

Proposed California Ballot Initiative to Prohibit Installment Fees and Broker Fees

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Consumer activists Harvey Rosenfield and Douglas Heller have asked Attorney General of California Jerry Brown to put to California voters a ballot initiative, called the "Stop Insurance Overcharges Act," that would prohibit and limit certain insurance fees, including installment fees (i.e., fees charged by insurers to those customers who choose to pay their premiums in installments over time, rather than at policy inception) and broker fees.

The proposal would apply to all California insurance business that is subject to California Proposition 103, including personal lines automobile insurance and homeowners insurance.

According to the proposal submitted to Secretary of State Brown, the purpose and intent of the proposal include:

- Stopping insurers from "*overcharging* customers who pay for insurance on an installment basis";
- Limiting insurance broker fees and "prohibit brokers from *double-dipping* by charging consumers a fee while also collecting an insurance company commission"; and
- Prohibiting insurers from "making customers pay more for insurance *simply* because they restarted their insurance, did not previously have insurance (even if they never needed it before), or because they filed a claim for an accident in which they were not at-fault." (emphasis added).

Installment Fees

The proposed initiative would require the California Commissioner of Insurance to review and approve installment fees charged by insurers (i.e., fees charged by insurers to those customers who choose to pay their premiums in installments over time, rather than at policy inception). Under this proposal, installment fees would be subject to review and approval in the same manner as insurance premiums are reviewed and approved. The proposal goes on to prohibit the commissioner from approving any installment fee that exceeds the insurer's actual direct cost of collecting the installment, such as printing and mailing invoices. This provision presumably would prohibit insurers from including a charge for the time value of money in such installment fees.

This memorandum is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call upon your Dewey & LeBoeuf relationship partner.

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Rating Factors

The proposal would limit the rating practices of insurers in two specific ways. First, insurers would be prohibited from taking into account for eligibility and rating purposes that a proposed automobile or homeowners insured was not previously insured. Second, in determining automobile insurance eligibility and premiums, insurers may not consider an insured's or applicant's claims history, though the insurer can consider the insured's or applicant's driving safety record.

Broker Fees

The proposal would prohibit a broker who charges its customer a broker fee in connection with the placement of insurance from also collecting any commission from the insurer – presumably, even if the fees and commissions are disclosed. It also calls for the California Commissioner of Insurance to adopt rules (i) establishing limits on broker fees and (ii) defining the duties that brokers owe to their customers. The proposal that the commissioner establish rules concerning the duties that brokers owe to their customers and limiting broker fees is very open ended, and it is impossible to predict if those rules would take into account that a broker's fees and its duties in many cases are delineated as a matter of contract between brokers and their customers.

Procedure

The proponents have to submit over 400,000 signatures from registered California voters approving this initiative in order to get it on a ballot. It appears that the earliest this initiative could reach voters would be the election in November 2010.

If adopted, the proposal would become the law in California. The provisions of this initiative could not be amended by the Legislature except by a vote of two-thirds of each house of the California Legislature.

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