

As focus turned to coronavirus crisis, insurers pushed for a sneaky rate hike on homeowners

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It's fair to say that most Americans see the coronavirus outbreak as an enormous and fearsome burden.

Not the insurance industry. In California, the industry is using the crisis to bring about a sneaky change in insurance rules that could lead to massive increases in homeowner premiums.

The insurers' instrument is a bill that has quietly sailed through the state Assembly during the coronavirus lockdown.

AB 2167 would strip the state's elected insurance commissioner of many important powers, effectively eviscerating key consumer protection provisions of the state's landmark Proposition 103 insurance reform measure, which has been the law for more than three decades.

Its purported rationale is to relieve a burgeoning crisis in homeowner insurance availability in wildfire high-risk zones. As we'll see, however, that argument doesn't hold water, because the purported relief comes with enormous loopholes.

The bill was introduced in the Assembly on Feb. 11. It passed the Insurance Committee whose chairman, Tom Daly, an Anaheim Democrat, is its sponsor) on May 7 by a 14-0 vote after a hearing that was sparsely attended in person or by video or telephone feed.

The measure passed the Appropriations Committee on June 3 by a 17-0 vote, and passed the full Assembly on June 8 by 61-3. Bristling with technical jargon that obscures its importance — or its potential impact on homeowner insurance rates — the measure hasn't been widely debated.

The measure is now before the state Senate. That's where it should die.

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“The bill is pretty sneaky,” says Amy Bach, executive director of the consumer group United Policyholders. “The whole way they’ve been trying to jam it through when very few people are paying attention is worth noting.”

The bill’s supporters depict it as a tool to give insurance regulators more flexibility to ensure that Californians in high-risk zones can obtain coverage, by creating “a reasoned private-sector solution to the problem of insurance unavailability.”

Don’t you believe it. The bill is opposed not only by a raft of consumer advocates but also by Insurance Commissioner Ricardo Lara.

“We view this really as an industry wish list,” Deputy Commissioner Bryant Henley told me.

We should stipulate that the insurers are only doing what comes naturally. One can’t blame them for trying to protect their profits any more than one can blame a dog for drinking out of the toilet. The spotlight belongs on legislators, who thus far have voted to be complicit with the industry.

It probably won’t surprise anyone that the path to passage of AB 2167 has been liberally greased with cash: Major insurers and their trade organizations have spent more than \$66 million on campaign contributions in Sacramento over the last decade, according to state figures.

There’s no question that the residential insurance market in wildfire areas is in a bad way. After the 2017 and 2018 fire seasons — including the deadly Camp fire of November 2018, which took at least 85 lives and destroyed the foothill community of Paradise — insurance companies refused to renew thousands of policies.

That forced homeowners to resort to the California FAIR Plan, an assigned risk pool that offered high-priced but limited coverage, or unregulated “surplus line” insurers such as Lloyd’s of London, also at sky-high rates.

But that’s no excuse to roll back Proposition 103, which provides Lara with all the authority he needs to review and approve insurer requests that make a legitimate case for rate increases.

Indeed, the California Insurance Department has looked kindly on rate requests; it says it has approved

96% of homeowner rate increase filings in recent years.

If anything, Lara has been viewed as being perhaps too close to the insurance industry, rather than not close enough. If insurers or their policyholders think he's not serving their interests, they can try to show him the door if he runs for a second term in 2022. He'd be term-limited out of office in 2026.

It's evident, therefore, that the insurance industry and its acolytes in the state Legislature have a different target in mind: Proposition 103.

To understand how AB 2167 undermines Proposition 103, a primer about the ballot measure is in order.

Enacted by voters in 1988, the measure ranks as one of the most successful regulatory reforms in California history. Proposition 103 removed the insurance industry's grip on insurance regulation.

Proposition 103 made the job of insurance commissioner an elected position and required the commissioner's prior approval for rate increases in many lines, including homeowner coverage, while establishing clear standards for those reviews.

It established a role for public comment on rate requests through public hearings and the participation of "intervenors," third parties that can subject rate requests to professional analysis and challenge them before the department or in court.

It also rolled back insurance rates by 20%.

Naturally, the industry has tried to eviscerate the measure since its inception — a testament to its spectacular effectiveness.

The industry has tried to make the measure's success at holding down insurance rates sound like a drawback.

During a May 7 hearing on AB 2167 before the Assembly Insurance Committee, insurance lobbyist Seren Taylor lamented that the average California homeowner's annual premium of \$1,008 is "17% below the national average and almost one-half of the average price in hurricane states like Louisiana and Florida."

He added that, although the average price of homeowner insurance nationally has increased 53% in the last 10 years, “in California, it has only risen 10.6%, which is less than half the rate of inflation.”

Perhaps concerned that his audience might judge his testimony to be proof of the wisdom and foresight of the voters who passed Proposition 103 and thereby won themselves billions of dollars in savings over the decades, Taylor warned that bad times lie ahead. He asserted that “the status quo is unsustainable in this new normal” of lengthening wildfire seasons.

Taylor didn’t reply to my request for further comment. Daly’s staff said he was “unavailable” to comment on his own bill.

AB 2167 takes aim at Proposition 103 in two ways. First, it provides for fast-tracking of insurer rate requests for homeowner and renter coverage in fire zones.

Insurers could submit a so-called Insurance Market Action Plan, or IMAP, for a county with high fire of risk. Under certain circumstances, the commissioner would have only 120 days to rule on the request. That’s a tight deadline compared with the maximum of 180 days afforded to rate requests under Proposition 103.

The bill allows insurers to seek “cost-based rates” — that is, rates that might not otherwise meet Proposition 103 standards — in exchange for “assurances” that they would serve high-risk markets. But there’s no mechanism in the bill to enforce those assurances.”

“Assurances are worthless,” says Harvey Rosenfield, the author of Proposition 103 and founder of the consumer rights group Consumer Watchdog.

By dictating that IMAPs follow county lines rather than high-risk zones alone, he adds, the bill opens the door to cherry-picking.

An insurer might file an IMAP for, say, Placer County, which incorporates thousands of high-risk wildfire acres, but meet its commitment to serve residents in the county by writing policies only along the Lake Tahoe shoreline or the low-risk flatlands in the county’s western end. In other words, insurers could still avoid writing policies in areas where coverage is hard to obtain and which the bill is ostensibly designed

to serve.

The sneakiest provision of the bill may be its treatment of reinsurance expenses. Reinsurance is a hedge by which primary insurers cap their risk exposure by laying some of it off on other firms for a fee.

Proposition 103 doesn't regulate reinsurance, and as a result insurance commissioners haven't allowed insurers to pass their reinsurance expenses through to consumers via premiums for residential coverage. The only exceptions are for earthquake and medical malpractice coverage.)

The exclusion was endorsed in a 1994 case by the state Supreme Court, which found that allowing reinsurance to be incorporated in consumer rates would open "a possible loophole."

AB 2167 would allow insurers to use reinsurance expenses to justify their IMAP filings. Rosenfield says that because reinsurance is unregulated, allowing it to become part of a rate filing raises the potential of double- or even triple-digit rate increases for consumers.

"States that allow reinsurance to be passed through have substantially higher homeowner rates than we do in California," says Douglas Heller, an insurance expert at the Consumer Federation of America. "There are no benefits to consumers, but the companies would be able to pass their hedging costs on to consumers without review."

Like other ballot measures, Proposition 103 has a built-in rampart against legislative mischief. It can only be amended by two-thirds votes in each chamber, and then only if the changes "further its purposes."

Its defenders have already said they would go to court to protect it from AB 2167, if necessary. The Insurance Department has warned that passage would lead to millions of dollars in annual expenses for several years to defend against such litigation, among other costs.

Is it worth the price? Obviously not.

If the insurance industry thought it was really doing consumers a favor by stripping the elected insurance commissioner of the tools that have kept California homeowner rates lower than those of other states, it would shout it from the rooftops, not sneak about while another crisis holds everyone's attention.