

Consumers Locked Out of Tort Talks

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SACRAMENTO — Major tort reform legislation designed to head off a multimillion-dollar initiative fight next year was expected to be introduced on Friday, the last day of the legislative session, in a move blasted by consumer groups as "a backroom raid on victims' rights."

The compromise legislation was worked out in weeks of closed-door negotiations involving the California Trial Lawyers Association (CTLA), the Association for California Tort Reform (ACTR) and other medical, business and insurance groups.

It was expected to be merged late Friday into existing legislation by Sen. Bill Lockyer, D-Hayward, and to include many of the same provisions as a proposed 1988 initiative, the Fair Liability Act, that would limit product liability and punitive damages.

Details of the legislation were unavailable late Friday, but the package reportedly contains liability exemptions for certain products, including alcohol and second-hand tobacco smoke. The measure was said to contain no limit on attorneys fees and an agreement between trial lawyers and insurance-business in-

terests not to sponsor initiatives against each other.

The weeks-long negotiations leading to the legislation were conducted in Capitol meeting rooms and even in a private men's club in downtown Sacramento.

Notably absent from the meetings were representatives of major consumer groups that opposed any changes in product liability laws and which fought unsuccessfully for insurance reform this session.

The CTLA and consumer groups opposed a predecessor initiative to the Fair Liability Act — the successful, and highly controversial so-called "deep pockets" initiative, Proposition 51 — and it was expected that the CTLA would join and help fund consumer opposition to the current proposed initiative.

"Insurance companies, manufacturers, doctors and trial lawyers have met to decide the rights of victims injured by some dangerous products," said Consumers Union Regional Director Harry Snyder about the 11th-hour tort reform legislation. "Unfortunately the victims who will be harmed weren't in the room when the deal was cut."

Consumer groups expressed concern about the product liability exemptions for alcohol and tobacco smoke. According to

Consumers Union, the legislation would shield manufacturers and sellers from liability if they can demonstrate that "consumers are generally aware of the hazards of unsafe products."

Gail Hillebrand, a Consumers Union staff attorney in San Francisco, said her organization "was apprised quite late in the process" by participants in the negotiations, which included the California Chamber of Commerce, the California Manufacturers Association, the California Medical Association and the Association of California Insurance Companies.

"There have been no public hearings, no testimony before a policy committee," Hillebrand said. "We don't think this is the way to make public policy."

Hillebrand and other consumer groups said the Legislature has "abdicated" its policy-making responsibility by allowing special-interest lobbyists in private meetings to determine the content of legislation.

One negotiating session occurred Friday at Sacramento's Sutter Club, which has no female members and permits women only as guests. A source who helped set up the meeting said the hour-long session was attended by at least a dozen people, including Chamber of

Commerce President Kirk West, medical lobbyist Jay Michael and insurance lobbyist Clay Jackson.

Spokeswomen for West and Michael confirmed their attendance at the meeting, as did a spokeswoman for ACTR Chairman Gene Livingston. Jackson could not be reached for comment.

The proposal drew the immediate ire of consumer advocate Ralph Nader, who objected in a telephone interview to "the back-door, closed-room secret negotiations" involving special interests which stand to profit financially from restrictions on victims' rights in product liability suits.

"Why should victims have to give up any rights?" Nader said. "They don't have enough rights now."

He said the proposed legislation is a result of "the legislative leadership saying to the trial lawyers and the insurance industry, 'Make whatever deal you like,' and the Legislature will approve it."

Proponents of the agreement insist it represents an historic compromise among the traditionally warring special interests over necessary tort reform.

The legislation is separate from an earlier package affecting public-entity liability, which was expected to be passed in the Legislature Friday.