

1988

Automobile Accident Claims And Insurance Rates.

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Official Title and Summary Prepared by the Attorney General

AUTOMOBILE ACCIDENT CLAIMS AND INSURANCE RATES. INITIATIVE STATUTE. Reduces bodily injury, uninsured motorist rates to 50 percent of October 31, 1988, or October 31, 1987, level, whichever is lower, adjusted for medical inflation. Limits motor vehicle accident recovery for noneconomic losses such as pain and suffering to 25 percent of economic losses, as defined. Prohibits attorney contingent fees greater than 25 percent of economic losses, as defined. Limitations not applicable to survival, wrongful death actions or actions involving serious and permanent injuries and/or disfigurement. Provisions expire December 31, 1992. Summary of Legislative Analyst's estimate of net state and local government impact: Would increase state administrative costs by about \$2 million in 1988-89, varying thereafter with workload, to be paid by additional fees on the insurance industry. State and affected local governments would have unknown savings from reduced insurance rates and loss limitations. Possible reduction in court costs and court revenues could result from limitation on claims for noneconomic damages. Would reduce state revenues from the gross premiums tax by about \$50 million a year for next four years if no other changes are made in insurance rates.

Analysis by the Legislative Analyst

Background

Various types of insurance are sold in California, including automobile, liability, fire, health and life. In 1987, insurance companies collected about \$50 billion in premiums from the sale of insurance. In turn, they paid about \$1 billion to the state in a tax on these premiums.

Motor vehicle insurance is one of the major types of insurance purchased in the state. It accounted for about \$12 billion (24 percent) of all premiums collected during 1987. Such insurance may include protection for:

- Liability and property damage (which covers claims for bodily injury and property damage to others when the insured person was at fault);
- Medical (which covers the insured person and others in the automobile, regardless of fault, for "excess" medical expenses, meaning those expenses not covered by other insurance);
- Collision (which covers collision damage to the insured's car regardless of the fault of the insured);
- Comprehensive (which covers damage other than collision, such as fire, theft, glass breakage and vandalism, to the insured's car); and
- Uninsured and underinsured motorist (which covers claims for bodily injury and/or property damage caused by a motorist who is at fault and who has no insurance or inadequate insurance).

Rate-Setting by Insurance Companies. Currently, insurance companies set rates for various types of insurance, using a number of factors. For motor vehicle insurance, these factors generally include the age, sex, marital status, driving record, type of vehicle and home address of the insured. The insurance companies also take into consideration other factors such as their claims experience, income and expenses. Insurance companies are not required to tell the public what relative weight they give to these factors when setting rates. In addition, insurance companies are not subject to the state's anti-trust laws.

Role of the Department of Insurance in Reviewing Rates. Currently, the Department of Insurance does not review and approve insurance rates before they take effect. Instead, the Department of Insurance can request

insurance companies to justify such rates *after* they take effect, as part of the rate examination process or in response to complaints from consumers. Historically, the scope and frequency of rate examinations has been limited.

Current Method of Settling Claims. Currently, the party who is "at-fault" in an accident is responsible for paying compensation for both bodily injury and property damage.

If a claim for damages is filed and one or more of the parties involved in an accident is insured, insurance companies attempt to determine who is at fault. Insurance claims are usually settled by negotiations or by court action. After it is determined which party is at fault, the insurance company of that party pays the damages, not to exceed the limits of the insurance policy.

Attorney Fees. Attorney fees in motor vehicle accident cases are usually based on a percentage of the amount the client recovers and are referred to as "contingency fees." The fees are fixed by a contract between the attorney and client. There are no dollar limits on contingency fees in these cases.

Proposal

In summary, this measure:

- Requires insurance companies to reduce the bodily injury liability and uninsured motorist portions of motor vehicle insurance rates and makes other changes related to motor vehicle insurance,
- Limits claims for noneconomic losses (such as "pain and suffering") and attorney contingency fees, and
- Expires at the end of December 1992.

Rate Reductions

This measure requires insurance companies to reduce their rates for the bodily injury liability and uninsured motorist components of motor vehicle insurance policies. These components account for roughly 40 percent of total motor vehicle insurance premiums. Specifically, the measure requires that rates for policies issued on or after November 9, 1988, be reduced to the lower of the following:

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Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure amends and adds sections to the Business and Professions Code, adds sections to the Civil Code, Code of Civil Procedure, and Insurance Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. (a) *We the people of the State of California hereby find and declare that insurance coverage of liability for bodily injury arising out of the use of motor vehicles has become unaffordable to many individuals and businesses.*

(b) *We the people also find and declare that the high cost of this coverage is the result of the bodily injury reparations system in effect today.*

(c) *In order to address these concerns, we the people further find and declare that it is necessary and proper to (1) reform the reparations system as set forth in the statutes of this state and as developed in numerous court decisions, and (2) as a direct result, reduce by 50 percent premiums for coverage of liability for bodily injury provided by policies covering liability arising out of the use of any motor vehicle.*

(d) *With these goals in mind, we the people do hereby enact this initiative measure.*

SEC. 2. Section 6146.6 is added to the Business and Professions Code, to read:

6146.6. (a) *For the purposes of this section:*

(1) *"Bodily injury" means injury to a person which arises out of the use of a motor vehicle as a motor vehicle and any sickness or disease that results from the injury. Bodily injury does not mean injury occurring during the use of a motor vehicle but not arising out of that use.*

(2) *"Economic losses" means objectively verifiable past and future monetary losses not compensable from other sources, including medical expenses, loss of earnings, including future loss, burial costs, loss of business, loss of employment opportunity, and costs of obtaining necessary substitute domestic services, excluding services rendered by relatives, members of the injured person's household, or others under age 16. No other losses or damages shall be considered economic losses.*

(3) *"Motor vehicle" means any vehicle designed primarily for use on streets and highways and subject to motor vehicle registration under the laws of California.*

(4) *"Person" means a natural person and not a corporation, partnership, association, or trust.*

(5) *"Use of a motor vehicle" means operating, maintaining, loading, or unloading a motor vehicle.*

(b) *An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with a claim for bodily injury, which is not both serious and permanent as defined in subdivision (b) of Section 3333.6 of the Civil Code, or which does not involve serious and irreparable permanent disfigurement, presented to an insurer providing coverage of liability for bodily injury arising out of the use of a motor vehicle, in excess of 25 percent of the economic losses recovered.*

(c) *This section does not apply to either survival actions provided for in Section 573 of the Probate Code or wrongful death actions.*

(d) *This section only applies to causes of action arising from accidents that occur on and after November 9, 1988, and on or before December 31, 1992.*

SEC. 3. Section 6147 of the Business and Professions Code is amended to read:

6147. (a) An attorney who contracts to represent a plaintiff on a contingency fee basis shall, at the time the contract is entered into, provide a duplicate copy of the contract, signed by both the attorney and the plaintiff, or his guardian or representative, to the plaintiff, or to the plaintiff's guardian or representative. The contract shall be in writing and shall include, but is not limited to, all of the following:

(1) A statement of the contingency fee rate which the client and attorney have agreed upon.

(2) A statement as to how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect contingency fee and the client's recovery.

(3) A statement as to what extent, if any, the plaintiff could be required to pay any compensation to the attorney for related matters that arise out of their relationship not covered by their contingency fee contract. This may include any amounts collected for the plaintiff by the attorney.

(4) Unless the claim is subject to the provisions of Section 6146 or 6146.6, a statement that the fee is not set by law but is negotiable between attorney and client.

(5) If the claim is subject to the provisions of Section 6146 or 6146.6, a statement that the rates set forth in that section are the maximum limits for the contingency fee agreement, and that the attorney and client may negotiate a lower rate.

(b) Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.

(c) This section shall not apply to contingency fee contracts for the recovery of workers' compensation benefits.

SEC. 4. Section 3333.6 is added to the Civil Code, to read:

3333.6. (a) *For the purposes of this section:*

(1) *"Bodily injury" means injury to a person which arises out of the use of a motor vehicle as a motor vehicle and any sickness or disease that results from the injury. Bodily injury does not mean injury occurring during the use of a motor vehicle but not arising out of that use.*

(2) *"Economic losses" means objectively verifiable monetary past and future losses not compensable from other sources, including medical expenses, loss of earnings, including future loss, burial costs, loss of business, loss of employment opportunity, and costs of obtaining necessary substitute domestic services, excluding services rendered by relatives, members of the injured person's household, or others under age 16. No other losses or damages shall be considered economic losses.*

(3) *"Motor vehicle" means any vehicle designed primarily for use on streets and highways and subject to motor vehicle registration under the laws of California.*

(4) *"Noneconomic losses" means all losses except those specifically defined as "economic losses" in paragraph (2), including, but not limited to, subjective, nonmonetary losses such as pain and suffering, inconvenience, mental suffering, emotional distress, loss of society, loss of companionship, loss of consortium, injury to reputation, humiliation, or any combination of the above.*

(5) *"Person" means a natural person and not a corporation, partnership, association, or trust.*

(6) *"Use of a motor vehicle" means operating, maintaining, loading, or unloading a motor vehicle.*

(b) *No person or entity may recover noneconomic losses in excess of 25 percent of economic losses for bodily injury resulting from or caused by an accident arising out of the use of a motor vehicle unless the person seeking recovery, as a direct result of the accident, has suffered an injury resulting in either of the following:*

(1) *Serious and irreparable permanent disfigurement.*

(2) *Any injury which is both serious and permanent. An injury is "serious" for the purposes of this paragraph only if it substantially prohibits the injured person from resuming substantially all of his or her normal activities. An injury is "permanent" only if its effects cannot be eliminated by further time for recovery or by further medical treatment and care, including surgery, or both.*

(c) *This section does not apply to either survival actions provided for under Section 573 of the Probate Code or wrongful death actions.*

(d) *This section only applies to causes of action arising from accidents that occur on or after November 9, 1988, and on or before December 31, 1992.*

SEC. 5. Section 425.14 is added to the Code of Civil Procedure, to read:

425.14. (a) *For purposes of this section:*

(1) *"Bodily injury" means injury to a person which arises out of the use of a motor vehicle as a motor vehicle and any sickness or disease that results from the injury. Bodily injury does not mean injury occurring during the use of a motor vehicle but not arising out of that use.*

(2) *"Economic losses" means objectively verifiable monetary past and future losses not compensable from other sources, including medical expenses, loss of earnings, including future loss, burial costs, loss of business, loss of employment opportunity, and costs of obtaining necessary substitute domestic services, excluding services rendered by relatives, members of the injured person's household, or others under age 16. No other losses or damages shall be considered economic losses.*

(3) *"Motor vehicle" means any vehicle designed primarily for use on streets and highways and subject to motor vehicle registration under the laws of California.*

(4) *"Noneconomic losses" means all losses except those specifically defined as "economic losses" in paragraph (2), including, but not limited to, subjective, nonmonetary losses, such as pain and suffering.*

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Argument in Favor of Proposition 101

Only one auto insurance initiative on this ballot can dramatically reduce your premiums and provide for legal reforms which end trial lawyer-promoted lawsuits and fraudulent insurance claims . . .

PROPOSITION 101.

- Your YES vote on Proposition 101 mandates an insurance premium reduction AVERAGING ONE-THIRD for all California motorists and limits future increases to the cost of living.
- Your YES vote on Proposition 101 means that insurance will be affordable and families with teenage drivers and uninsured motorists will now be able to purchase insurance coverage.
- Your YES vote on Proposition 101 stops the rip-off which occurs when someone yells "whiplash" and sues for megabucks.
- Your YES vote on Proposition 101 stops those greedy individuals who have institutionalized the slogan, "Hit me—I need the money."
- Your YES vote on Proposition 101 ensures that all out-of-pocket expenses for medical bills, lost wages (including future loss), lost business opportunity, etc. are paid in full.

Proposition 101 is easy to understand and it is also fair! It mandates a 50% cut in bodily injury and uninsured motorist liability insurance premiums. This means that you will receive a reduction in your premium between 22% and 45% depending on your driving record, type of vehicle driven and the insurance coverage you carry.

Average reductions for California consumers will be about 35%.

Every registered personal and commercial on-road vehicle in the state will receive this reduction.

This significant cut in premiums occurs because, when a "fender bender/minor injury" accident happens, Proposition 101 limits claims for noneconomic loss (pain and suffering) to 25% above the real economic loss. According to the California Attorney General, Proposition 101's limitations ARE NOT in effect when an accident involves serious and permanent injuries or survivors' rights when a death occurs.

Proposition 101 also reduces the incentive for those lawyers special-

izing in "ambulance chasing" from filing meaningless lawsuits by limiting their contingency fees to 25% in those cases.

California consumers can no longer afford to be at the mercy of the "Devil's Duo"—unscrupulous trial lawyers and those insurance companies which prey upon California motorists with high premium increases! Proposition 101 provides significant rate reduction while protecting the rights of honest California motorists.

While the average California consumer will receive an approximate 1/3 cut in auto insurance premiums from Proposition 101, those motorists driving cars with little or no comprehensive or collision insurance may receive rate reductions of almost 50%. This significant reduction is especially helpful to seniors and people driving older cars.

As an added benefit, the reduction Proposition 101 provides is applicable to local and state governments and school districts. This means more funds will be available for programs instead of being paid out for insurance.

FOUR INITIATIVES ON AUTO INSURANCE APPEAR ON THIS BALLOT. NO MATTER HOW YOU VOTE ON THE OTHER INITIATIVES, BE SURE TO VOTE YES ON THE ONE INITIATIVE WHICH WILL CUT YOUR INSURANCE PREMIUM 1/3—PROPOSITION 101.

VOTE YES ON PROPOSITION 101.

Thank you.

RICHARD POLANCO

*Member of the Assembly, 55th District
Chair, Consumers for Lower Auto Insurance Rates*

JOHN SEYMOUR

*State Senator, 35th District
Orange County*

MIKE ROOS

*Member of the Assembly, 46th District
Assembly Speaker pro Tem
Los Angeles*

Rebuttal to Argument in Favor of Proposition 101

LOOK WHO'S TALKING: Proposition 101 was drafted and is supported by insurance companies. Official records of the California Secretary of State show that as of July more than \$1.7 million, over 92% of Proposition 101's budget, was contributed by one insurance company and its holding company. That's why Proposition 101 is great for insurance companies and bad for consumers.

If you are hurt in an auto accident Proposition 101 requires you to use all:

- *your sick leave*
- *your vacation time*
- *your health insurance*
- *your workers' compensation*
- *your state disability*

before you get a dime from the insurance company of the person who hit you!

Proposition 101 will cost taxpayers money. Taxpayers, not the at-fault driver's insurance company, will pay the medical costs when a Medi-Cal recipient is injured in an auto accident. Taxpayers pick up the bill,

insurance companies get the extra profits.

Drivers with perfect records are treated no better than drunk and reckless drivers. Because general damages would be reduced if you or a family member were injured by a drunk driver, the amount you collect from the driver's insurance would be reduced by as much as 66%. And you may still have to hire a lawyer and go to court to collect.

Proposition 101's promised premium reduction applies only to two portions of your premium. Insurance companies can raise the rest of your premium as much as they want.

Proposition 101 is a windfall for auto insurance companies; it's not real reform. **VOTE NO ON PROPOSITION 101.**

JOHN VAN DE KAMP

Attorney General, State of California

GLORIA MOLINA

Los Angeles City Councilwoman

EDWARD V. ROBERTS

*Former Director, California State Department of
Rehabilitation
President, World Institute on Disability*

Argument Against Proposition 101

CONSUMERS UNION, THE NON-PROFIT PUBLISHER OF *CONSUMER REPORTS* MAGAZINE, urges you to vote NO ON PROPOSITION 101. We believe it isn't good for consumers.

PROPOSITION 101 DOESN'T DELIVER THE LOWER RATES YOU DESERVE.

When an insurance company says it will lower your rates you have to ask "How?" Your total cost could be higher if Proposition 101 passes.

READ THE FINE PRINT. PROPOSITION 101 DOESN'T REALLY GUARANTEE A RATE REDUCTION OF 50%.

The promised reduction in premiums applies only to the bodily injury and uninsured motorist portions of your liability coverage. This might amount to a 17% overall reduction in your premiums depending on how much coverage you carry. *However, there's nothing in the plan to prevent insurance companies from raising the premiums for other portions of your policy.* Insurance companies can increase your premiums for property damage, collision, and/or comprehensive coverage as much as they want without restrictions.

PROPOSITION 101 DOESN'T STOP AUTOMOBILE INSURANCE RATE INCREASES.

The insurance companies drafted this initiative to allow increased bodily injury premiums every year after the first year. The other portions of your premiums can go up even sooner.

If this measure passes, the amount you receive after being injured in a typical automobile accident could be reduced by 2/3 or more. When

someone hits your car, only part of the costs and injury you suffer will be paid under Proposition 101. This will amount to approximately 1/3 of today's typical auto accident claim. And you still may have to hire and pay an attorney to get your claim paid.

PROPOSITION 101 LETS INSURANCE COMPANIES OFF THE HOOK FOR MOST OF THE CLAIMS THEY NOW PAY.

If you are in an accident and the other driver is at fault, you may have to use up *your* health insurance, *your* sick leave, and *your* disability insurance before you can collect one penny from the insurance company for your medical costs or lost wages. If you are eligible, you may have to collect from Medi-Cal and Workers Compensation before the other driver's insurance company pays you a cent. This means that the costs of health insurance will increase drastically. While auto insurance companies pay less, our taxes and health care costs will go up.

This initiative affects more than just fender benders. PROPOSITION 101 DOESN'T REFORM THE INSURANCE SYSTEM AND IT DOESN'T GIVE YOU TRUE RATE REDUCTIONS. IT DOES PROTECT AUTO INSURANCE COMPANY PROFITS AT YOUR EXPENSE.

SAY NO TO PROPOSITION 101.

HARRY M. SNYDER

*Director, West Coast Regional Office,
Consumers Union of U.S., Inc.,
Publishers, Consumer Reports Magazine*

Rebuttals to Argument Against Proposition 101

...ERE THEY GO AGAIN...

Attorney Harry Snyder, hiding behind the guise of a consumer organization, does not understand Proposition 101.

- Proposition 101 mandates *by law* a 50% reduction in bodily injury liability and uninsured motorists insurance.

Most Californians receive an average rate reduction of one-third. Drivers with older cars may get almost one-half. Drivers with newer, luxury cars, about one-fourth.

- Proposition 101 stops fraud.

The Insurance Crime Prevention Institute estimates that 30% to 40% of all accident claims in southern California may involve some elements of fraud.

- Proposition 101 *only* limits pain and suffering awards in minor accidents.

Medical bills, lost wages, auto repair, etc. are paid in full in *any* accident. Individuals with serious and permanent injuries are entitled to the same pain and suffering damages they receive today.

- Proposition 101 provides an arbitration procedure to determine the seriousness of the injury.

A neutral physician determines if any injury is serious and permanent.

Proposition 101 lowers auto insurance rates *and* protects consumers rights!

Vote YES on 101.

RICHARD POLANCO

*Member of the Assembly, 55th District
Chair, Consumers for Lower Auto Insurance Rates*

Proposition 101 means that every county, city, and school district in California will have millions more dollars for meaningful programs—or rebates to taxpayers—and less money going into insurance reserves.

I strongly urge everyone concerned about local government and schools to vote *for* Proposition 101.

DON ROTH

Orange County Supervisor

Seniors should support Proposition 101 because we will receive the greatest benefit from it.

Because we generally have older cars we will receive rate reductions of almost 50%.

Vote YES on 101.

MAY SHOTWELL

Seniors Advocacy Services

agent, broker, or other person engaged in the business of insurance or any other person or entity, a notice of hearing. The notice shall state the commissioner's intent to assess administrative penalties, the time and place of the hearing and the conduct, condition, or ground upon which the commissioner is holding such hearing and proposing the assessment of penalties. The hearing shall be held

in 30 days after such notice is served. Within 30 days after the conclusion of hearing, the commissioner shall issue an order specifying the amount of penalties to be paid, if any. Penalties shall be paid into the state insurance fund.

(c) Any broker, agent, or other person engaged in the business of insurance, other than an insurer, or any other person or entity, who violates the provisions of this article is liable for administrative penalties of no less than one thousand dollars (\$1,000) and no more than twenty-five thousand dollars (\$25,000) for each violation.

(d) Any insurer which violates the provisions of this article is liable for administrative penalties of no less than ten thousand dollars (\$10,000) and no more than one hundred thousand dollars (\$100,000) for each violation.

(e) The powers vested in the commissioner by this section shall be in addition to any and all other powers and remedies vested in the commissioner by law.

10198.10 Actions for injunctive relief, compensatory damages, punitive damages, restitution, penalties, or any other remedy provided in law or equity may be brought in superior court by the Attorney General, a district attorney, or a city attorney on behalf of the people of the State of California, or by any person against any person violating, or threatening to violate, this article. The court shall award reasonable attorneys fees for successful prosecution of such actions.

10198.11 Any person who intentionally violates any provision of this article is guilty of a public offense punishable by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

10198.12 The requirements and remedies provided by this article are in addition to any other requirements and remedies provided by law.

SECTION 17. Regulation of Attorneys' Fees

Section 6146.6 of the Business and Professions Code is added, to read as follows:

6146.6 In addition to any other obligation imposed upon attorneys by law, attorneys shall advise prospective clients in writing that fees are not set by law, but are negotiable without restriction between attorney and client. Fees shall not be set by law. The existing right of clients to negotiate fees without restriction and to receive written fee agreements is hereby ratified.

When fees are based on the amount recovered, the contract shall specifically state whether the calculation is based on recovery before or after deduction of costs and expenses.

The provisions of this section do not apply to any matter for which attorneys' fees are set by statute existing on January 1, 1988.

SECTION 18. Appropriations and Assessments

Article 8 is added to Chapter 2 of Division 3 of the Insurance Code to read as

13700. The moneys appropriated pursuant to this act shall be funded entirely by fees assessed by the commissioner as follows:

(a) The commissioner shall establish a schedule of fees for filings made pursuant to section 1852.1 that will produce revenues sufficient to carry out the provisions of Sections 4, 8, and 9 of this act.

(b) For each year commencing with the 1989-90 fiscal year, the commissioner shall establish a schedule of fees for filings made pursuant to section 10198.08 that will produce revenues sufficient to carry out the provisions of Section 16 of this act.

(c) The commissioner shall establish a schedule of modest fees for use of the consumer information program created by Section 11629.606.

Said fees shall be deposited in the Insurance Fund.

13701. (a) For fiscal year 1988-89, there is hereby appropriated from the Insurance Fund, for the purpose of carrying out this act, the following amounts, which shall be in addition to amounts otherwise appropriated:

(1) To the Department of Insurance, the sum of eight million dollars (\$8,000,000.00).

(2) To the Department of Justice, the sum of two million dollars (\$2,000,000.00).

(b) It is the will of the People that, for fiscal year 1989-90 and each year thereafter, the Legislature appropriate from the Insurance Fund an amount sufficient to fund adequately the activities of state government specified in this act.

SECTION 19. Amendment

(a) Except as provided in subdivision (b) of this section, this act may be amended or repealed only by one of the following two procedures:

(1) This act may be amended to further its purposes by statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor, if at least twelve days prior to passage in each house the bill is in its final form.

(2) This act may be amended or repealed by a statute that becomes effective when approved by the electors.

(b) Notwithstanding the provisions of subdivision (a) of this section, Sections 15 and 17 of this act may be amended or repealed by statute approved by the electors after the effective date of this act or by subsequent statute passed by the Legislature and signed by the Governor as otherwise provided by law.

SECTION 20. Severability

If any provision of this act, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this act, to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this act are severable.

SECTION 21. Liberal Construction

This act shall be liberally construed and applied to promote its underlying purposes.

Proposition 101: Analysis

Continued from page 90

- 50 percent of the rates in effect on October 31, 1988; or
 - 50 percent of the rates in effect on October 31, 1987, adjusted for inflation by the Physicians' Services component of the California Consumer Price Index (CCPI).
- The resulting reduced rates:
- Cannot be increased during the period November 1988 through November 1989.
 - Thereafter, these rates can be increased by no more than the annual change in the Physicians' Services component of the CCPI during the period November 1989 through December 1992.

This measure applies to private and commercial motor vehicles including automobiles, motorcycles, trucks and buses. It does not apply to "off-road-type" vehicles which are not registered with the Department of Motor Vehicles.

The measure requires each affected insurance company to file a report with the Department of Insurance by December 1988, showing compliance with the rate reductions.

Limits on Claims for Noneconomic Damages and Attorney Fees

1. **Limits on Noneconomic Damages.** In general, the measure limits claims for noneconomic losses for bodily injury resulting from the use of a motor vehicle. It limits noneconomic losses (such as pain and suffering) to 25 C88

percent of economic losses (such as medical costs and loss of wages, not paid by other sources). These limits do not apply to situations in which the injuries resulted in death or in serious and permanent injury or disfigurement.

2. **Limits on Attorney Fees.** The measure limits attorney contingency fees to 25 percent of the economic losses recovered by the injured person if a claim is filed with an insurance company. These limits do not apply to situations in which the injuries resulted in death or in serious and permanent injury or disfigurement.

Expiration of Provisions

The provisions of this measure expire at the end of December 1992.

Fiscal Effect

Costs

Department of Insurance. This measure would increase the Department of Insurance's administrative costs by about \$2 million during 1988-89. In years following, these costs could be somewhat lower or higher, depending on workload. These costs, payable from the Insurance Fund, may require additional fees and assessments to be levied on the insurance industry.

State and Local Governments. While some local governments purchase insurance, most "self-insure" by relying upon their own resources to pay for losses and claims resulting from motor vehicle accidents. The state also is self-insured against such losses and claims. Because this measure reduces certain types of motor vehicle insurance

rates, and limits claims for noneconomic losses, it would result in unknown savings to the affected state and local governments.

Courts. Because this measure places limits on court actions for noneconomic damage claims, it may reduce, to an unknown extent, annual state and local court costs and local court revenues.

Revenues

Insurance companies pay a tax, based on the amount of gross premiums they receive each year from insurance sold in California. These tax revenues are deposited in the State General Fund.

Proposition 101: Text of Proposed Law

Continued from page 91

inconvenience, mental suffering, emotional distress, loss of society, loss of companionship, loss of consortium, injury to reputation, humiliation, or any combination of the above.

(5) "Person" means a natural person and not a corporation, partnership, association, or trust.

(6) "Use of a motor vehicle" means operating, maintaining, loading, or unloading a motor vehicle.

(b) No claim to recover noneconomic losses in excess of 25 percent of economic losses, resulting from or caused by an accident arising out of the use of a motor vehicle, shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading to be filed that includes a claim for noneconomic losses in excess of 25 percent of economic losses. The court may allow the filing of an amended pleading claiming noneconomic losses in excess of 25 percent of economic losses on a motion by the party seeking the amended pleading if the court finds that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim that the limitations provided in Section 3333.6 of the Civil Code do not apply on the basis of the findings of the physician selected pursuant to subdivision (c), the findings of other physicians, and any other relevant information the court wishes to consider. The court shall not grant a motion allowing the filing of an amended pleading that includes a claim for noneconomic damages in excess of 25 percent of economic damages if the motion for the order is not filed within two years after the complaint or initial pleading is filed.

(c) If a defendant disputes that the plaintiff's injury meets the requirements of Section 3333.6 of the Civil Code, the plaintiff shall be examined by a neutral physician selected pursuant to this subdivision. The county medical association for the county in which the action has been filed shall furnish, upon request of either party, the names of three physicians whose specialties qualify them to evaluate the injury, whose practices are located in the county in which the action has been filed, and who have agreed to provide examinations for the purposes of this section. If the county medical association is unable to furnish the names of three physicians, the Board of Medical Quality Assurance shall furnish the names. If there are not three physicians whose practices are located in the county in which the action has been filed, whose specialties qualify them to evaluate the injury, and who have agreed to provide examinations for the purposes of this section, the county medical association or the Board of Medical Quality Assurance, as applicable, shall furnish the names of three qualified physicians whose practices are located in a nearby county and whose practices are closest to the county in which the action has been filed. The plaintiff and defendant shall each eliminate one name. The remaining physician shall examine the plaintiff and furnish copies of his or her written findings to the plaintiff, defendant, and the court. Both parties shall share equally in the costs of the examination. The examination provided pursuant to this subdivision shall be in addition to other discovery provided for by law. If the plaintiff refuses to submit to the examination, the court shall deny plaintiff's motion for an order allowing an amended pleading to be filed that includes a claim for noneconomic losses in excess of 25 percent of economic losses.

(d) This section does not apply to either survival actions provided for in Section 573 of the Probate Code or wrongful death actions.

(e) This section only applies to causes of action arising from accidents that occur on or after November 9, 1988, and on or before December 31, 1992.

SEC. 6. Section 1852.5 is added to the Insurance Code, to read:

1852.5. (a) For the purposes of this section:

(1) "Bodily injury" means injury to a person which arises out of the use of a motor vehicle as a motor vehicle and sickness, disease, or death that results from the injury. Bodily injury does not mean injury occurring during the use of a motor vehicle but not arising out of that use.

(2) "Motor vehicle" means any vehicle designed primarily for use on streets and highways and subject to motor vehicle registration under the laws of California.

(3) "Person" means a natural person and not a corporation, partnership, association, or trust.

(4) "Use of a motor vehicle" means operating, maintaining, loading, or unloading a motor vehicle.

(b) For any coverage of liability for bodily injury arising out of the use of a

This measure requires that the rates for the bodily injury liability and uninsured motorist components of motor vehicle insurance policies be reduced. These two components account for about 40 percent of total motor vehicle insurance premiums. The required rate reductions—by themselves—would reduce state insurance tax revenues by about \$50 million a year. This estimate assumes that no offsetting adjustments are made in other insurance rates—not restricted by this measure—to compensate for these reductions. Whether such adjustments would occur is unknown.

The rate reductions required by this measure will expire after four years, at the end of 1992.

motor vehicle provided by policies issued or renewed in this state with an effective date on or after November 9, 1988, the maximum premium rate charged by each motor vehicle liability insurer admitted in this state shall be the lower of the following:

(1) The insurer's premium rate in effect on October 31, 1988, reduced by 50 percent.

(2) The insurer's premium rate in effect on October 31, 1987, increased in an amount not to exceed the amount of the Physicians' Services component of the Consumer Price Index applicable to California for the period of time from October 1, 1987, to November 1, 1988, reduced by 50 percent.

The maximum premium rate shall also apply to premium rates for any uninsured motorist coverage of bodily injury.

(c) No insurer required to reduce premium rates pursuant to subdivision (b) may increase premium rates for coverage for bodily injury arising out of the use of any motor vehicle for any policy issued or renewed with an effective date before November 9, 1989. For any policy issued or renewed with an effective date from November 9, 1989, to December 31, 1992, the premium rates for coverage for bodily injury arising out of the use of any motor vehicle shall not be increased at an annual rate in excess of the Physicians' Services component of the Consumer Price Index applicable to California for the 12-month period preceding the increase.

(d) Each insurer required to reduce premium rates pursuant to subdivision (b) shall file a report evidencing compliance with its provisions with the commissioner by December 9, 1988. The report shall set forth the insurer's premium rate in effect on October 31, 1987, and October 31, 1988, for coverage of liability for bodily injury, and the reduced premium rates in effect on and after November 9, 1988. From November 9, 1989, to December 31, 1992, each insurer shall file a report within 30 days of any change in premium rates for coverage of liability for bodily injury arising out of the use of any motor vehicle with the commissioner. The report shall set forth the insurer's premium rates in effect prior to the change in premium rates, for coverage of liability for bodily injury, and the insurer's new premium rates.

(e) (1) Each motor vehicle liability insurer admitted in this state, including an insurer admitted after November 8, 1988, that did not have premium rates in effect for new business on October 31, 1988, for any coverage of liability for bodily injury arising out of the use of a motor vehicle because it did not offer that coverage on or before that date shall not increase premium rates initially imposed in excess of the amounts specified in subdivision (c), shall file a report of any change in premium rates as required by subdivision (d), and, if applicable, shall be subject to paragraph (2).

(2) If a motor vehicle liability insurer described in paragraph (1) is a subsidiary of, is controlled by, is a surviving corporation of, or is subject to common control along with an insurer required to reduce premium rates pursuant to subdivision (b), it may not have premium rates in excess of those permitted for the insurer required to reduce premium rates pursuant to subdivision (b).

For the purposes of this paragraph, "control" has the meaning set forth in subdivision (a) of Section 160 of the Corporations Code, "subsidiary" has the meaning set forth in Section 189 of the Corporations Code, and "surviving corporation" has the meaning set forth in Section 190 of the Corporations Code.

(3) If a motor vehicle liability insurer described in paragraph (1) is not subject to paragraph (2), then prior to the offer of any coverage of liability for bodily injury arising out of the use of a motor vehicle, it shall file its premium rates with the commissioner and obtain the commissioner's approval of those rates. Paragraph (1) shall apply to any subsequent increase in premium rates.

(f) This section applies to policies issued pursuant to Article 4 (commencing with Section 11620) of Chapter 1 of Part 3 of Division 2.

(g) The commissioner shall enforce the provisions of this section in accordance with Article 7 (commencing with Section 1853) including, but not limited to, by means of appropriate suspensions and revocations of certificates of authority and penalties.

(h) Except as provided in this section, the rating and classification of motor vehicle insurance shall be regulated in accordance with the provisions of Section 1852 in effect on January 1, 1988.

(i) Except as expressly provided, this section shall not affect the Insurance Code or any regulations issued pursuant to the Insurance Code.

SEC. 7. Section 3333.6 of the Civil Code, added by Section 4 of this measure and Section 1852.5 of the Insurance Code, added by Section 6 of this measure, are dependent on each other and are not severable.

SEC. 8. (a) Except as provided in subdivision (b), the provisions of this

measure shall not be amended by the Legislature by any bill which becomes operative on or before December 31, 1992, unless the bill (1) furthers the purposes of this act and is passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring or (2) becomes effective only when approved by the electors.

1 sition 102: Analysis

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tion and persons to whom the infection may have been transmitted, current law does not require health officers to do so. Health officers may alert persons who potentially have been exposed to the virus if the infected person provides written consent to the health officer to do so. If the health officer contacts a person who may have been exposed to the virus, the health officer must keep confidential the identity of the infected person.

Exposing Others to HIV. Current law does not impose specific criminal penalties on persons who knowingly expose others to HIV. Current law makes no provision for testing of persons charged with crimes to determine whether they are infected with the HIV.

Proposal

This measure makes various changes to existing laws that affect reporting, investigation, confidentiality, and penalties related to HIV infection. The measure also changes references in existing law from testing for HIV antibodies to testing for evidence of infection. The measure contains the following specific provisions:

Reporting and Investigation of HIV-Infected Persons. The measure requires health care providers to report the names of HIV-infected persons to local health officers and requires HIV-infected persons to report their names and the names of their contacts to local health officers. It also directs local health officers (1) to immediately investigate cases of AIDS and HIV infection and (2) to take all measures "reasonably necessary" to prevent transmission of infection. The measure requires the State Department of Health Services to adopt regulations specifying procedures for case investigation and "reasonably necessary" methods for preventing transmission of HIV infection.

Elimination of Restrictions on Using HIV Antibody Test Results. The measure removes current restrictions on using HIV antibody test results for determining insurability or employability of individuals. It also allows use of HIV test results in criminal or civil actions against infected persons and provides that physicians and nurses cannot be held liable for damages resulting from their disclosure of test results to certain persons.

Testing Persons Charged with Crimes. The measure allows involuntary HIV testing of persons charged with prostitution, certain sex crimes, or assault by means likely to produce great bodily injury. The state Department of Justice would be required to keep the test results on file and provide them to the courts, legal personnel, and law enforcement agencies upon request.

Criminal Penalties for Persons Who Knowingly Expose Others to the HIV. Anyone who donates blood or engages in prostitution, knowing that he or she is infected with HIV, would be guilty of a felony, punishable by imprisonment in state prison for five, seven, or nine years. In addition, anyone who commits certain crimes (including rape, sexual battery, and assault by means likely to produce great bodily injury), knowing that he or she is infected with HIV, would be sentenced to three addi-

(b) For any bill with an operative date on or after January 1, 1993, or that amends or repeals Section 6147 of the Business and Professions Code, as amended by Section 3 of this measure, the Legislature may amend or repeal the provisions of this measure by whatever vote is otherwise applicable to the bill and the bill need not be approved by the electors.

tional years in prison for each violation, in addition to the prison term imposed for the sex crime or assault.

Consent and Confidentiality Related to HIV Testing. The measure (1) eliminates the express requirement that consent for an HIV test be in writing and (2) prohibits physicians from being held criminally or civilly liable for disclosing test results without consent to (a) persons who may have been infected by the test subject, such as sexual partners, and (b) other medical personnel involved in treating the test subject. The measure also reduces fines and penalties for violation of provisions requiring that test results be kept confidential.

Protective Clothing. The measure prohibits any employer from inhibiting or interfering with an employee's decision to wear any type of protective clothing, such as gloves or a mask, the employee believes necessary to protect against HIV infection, unless the clothing interferes with the employee's ability to perform his or her job.

Biological Hazard Labels. The measure requires health facilities and clinics to place biological hazard labels on all items soiled by, or containing body fluids of, persons who are HIV-infected.

Compliance with the Measure. Failure to comply with specified provisions of the measure or State Department of Health Services regulations implementing these provisions would be a misdemeanor, punishable by imprisonment in a county jail or a fine or both.

Fiscal Effect

The measure has three potentially major, and a variety of minor or unknown, fiscal effects:

1. **Reporting and Investigation of Cases.** The fiscal impact of this provision could vary greatly depending on the number of persons who test positive for HIV infection, the number of cases investigated, the costs of investigating cases, and the types of measures determined to be reasonably necessary to prevent transmission of infection. The costs are potentially in the tens of millions of dollars annually. Costs could significantly exceed this amount if additional measures beyond tracing of contacts, such as widespread testing, are determined to be "reasonably necessary" to prevent the spread of the disease.

2. **Elimination of Restrictions on Using Test Results.** The costs of this provision to government health care programs ultimately could be in the tens to hundreds of millions of dollars annually if insurance companies institute HIV testing programs to eliminate or reduce their costs related to AIDS. This is because the annual costs of AIDS care in California will grow substantially over time. Currently, a majority of this care is funded by insurance companies. Allowing insurance companies to deny coverage based on HIV tests could shift a significant portion of these costs to public programs.

Potential costs resulting from employer testing programs are unknown. If a substantial number of people lose their jobs as a result of HIV testing, there could be substantial unemployment compensation and other costs.

3. **Testing of Criminal Offenders.** The fiscal impact of this provision is unknown, but could vary greatly, depending on how it is implemented. If all persons charged