

Consumer Watchdog collects millions, but does it lower your insurance rates?

The Sacramento Bee

Nearly 30 years ago, consumer activist Harvey Rosenfield wrote and helped qualify Proposition 103, the November 1988 ballot measure that overhauled state regulation of home and auto insurance rates. The initiative, dubbed by supporters as the “Voter Revolt to Cut Insurance Rates,” also contained a provision that got little attention during one of the most expensive campaigns in state history: outsiders could challenge proposed insurance rates and get reimbursed for their costs.

The so-called intervenor process has become a significant source of revenue for the nonprofit founded by Rosenfield and its successor, Consumer Watchdog – and a major thorn in the insurance industry’s side. More than three-quarters of the \$17.6 million in intervenor fees awarded since 2003 have gone to Consumer Watchdog or its predecessor, state records show.

California is the only state that allows outside groups to participate in the home and auto insurance filing process. Yet there is still far from consensus on what the process has saved state residents, if anything. Critics in the insurance industry and others contend that Proposition 103’s intervenor process has done nothing to lower premiums paid by millions of auto and property insurance customers and may actually cause them to be higher than they would be without it. The main beneficiaries, they say, have been the outside groups awarded millions in fees for little work.

“They complicate the negotiations,” said Bill Gausewitz, a former deputy insurance commissioner for policy and regulation under former Commissioner Steve Poizner. “I personally do not think anyone benefits from it except for the intervenors.”

But supporters, including the office of Insurance Commissioner Dave Jones, say outside groups get involved in less than 1 percent of rate filings. The challenges, they say, play an important role in leveling the playing field between consumers and insurance companies, who wrote policies covered by Proposition 103 totaling \$50.3 billion in premiums in 2015.

“They are bred to hate Proposition 103 and to hate the intervenor process,” Amy Bach, executive director of United Policyholders, a consumers group, said of insurers. The intervenors, she said, benefit

the rate-review process and help “grossly outgunned” state insurance regulators.

\$17.6 million Total intervenor awards approved by the Department of Insurance from 2003 through 2016

Proposition 103 was one of five competing insurance-related measures in a nationally watched campaign involving the insurance industry, lawyers and others. The measure, among its provisions, created an elected insurance commissioner, and required insurance companies to get the agency’s approval for rate changes.

The ballot argument by Rosenfield and national consumer activist Ralph Nader said the measure would “create a permanent, independent consumer watchdog system” to “champion the interests of insurance consumers.” Opponents warned that it could cause insurance companies to leave the California market. Supporters were heavily outspent, but Proposition 103 passed with 51.1 percent of the vote.

Years of court battles followed over the law’s implementation. Consumer groups, meanwhile, began to weigh in on proposed insurance rates, rulemaking and other matters and were reimbursed for attorneys fees and other costs. Insurance companies pay for the intervenor awards.

During an early skirmish over the fees in 1995, former Insurance Commissioner Chuck Quackenbush alleged that some consumer advocates had “gotten fat off the public trough.” Rosenfield countered that Quackenbush favored insurance companies over consumers.

Both sides of the debate say it is impossible to assign a dollar amount to how much the intervenor process has saved California ratepayers.

The Department of Insurance, for example, has 1,200 employees and a \$269.7 million budget.

Department officials estimated that about 100 employees there work in divisions that review insurance companies’ rate filings.

“I wouldn’t say the department is lacking in any level of expertise,” Joel Laucher, chief deputy insurance commissioner, said, adding of intervenors, “They come in just like any other expert coming in that has their own perspective and viewpoint.”

In an accounting of cases since 2003 in which they were involved, Consumer Watchdog says consumers saw almost \$3.3 billion in combined savings – \$1.7 billion of it involving auto insurance rates and \$1.52 billion on homeowner policies.

“That definitely would not be as high unless Consumer Watchdog was involved,” said Carmen Balber, the executive director of Consumer Watchdog, which is based in Santa Monica.

Gausewitz disagreed. Gausewitz, a shareholder at the Greenburg Traurig LLP, said he has long believed that department workers do the heavy lifting on rate reviews. Outside intervenors then try to get paid for work of dubious value, he said.

“I have never seen any significant evidence that intervenors make any contribution to the process that isn’t already made by the Department of Insurance,” he said.

Each side points to research to help make their case.

A 2013 report by the Consumer Federation of America concluded that the intervenor process “improves both industry and government accountability.”

To craft the most effective prior approval system, the report said, states should include an intervenor process “that provides resources for citizen and organizational watchdogs who can serve as both a resource for and check on state Departments of Insurance and who will help hold insurance rates down to appropriate levels.”

But a 2015 study by the R Street Institute, a right-leaning think tank, singles out the intervenor process in a report critical of Proposition 103’s legacy.

Intervenors are “perhaps the worst” part of Proposition 103 “from a personal greed standpoint,” the report said. Consumers would benefit from a quick turnaround on rate applications, it said, but intervenors slow it down “since they are able to bill more hours and make more money by dragging out the process.”

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Whatever the impact of intervenors in the rate-setting process, industry data suggest that California remains a successful market for insurance companies.

About 100 insurance groups, representing almost 200 companies, sold private passenger auto insurance in the state, representing \$23.3 billion in premiums in 2015, according to A.M. Best Company, an insurance rating agency.

That year, insurance companies doing business in California reported paying out a little more than 68 cents on auto claims for every dollar collected in premiums. The California ratio was slightly better for insurance companies than the national average and those of 17 other states, including New York, Texas and Florida.

Californians’ costs for car insurance, however, averaged \$782.63 in 2013, below the national average of \$841.23, according to the most recent data available from the National Association of Insurance Commissioners.

Intervenors have had to deal with insurance commissioners of both parties in the years since Proposition 103 passed. Perhaps no relationship is as strong as the ties between Consumer Watchdog and Jones, a Democrat.

The Department of Insurance website links to Consumer Watchdog posts touting the success of the intervenor program.

In the years since Jones took office in 2011, the department has awarded almost \$7 million in intervenor reimbursement, almost all of it to Consumer Watchdog. Department officials say some of those challenges had been in the works before Jones took office.

Poizner, Jones' Republican predecessor, also was a full participant in the process. The department awarded \$5.5 million intervenor fees during Poizner's single term in office, records show, with Consumer Watchdog receiving almost all of the money.

"Our feeling is, it's working well, just as it was intended to work," said Laucher, a former deputy commissioner of rate regulation. "It serves as another set of eyes."

Yet a former high-ranking official in the department said of the rate challenges: "It was definitely Department of Insurance people who did the work."

"I would just compare the files that were intervened and the ones that weren't. I couldn't see ... any difference. I don't think the result was any better for the consumer," said Philip Pratt, a former bureau chief in one of five rate-filing units in the department's rate regulation branch.

Consumer Watchdog has clashed with more than just insurance companies in recent years, with lawmakers, health plans, aides to Gov. Jerry Brown and the California Democratic Party among its targets.

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All the while, the nonprofit has had little competition for the intervenor work, a situation that prompted then-state Sen. Juan Vargas in 2012 to call on Jones' office to work harder to get a more diverse intervenor pool.

The department hasn't had much success.

"We struggle with that," said Dan Goodell, assistant chief counsel. "There aren't that many consumer groups that are super-knowledgeable about consumer rate-making or who want to become knowledgeable about consumer rate making."

The National Asian American Coalition has been deemed eligible to intervene but has yet to decide if it will participate, general counsel Robert Gnaizda said in an interview. He acknowledged that the group faces a "lack of capacity" for those types of cases, he said.

Bach, of United Policyholders, said Consumer Watchdog largely dominates in pre-approval rate challenges.

“It was never the intent of the proposition to create a full-employment act for Consumer Watchdog attorneys,” said Bach, whose group has intervened in a case dealing with an insurance company’s modeling of fire risk.

“I think the department would prefer more diversity, but the fact is, Consumer Watchdog is very effective,” she said.

Members of the Legislature’s Democratic majority have largely steered clear of the issue, other than quickly blocking any efforts to change the process.

An industry-backed bill in 2014 by state Sen. Ted Gaines, R-El Dorado Hills, who was running against Jones that year, would have asked voters to eliminate witness and advocacy fees for intervenors. The measure didn’t make it out of its first committee after all majority Democrats voted no. Jones’ office, Consumer Watchdog, and other groups opposed Senate Bill 1331.

“This is really the bane of the industry’s existence,” Balber said. “That’s why they keep coming after it.”

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