Stop Insurance Company Abuses Act

Section 1. Findings & Declarations.

Unfair insurance practices and excessive premiums threaten the safety and economic security of Californians and are harmful to consumers, businesses and the economy. The People of California find that:

a) Insurance companies are refusing to sell or renew policies simply because a policyholder made a claim or merely called the company to inquire whether a particular loss would be covered by their policy, even if no claim is filed. As a result, many consumers are afraid to make a claim. Others cannot buy the insurance they need.

b) Insurance companies are lobbying to use a customer's private financial information in order to increase premiums or deny coverage altogether, even though a person's financial information and credit history have no relationship to the cause of accidents or claims.

c) Insurance brokers double-charge consumers without their knowledge, which unnecessarily increases the cost of insurance.

d) Insurance companies misrepresent their financial condition in order to justify rates that are higher than necessary.

e) Insurance companies have tried to delay or evade the enforcement of these consumer protections laws at taxpayer and consumer expense.

f) The legislature has refused to pass laws to stop these abuses. In 1988, when lawmakers failed to address other insurance abuses, California consumers sponsored insurance reform Proposition 103, which has saved Californians over $24 billion.

Now, therefore, the People of California declare that it is necessary once again to protect consumers from abusive insurance company practices.

First, policyholders shall not be punished for using the insurance that they pay for. Insurers shall be barred from penalizing consumers who have made legitimate claims. Second, insurers shall be barred from using personal credit information in the sale of insurance. Third, insurers shall not double-charge consumers. Fourth, existing regulations governing insurance rates shall be strengthened to address insurer accounting practices and ensure that rates remain fair and affordable. No insurer may raise rates until these new rules take effect. Fifth, insurers shall be required to reimburse taxpayers when they file unsuccessful lawsuits to block or overturn voter-approved insurance reforms and pay interest to people to whom they owe money

when they violate consumer protection laws. The Insurance Commissioner shall have authority to order insurance companies to return overcharges.

Finally, the initiative process belongs to the People of California, who have reserved to themselves the power to make laws by initiative. The California Constitution prohibits the Legislature from unauthorized amendments to voter-approved laws. However, at the behest of insurance industry lobbyists, the Legislature has attempted to repeal insurance reform laws previously enacted by the voters. It is therefore necessary to protect propositions against unlawful changes by the Legislature.

Section 2. Purpose and Intent.

The purpose of this Act is to provide California consumers and businesses with protections needed to maintain a fair marketplace in which insurance is available and affordable.

Section 3. The following sections and subdivisions are added to Article 10, Chapter 9, Part 2, Division 1 of the Insurance Code.

1861.17 Protection Against Unfair Cancellations, Renewals and Surcharges for Home & Property Insurance

(a) This section shall apply to policies of residential property insurance covering the risks specified in section 675.

(b) An insurer shall not refuse to issue or renew a residential property insurance policy, or charge a surcharge or deny a discount, on the basis of claims made by the applicant or the insured unless the applicant or the insured has made more than three qualifying residential property insurance claims concerning the subject property in the three-year period preceding the date of application or renewal.

(c) The following shall not be considered qualifying claims:

(1) claims resulting from a loss due to natural causes, including, but not limited to, floods, earthquakes, lightning, and any weather-related event in which the loss is not the direct result of gross negligence by the applicant or insured;
(2) claims resulting from fire losses where the fire did not start on the insured's property;
(3) claims that are filed but are not paid, are within the claimant's deductible or are not covered by the policy;
(4) claims that are paid in full by another insurance policy or a third party;
(5) an inquiry about the scope or nature of coverage, in which the inquiry did not result in the filing of a claim, or resulted in a claim that does not qualify under this section;

(6) claims in which the loss is not the direct result of gross negligence by the applicant or insured and for which the risk of loss has been mitigated through (i) the removal of the hazard, (ii) the repair of the damage or defect, (iii) other changes to the property or condition causing the loss that eliminate the insurer's increased exposure to loss;
(7) claims arising from hazards for which the policy no longer provides coverage; or,
(8) claims concerning a property that is no longer owned by the applicant or insured.

(d) An insurer shall not refuse to issue a residential property insurance policy on the basis of claims previously made concerning the property to be insured, unless the property presents an ongoing hazard that violates the insurer's underwriting system.

(e) A non-renewal based on the number of claims filed by the applicant or insured that would otherwise be permitted by this section shall not be effective unless the insurer provided written notice to the insured not more than forty-five days after the third qualifying filed claim was paid that:

(1) states that filing a fourth qualifying claim may result in non-renewal of the policy;
(2) lists the insured's previous qualifying claims, along with a description of each and the amounts paid;
(3) provides the insured with a copy of this section and any regulations adopted by the commissioner pursuant to this section; and,
(4) provides the insured an opportunity to dispute whether the previous claims are qualifying claims through a dispute resolution process established by regulations adopted by the commissioner. A notice of non-renewal shall not take effect until the dispute is resolved.

(f) Notwithstanding any other law, an insurer may not cancel a residential property insurance policy except for:

(1) non-payment of premium currently due;
(2) conviction of the named insured of a crime having as one of its necessary elements an act increasing the risk of loss posed by any hazard insured against;
(3) fraud or material misrepresentation by the named insured in obtaining the insurance or pursuing a claim under the policy;
(4) grossly negligent acts or omissions by the named insured substantially increasing the risk of loss posed by any hazard insured against; or,
(5) physical changes in the insured property which result in the property becoming uninsurable, as defined by regulations adopted by the commissioner.

1861.18 Prohibition on Use of Credit Data in Sale of Insurance

(a) The credit history of an applicant or insured may not be used, in whole or part, as a basis to:

(1) refuse to issue, renew or cancel a policy of insurance;
(2) set rates or premiums, including by removing a credit or providing a surcharge, for a policy of insurance;
(3) assign the insured or applicant to a rating tier;
(4) place an insured or applicant with an affiliated company;
(5) establish terms of payment of a policy of insurance; or,
(6) advertise or market a policy of insurance.

(b) "Credit history" means any information, written, oral, or otherwise, bearing on a consumer's creditworthiness, credit standing, or credit capacity.

(c) This section shall apply to private passenger automobile insurance, residential property insurance and earthquake insurance.

1861.19 Prohibition on Double-Charging by Insurance Brokers

Notwithstanding any other provision of law, in any personal lines insurance transaction as described by section 1625.5, no insurance broker-agent licensee who receives a commission from the insurance company shall charge any consumer a broker fee, or other monetary charge, however labeled, for that transaction of insurance as defined in section 35.

1861.20 Regulation of Improper Accounting Practices Used by Insurance Companies

Whether a rate is excessive or inadequate pursuant to section 1861.05(a) shall be determined according to the regulations set forth in California Code of Regulations, title 10, sections 2644.1 to 2644.23, as they existed on January 1, 2006, subject to the following provisions:

(a) Fair profits.

(1) An insurer shall earn a fair rate of return only on surplus that is used and useful for that line of insurance.
(2) The allowable after-tax rate of return on surplus for rate applications filed with the California Department of Insurance shall be based upon the average of the 1-month, 3-year and 10-year U.S. government treasury constant maturity securities for the calendar year prior to the calendar year in which the application is filed. An after-tax rate of return on surplus of no less than 2% and no more than 4% above that average shall be

conclusively presumed to be neither inadequate nor excessive. An after-tax rate of return on surplus of more than 4% but less than 8% above that average shall be presumed to be excessive. An after-tax rate of return on surplus of 8% or more above that average shall be conclusively presumed to be excessive.

(b) Fair limits on expenses.

(1) The efficiency standard applied to fixed expenses shall be no more than 34% for homeowners insurance and no more than 30% for private passenger automobile insurance.

(2) Any fee paid by a reciprocal or interinsurance exchange insurer to a management company or attorney in fact shall be treated as a fixed expense, except that any profit component included in the fees paid shall be excluded from the allowable fixed expenses. Any rate application filed by a reciprocal or interinsurance exchange insurer that includes all or part of any fee paid to the management company or attorney in fact as an expense shall include with the rate application the most recent three audited financial statements of the management company or attorney in fact.

(3) The amount of executive compensation included in fixed expenses that may be passed through to policyholders for each of the top five highest paid executives shall not exceed $500,000 times the ratio of the written premium for the insurance business that is the subject of the rate filing, to the all lines countrywide written premium, for the calendar year prior to the year the filing was received at the California Department of Insurance.

(c) Honest projections of future claims and losses.

(1) The trend factor used in an insurance company's rate filing shall be based upon an analysis of that insurance company's own experience, subject to the following conditions:

(A) For private passenger automobile insurance, the annual trend factor may not exceed the annual trend factor that is indicated by the annual paid pure premium data for California covering the entire period contained only in the most recent Private Passenger Automobile Fast Track Data publication available prior to the date the rate application was received by the California Department of Insurance.

(B) For homeowners insurance, the annual trend factor may not exceed the annual trend factor that is indicated by the annual paid pure premium data for California, excluding catastrophes, covering the entire period contained only in the most recent Homeowners Fast Track Data publication available prior to the date the rate application was received by the California Department of Insurance.

(C) For all other lines of insurance the annual loss trend factor may not exceed the average annual change in the all items consumer price index for the three calendar years prior to the date the filing was received by the California Department of Insurance.

(2) The rate calculation shall use loss development based upon case incurred losses, unless there has been an increase in the level of reserves included in the case incurred losses. If there has been an increase in the level of reserves included in the case incurred losses, then an average of the results from case incurred development and paid development shall be used in the rate calculation. There shall be a presumption that the level of reserves included in the case incurred losses has increased if the case incurred development method gives a higher indicated rate than the paid development method.

(3) The increased limits factor assumed by the insurer may not exceed the lesser of the indicated increased limits factor for the most recent three-year period and the indicated increased limits factor for the most recent five-year period, unless the Commissioner promulgates an increased limits factor for each line of insurance.

(4) The loss, exposure and premium data used in the rate calculation shall be on a direct basis excluding the impact of any reinsurance transactions. Reinsurance costs shall not be included in the expenses used for the rate calculation.

(d) Excessive surplus.

The premium to surplus or leverage ratio used by an insurer in its rate calculation shall be no less than
(1) 2:1 for private passenger automobile insurance,
(2) 2:1 for homeowners insurance,
(3) 1:1 for earthquake insurance, and
(4) 1:1 for professional liability insurance.

(e) Commissioner's authority.

(1) The Commissioner shall conform the existing regulations (California Code of Regulations, title 10, sections 2644.1 to 2644.23) to incorporate the requirements of this Section.
(2) On or after January 1, 2012, the Commissioner may adopt by regulation alternative values for the efficiency standard and leverage ratio specified in subdivisions (b)(1) and (d) and may otherwise amend the regulations, if such amendments are consistent with the requirements of this section and section 1861.05.

(f) Freeze on rate increases.

Effective immediately upon passage of this measure, no rate increases shall be approved until the conforming regulations required by subdivision (e)(1) are promulgated and take effect, subject to subdivision (h). However, the commissioner shall continue to ensure that rates are not excessive, and may approve rate decreases or order rate decreases subsequent to the passage of this measure, even if the conforming regulations have not been promulgated and taken effect.

(g) Automatic review of automobile and homeowners insurance rates.

If, in any calendar year, an insurer's ratio of paid losses to written premium or its ratio of incurred losses to earned premium is less than 70%, the insurer must file a rate application with the commissioner pursuant to section 1861.05. This provision applies separately to private passenger automobile insurance and homeowners insurance. The private passenger automobile insurance and homeowners insurance data used to make these calculations shall be obtained from the Annual Statement filed by the insurer with the California Department of Insurance.

Rate applications required by this subdivision must be filed with the commissioner no later than May 1 of the year subsequent to the calendar year used in calculating these ratios. If the rates charged by the insurer are found to be excessive, then the effective date of the new rates shall be the date the rate application was received by the commissioner. Any policyholders with an effective date for coverage on or after the date of the rate application that paid excessive rates shall be due a refund from the insurance company for the excessive portion of the rate. Interest shall be paid to the policyholder based upon the average of the 1-month, 3-year and 10-year U.S. government treasury constant maturity securities in the prior calendar year plus 4%.

(h) Exemption.

An insurer may seek and obtain from the commissioner such immediate relief as is necessary to protect its right to a fair return as set forth in *Calfarm v. Deukmejian* (1989) 48 Cal.3d 805.

1861.21 Underwriting Systems.

(a) The underwriting systems employed by insurers shall be subject to the application, review, and disclosure requirements applicable to rate applications pursuant to section 1861.05 et seq. and class plans filed pursuant to section 1861.02.
(b) "Underwriting systems" means any rules, plans, manuals and guidelines used to determine eligibility to purchase insurance, to calculate rates and premiums, including credits and surcharges, to assign a person to a rating tier, to place a person with an affiliated company, or to establish the financing or terms of payment of a policy of insurance.

1861.22 Internet Access to Filings

Effective no later than January 1, 2008, any rate application or other public filing by an insurer that is required by this article shall be submitted to the commissioner in electronic form, in a format specified by the commissioner, and shall be placed on the web site of the Department of Insurance in its entirety for a period of at least five years where it may be accessed by the public at no charge.

1861.23 Lawsuits and Violation of Laws by Insurers

(a) Whenever it is determined, either in a civil action brought pursuant to subdivision (a) of section 1861.10, or in an administrative proceeding before the commissioner, that an insurer has violated a provision of this Chapter or otherwise owes money to a consumer, the licensee shall pay interest to the consumer at the rate of 25% per year.

(b) Any insurer that brings a challenge to the constitutionality, application or enforcement of any provision of this Code that was enacted by the voters shall reimburse the taxpayers for the legal fees and costs incurred by the State of California in defending such challenge if such challenge is unsuccessful as determined by the court.

(c) A willful violation by an insurance company of any provision of this Article enacted by the voters is a felony. For the purposes of this section, "willful" shall be defined as the conscious and deliberate commission or omission of an act that violates this Article, irrespective of any intent to violate any provision of this Article or any rule or regulation of the commissioner authorized by this Article.

(d) In any administrative proceeding initiated by the commissioner or by an aggrieved individual under Article 7 of this Chapter, the commissioner shall have the authority to order restitution of monies owed by an insurer to any person.

1861.24 Legislative Amendments to Voter Approved Laws

No provision of this Article, including the provisions of Proposition 103 enacted by the voters in 1988, may be amended by the Legislature except as follows. The proposed amendment must further the purposes of the initiative, by a statute passed in each house no later than July 31 in any calendar year, by roll call vote, entered in the journal, two-thirds of the membership concurring.

1861.25 Other Matters

(a) Insurers to Pay Fees to Cover Costs of Reforms. Insurers shall pay fees pursuant to section 12979 to cover any administrative or operational costs arising from this Act.

(b) Authority of commissioner. The commissioner has such authority, including the authority to adopt regulations, as is necessary to implement this Act.

(c) Application. This Act shall apply as specified by section 1861.13.

(d) Interpretation. This Article shall be liberally construed and applied in order to fully promote its underlying purposes.

(e) Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this Act are severable.