

AMENDED IN SENATE AUGUST 25, 2004

AMENDED IN SENATE AUGUST 16, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 3088

Introduced by Assembly Member Jerome Horton

March 11, 2004

An act to amend Section 1861.16 of the Insurance Code, relating to automobile insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 3088, as amended, Jerome Horton. Auto insurance: good driver discounts.

Existing law requires agents or representatives representing insurers under common ownership, management, or control to offer, and one of these insurers to sell, a good driver discount policy to a good driver. Under Proposition 103, an insurer is required to offer good driver discount policies to individuals who meet specified requirements.

This bill would provide that, notwithstanding the above provisions, insurers operating under common management or control are not required to sell good driver discount policies issued by other insurers within the common ownership group if specified conditions are met. Because this bill would change the requirements contained in Proposition 103 with respect to offering good driver discount policies, it would amend that proposition and would therefore require a $\frac{2}{3}$ vote for enactment.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1861.16 of the Insurance Code is
 2 amended to read:

3 1861.16. (a) An insurer issuing a policy described in
 4 subdivision (a) of Section 660 by or through an insurance agent
 5 where a commission is paid, directly or indirectly, to that agent
 6 shall, when issuing a policy in the minimum financial
 7 responsibility coverage amount as required by Section 1861.15,
 8 pay a commission on the same terms and on the same percentage
 9 basis to that agent as for any higher amount of policy coverage sold
 10 by that agent. In no case shall the percentage amount of
 11 commission paid to that agent for a policy of minimum financial
 12 responsibility coverage be less than the percentage commission
 13 paid to that agent on any higher level of policy coverage issued by
 14 that insurer.

15 (b) An agent or representative representing one or more
 16 insurers having common ownership or operating in California
 17 under common management or control shall offer, and the insurer
 18 shall sell, a good driver discount policy to a good driver from an
 19 insurer within that common ownership, management, or control
 20 group, which offers the lowest rates for that coverage. This
 21 requirement applies notwithstanding the underwriting guidelines
 22 of any of those insurers or the underwriting guidelines of the
 23 common ownership, management, or control group. Nothing in
 24 this subdivision shall require an insurer to offer and sell a good
 25 driver discount policy that the insurer would otherwise not be
 26 required to offer and sell in accordance with paragraph (3) of
 27 subdivision (b) of Section 1861.02. As used in this subdivision,
 28 “representative” means any person who offers or prepares
 29 premium quotations on behalf of either an insurer or any entity
 30 acting directly or indirectly on behalf of an insurer. This
 31 subdivision shall not be construed to either permit a representative
 32 to transact insurance, or to exempt a representative who does
 33 transact insurance from the licensing provisions of this code.

34 (c) (1) Notwithstanding subdivision (b), insurers having
 35 common ownership and operating in California under common
 36 control are not required to sell good driver discount policies issued
 37 by other insurers within the common ownership group if *the*



1 *commissioner determines that the insurers substantially satisfy all*
2 *satisfy each of the following conditions:*

3 ~~(1)~~

4 (A) The business operations of the insurers are independently
5 managed and directed.

6 ~~(2)~~

7 (B) The insurers do not jointly develop loss or expense statistics
8 or other data used in ratemaking, or in the preparation of rating
9 systems or rate filings.

10 ~~(3)~~

11 (C) The insurers do not jointly maintain or share loss or
12 expense statistics, or other data used in ratemaking or in the
13 preparation of rating systems or rate filings. This condition shall
14 not apply if the data is generally available to the industry through
15 a nonaffiliated third party and is obtained from that third party.

16 ~~(4) The insurers do not share marketing, sales, or underwriting~~
17 ~~data between or among themselves in a manner that diminishes the~~
18 ~~independence of the insurers' business operations.~~

19 ~~(5)~~

20 (D) *The insurers do not utilize each others' marketing, sales, or*
21 *underwriting data.*

22 (E) The insurers act independently of each other in
23 determining, filing, and applying base rates, factors, class plans,
24 and underwriting rules, and in the making of insurance policy
25 forms.

26 ~~(6)~~

27 (F) The insurers' sales operations are separate.

28 ~~(7)~~

29 (G) The insurers' marketing operations are separate.

30 ~~(8)~~

31 (H) The insurers' policy service operations are separate.

32 ~~(9) The insurers do not use or reference the same company or~~
33 ~~group name in marketing or selling insurance in California in a~~
34 ~~manner that is likely to influence a statutory good driver not to~~
35 ~~purchase a good driver discount policy from an insurer within the~~
36 ~~common ownership group that offers the lowest rate for that~~
37 ~~coverage.~~

38 (2) *Notwithstanding Senate Bill 1 of the 2003–04 Regular*
39 *Session (Chapter 241 of the Statutes of 2003), the federal*
40 *Gramm-Leach-Bliley Act (Public Law 106-102), and the federal*



1 *Fair Credit Reporting Act (15 U.S.C. Sec. 1681 and following), the*
2 *sharing of information between insurers as described in*
3 *subparagraphs (A) to (H), inclusive, of paragraph (1) shall be*
4 *more restrictive than may otherwise be permissible pursuant to*
5 *those acts.*

6 (d) Except to the extent restricted by subdivision (c) or any
7 regulation adopted to implement subdivision (c), this section shall
8 not be interpreted to restrict the right of an insurer or holding
9 company to use aggregate data of its affiliated insurers having
10 common ownership or operating in California under common
11 control.

12 (e) Nothing in subdivision (c) is intended to amend, alter, or
13 supersede other sections of this code, or other laws of this state,
14 regarding any right of an insurer or holding company to use
15 aggregate data of its affiliated insurers having common ownership
16 or operating in California under common control.

17 (f) The commissioner may adopt regulations to implement this
18 section.

19 (g) An insurer that is required by this section or Section
20 1861.02 to offer and sell good driver discount policies to good
21 drivers to whom it did not sell those policies prior to November 8,
22 1988, due to driving safety record or vehicle type may file and,
23 upon the approval of the commissioner, implement an interim
24 rating plan for those applicants until the rating plan required by
25 subdivision (a) of Section 1861.02 is adopted, provided that the
26 insurer has timely filed an automobile insurance rating plan in
27 compliance with subdivision (a) of Section 1861.02, and that plan
28 has not been approved. An insurer may file an interim plan prior
29 to the operative date of subdivision (b).

30 The commissioner shall notify the public of any application by
31 an insurer for an interim rating plan. The public notice shall meet
32 the requirements of Section 1861.06. The application shall be
33 deemed approved 60 days after public notice unless (1) a consumer
34 or his or her representative requests a hearing within 45 days of
35 public notice and the commissioner grants the hearing, or
36 determines not to grant the hearing and issues written findings in
37 support of that decision, or (2) the commissioner on his or her own
38 motion determines to hold a hearing. If the commissioner grants
39 a request for a hearing or determines on his or her own motion to
40 hold a hearing on the application for an interim rating plan, but



1 does not approve or disapprove the proposed interim rating plan
2 within the later of 30 days from the date the commissioner grants
3 a request or determines to hold the hearing or January 1, 1991, the
4 interim rating plan may be used until the time that the
5 commissioner issues a decision.

6 If an interim rate or proposed interim rate is greater than the rate
7 ultimately approved, the insurer shall refund to its applicable
8 policyholders, in proportion to the amount of premium paid by
9 each, the difference between the total amount earned and the
10 amount to which the insurer is entitled under the rate ultimately
11 approved, together with interest at the rate of 10 percent per year.
12 In lieu of a refund, the insurer may provide a credit to the
13 policyholder if the amount due is less than three dollars (\$3).

14 (h) Nothing contained in subdivision (b) or (c) shall be
15 construed to expand, limit, or modify the requirements of
16 subdivision (b) of Section 1861.02.

17 (i) A violation of this section by any insurer shall subject it to
18 the penalties provided by Section 1861.14.

