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May 12, 2004

VIA FACSIMILE: (916) 445-4722
The Honorable John Burton
President Pro Tempore
California State Senate, Room 205
Sacramento, California 95814

Re: S.B. 1291 (Burton) – OPPOSE

Dear Senator Burton:

Public Advocates, Inc. and the California Reinvestment Coalition are deeply troubled over your Senate Bill 1291, and the inappropriate fast-track treatment it is receiving. We ask that this bill be taken off the consent calendar so that it can receive full consideration by legislators and the public.

SB 1291 would hurt consumers by magnifying every regulatory failure by staff at the California Department of Insurance (CDI) – whether intentional or inadvertent. Its effect will be to endow these regulatory failures, at least temporarily, with an unwarranted legal status. And the burden of that newly-enshrined status will fall most heavily – as the burden of unfair insurance practices and redlining has always fallen – on low-income communities and communities of color.

CDI is charged with protecting consumer interests by enforcing Proposition 103, which requires the approval of insurance rates before their use. To this end, CDI regulatory staff review upwards of 250 "class plans" a year, as well as over 6,000 rate filings. Typically, these are very lengthy documents. Each of them potentially raises numerous legal issues, including civil rights issues that may not be evident to regulatory staff. Mistakes are inevitable in the best of circumstances; and when the office of Insurance Commissioner is occupied, as it was not long ago, by an official with greater loyalty to the interests of the industry than to those of the public, the approval of outright illegal practices has not been unknown.

Under current law, a mistake by CDI is just that: a mistake. SB 1291 would elevate such mistakes, for a period of time that could easily run into months and years, to a quasi-legal status that would amplify their consequences across California's entire insurance market. It would do so by requiring CDI to permit all other insurers to engage in that same illegal conduct until a court, or a formal CDI rulemaking proceeding, put an end to it.

This bill, in short, will launch a race to the bottom for all insurers doing business in California.

At the same time, SB 1291 will encourage a disgraceful practice by which insurers bury in their filings "Trojan Horse" provisions in innocuous-sounding language. Upon approval of a single such plan, by CDI staff that in all likelihood did not notice the provision or did not understand its intent, this bill would give all insurers the green light to engage in unfair business practices.

Finally, it would make it immeasurably more difficult for consumer advocates, or even a consumer-friendly Commissioner, to set right what are likely to be numerous new loopholes that insurers seek to exploit every year.

Apart from the havoc it will wreak, this bill serves no legitimate purpose; there is simply no problem that a bill like this could rectify. Every insurer is already authorized to seek approval for any appropriate class-plan or rate provision on the merits of that provision, without piggybacking on an approval that was given under what may be very different circumstances pertaining to very different insurers.

There is no consensus in California to roll back Proposition 103 and open a wedge for deregulating the insurance markets that are critical to economic development, particularly in low-income communities. SB 1291 is bad public policy, made unspeakably worse by the absence of any opportunity for public debate.

Thank you for taking our concerns into consideration.

Very truly yours,

Richard A. Marcantonio
Managing Attorney
Public Advocates, Inc.

Kevin Stein
Associate Director
California Reinvestment Coalition