

Tort Activists Tinkered With Ballot Laws to Avoid Trouble

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SACRAMENTO — In a last-minute precautionary maneuver, tort reform negotiators sidestepped an apparent state Elections Code violation by persuading legislators to amend a prohibition on trading for the withdrawal of a ballot initiative proposal.

Consumer groups, already fuming about the closed-door tort reform negotiations, said the law was designed to prevent exactly the kind of secret bargaining that allowed the tort reform package to be rammed through the Legislature in the final hours of the session last week.

Central to the tort reform package was a desire by trial lawyers and a coalition of business, insurance and medical interests to avoid a costly tort reform initiative battle. That skirmish already had begun with the filing of the proposed Fair Liability Act and a companion initiative to limit attorney contingency fees. The referendums were proposed by the same tort reform coalition that sponsored Proposition 51 last year.

The Elections Code bill, AB 1667 by Assemblyman Patrick Johnston, D-Stockton, modified sections of the code that make it illegal to fraudulently "seek, solicit any money, thing of value or advantage for the purpose of" halting an initiative. Violations are punishable by a \$5,000 fine, a state prison term of up to three years, or a county jail term of one year.

The landmark private tort reform legislation was introduced, passed and sent to the governor following lengthy private negotiations among legislative leaders, trial lawyers and a coalition of business, medical and insurance interests.

In return for various compromises, the parties agreed not to file initiatives against each other for the next five years. Those participating in the unusual negotiations included representatives of legislative leadership, the California Trial Lawyers Association, the Association for California Tort Reform, Californians for Fair Liability Laws, the California Chamber of Commerce, the California Medical Association, the California Manufacturers Association and the Association of California Insurance Companies.

Jeff Shelton, consultant to the Assembly Finance and Insurance Committee, said the last-minute changes permit withdrawal of an initiative if the matter is addressed legislatively — as it is in SB 241, the landmark tort reform legislation sponsored by Sen. Bill Lockyer, D-San Leandro, for the tort reform negotiators.

William George, chief consultant to the Finance and Insurance Committee and an expert on tort law, said the changes were sought in an "excess of caution" by negotiators who feared that an overzealous prosecutor might act under the little-known code sections.

"There was concern among the parties
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that if they reached a negotiated settlement, they might face criminal "sanctions," George said.

Gene Wong, consultant to the Senate Judiciary Committee and a central participant in the tort reform negotiations, said the elections code amendment allows the parties to negotiate in good faith.

"From a policy standpoint, people should be encouraged to negotiate," Wong added. "The law seemed to say that once it's filed, it's frozen."

Shelton said the legislative history of the sections (29740 and 29741 of the Elections Code) indicates that they originated in 1939, probably to prevent extortion or bribery from affecting the initiative process.

"The operative word here is 'fraudulent,'" Shelton added, echoing the sentiments of other participants in the tort reform negotiations who believed the code sections were not intended to halt the type of "good-faith" negotiations that led to the tort reform legislation.

Consumer groups — virtually shut out of the closed-door negotiations — condemned the process by which the tort reform and elections code legislation was devised and passed.

"It's the process that I'm bothered by," said Steven Miller, director of the Insurance Consumer Action Network. He said the negotiations were marked by closed-door dealings involving "special interest groups and fat cats, and the public was barred. I find it very troubling."

Gail Hillebrand, staff attorney for Consumers Union in San Francisco, said the elections code changes were designed to prevent the kind of bargaining that occurred. She said the negotiations "point to a very sorry state of affairs. The idea that it is acceptable to make public policy in the final days of the session is appalling. To turn it over to special interests is appalling."