



April 24, 2008

Honorable Assembly Member Joe Coto
Chairman Assembly Insurance Committee
State Capitol, Room 2013
Sacramento, CA 95814

RE: AB 2956 —Oppose

Dear Assembly Member Coto:

United Policyholders respectfully submits that the real life impact of AB2956 will be to reduce the number of insured drivers in this state, raise auto insurance costs, and create new ambiguities as to the authority of insurance sales people to act on behalf insurance companies and/or consumers. We oppose passage of this measure.

United Policyholders (“UPH”) is a non-profit corporation founded in 1991 as an educational resource for the public on insurance issues and consumer rights. UPH is based in California but operates nationwide and is funded by donations and grants from individuals, businesses, and foundations. UPH advocates for policyholders in individual states, through the National Association of Insurance Commissioners, and in courts throughout the United States.

We oppose AB 2956 for the following reasons:

AB 2956 creates new possibilities for insurers to deny that a consumer is covered by automobile insurance in derogation of California’s mandatory financial responsibility law. This election year a key issue in our presidential campaign that greatly affects Californians is whether illegal aliens should have drivers’ license so as to be able to obtain automobile insurance. The majority of California voters support the candidates who propose to permit illegal aliens to have licenses because as the driving public, we want every driver to have insurance.

We believe that if the legislature adopts AB2956, it will largely undo what voters have overwhelming stated they want – the protection of knowing drivers are insured.

California law must ensure that the public is adequately protected by drivers with insurance regardless of whether the driver procured the insurance from a direct writer, a captive agent or an independent broker.

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AB2956 would eliminate this protection for drivers and the public. It instead creates a vague test for insurance coverage that is based on the label of the person selling a policy. Even if the insured never met his or her broker, bought coverage through one phone call, and doesn't know his or her name, the proposed new law would make that producer a "broker" and any errors they make become the insureds problem, not the insurance company's problem.

Application errors are extremely common, particularly in the auto insurance context. Many agents and brokers rush to make a sale in a competitive marketplace. They often leave important boxes unchecked, mistakenly record applicants' answers, and invent answers and sign applications for insureds, all the while assuring customers that everything will be fine once their premium is paid.

Under this legislation, a producer could be deemed a broker by transacting "with" an admitted insurer even it knows all of the underwriters on a first name basis, received more than 50 percent of its commissions from sales of policies produced with this insurer, uses the *insurer's* standard forms (including the insurer's standard form application identifying this producer as a broker), is given computerized access to the insurer's underwriting guidelines and is given the insurer's computerized program for rating and quoting policies and then uploading the applications.

In the insurance industry this whole process is known as "Zap App" and is the most common way insurance policies are bound.

The result of a producer transacting "with" instead of "on behalf of" means that any error rests exclusively on the insured and the driving public. An insurer who does business with a broker instead of an agent is not bound by the agent's mistakes.

So for example if the producer makes a mistake and checks the "no" box instead of the "yes" box for uninsured motorist coverage in the computerized Zap Application, when the next day a person believing he is covered is rendered a paraplegic through the fault of an uninsured illegal alien, then the insurer is able to tell the insured it's "your fault." Your broker made a typo in our computerized Zap Application and we're sorry there's just no coverage. [The facts of this example come from a true case under current law protecting the insured in just this situation.]

This legislature should not abrogate California's mandatory financial responsibility law based on whether a producer transacts "with" an insurer or "on behalf of" an insurer.

AB2956 will result in higher auto insurance premiums statewide because as more agents are deemed brokers, consumers will pay commissions that insurers were previously paying. At this time of unprecedented high gas prices, this legislature should not simultaneously increase the price of insurance by permitting insurers to shift to insureds the commissions paid to the insurer's producers.

For the foregoing reasons, UPH respectfully opposes AB2956.

Sincerely,

Amy Bach, Esq.
Executive Director