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November 12, 2009

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed a proposed statutory initiative related to insurance (A.G. File No. 09-0050).

Background

State Regulation of Insurance. The state regulates many aspects of California's insurance market. Pursuant to Proposition 103, a statewide initiative enacted by voters in 1988, the Insurance Commissioner is responsible for reviewing and approving rate changes for property and casualty insurance lines—such as automobile, residential property, and earthquake insurance—before revisions to the rates can take effect. Current law also allows any person or third-party entity to initiate or intervene in any rate change application. When such a petition occurs, the Insurance Commissioner must hold a hearing to determine if the petition has merit. Currently, the Insurance Commissioner has the authority to order refunds for violations of law in settlements obtained at rate hearings. Under state law, insurance companies are charged fees to cover the state's cost to regulate the industry.

Insurance Premium Tax. Under current law, insurance companies doing business in California pay an insurance premium tax in lieu of a state corporate income tax. The tax is based on the amount of insurance premiums they earned in the state each year for various types of insurance coverage. In 2008, insurance companies paid about $149 million in premium tax on residential property insurance policies in California.

Requirements for Determining Rates, Premiums, and Coverage. Current law specifically requires rates and premiums for automobile insurance policies to be determined mainly using certain factors, such as the number of miles driven by an insured. Additionally, the fact that someone did not previously have automobile insurance may not be used as a criterion for determining automobile rates, premiums, or in making decisions about whether someone will receive insurance coverage.

No similar provisions apply for residential property insurance. However, state law currently prohibits a residential property insurance company from increasing premiums, denying a discount, or refusing to issue or renew insurance coverage based on certain types of information. Specifically, in making these decisions, an insurer may not consider information obtained from third-party organizations supported by insurance companies regarding whether an individual policyholder has inquired about the scope or nature of their insurance policy. However, current law does not explicitly prohibit an insurer from increasing residential property insurance premiums or refusing to renew coverage because a policyholder asked questions about the kind of losses covered by their insurance policy.

Eligibility Guidelines. Currently, insurance companies are required, by regulation, to maintain eligibility guidelines for every line of insurance they offer. These guidelines are used by the insurance company to determine who or what types of property may be insured and to determine the rate that needs to be charged to insure that risk. The Commissioner may require an insurance company to submit its eligibility guidelines in order to obtain prior approval of the rates. Under certain circumstances, these guidelines are not considered public documents.

Major Provisions

This measure (1) restricts the use of certain information by companies that sell residential property insurance in California, (2) requires that certain residential property information be disclosed to the public, and (3) requires that various types of insurers issue refunds of premiums when it is determined they collected them as a result of a violation of insurance laws.

Restrictions on Use of Certain Information by Residential Property Insurers. This measure prohibits a company selling residential property insurance from using certain types of information on prior insurance claims to determine rates or premiums. For instance, insurers could not consider information about claims filed by someone that they were currently insuring, or by someone applying for coverage, relating to losses that were due to natural causes such as floods, or claims that were filed but not paid, or claims involving a property that is no longer owned by the policyholder. In addition, a residential insurance company could not increase premiums, deny a discount on an insurance policy, or refuse to issue or renew insurance coverage based on whether a policyholder had previously made an inquiry about his or her insurance coverage. The measure also states that information on whether someone previously had insurance coverage could not be used as a criterion for determining rates or premiums or deciding whether someone received residential property insurance coverage. The measure also restates that a similar prohibition applies to automobile insurance.

Public Disclosure and Public Hearings. This measure requires an insurance company that sells residential property insurance to submit a copy of its eligibility and risk classification rules and procedures to the Insurance Commissioner within 30 days of the enactment of the measure. These are defined in the measure as the criteria, rules, and procedures used by an insurance company to determine who may be insured and the amount of premium they pay. The same requirement would apply whenever a company subsequently made changes to its rules and procedures. These documents would be available for public review. The measure allows the Commissioner to hold public hearings to determine whether an insurance company's eligibility and risk classification rules and procedures comply with state law. The Commissioner would be required to hold such a public hearing if any person filed a petition requesting one.

Refund for Violations. This measure requires that any insurance company found by a court or the Commissioner to be in violation of state insurance laws to refund the amount of insurance premium or other benefits they received, plus interest.

Fiscal Effect

The provisions of this measure that require residential property insurance companies to submit certain information to the Insurance Commissioner would increase the workload of the Department of Insurance. The department could also incur costs to conduct the additional public hearings required under this measure. These costs would probably be minor, and would be offset through regulatory fees charged to insurance companies.

The provision of this measure that would enact new requirements restricting residential property insurers from making decisions about insurance coverage could result in a change in the total amount of residential property insurance premiums earned in the state by insurance companies. This, in turn, could affect state premium tax revenue. However, the impact of any change on revenues is probably not significant.

Summary

- This measure would probably have no significant net fiscal effect on state or local governments.

Sincerely,

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Mac Taylor
Legislative Analyst

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Michael C. Genest
Director of Finance