

But 5 years later, consumers are benefiting

Insurers still battle Prop. 103

BY HARVEY ROSENFELD

FIVE YEARS ago this week, California voters approved Proposition 103, the insurance reform initiative. After a withering campaign, in which insurance companies spent \$60 million against the initiative, most voters assumed that victory at the ballot box meant the battle was over. Instead, the front line merely shifted to the corridors of power and privilege, where lawyers and lobbyists, not voters, rule.

In the Legislature, the same politicians who blocked reform in 1987, forcing voters to the initiative process, are now engaged in the piecemeal repeal of 103. One of the proposition's key reforms requires insurers to obtain the approval of the insurance commissioner before increasing rates. Last month, at the behest of the insurance industry, the Legislature changed 103 to allow rate increases to take effect automatically unless the commissioner begins a full-scale hearing. Another bill approved by the Legislature allows insurance agents to keep \$625 million in excess commissions that are supposed to be returned to policyholders under 103. A third restored the industry's ability to engage in price fixing, specifically prohibited by 103.

Proposition 103 forbids amendments by the Legislature that do not "further its purposes," but that has not deterred the industry's indentured servants in Sacramento.

And the same insurance companies which complain that consumers file too many lawsuits have filed more than 60 suits to block Proposition 103. The legal delays allow insur-

ers to keep our money longer, of course.

But most important, the insurers are looking for sympathetic judges willing to rewrite Proposition 103.

Some judges have accommodated the industry, no matter how preposterous the outcome. One decision invalidated a provision of the initiative that requires insurers to base their rates on a motorist's driving safety record, rather than zip code. The judge ruled that it would be unfair to make bad drivers pay more for auto insurance than good drivers.

More recently, Los Angeles Superior Court judge Dzintra Janavs ruled that the voters did not intend to give the insurance commissioner the power to limit wasteful insurance company expenses and excessive profits.

She proceeded to cancel \$2.5 billion in rollbacks ordered by Commissioner John Garamendi.

In contrast to that exercise in judicial activism, Judge Janavs took a hands-off approach when consumer groups sued to challenge one of the Legislature's hostile amendments to 103. In that case, she ruled that judges should not interfere with the Legislature's authority. These unjust decisions have been appealed to higher courts.

Finally, numerous insurers are taking the most direct route around Proposition 103: They simply disregard it. Many companies are evading 103's anti-redlining protections by refusing to sell a good driver policy to qualified drivers. Still others, seeking higher profits, have begun to low-ball claims involving everything from auto accidents to natural catastrophes like the Oakland Hills fire and

the Loma Prieta earthquake.

As hard as the industry has tried to undermine Proposition 103, however, the initiative remains a triumph for consumers. More than 6 million Californians have received their 103 rollback checks, a total of \$733 million averaging \$117 per policyholder. Even more important, 103 has put an end to unjustified growth in premiums. Rate increases of an estimated \$4.2 billion to \$6 billion have been averted since 103 passed, according to the National Insurance Consumers Organization.

California used to have the third fastest growing premiums in the nation; now it ranks third slowest. And direct accountability to the public has made the office of insurance commissioner a powerful forum for consumer protection, as California's first elected commissioner, John Garamendi, has often shown.

But by subverting 103 in the state Capitol, the insurers themselves have underscored the urgency of reform of our corrupt political system, particularly the elimination of all private financing of public elections.

Until these structural reforms are enacted, voters must continue to fight the judicial and legislative meddling that threatens to gut 103 and lead to enormous rate increases. But five years later, this struggle is not simply about insurance premiums. It is the integrity of democracy that we defend when we insist that the law be obeyed by insurance companies, elected officials and the courts.

Harvey Rosenfeld, the author of Proposition 103, heads the newly created Proposition 103 Enforcement Project in Los Angeles.