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Commentary

Insurance Options

CALIFORNIANS CAN DRIVE THEIR WAY TO SOLVING INSURANCE, SAFETY AND ENVIRONMENTAL WOES UNDER NO-FAULT INSURANCE PAID-AT-THE-PUMP'

N o-fault auto insurance with premiums remitted under a pay-at-the-pump plan would remedy many of the legal, safety and environmental problems that the current liability insurance/lawsuit system has proven powerless to handle. If a successful signature-gathering campaign can be launched right after Jan. 1, an initiative creating the Uninsured Motorist Act will be on California's ballot next November.

SOLVING MULTIPLE PROBLEMS

The proposal contains four separate advantages over the current system. First, it will make auto insurance considerably cheaper for most vehicle owners, including businesses. Second, instead of squandering billions on lawyers' fees and other costs of litigation, it will use auto insurance dollars far more efficiently, by promptly paying more sensible benefits to more auto accident victims.

Third, it will make insurance funding fairer, by extracting contributions from scofflaws who drive today without insurance, while at the same time rewarding safer drivers and the purchase of safer cars. Fourth, its social effects will include reduced auto pollution and traffic congestion, the purchase of more fuel-efficient cars and decreased dependence on imported oil.

Good drivers would pay into the system an average of about $300 yearly per car. About half of that would come from increased vehicle registration fees that would vary according to the safety record and safety features of the vehicle. The other funding source is a surcharge of 25 cents a gallon on gasoline; at 20 miles per gallon and 12,000 miles per year, this amounts to $150 per year.

In return for paying these new costs, most motorists would save considerably more money in reduced insurance premiums. Because the pay-at-the-pump system created by the initiative would essentially eliminate tort liability arising from the operation of a motor vehicle, a large share of traditional auto insurance premiums would disappear. My wife and I, for example, are good drivers living in the Bay Area; the two of us now pay a total of about $1,200 a year for our two cars for the policy coverage that would be eliminated under pay-at-the-pump. Pay-at-the-pump would cut this payment by at least 50 percent.

Those who don't qualify as good drivers would have to pay more than $300 a year under pay-at-the-pump, considerably more in the case of seriously bad drivers like those convicted of drunk driving. Motorists would continue to purchase auto insurance for collision coverage to protect against damage to their own cars caused by their own fault, and for comprehensive insurance to cover vehicle losses arising from fire and theft.

Because neither the gasoline surcharge nor the registration surcharge would be easy to avoid, most of the estimated 25 percent of California motorists who now drive uninsured would finally be forced into the system. Still, they would be paying rates that even lower income people among them could reasonably afford.

Pay-at-the-pump would provide benefits on a no-fault basis to all auto accident victims, including drivers, passengers and pedestrians. Most importantly, it would cover up to $1 million in medical costs and up to $30,000 yearly in lost wages. The plan also includes a modest death benefit, coverage for one's car if damaged through the fault of another, coverage for property other than vehicles that one might damage with a car, and liability insurance coverage when driving out of state.

THE STAKE FOR COUNSEL

Cost saving would accrue primarily by sharply reducing the cost of claims administration, largely eliminating legal fees, which in California amount to over $2.5 billion a year under the present system; by eliminating awards for pain and suffering frequently extracted from insurers today simply so adjusters can close the file; and by no longer duplicating benefits that victims already have from other standard forms of insurance.

With so much money in attorneys fees at stake, it is not surprising that trial lawyers for both plaintiffs and defendants oppose the plan, claiming that it unfairly takes away victims' rights to have juries determine how much money they are entitled to recover. Even under the present system, however, about 98 percent of claimants don't have jury trials: Their cases are settled or dropped.

What victims really would give up is:

The right to pay over about a third of their settlement to their lawyer, frequently the full amount of any pain and suffering payment they get;

The right to wait, often for years, for their case to be resolved, along with the anxiety that accompanies a process with a highly uncertain outcome;

The right to discover that their negligent injurer is uninsured or underinsured, a reality faced by perhaps three-quarters of those who are seriously injured; and

The right, if they are badly hurt, to participate in the lawsuit lottery that just might win them the jackpot if they happen to be harmed by a municipal transit bus, a company car or that unusual individual with very high policy limits.

THREATENING LOBBIES

For all the talk of individualized justice, fault only really counts in the current scheme in two ways. First, careless drivers face insurance rate increases, a result that would continue under pay-at-the-pump. Second, careless victims have their recoveries reduced or eliminated. This outcome is rejected by pay-at-the-pump that covers medical costs and wage losses because they are needed.

Opposition by oil interests and others in what I call the highway lobby is often couched in the maxim that gasoline taxes can only go for highway improvements. Pay-at-the-pump expenditures would also be driving-related. The real antagonism here is that by making people pay for the cost of auto accidents every time they fill up, instead of when they pay their auto insurance bills, they will buy less gasoline.

But that is one of the purposes of pay-at-the-pump, and why the plan is favored by environmentalists, public transport advocates, and those promoting energy conservation and a shift to more fuel-efficient cars. The current system is more closely analogous to having the water company charge people $25 a month for all the water they want to use; we know how wasteful that would be.

THE PRICE TO INSURERS

Insurance company opposition to pay-at-the-pump is more complex. On the whole, auto insurers favor a shift to no-fault insurance, so that pay-at-the-pump's no-fault benefit structure should be attractive to the insurance industry. Obviously, that attraction would disappear if pay-at-the-pump were to be administered by government claims administrators, thus cutting insurers out of the picture entirely.

But that is not proposed; rather, the initiative maintains the same sort of consumer choice and driver-insurer relationship that we have today. Good drivers would pick their own insurer; bad drivers who could not readily find insurers would go into the assigned risk pool and would be assigned to insurers on a market share basis.

The difference is that the insurers would not collect the basic no-fault premium directly from motorists. Instead, it would be paid over to them out of the fund created with the registration fees and gasoline surcharge imposed by the plan.

How much would the insurers receive for each motorist and vehicle they insure? That would depend upon findings made by the Insurance Commissioner after hearings on rate proposals from the insurance industry. The amounts could vary according to the same owner and vehicle characteristics now used by insurers in establishing their premiums. While this appears to put the commissioner squarely in the rate-setting business, don't forget that he is already there in California as a result of Proposition 103.

Those not qualifying as good drivers would be directly charged more by insurers, just as they are today. Moreover, there would still be room for price competition among insurers: in the amount, if any, of an agent's commission they charge, and through dividends they could pay out to their policyholders if the income they receive from the plan is in excess of benefit payments, administration costs, and reasonable profits.

In fact, there is every reason to believe that efficiently-run insurance companies would actually fare better under pay-at-the-pump than under today's scheme, under which, the industry keeps complaining, it is losing millions of dollars a year.

POLITICAL REALITIES

To be sure, the insurers have their own favorite reform: traditional auto no-fault insurance. But despite the fact that studies show that well-designed no-fault plans save consumers money and provide victims far more benefits than does the fault system from each premium dollar paid, the political reality is that no American state has ever adopted a pure auto no-fault plan.

The industry's incomplete and rather ungenerous auto no-fault plan put to California voters in 1988, as Proposition 104, was badly defeated. Pay-at-the-pump supporters hope to break through that voter opposition with a new approach, one that not only sounds different, but is better on several counts. To re-emphasize, virtually all drivers would pay; both bad drivers and those with less safe cars would have to pay more; and Californians as a whole would enjoy gains from reduced pollution, energy savings and decreased congestion that pay-at-the-pump would bring.

The initiative's advocates would probably rather have their plan adopted by the Legislature, at least if it could be passed intact. However, as Sen. Art Torres and Insurance Commissioner John Garamendi found out earlier this year when their pay-at-the-pump proposal was buried by the intransigent Senate Judiciary Committee, it is apparent that the lobbying power of the legal, insurer, and highway interests is currently more than enough to block the measure.

That very opposition may turn out to be an advantage if the measure gathers enough signatures to go to the voters. Results from focus groups and opinion polls already suggest that Californians are more likely to favor the measure once they are told that lawyers, the insurance companies and the oil industry are against it.

Pay at the Pump Auto Insurance,

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