

## [More on Harvey Rosenfield's Initiative to Prohibit Broker and Installment Fees](#)

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This Alert follows our Client Alert of September 4, 2009, [Harvey Rosenfield Seeks Initiative to Prohibit Broker and Installment Fees](#).

[Harvey Rosenfield's](#) proposed initiative, [Stop Insurance Overcharges Act](#) (pdf), of September 4, 2009, is intended to counter the July 2009 initiative, [The Continuous Coverage Auto Insurance Discount Act](#), sponsored by [CalFair](#) and [Mercury General Corp.](#)

The historical background is as follows:

In 2004, Mercury sponsored SB 841, which codified the right to offer portable persistency discounts. In 2005, the [Court of Appeal overturned SB 841](#), reasoning that the legislation did not further the purposes of [Proposition 103](#). In July 2009, Mercury and CalFair sponsored an initiative for the 2010 ballot to permit insurers to offer portable persistency discounts, arguing that consumers benefit by this discount and that it encourages consumers to shop for the lowest rates.

Harvey Rosenfield argues that portable persistency punishes the uninsured. Smart's California Insurance Report of July 15, 2009 refers to [Michael Hiltzik's](#) July 2nd [Los Angeles Times](#) article, [Mercury General using guise of benevolence to assault Prop. 103](#), that criticizes Mercury's attempt to undermine Proposition 103's ban on insurers from using the absence of prior coverage as a factor in rate setting. The article also asserts that previously uninsured motorists were charged higher premiums because they do not qualify for a discount, which, in turn, discourages them from purchasing insurance.

The [Stop Insurance Overcharges Act](#) would also add other provisions to the [Insurance Code](#) that deal with installment fees, broker fees, the absence of prior insurance and precluding the use of claims experience.

**Proposed Section 1861.25** deals with installment fees and mandates that installment fees, including a fee for the time value of money, are premium. It further limits fees to the direct cost of collecting the installment payments. **Comment:** This would eliminate the ability to estimate a specific amount as the installment fee.

**Proposed Section 1861.26(a)** precludes the charging of a broker fee if the broker receives a commission from the insurer on the transaction. It further requires that broker fees be fair and reasonable and not unfairly discriminatory. It requires the Commissioner to adopt regulations to establish broker fee limits. **Comment:** This section attempts to regulate broker fees that are not part of the rate and nullify AB 2956. AB 2956, which was unanimously passed by the legislature last year, clarifies the difference between agents and brokers by using the "totality of the circumstances" test coupled with the addition of disclosures to the consumer.

**Proposed Section 1861.27** establishes that any other amount that is billed to and paid by a policyholder constitutes premium and is subject to review and approval by the

Commissioner. **Comment:** Harvey Rosenfield is expanding Proposition 103, which covers insurance rates, to cover all amounts paid by a policyholder. This would include all broker fees and fees charged when the broker does not receive a commission.

**Proposed Section 1861.28** clarifies that the absence of prior insurance is not a criteria for auto and homeowners rates. **Comment:** This deals directly with the Mercury/CalFair initiative.

Finally, **proposed Section 1861.29** maintains that except pursuant to Section 1861.02, an insurer may not include claims experience in determining rates, discounts or insurability. **Comment:** This is meant to address rating and insurability in homeowners insurance.

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