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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

October 6, 2009

The Honorable Jerry Brown
Attorney General
State of California
1300 I Street
Sacramento, CA 95814

Attention: Ms. Krystal Paris, Initiative Coordinator

Re: Request for Title and Summary – Initiative Statutory Amendment
“The Fair Insurance Premiums and Practices Act”

Dear Attorney General Brown:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, we are submitting the attached proposed statewide ballot measure, entitled "The Fair Insurance Premiums and Practices Act" to your office. We request that you prepare a title and summary of the measure as provided by law.

We have also included with this letter the required statement under California Elections Code section 9608 signed by Douglas Heller as the proponent and a check in the amount of \$200.

Should you require any further information, please contact Douglas Heller at 1750 Ocean Park Blvd., Suite 200, Santa Monica, CA 90405 or by telephone at 310-392-0522 ext. 309.

Thank you for your time and attention to this matter.

Sincerely,

Douglas Heller

SECTION 1. TITLE

This measure shall be known as The Fair Insurance Premiums and Practices Act.

SECTION 2. FINDINGS AND DECLARATIONS.

The People of the State of California find and declare the following:

- (a) When homeowners file a legitimate claim, insurance companies raise their rates or refuse to renew policies – even if the policyholder is not responsible for the loss or the claim is never paid.
- (b) Some insurance companies want to penalize people when they restart insurance that has lapsed or who want to purchase insurance for the first time.
- (c) These practices are unfair to consumers, violate existing laws and lead to Californians paying too much for insurance or going without insurance.

SECTION 3. PURPOSE AND INTENT.

In enacting this Act, it is the purpose and intent of the People of the State of California to:

- (a) Prohibit insurance companies from punishing policyholders for using the policies they purchase to file legitimate claims;
- (b) Prohibit insurance companies from making customers pay more for insurance simply because they did not previously have insurance, even if they never needed it before; and,
- (c) Require insurance companies to refund, with interest, any premiums charged that violate California's insurance consumer protection laws.

SECTION 4. The following sections, commencing with section 1861.17 is added to Article 10 of Chapter 9 of Part 2 of Division 1 of the Insurance Code to read:

Prohibition on Unfair and Arbitrary Use of Claims History

1861.17 (a) When setting rates or premiums or determining eligibility for residential property insurance, an insurance company shall not refuse to issue or renew, determine eligibility, increase premiums, or deny a discount for a residential property insurance policy on the basis of any of the following prior insurance claims by the applicant or insured:

- (1) claims resulting from a loss due to natural causes, including, but not limited to, floods, earthquakes, lightning, and any weather-related event;
- (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 or payable;
- (4) claims that are within the claimant's deductible;
- (5) claims that are not covered by the policy;
- (6) claims that are paid in full by another insurance policy or a third party;
- (7) claims arising from hazards for which the policy does not provide coverage;

(8) claims concerning a property that is no longer owned by the applicant or insured;

(9) claims concerning the property to be insured that were made or paid prior to the applicant or insured owning or residing at the property;

(10) claims by the applicant or insured for which the risk of loss has been mitigated through the removal of the hazard, the repair of the damage or defect, or other changes to the property, or to the condition that caused the loss; or

(11) claims made or paid under a prior policy unless the insurer can definitively determine that subsections (1) through (10) do not apply. Any use of a claim made under a prior policy shall be disclosed to the insured or applicant with a written explanation of why consideration of the claim is not limited by this section.

(b) An insurance company shall not refuse to issue or renew, increase premiums, or deny a discount for an insurance policy based in whole or part on whether a policyholder has previously inquired about the insurance policy, including but not limited to an inquiry concerning the scope or nature of coverage available under the policy.

(c) Nothing in this act shall prohibit an insurer from determining premiums or eligibility for a residential property insurance policy on the basis of the discovery of grossly negligent acts or omissions by the insured that substantially increase any of the hazards insured against.

(d) "Residential property insurance" refers to the insurance described in section 675 (a).

Public Disclosure and Oversight of Insurance Company Practices

1861.18 (a) Each insurer selling residential property insurance shall submit a complete copy of its eligibility and risk classification rules and procedures to the Insurance Commissioner within thirty days of enactment of this statute and at any time thereafter that an insurer makes any changes to its underwriting system. These submissions shall be made available for public inspection pursuant to section 1861.07.

(b) The Commissioner may hold a public hearing to determine whether or not an insurer's eligibility and risk classification rules and procedures comply with this Article. The Commissioner shall hold a public hearing upon a petition by any person.

(c) "Eligibility and risk classification rules and procedures" means the criteria, rules and procedures used by an insurer to determine an applicant's eligibility for coverage and the amount of premium to be paid by an applicant or policyholder.

Prohibition on Consideration of Prior Insurance Coverage

1861.19 Notwithstanding any other provision of law, the absence of prior insurance, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile or residential property insurance rates, premiums or insurability.

Refunds for Violation of the Law

1861.20 In addition to any other remedy authorized by law, an insurance company that does not comply with any provision of this article, as determined by a court or the Commissioner, shall be required to refund the premium or other financial benefit, plus interest, that the insurance company obtained as a direct or indirect result of its violation of law. This section is intended to restate and clarify existing law as of September 1, 2009.

SECTION 5. CONFLICTING BALLOT MEASURES

In the event that this measure and another measure or measures relating to the issues herein shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SECTION 6. AMENDMENT.

The provisions of this act shall not be amended by the Legislature except to further its purposes 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.

SECTION 7. OTHER MATTERS

(a) Interpretation. The courts are directed to construe and apply this measure in the manner that best and most fully promotes its underlying purposes.

(b) 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.