOSITION 103 AND THE INSURANCE CODE**

14 22. On October 26, 1987, the California Supreme Court declared in King v. Meese that
15 the mandatory insurance requirement under the new financial responsibility law met minimum
16 procedural due process standards, and the aggrieved individuals such as the plaintiffs should seek
17 relief from the legislature, not the courts.²⁹ On November 8, 1988, the People, acting in their

18 purchase the necessary automobile insurance at all or were unable to purchase a policy with
19 premiums lower than the high-priced insurance provided by a state program for bad drivers who
20 are otherwise unable to obtain other private insurance (the California Automobile Assigned Risk
21 Plan or “CAARP”). None of the plaintiffs had been involved in an accident or had a traffic
22 violation within the last three years or since they had started driving. Id. at 1224-25. Many of the
23 plaintiffs simply could not afford to purchase automobile insurance at the prices charged in their
24 neighborhoods even if it were available to them. Ibid.

25 ²⁵ 43 Cal. 3d at 1235.

26 ²⁶ Id. at 1241-42 (Broussard, J., concurring) (emphasis added; footnote omitted).

27 ²⁷ See, e.g., King v. Meese, 43 Cal. 3d at 1237-38 (Broussard, J., concurring) (“Often a
28 resident of [some] areas with a perfect driving record could obtain private coverage, if at all, only
29 by paying more than a resident of some other areas with a history of accidents and violations.”);
30 Williams, supra note 17, at 848 n.14, 847-59 (comparisons for drivers with no citations and no
31 accidents).

32 ²⁸ E.g., id. at 848-49, 860, 861, 893; Insurance Crisis, supra note 2; Insurance Availability
33 Problems, supra note 3; Local Maps to Limit Firm's “Colored Business”, supra note 4.

²⁹ King v. Meese, 43 Cal. 3d at 1220, 1235.

1 sovereign capacity as a legislative body pursuant to their constitutional powers of initiative,
2 enacted Proposition 103 in order to redress the fundamental unfairness of the way in which
3 insurers were determining their automobile insurance rates.³⁰ Section 1861.02(a) transformed the
4 determination of automobile insurance rates and premiums into one based primarily upon three
5 mandatory rating factors—driving safety record, miles driven, and years of driving experience—
6 not the racial character or income levels of segregated neighborhoods.³¹

7
8 23. This requirement was made explicit in Section 1861.02 of the California Insurance
9 Code, which states:

10 (a) Rates and premiums for an automobile insurance policy . . . shall be
11 determined by application of the following factors in decreasing order of
12 importance:

13 (1) The insured's driving safety record.

14 (2) The number of miles he or she drives annually.

15 (3) The number of years of driving experience the insured has had.

16 (4) Such other factors as the commissioner may adopt by regulation that have a
17 substantial relationship to the risk of loss. The regulations shall set forth the
18 respective weight to be given each factor in determining automobile rates and
19 premiums. Notwithstanding any other provision of law, the use of any criterion
20 without such approval shall constitute unfair discrimination.

21 Under Proposition 103, insurers must have an approved class plan on file with the Department of
22 Insurance.³² The class plan is the insurer's "schedule of rating factors and discounts, and their
23 order and manner of analysis . . . in the development of rates and premiums charged for a policy
24 of automobile insurance".³³ Proposition 103 specified that three principal, mandatory factors
25 shall determine one's auto insurance premium: the insured's driving safety record, annual mileage
26 driven, and years of driving experience, in that decreasing order of importance. The Insurance
27 Commissioner may approve other, optional rating factors by regulation; and among the optional
28 factors which former Commissioner Quackenbush adopted were one's ZIP code, gender, and
29 marital status. However, any optional factor authorized by the regulations must have less
30 importance than each statutorily mandated factor in determining automobile insurance rates and
31 premiums.

32
33

³⁰ Proposition 103 enacted Sections 1861.01-1861.14 of the *California Insurance Code*.

³¹ See Cal. Ins. Code § 1861.02(a); Ballot Pamp., Gen. Elec. (Nov. 8, 1988) text of Prop. 103,
§ 1, p. 99.

³² Cal. Code Regs. tit. 10, § 2632.10(a).

³³ Id. § 2632.3(a).

1
2 24. Furthermore, Section 1861.05(a) mandates that “[n]o rate shall be approved or
3 remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation
4 of [Division 1, Part 2, Chapter 9 of the *California Insurance Code*].” Thus, in order to comply
5 with Section 1861.05, rates for automobile insurance must also be calculated in accordance with
6 the requirements of Section 1861.02. Premiums that are excessive; premiums that are unfairly
7 discriminatory on the basis of factors tied, *inter alia*, to drivers' race, socioeconomic status, or
8 ethnicity; and premiums that violate the requirements of Section 1861.02(a), violate Section
9 1861.05(a) as well. Both Section 1861.02 and Section 1861.05 set forth precisely the relief
10 Petitioners seek: the amendment of regulations to require automobile insurance rates and
11 premiums to be based primarily on how one drives, not where one lives.
12

13 **C. FORMER COMMISSIONER QUACKENBUSH'S REGULATIONS**
14

15 25. In 1996, former Commissioner Chuck Quackenbush promulgated regulations to
16 implement Cal. Ins. Code § 1861.02(a), Sections 2632.1-2632.11 of title 10 of the *California*
17 *Code of Regulations*. Only a few words of Regulation § 2632.8 would be affected by granting the
18 relief Petitioners request herein, but several regulatory sections set the context for Regulation §
19 2632.8 and therefore are of particular relevance to Petitioners' proposed amendments.
20

21 26. The first of these sections is Regulation § 2632.4, which provides that “[n]o insurer
22 shall use a rating factor which is not set forth in these regulations and no insurer shall adopt any
23 rating factor based in whole or in part upon the race, language, color, religion, national origin,
24 ancestry, age, political affiliation, or sexual orientation of any person.”³⁴ This section also
25 specifies that “[n]o insurer shall use a rating factor . . . in a manner that does not bear a substantial
26 relationship to loss.”³⁵
27

28 27. Next, Regulation § 2632.5 specifies the three mandatory rating factors under Cal.
29 Ins. Code § 1861.02(a): driving safety record, miles driven annually, and years of driving
30 experience. In addition to these mandatory rating factors, the Commissioner approved sixteen
31 optional rating factors, two of which (claim frequency and claim severity) are territorial factors
32

33 ³⁴ Id. § 2632.4(a).

³⁵ Id. § 2632.4(b).

1 that capture and reflect the ZIP code where the vehicle is garaged.³⁶ Insurers may use one or
2 more optional factors, but are not required to use any of them.³⁷ No insurer may use a rating
3 factor other than those listed in the regulations.³⁸ While former Commissioner Quackenbush's
4 regulations prohibit the use of race in setting insurance rates and premiums,³⁹ they allow insurers
5 to circumvent this restriction by using territorial rating factors (ZIP codes) reflecting
6 discriminatory patterns, just as the *Wall Street Journal's* article documented in 2001.

7
8 28. Regulation § 2632.7 requires insurers to undertake a “sequential analysis” of all
9 rating factors prior to measuring their weight or importance in determining premiums. Sequential
10 analysis is “a method of determining the rates (i.e., the amount of discount or surcharge) to
11 associate with the *categories* of a rating factor” (italics added).⁴⁰ It does not measure the weight
12 of each factor.⁴¹ Rather, sequential analysis determines the initial relativities assigned to each
13 category of a rating factor—such as “good” driver and “bad” driver, or ZIP code 90036 (South
14 Central Los Angeles) and ZIP code 93546 (Mammoth Lakes, Mono County). It also removes the
15 variation in loss costs already explained by prior factors in the sequence of analysis.

16
17 29. These sections provide the key to understanding the importance of Regulation §
18 2632.8, which governs the calculation and disclosure of rating factor “weights”. The weight of a
19 rating factor is a measurement of its influence on premium.⁴² Since the weight of rating factors
20 directly affects the amount consumers are charged for auto insurance, this issue has central
21 importance for the implementation of Proposition 103 and Section 1861.02(a) of the Insurance
22 Code. Currently, Regulation § 2632.8(a) requires that insurers disclose only “one [weight] for all
23

24 ³⁶ Id. § 2632.5(d).

25 ³⁷ Id.

26
27 ³⁸ See Cal. Ins. Code § 1861.02(a) (use of a rating factor not adopted by regulation constitutes
28 unfair discrimination).

29 ³⁹ See Cal. Code Regs. tit. 10, § 2632.4(a).

30 ⁴⁰ Impact Analysis, supra note 7, at 3, 20-21.

31 ⁴¹ See id. at v; see also id. at 3, 54 (stating that sequential analysis does not produce a
32 measurement of a factor's influence on premium, or its weight, and as such is not a weighting
33 methodology which complies with Proposition 103).

⁴² Id. at 1.

1 the optional factors (from Regulation § 2632.5(d)) taken together as a single factor weight,”
2 rather than the weights of each optional factor individually.⁴³ While the weight of the mandatory
3 and optional factors must be aligned in “decreasing order of importance,” it is only the single
4 *average* of all optional factors' weights which must be less than the third mandatory factor's
5 weight.⁴⁴ Consequently, the actual weights of the individual optional rating factors can and do
6 range from far below average to far above average—some of them *exceeding* the weights of
7 driving safety record, annual mileage, and years of driving experience. In this manner, the
8 current regulations allow the driver's ZIP code or territorial factor(s) to have the greatest weight
9 of all the mandatory and optional factors.

10
11 30. Figure 2, on the next page, again illustrates Regulation § 2632.8 in operation, using
12 California's largest auto insurer, State Farm, as an example. State Farm's ten optional rating
13 factors have an average weight of 9.82. The actual weight of its optional frequency and severity
14 ZIP code factor is 34.60—far greater than the weights of the three statutory factors,

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31 _____
32 ⁴³ Cal. Code Regs. tit. 10, § 2632.8(a).

33 ⁴⁴ The remainder of Regulation § 2632.8 provides the mechanism to adjust the factor weights,
either by “pumping” or “tempering”, so that the weights are correctly aligned in the mandated
order of importance. See Cal. Code Regs. tit. 10, § 2632.8.

DEMONSTRATION OF CURRENT SECTION 2632.8 IN OPERATION STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY CALIFORNIA BODILY INJURY AND PROPERTY DAMAGE LIABILITY	
RATING FACTOR	AVERAGE PREMIUM EFFECT, OR WEIGHT
1. Driving Safety Record	20.65
2. Annual Mileage	13.64
3. Years of Driving Experience	10.51
4. Ten Optional Rating Factors Combined	9.82

4. Ten Optional Rating Factors:	
a. Cost/Frequency Bands (ZIP Code)	34.60
b. Gender, Marital Status	25.10
c. Persistency	15.51
d. Multiple/single car	14.52
e. Academic standing	2.70
f. Percentage use by driver	2.22
g. Driving safety education	1.51
h. Usage of vehicle	1.46
i. Mature driver improvement	0.31
j. 2nd Driver characteristics	0.24
Ten Optional Rating Factors Combined	9.82

Source: Clerk's Transcript at 121, 131, 165, 325, 338.

FIGURE 2

1 *i.e.* safety record (20.65), annual mileage (13.64), and years of driving (10.51). However, the
2 weight of the optional frequency and severity ZIP code factor is averaged with very low weights
3 for some of State Farm's other optional factors (such as 2nd Driver Characteristics and Mature
4 Driver Improvement), bringing the average of the optional factors' weights (9.82) below the
5 weights of each mandatory factor.
6

7 31. Former Commissioner Quackenbush's regulation purports to compare an *average* of
8 the individual optional factors' respective weights, with the *actual* weight of each mandatory
9 rating factor, but those numbers are *not* comparable in kind or number. The point is most starkly
10 illustrated by comparing the total premium effect and the average premium effect on Figure 2:
11 For every mandatory factor, and for every individual optional factor, the average premium effect
12 is proportional to the total premium effect. As a factor's total premium effect increases, so does
13 its average premium effect per vehicle, or weight. The average "weight" for all optional factors
14 combined, however, suddenly reverses this consistent, proportional relationship. Where the total
15 premium effect (\$270,127,062) is the greatest by far—far greater than the weight of any
16 mandatory rating factor—the average "weight" (9.82) suddenly falls far below the weights of the
17 individual factors, because it is instead the average of the ten optional factors' individual weights.
18

19 32. When Petitioners challenged Regulation § 2632.8 in state court, the Superior Court
20 agreed and held that the regulation violated the plain mandate of Section 1861.02(a) because it
21 “[permits] insurers to use individual optional factors that have a greater impact in the
22 determination of rates and premiums than one or more of the three mandatory factors.”⁴⁵
23 Commissioner Quackenbush and Intervenors State Farm and Farmers appealed that order. The
24 First District Court of Appeal held that using one (average) factor weight for all optional factors
25 is one permissible reading of the statute, but not the only or a mandatory one.⁴⁶ The appellate
26 court justified preserving the conflict between subordinate regulation and superior statute by
27 concluding, “The current regulations constitute a lawful choice among imperfect options.”⁴⁷
28 “The most that could be said for a rule that the weight of each optional factor must be less than
29

30 ⁴⁵ Order after Hearing on June 19, 1998 Regarding Petitioners' Motions for Order Issuing
31 Peremptory Writ of Mandate at 3, Spanish Speaking Citizens' Foundation, Inc. v. Quackenbush,
Case No. 796071-6 (Cal. Super. Ct., Alameda Co., June 23, 1998).

32 ⁴⁶ Spanish Speaking Citizens' Foundation, Inc. v. Low, 85 Cal. App. 4th 1179, 1186, 1238-
33 1239 (1st Dist., Dec. 29, 2000).

⁴⁷ Id. at 1238.

1 that of each mandatory factor is that this may be a permissible interpretation of the statute.
2 Evidence on the consequences of that interpretation could be seen as somewhat equivocal.
3 However, we find no reason to *prefer* that interpretation to the one reflected in the current
4 regulations.”⁴⁸ A sharply divided California Supreme Court voted 3-4 to deny review, with the
5 Chief Justice and two other Justices voting to grant review, of the question whether the
6 Commissioner's duty was mandatory, not just discretionary. In any case, the current Insurance
7 Commissioner, John Garamendi, has the discretion to grant the relief Petitioners seek here.

8
9 **D. THE DISCRIMINATORY IMPACT OF TERRITORIAL RATING AND REGULATION §**
10 **2632.8 IN CALIFORNIA**

11 33. Petitioners are able to demonstrate the severely adverse impact of Regulation §
12 2632.8, using scenarios based on information and standard examples from California's largest
13 insurers—State Farm, Farmers, and Allstate—of how they calculate different drivers' automobile
14 insurance premiums. Pursuant to the regulations, California's largest insurers—State Farm,
15 Farmers, and Allstate—each disclosed how they calculate a driver's automobile insurance
16 premium using standard examples. For each of the following examples, we calculated State
17 Farm's, Farmers', and Allstate's premiums for the same driver with the same driving record,
18 driving the same car with the same coverage, changing only the driver's ZIP code.⁴⁹ *These*
19 *examples illustrate the severe impact of ZIP code rating, especially upon residents of low-income,*
20 *inner city communities in California. This impact will continue unless the Insurance*
21 *Commissioner grants this petition and amends the regulations.*

22
23 34. The first hypothetical driver (“Driver A”) is a single man, licensed for two years,
24 who drives 15 miles each way to school (15,000 annual miles). He purchases little more than the
25 minimum coverage mandated by law in order to drive (\$15,000/\$30,000 for bodily injury
26 coverage, \$5,000 for property damage coverage, and minimal coverage for medical payments and
27 uninsured motorist coverage). He has one at-fault accident with \$1,000 of property damage.

28
29 35. The second hypothetical driver is a single woman, licensed for 22 years, with no
30

31
32 ⁴⁸ *Id.* at 1239.

33 ⁴⁹ These examples come from State Farm's, Farmers', and Allstate's class plans filed in 1996, and were part of the record throughout Spanish Speaking Citizens' Foundation, Inc. v. Low, Case Nos. A084024, A085376 & A085713 (Consolidated).

1 violations (“Driver B”). She drives a 1996 Honda Accord LX sedan 20 miles each way to work
2 (16,000 annual miles). She purchases \$100,000/\$300,000 of bodily injury coverage, \$50,000 of
3 property damage coverage, \$5,000 of medical payments coverage, and \$30,000/\$60,000 of
4 uninsured motorist bodily injury coverage. She has a \$100 deductible on comprehensive
5 coverage and \$200 deductible on collision coverage.

6
7 36. For each of these two drivers, we calculated State Farm's, Farmers', and Allstate's
8 premiums, changing only the driver's ZIP code. Two particularly disturbing examples highlight
9 the severe impact that territorial rating can make for people like Driver A: Were this man to
10 move from San Luis Obispo (93401) to South Central Los Angeles (90036)—but keep the *same*
11 driving record, the *same* coverage for his automobile, and the *same* number of miles driven
12 annually—his annual premium with Farmers would increase from \$1,706 to \$7,844. The change
13 in his ZIP code alone increases his premium more than \$6,000 per year, or 360 percent. Were
14 this same driver to move from Red Bluff (96080) to Moreno Valley (92553) in Riverside County,
15 Allstate would increase his annual premium from \$1,299 to \$2,434, an 87 percent increase due to
16 change in ZIP code alone. Our remaining calculations confirm the widespread violation of
17 Proposition 103's central mandates and demonstrate the unfairness of territorial rating statewide.

18
19 **a. Insurers' arbitrary and discriminatory use of territorial factors affects
20 drivers in “rural” areas as well as “urban” ones.**

21 37. Insurance companies have encouraged a misconception that those who seek to
22 minimize the impact of territorial rating factors on auto insurance premiums do so *despite* the
23 negative impact that this would have on drivers from non-urban communities.⁵⁰ However, this
24 ignores the negative impact that the arbitrary and discriminatory use of ZIP code presently has on
25

26 ⁵⁰ See, e.g., Appellant State Farm Mutual Automobile Insurance Company's Reply Brief at 39,
27 Spanish Speaking Citizens' Foundation, Inc. v. Quackenbush, Case Nos. A084024, A085376
28 (Cal. Ct. App., 1st Dist., filed June 10, 1999) (“[I]t is not rational to require the rural poor to
29 subsidize the urban poor and, for that matter, the urban rich”); Declaration of Ina Becraft in
30 Support of State Farm Mutual Automobile Insurance Company's Opposition to Motions for
31 Preemptory Writ exh. L, Spanish Speaking Citizens' Foundation, Inc. v. Quackenbush, Case Nos.
32 796071-6, 796082-2 (June 19, 1998) (“Illustration of Deviation from Cost-Based Premium by
33 County as Result of Petitioners' Proposed Section 2632.8 BIPD Coverage”); Appellants'
[Farmers'] Reply Brief at 3, 12-13, 38, Spanish Speaking Citizens' Foundation, Inc. v.
Quackenbush, Case Nos. A084024, A085376 (Cal. Ct. App., 1st Dist., filed June 10, 1999)
(arguing that the impact of petitioners' interpretation of Cal. Ins. Code § 1861.02 would be to
produce “a disproportionately large premium on non-urban drivers as compared with urban
drivers”).

1 many drivers in rural communities. For example, State Farm charges Driver A an annual
2 premium of \$1,367 in Ukiah (95482), Mendocino County, to use his car to drive to school. But if
3 he were in Eureka (95501), in nearby Humboldt County, State Farm would increase the annual
4 premium for the *same* driver with the *same* driving record by 17 percent, to \$1,604.

5
6 38. Similarly, Allstate charges this driver an annual premium of \$1,234 in Grass Valley
7 (95945), Nevada County. But if he moves to Modesto (95351), in nearby Stanislaus County,
8 Allstate increases the annual premium for the *same* driver with the *same* driving record, driving
9 the same number of miles to school, by 69 percent, to \$2,084.

10
11 39. The arbitrary and negative impact of territorial rating within and between urban
12 communities is equally severe. When Driver A moves from ZIP code 90044 in Los Angeles to
13 ZIP code 90045 in Los Angeles, State Farm drops his annual premium from \$4,066 to \$2,522.
14 His premium increases \$1,544, or 61 percent, for living in the same city, but on the wrong side of
15 the street.

16
17 40. Similarly, in Oakland, when Driver A drives fifteen miles from the predominantly
18 Latino Fruitvale District in East Oakland (94601) to school in Oakland's higher income,
19 predominantly white Montclair District (94611), Farmers charges him an annual premium of
20 \$4,417. If the ZIP codes are reversed, however, and he drives from Montclair (94611) to school
21 in the Fruitvale District (94601), Farmers drops his annual premium over \$1,000, or 23 percent, to
22 \$3,389. When this man drives fifteen miles from Oakland's Montclair (94611) to the
23 predominantly African-American inner city area of East Oakland (94621), State Farm charges
24 him an annual premium of \$2,088. But again, if the ZIP codes are merely reversed and he drives
25 from East Oakland (94621) to a school in Montclair (94611), State Farm increases his annual
26 premium over \$700, or 34 percent, to \$2,798.

27
28 41. Different cities also mean different premiums. In Santa Barbara (93105), Farmers
29 would charge Driver A an annual premium of \$2,173 to use his car for driving to school. But if
30 he moves to Fresno (93727), Farmers increases the annual premium for the *same* driver with the
31 *same* driving record by 32 percent, to \$2,864.

32
33 **b. Insurers' arbitrary and discriminatory use of territory negatively affects
Good Drivers all over the state.**

1 42. Recall the example of Driver B—the single woman, licensed 22 years, with no
2 violations—who would be considered a “Good Driver” under Proposition 103.⁵¹ When she
3 moves from San Luis Obispo (93401) to South Central Los Angeles (90036), State Farm
4 increases her annual premium from \$883 to \$2,396, an increase of over \$1,500, or 171 percent,
5 due to the change in ZIP code alone.

6
7 43. If this driver were to move from Sunnyvale (94086) to Pacoima (91331), Farmers
8 would increase her annual premium from \$979 to \$2,753, or 181 percent, because of the change
9 in ZIP code alone.

10
11 **c. Insurers' arbitrary and discriminatory use of territory often ignores the**
12 **actual risk of loss and defies common sense.**

13 44. When Driver A commutes to work from suburban Walnut Creek (94596) *with* the
14 rush hour traffic to downtown San Francisco (94105), Allstate charges her an annual premium of
15 \$1,377. But if the ZIP codes are reversed, and she drives *against* the rush hour traffic from San
16 Francisco (94105) to work in Walnut Creek (94596), Allstate increases her annual premium to
17 \$2,039, an increase of \$662, or 48 percent, due to the change in her ZIP code.

18
19 45. Similarly, when this Good Driver commutes from Roseville (95661) *with* the rush
20 hour traffic to and from work in downtown Sacramento (95814), State Farm charges her an
21 annual premium of \$1,108. But if the ZIP codes are reversed, and she drives *against* the rush
22 hour traffic from Sacramento (95814) to work in Roseville (95661), State Farm increases her
23 annual premium to \$1,779, an increase of \$671, or 61 percent, due to the change in ZIP code
24 alone.

25
26 46. Overall, the practice of territorial rating negatively affects more than 20 million
27 drivers in urban, suburban, and rural areas across the state of California. This diverse and
28 substantial consumer population could benefit from the Commissioner's decision to grant the
29 regulatory changes this petition requests.

30
31 **E. THE DEPARTMENT'S OWN ANALYSIS OF THE CURRENT REGULATIONS**

32
33 ⁵¹ See Cal Ins. Code § 1861.025 (defining criteria that qualify an individual to purchase a
Good Driver Discount policy); Cal. Code Regs. tit. 10, § 2632.13 (setting forth guidelines for
determination of a driver's qualification to purchase a Good Driver Discount policy).

1 factors).⁵⁷ The Commissioner agreed that this method complies with Section 1861.02(a).⁵⁸ The
2 Department concluded that methods such as the Single Omit Method⁵⁹ could better effectuate the
3 statutory mandates of Proposition 103 by reducing auto insurance rates for Good Drivers who
4 have been unfairly overcharged and lessening the effect of more arbitrary and invidious factors
5 such as the driver's residential ZIP code.

6
7 50. Using the database of 11 million vehicles, "[e]very category used by every rating
8 factor for every insurer and the rate associated with it was identified and programmed into a
9 computer."⁶⁰ No insurer was complying with Proposition 103's requirement that automobile
10 premiums be primarily determined by the safety record, mileage, and driving experience rating
11 factors in that order.⁶¹ Impact Analysis also finds that insurers routinely deviate from cost-based
12 pricing.⁶²

13
14 51. The Department corrected insurers' weights of mandatory and optional rating factors
15 to comply with and align in the order mandated by Section 1861.02(a)—with safety record,
16 mileage, and driving experience having greatest weight, and no individual optional factor having
17 more weight than any mandatory factor. The Commissioner classified premium changes, or
18 “dislocation”, as “good”, “bad”, or “nil”. The Commissioner concluded that, calculating and
19 properly aligning the weights of insurers' *individual* optional factors, as Petitioners request,
20 “result[s] in primarily positive or nil dislocation. The majority of increased premiums falls on
21

22 ⁵⁷ Id. at 24-25 (stating that the Commissioner used “Single Omit [method] without
23 standardized factors”). The “Single Omit” method calculates the weight of a rating factor by
24 examining the effect on the premium if the factor is omitted from the premium calculation
25 process.

26 ⁵⁸ Id. at v.

27 ⁵⁹ Id. at 1-2, 9, 24-27.

28 ⁶⁰ Id. at 2.

29 ⁶¹ Id. at 3, 54 (“primary finding” that “The variations in [then] current rating factors and
30 practices appear to be arbitrary.”).

31 ⁶² Id. at 19 & n.3 (“using relativities that vary from actual loss costs”); id. at 20 (“Insurers
32 frequently select relativities to actually use that differ from the values indicated by the analysis of
33 loss data[.]”); id. at 2 (“After analyzing these rating factors, wide variations were found in how
different insurers created and used the same rating factors. These substantial variations from
insurer to insurer appear to be arbitrary.”).

1 those with the poorer safety records, less experience, and greater miles driven, while their
2 opposites (i.e., lower risk drivers) pay less.”⁶³ “Overall, few consumers saw large increases or
3 decreases. Most consumers are in the middle and experience either no change, a slight increase,
4 or a slight decrease. . . . When premium variations is [sic] classified as furthering the intent of the
5 Proposition (positive) or not (negative), 90% of all consumers experienced either positive
6 premium variation or a change in premium of 10% or less.”⁶⁴

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8 52. In summary, Commissioner Garamendi's own extensive analysis and conclusions
9 support precisely the relief Petitioners request and the record supports. As we set forth in greater
10 detail below, Petitioners request that the Commissioner amend Regulation § 2632.8 and either (1)
11 require insurers to calculate a total weight—a single, aggregate weight for all optional factors
12 combined, not simply the average of their individual weights—and require that the total weight of
13 all optional factors collectively, including ZIP code, gender, marital status, and persistency, must
14 be less than each individual weight of each mandatory factor (driving safety record, annual
15 mileage, and years of driving experience); or, alternatively, (2) require that the individual weight
16 of each optional factor—not simply the average of their individual weights—must be less than
17 each individual weight of each mandatory factor.

18 19 **V. PROPOSED AMENDMENTS TO REGULATIONS**

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21 53. Regulation § 2632.8 currently requires insurers to calculate only an average of the
22 individual weights of the various optional factors, allowing those individual weights to range
23 from far below average to far above average and far above the weights of the mandatory factors,
24 as illustrated in Figure 2 above. By allowing the weights of individual optional rating factors
25 such as ZIP code to supersede the weights of the mandatory factors, Regulation § 2632.8 conflicts
26 with the language of the statute. See Section IV.B. (¶¶ 22-24) above. The failure to implement a
27 proper weighting methodology has thwarted the intent of the electorate in voting for Proposition
28 103. Because of the economic importance of and statutory mandate to purchase automobile
29 insurance, these effects of Regulation § 2632.8 have perpetuated the economic and social
30 deterioration of communities and households across California. See Section I (¶¶ 1-6) and
31 Section IV.A. (¶¶ 17-21) above. Since the regulations in place do not implement the initiative

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⁶³ Id. at 55.

⁶⁴ Id. at 4.

1 properly, millions of consumers are being unfairly charged excessive automobile insurance rates.
2 Petitioners therefore request that the Insurance Commissioner promulgate either of the following
3 alternative proposed regulations as final regulations.
4

5 54. Petitioners present two alternative amendments to Regulation § 2632.8. The first
6 alternative would require that the total weight—a single, *aggregate* weight for all optional factors
7 collectively—shall be less than the weight of the third mandatory factor. The second alternative
8 would require only that the *individual* weights of each optional factor shall be less than the weight
9 of the third mandatory factor. Both alternatives would ensure at long last that driving safety
10 record, annual mileage and years of driving experience each have greater weight than one's ZIP
11 code, or one's gender or marital status, or any other optional factor. Only the first alternative,
12 however, would ensure that one's driving safety record has the greatest weight overall, as Section
13 1861.02 directs, including greater weight than all of the optional factors when considered
14 collectively. If only the individual weights of the optional factors are considered, all together
15 those individual weights could be greater than the weights of one or even all of the three
16 mandatory factors. To preclude this possibility, Alternative 1 requires that the *aggregate* weight
17 of the optional factors collectively shall be less the weight of each mandatory factor. Neither
18 alternative changes the weighting methodology set forth in Regulation § 2632.8(c), although
19 some words must be altered in order to remove the loophole that currently permits insurers to
20 calculate only an average of the individual weights of the optional factors.
21

22 55. **ALTERNATIVE 1 TO AMEND REGULATION § 2632.8: AGGREGATE WEIGHT OF**
23 **OPTIONAL FACTORS LESS THAN WEIGHT OF EACH MANDATORY FACTOR.** The first alternative
24 ensures that the optional factors collectively have less weight than each mandatory factor (driving
25 safety record, annual mileage, and years of driving experience) in determining automobile
26 insurance rates and premiums. This is consistent with Section 1861.02(a)'s expressed
27 requirement that driving safety record have greatest importance in determining rates and
28 premiums, followed by annual mileage, followed by years of driving experience, followed by the
29 optional factors. Thus, Alternative 1 requires that the *aggregate* weight of the optional factors
30 collectively be less than the weight of the third mandatory factor in decreasing order of
31 importance, i.e. years of driving experience. Proposed Cal. Regs. Code tit. 10, § 2632.8(d).
32 Alternative 1 requires insurers to continue using the Single Omit Method set forth in subsections
33 2632.8(b)-(c) but to apply it to *all* optional factors collectively in order to calculate and align the
totality of their effect on premiums. The aggregate weight of the optional factors collectively

1 would be calculated by determining, for each vehicle in the data set, the premium with all of the
2 optional factors being analyzed; next calculating the premium excluding simultaneously all of the
3 optional rating factors being analyzed; then calculating the absolute value of the difference
4 between those two premiums; and then adding together those absolute values of all the vehicles in
5 the data set and dividing by the number of vehicles. If the aggregate weight were not less than
6 that of the third mandatory factor, the insurer would sufficiently alter the weights of one or more
7 of the individual optional factors using the process set forth in subsection 2632.8(d).

8
9 **56. ALTERNATIVE 2 TO AMEND REGULATION § 2632.8: INDIVIDUAL WEIGHT OF**
10 **OPTIONAL FACTORS LESS THAN WEIGHT OF EACH MANDATORY FACTOR.** Alternatively, the
11 Commissioner could require insurers to implement Section 1861.02(a) by calculating and
12 aligning only the individual weights of each optional rating factor, rather than their aggregate
13 weight. Thus, Alternative 2 requires that the *individual* weight of each optional factor be less
14 than the weight of the third mandatory factor, i.e. years of driving experience. Proposed Cal.
15 Regs. Code tit. 10, § 2632.8(d). Like Alternative 1, Alternative 2 requires insurers to continue
16 using the Single Omit Method set forth in subsections 2632.8(b)-(c), and to apply it to each
17 optional factor individually in order to calculate and align the totality of their effect on premiums.
18 The individual weight of each optional factor would be calculated by determining, for each
19 vehicle in the data set, the premium with all of the optional factors being analyzed; next
20 calculating the premium excluding the individual optional factor being analyzed; then calculating
21 the absolute value of the difference between those two premiums; and then adding together those
22 absolute values of all the vehicles in the data set and dividing by the number of vehicles. If the
23 individual weight of the optional factor were not less than that of the third mandatory factor, the
24 insurer would sufficiently alter the weight of the optional factor using the process set forth in
25 subsection 2632.8(d). The Court of Appeals agreed that reading Section 1861.02(a) to require
26 individual optional factor weights is “a permissible interpretation of the statute.”⁶⁵

27
28 **57.** Section 1861.02(a) requires that insurers and the regulations disclose the individual
29 weight of each mandatory and optional factor.⁶⁶ Under proposed subsection 2632.8(a) of both
30 Alternative 1 and Alternative 2, the insurer shall calculate and disclose to the Insurance
31

32 ⁶⁵ Spanish Speaking Citizens' Foundation, Inc. v. Low, 85 Cal. App. 4th at 1239.

33 ⁶⁶ Cal. Ins. Code § 1861.02(a)(4) (“The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums.”).

1 Commissioner and the public the individual weight of each optional factor the insurer elects to
2 use, and the aggregate weight of all optional factors combined. Again, the current weighting
3 methodology remains unchanged. Thus, even if the Insurance Commissioner modifies
4 Regulation § 2632.8 to include only Alternative 2 (individual weights of optional factors), the
5 Commissioner and the public shall still have important information about the insurer's class plan
6 and the balance of weights among the mandatory and optional factors in determining rates and
7 premiums.

8
9 58. While the Court of Appeals held that the current regulations may not necessarily
10 violate Section 1861.02(a), it did conclude that the relief Petitioners request is “permissible” and
11 within the Commissioner's discretion to grant.⁶⁷ Indeed, three Justices of the California Supreme
12 Court voted to grant review to determine whether the relief Petitioners request is indeed
13 *mandatory* under Cal. Ins. Code § 1861.02. Adopting Alternative 1 or Alternative 2 would lessen
14 the weight of optional factors, thereby ensuring that the mandates of Proposition 103 are met.

15 16 VI. CONCLUSION

17
18 59. When Californians voted for Proposition 103, they specified exactly how drivers
19 should be charged for automobile insurance. The ballot pamphlet assured voters that the law
20 would “force insurance companies to base your rates on your driving record first, rather than on
21 where you live”.⁶⁸ Fourteen years after Proposition 103 passed, California's voters and
22 consumers are still waiting for their elected officials to implement the law they enacted. It is the
23 Petitioners' intent to ensure that Proposition 103 is properly implemented in keeping with the
24 letter and the spirit of the initiative. For all of the foregoing reasons, Petitioners hereby commend
25 the attached amendments for the initiation of a rulemaking proceeding and the formulation of
26 necessary regulations, consistent with and authorized by Proposition 103.

27
28 Dated in San Francisco, California, on the _____th of May, 2003.

29 Respectfully submitted,
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33 ⁶⁷ Spanish Speaking Citizens' Foundation, Inc. v. Low, 85 Cal. App. 4th at 1239.

⁶⁸ Ballot Pamp., Gen. Elec. (Nov. 8, 1988), rebuttal to argument against Prop. 103, p. 101.

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1 CALIFORNIA CODE OF REGULATIONS, TITLE 10, CHAPTER 5
2 SUBCHAPTER 4.7. PRIVATE PASSENGER AUTOMOBILE RATING FACTORS.
3 Article 3. Rating Factors

4 Note: The text below reflects proposed additions (in redline) and deletions (in
5 ~~strikeout~~) to the existing Cal. Code Regs. tit. 10, § 2632.8.

6
7 Section 2632.8 Factor Weights

8 (a) For each type of coverage, ~~four~~ factor weights shall be calculated, ~~one weight~~ for
9 each of the three mandatory factors listed in Section 2632.5(c)(1) through (3); ~~and one~~ for all
10 each of the optional factors the insurer elects to utilize in its class plan ~~(from Section 2632.5(d))~~
11 ~~taken together as a single factor weight~~; and for all of the optional factors collectively which the
insurer elects to utilize in its class plan.

12 (b) The data used to compute the weight shall be based on one of the following:

- 13 1. all of the subject company's currently insured vehicles;
- 14 2. the same data set used to perform the sequential analysis in Section 2632.7; or
- 15 3. the set of insured vehicles that may be published by the Department of
Insurance.

16 (c) For every insured vehicle in the data set and each rating factor utilized in the class
17 plan:

- 18 1. First, calculate the premium using the initial relativities from Section
2632.7(c);
- 19 2. Second, calculate the premium excluding the rating factor being analyzed;
- 20 3. Third, calculate the absolute value of the difference between subdivision
(c)(1) and subdivision (c)(2);
- 21 4. The weight for the rating factor being analyzed is the summation of the
22 amounts in subdivision (3) divided by the number of ~~calculations~~ vehicles in
the data set.

23 When calculating the aggregate weight of the optional factors collectively, the second step
24 excludes simultaneously all of the rating factors being analyzed.

25 (d) The weights of the factors, as calculated in subdivision (c), must align in decreasing
26 order of importance as follows: driving safety record must have the most weight followed by
27 annual miles driven followed by years of driving experience followed by the aggregate weight ~~for~~
of the optional factors collectively. If the weights are not in the order as specified herein then the
insurer must correct the relativities of the rating factors as follows:

- 28 (1) Select the rating factor to be modified.
 - 29 (A) Compute the weighted average of the initial relativities
for the factor over the data set selected in subdivision
30 (b) herein;
 - 31 (B) Subtract the weighted average from each initial
relativity;
 - 32 (C) Multiply the result of step (B) by a correction factor;
 - 33 (D) Add the result of step (C) to the weighted average.

The formula for this correction is:

ALTERNATIVE 1
(AGGREGATE WEIGHT OF OPTIONAL FACTORS COLLECTIVELY)

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$$NR = ((IR - WA) * CF) + WA$$

Where:

NR = New Relativity
IR = Initial Relativity
CF = Correction Factor
WA = Weighted Average

- (2) Repeat process of subdivision (d)(1)(A) through (D) if it is necessary to correct the weight of any of the rating factors.
- (3) The weight of a corrected rating factor may not exceed the corrected weight of the succeeding rating factor, in decreasing order of importance, by more than 0.25.

NOTE: Authority: Section 1861.02, California Insurance Code and Calfarm Insurance Company v. Deukmejian (1989) 48 Cal.3d 805. Reference: Sections 1861.02 and 1861.05, California Insurance Code.

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Where:

NR = New Relativity
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WA = Weighted Average

- (2) Repeat process of subdivision (d)(1)(A) through (D) if it is necessary to correct the weight of any of the rating factors.
- (3) The weight of a corrected rating factor may not exceed the corrected weight of the succeeding rating factor, in decreasing order of importance, by more than 0.25.

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If you would like a copy of the Exhibits please call (415) 431-6747.