

Antitrust Action Cheered by Reformers

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SACRAMENTO — Insurance reform activists expressed pleasure Tuesday at a major state antitrust action against the insurance industry brought by California Attorney General John Van de Kamp.

They also admitted surprise that such an action could be brought at all, given the limited legal tools available to antitrust prosecutors against the industry, which is exempt from most state and federal antitrust laws.

"This is a good sign," said Will Glennon, legal analyst for the California Trial Lawyers Association (CTLA), which is backing a broad-ranging consumer initiative to regulate the insurance industry, including elimination of the industry's longstanding exemption from state antitrust regulation. "But, obviously, something more has to be done."

"The attorneys general [who filed suit in eight states, including California] are working under a severe handicap, using the very limited provisions of the law," Glennon added. "The [insurance] companies have to have committed unmentionable economic crimes. It's amazing to me that they [prosecutors] have been able to bring this action at all, given the very narrow provisions of the law."

The CTLA is supporting — both philosophically and financially — an initiative sponsored by the Insurance Consumer Action Network (ICAN), which would require a 20 percent rate reduction for good drivers, ban no-fault auto insurance, limit the use of territorial rating, provide stronger regulation of the insurance industry and end the antitrust exemption.

Glennon said backers of the initiative — one of seven targeted for the November ballot — are close to obtaining the necessary number of signatures to qualify the measure.

Steven Miller, executive director of ICAN in Los Angeles, said the antitrust actions contain "evidence of a conspiracy to manipulate the U.S. insurance industry."

"Although the insurance industry has immunity [from antitrust laws], neither state nor federal law protect the industry from [prosecution for] conspiracy," Miller added. "After having created this 'insurance crisis,' the industry tried to shift the blame to everyone but themselves."

"We learn [from the complaint] that the roots of the insurance crisis lie directly with the insurance executives themselves [in] a conspiracy to create the crisis and to further increase profits."

Miller said the antitrust actions are

"terribly important" to consumers — to "individuals and nonprofit organizations and others victimized by the industry."

Assemblywoman Maxine Waters, D-Los Angeles, who twice has sponsored unsuccessful legislation to end the antitrust exemption enjoyed by the industry in California, praised the action by state prosecutors and blamed the insurance industry for killing legislative efforts to repeal the exemption.

"I tried to pass antitrust legislation on at least two different occasions," she said, "and it was resisted strongly."

Critics of the insurance industry blame legislative inertia — and the enormous campaign contributions of industry sources to legislative races — for the spate of initiatives. And those critics say a legislative solution to avert a long-predicted, expensive initiative war is increasingly unlikely.

"It [a legislative solution] is possible, but the odds are pretty much against it," said Glennon. "It really depends on how realistic the insurance industry is getting. They have got to know they are in grave danger."

An initiative — also likely to qualify for the November ballot — sponsored by the insurance industry would effectively protect the industry's antitrust exemption

as well as establish a no-fault auto insurance system in California. Glennon said the industry initiative would "set current law in stone."

Harvey Rosenfield, a Santa Monica lawyer who heads another major consumer initiative drive to regulate the insurance industry, said the antitrust action brought by Van de Kamp and the attorneys general in seven other states, validates "what consumer advocates have been saying for years — that the insurance industry engages in systematic anti-competitive actions that have made insurance problems worse for consumers."

"This vindicates what we've been saying all along," said Rosenfield, who heads an organization called the Voter Revolt to Cut Insurance Rates, which is sponsoring a Ralph Nader-backed consumer initiative to place strong regulatory controls on the industry and repeal the antitrust exemption.

"But it's going to take the kind of regulation in our initiative to outlaw [the practices alleged in the suits]. For every case that is prosecuted, there are 100,000 cases out there."

Rosenfield said a legislative solution to avert the expected insurance initiative battle on the November ballot currently stands "a snowball's chance in Malibu."