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State Insurance Initiatives: Hard Road to Real Reform

By Harvey Rosenfield

Fed up with soaring insurance rates and the Legislature's inability to address the problem seriously, Californians are about to take matters into their own hands.

At least one initiative to cut insurance prices and reform the industry will be on the November ballot, the product of a voter revolt comparable to that of the taxpayer rebellion of the 1970s that resulted in Proposition 13.

The insurance industry has nobody to blame but itself for any retribution it now faces. Auto insurance rates have leaped between 20% and 30% each year since 1984. Today, an estimated 86% of motorists in some areas of Los Angeles drive without any insurance, simply because they cannot afford it. Since 1985, some businesses, municipalities and other commercial customers have seen their rates climb by as much as 10,000%.

The rate increases helped boost liability-insurers' profits by an astounding 720% between 1985 and 1987.

Utilizing its influence as a major source of campaign contributions, the insurance lobby has crushed every legislative effort to resolve the cost situation. Last summer, a series of modest reforms were defeated by insurers—despite 30,000 letters from the public and the support of consumer advocate Ralph Nader and more than 100 citizen organizations.

In October the California Supreme Court upheld a 1985 law making automobile insurance mandatory. The decision forces motorists to make a tough choice: buy insurance they may not be able to afford, or drive without it and risk jail.

For consumers, recourse to the ballot has become a matter of economic survival. Seven initiatives on insurance have been announced, but all are not what they pretend to be. Proposals fall into three general categories:

Consumer-group reforms. The initiative our organization, Access to Justice, has filed exemplifies the reforms advocated by consumer organizations. A similar initiative has been proposed by Adam Burton of FAIR, also a Los Angeles-based citizen group. The product of two years of research, our initiative would:

- Cut all liability-insurance rates by 20% from November, 1987, levels and require all future rate increases to be justified by insurers before implementation. California is the only major state that lacks authority to control rates; in states requiring prior approval of rates, rates are between 10% and 15% lower, according

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to a 1986 federal study.

- Require insurers to base automobile rates primarily on a driver's safety record rather than on a driver's place of residence.

- Guarantee motorists with a good safety record a special 20% discount.

- Create a more competitive insurance marketplace by eliminating the special exemption to California's antitrust laws won for the insurance industry by its Sacramento lobbyists.

- Provide for election of the insurance commissioner, a post now filled by gubernatorial appointment. Not surprisingly, the last seven appointees were insurance-industry executives. Auto premiums were an average of 31% lower in 1985 in the 11 states that elect commissioners.

Insurance industry "counterinitiatives."

Alarmed by the prospect of genuine reforms, insurance companies have lined up behind two initiatives of their own. Both are designed to confuse voters with ineffective proposals and surreptitiously thwart a successful consumer-reform initiative. One is backed by Assemblyman Richard Polanco (D-Los Angeles), with the financial support of two insurance companies. It would arbitrarily cut compensation to auto accident victims and discourage attorneys from taking their cases. The other, a massive 120-page proposal, is sponsored by the insurance industry's chief lobbying association. It extends the Polanco proposal, instituting a no-fault system under which lawsuits for most auto accidents would be prohibited outright, and claims would be paid regardless of who was at fault. Both measures claim they would give substantial reductions in auto-insurance premiums if enacted.

No-fault has been debated for two decades. Its proponents say that, if designed correctly, it would lower insurance costs and guarantee speedier compensation by eliminating time-consuming and expensive lawsuits for minor accidents.

The insurance industry's version of no-fault, however, simply limits insurers' pay-outs—hence increasing profits—without including the necessary consumer safeguards that would guarantee commensurate reductions in rates.

Indeed, the real purpose of the insurance-industry initiatives is revealed by the fine print. Buried in both proposals are provisions that would forbid government regulation of rate increases, lock in the anti-competitive laws currently on the books and negate a true consumer-reform initiative in the event that one is approved by voters along with an insurance-industry measure. The insurance companies aim to confuse and deceive the public by cloaking an anti-consumer initiative in

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the guise of reform.

Leverage for a legislative compromise. Lawmakers and other elected officials are now talking about a closed-door negotiating session among all those with an interest in insurance reform. The politicians' role would be to help broker a legislative compromise that would halt the looming initiative battles.

But why would politicians get their acts together now, after years of inaction?

First, elected officials know a populist revolt when they see one. Aware of the public's anger over insurance, they will try to sidetrack the issue before it becomes a threat to their own aspirations.

Second, legislators want the campaign funds that will otherwise be spent by the insurance industry in multimillion-dollar initiative campaigns.

Third, the insurance industry now wants a deal, period. A last-minute legislative "solution" would allow the industry to argue that the crisis is over and that ballot reforms are no longer necessary.

Finally, the state's trial attor-

neys and accident victims they represent have a lot to lose under the insurance industry's no-fault initiatives and would favor a legislative compromise. Yet there is little reason to expect anything meaningful from the Legislature. The best that can be expected from Sacramento is a feeble compromise that mimics the consumer insurance-reform initiative but offers no real, long-term relief. Indeed, insurers, politicians and others backed such a proposal last October. But a last-minute effort to ramrod it through the Legislature failed when consumer and community groups vigorously protested.

The initiative process is not the best way to make public policy. It favors those, like the insurance industry, with the resources to manipulate it: by blocking access, as insurers and the California Trial Lawyers Assn. have done by putting all signature-gathering firms on contract not to work on other reform efforts; by using the initiative process as a club to obtain compromise, or by creating a Trojan Horse to confuse voters.

But when the Legislature consistently fails to protect the public, voters eventually get together to protect themselves. That's called a voter revolt. □