Failed Insurance Reform Brings Blizzard of Proposed Initiatives

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SACRAMENTO — The inevitable blizzard of initiatives predicted by state insurance-reform experts earlier this year has begun in earnest, with seven major insurance initiative drives — variously representing insurers, trial lawyers and consumers — now under way in California.

The initiative drives, which are a result of lawmakers' inability to devise a solution to spiraling insurance rates, could end up costing untold millions in order to qualify them for the November 1988, ballot — and, if they qualify, to pay for expensive election-year advertising.

"It's extraordinarily unlikely that seven or even a majority [of the proposed initiatives] will make it to the ballot," observed Gene Erbin, counsel to the Assembly Judiciary Subcommittee on the Administration of Justice and a top aide to Assemblyman Lloyd Connelly, D-Sacramento, author of unsuccessful reform legislation this past year.

Erbin said Connelly, Attorney General John Van de Kamp and a sometimes shaky consumer-insurance industry coalition will continue to pursue a "legislative solution" to the insurance crisis when the Legislature resumes next month. In the interim, Connelly and two major consumer groups — Common Cause and the Insurance Consumer Action Network — plan to file the seventh initiative with the attorney general's office next week.

The other six initiative proposals have been filed, including three last week, by the Association of California Insurance Companies (ACIC), the California Trial Lawyers Association (CTLA) and another consumer coalition headed by Consumers Union, which includes the Center for Public Interest Law and Public Advocates.

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Three earlier initiatives were filed by the Access to Justice Foundation, a consumer coalition connected with national consumer advocate Ralph Nader; by Consumers for Lower Auto Insurance Rates, a group chaired by Los Angeles Democratic Assemblyman Richard Polanco; and by Adam Burton, a consumer activist in Los Angeles.

Those initiatives most likely to generate intense, expensive campaigns and equally intense debate are those of traditional arch-rivals, the ACIC, whose 120-page no-fault auto insurance initiative was filed last Thursday, and the CTLA, whose so-called "Good Driver Rate Reduction Act of 1988" was filed late Wednesday.

Erbin said the initiative planned this week by Connelly and two consumer groups will likely contain elements of the proposed legislative agreement hammered out last month between insurers and consumers. Supporters of that agreement, which will be introduced in the Legislature by Connelly and backed by Van de Kamp, were unsuccessful in obtaining emergency legislation to avert the expected spate of initiatives.

That "memorandum of understanding" among the traditionally warring consumer-insurer representatives remains in effect, Erbin said, and may still avert an initiative battle.

"Others may disagree, but I still feel the memorandum of understanding forms the basis for a viable compromise," Erbin said.

Special Assistant Attorney General Michael Strumwasser, Van de Kamp's spokesman on insurance rates, said the attorney general continues to support the legislative proposal. "There are going to be a lot of initiatives," he said, "and few will qualify." He said Van de Kamp has not yet taken a position on any of the initiatives.

The agreement — long described as "fragile" by all participants — would establish stronger state control over insurance rate fluctuations and open up the secretive rate-setting process to public view. It would also begin to address problems in auto insurance rates, especially geographic disparities in premiums.

The viability of the agreement — and, perhaps more important, of the historic tort reform compromise hammered out in the waning days of the 1987 legislative session — may be jeopardized by the initiative blizzard. Parties to the tort reform agreement — including ACIC and the CTLA — promised not to fund or file initiatives against each other.

But Erbin said the various initiative backers are still attempting to maintain the "spirit of compromise" evidenced by both agreements.

The various initiatives often incorporate pieces of the same reform pie. "We're all agreed that some type of rate regulation is necessary," Erbin noted. "We've all agreed that the antitrust exemption [for the insurance industry] should be stopped, and that there should be an institutional advocate for consumers [within state government, either in the attorney general's office or the state Insurance Department]. Everyone is trying to take a restrained, statesmanlike attitude to all this."

He also said the proposed Connelly-consumers initiative to be filed this week "will take a more rigorous approach" to insurance reform than the legislative agreement. He did not elaborate.

The other six initiative proposals that have been filed include:

• Association of California Insurance Companies. Billed as a "no-fault solution to California's spiraling auto insurance costs," the initiative is also backed by the American Insurance Association, the Alliance of American Insurers and the National Association of Independent Insurers. Stanley Zax, president of ACIC, said the proposal is a "proven solution that has successfully brought insurance costs under control in other states."

Among its many provisions, the initiative would: require a basic benefits package of $10,000 for medical expenses, up to $15,000 in lost wages and a $5,000 funeral benefit; guarantee payment of all valid claims within 30 days of a request; mandate a two-year 20 percent rollback of the statewide average premium for bodily injury liability and uninsured motorists coverage; and limit attorney contingency fees in auto accident cases brought to court to 33.3 percent of the first $50,000 of an award, 25 percent of the next $50,000 and 15 percent of all amounts greater than $100,000.

The proposal also would preclude auto accident victims compensated by their own company through no-fault from filing lawsuits unless their injuries were "serious and permanent," although victims of convicted drunk drivers could bring lawsuits as well as collect no-fault benefits.

• California Trial Lawyers Association. The so-called "Good Driver Rate Reduction Act" would establish a "good driver rating plan" that would reduce the total auto insurance premium for good drivers — those with no more than one moving violation in the last three years and no convictions for hit-and-run, drunk or reckless driving.

Under the CTLA plan, good drivers' policies could not be canceled and companies would have to offer good-driver rates that were at least 25 percent lower than the next-lowest rate. In addition, no-fault auto insurance and attorney contingency-fee limitations in auto liability cases would be prohibited.

• Consumers Union. Called the "Universal Low Cost Automobile Insurance Initiative," the measure is also backed by the Center for Public Interest Law, Public Advocates, the Urban League of California and the League of Latin American Citizens. It would establish a state-run auto insurance plan that would cover each California registered vehicle for approximately $300 a year and would implement "strict review and regulation of insurance rates." It also would require disclosure to consumers of insurance information and repeal the industry's exemption from state antitrust laws.

• Access to Justice. Called the "Insurance Rate Reduction and Reform Act," the measure would roll back current insurance rates by 15 percent and require that future rate increases be justified and approved by the state insurance commissioner. It also would end the industry's antitrust exemption and require that auto premiums be based on a driver's safety record and number of miles driven rather than "unfair and arbitrary classification factors," such as ZIP codes.

• Consumers for Lower Auto Insurance Rates. Organized by Assemblyman Polanco, the measure would cut by 50 perent the premiums for auto bodily injury liability and restrict pain-and-suffering damages.

• A proposed initiative by Los Angeles consumer activist Adam Burton would require state approval of all rate increases, establish a consumer advocate within the state Insurance Department and end territorial rating.

Initiative proposals first must be filed with the state attorney general for routine title and summary and a fiscal analysis. They then go to the secretary of state's office for certification to gather signatures.

Backers must gather 372,178 signatures to qualify a measure for the ballot. To avoid being short due to disqualification of signatures, initiative backers generally try to obtain more than are required.