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Patrick Quinn

Attorney practicing in public interest and tax law.

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THE ILLINOIS CONSUMERS INSURANCE BOARD: A NEEDED ADVOCATE FOR ILLINOIS CONSUMERS

Patrick Quinn*

I. INTRODUCTION

Each year Americans spend more than eleven percent of their disposable income on insurance premiums.¹ After food, housing, and taxes, insurance is the largest household expenditure.² It is estimated that consumer expenditures on insurance will soon overtake that spent on personal federal income taxes.³ Insurance premiums for life and health insurance, auto insurance, homeowners insurance, and other types of insurance cost consumers more than 300 billion dollars each year.⁴

Each year Americans spend more than eleven percent of their disposable income on insurance premiums.

Despite the importance and cost of insurance for every family, consumers do not have an effective advocacy group to represent their interests. In Illinois, the time has come to create a Consumers Insurance Board. By uniting the resources of a large number of insurance consumers, the Consumers Insurance Board would give consumers a needed and effective voice in determining insurance industry policy and practice. The Board would advocate for insurance industry reforms on behalf of Illinois consumers, educate and assist consumers in purchasing insurance, as well as monitor insurance company practices and publicize abuses.

This article examines the pressing need for a Consumers Insurance Board and proposes a viable plan for its development and implementation. Section II examines the imbalance of power between the insurance industry and consumers, and the impact of industry lobbying on the Illinois legislature, the Department of Insurance, and the individual consumer. Section III reviews the history and success

of the analogous Citizens Utility Board, which was created in 1983 to address the imbalance of power between utility companies and consumers. Section IV describes the structure of the proposed Citizens Insurance Board, its methods of operation, and its education and reform goals.

II. THE NEED FOR A CONSUMERS INSURANCE BOARD

During the most recent session of the Illinois legislature, the insurance industry fielded more than one hundred lobbyists, whereas consumers were represented by only a handful of advocates.⁵ Consumer advocates possessed a fraction of the resources available to insurance industry lobbyists. Not surprisingly, the Illinois legislature failed to enact any of the twelve insurance industry reform bills that were introduced, such as the Insurance Anti-Price Fixing bill, the Rate Protection bill, and the Insurance Revolving Door Prohibition bill.

The Insurance Anti-Price Fixing bill would have amended the Illinois Insurance Code to eliminate the anti-trust exemption for insurance companies,⁶ thus promoting competition in the insurance industry. The Rate Protection bill would have amended the Illinois Insurance Code to prohibit rate changes exceeding ten percent unless the insurance company justified the increase to the Department of Insurance.⁷ A similar measure recently was enacted by popular referendum in California.⁸ The Insurance Revolving Door Prohibition bill would have forbidden the Department of Insurance Director, Deputy Director, and Assistant Director from working for an insurance company within two years after working for the Department of Insurance.⁹ Each bill was defeated after strong opposition by insurance industry lobbyists. Unless an organization is formed to effectively voice consumers' concerns, these concerns will not be

meaningfully addressed by the Illinois legislature.

As former Illinois Supreme Court Justice Walter Schaefer once said, "the regulation of insurance companies is one of the weakest spots in state government in Illinois."¹⁰ Illinois ranks in the bottom 15% of states in the proportion of its budget it devotes to regulating the insurance industry.¹¹ Although the Illinois Department of Insurance is responsible for regulating the insurance industry,¹² the Department has been long-dominated by the insurance industry. In fact, many Department of Insurance regulators previously worked for the insurance industry, or subsequently take jobs with the very insurance companies they are expected to regulate. This raises serious questions as to the adequacy and impartiality of decisions made by the Department of Insurance.¹³ In addition, insurance companies are able to hire an army of lawyers, accountants, actuaries, and lobbyists to represent them in judicial,

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legislative, and administrative forums.¹⁴

As a result of inadequate representation in all of these forums, consumers remain uneducated and largely at the mercy of the insur-

* Attorney, practicing in public interest and tax law; former Commissioner of the Cook County Board of (Tax) Appeals; former Director of the Department of Revenue for the City of Chicago; founder of the Coalition for Political Honesty; J.D., Northwestern University School of Law; B.A., Georgetown University School of Foreign Service.

ance industry. When selecting an insurance policy, the average consumer places a great amount of reliance upon a salesperson to "explain" the policy terms, although the salesperson's primary goal is to maximize his or her commission rather than to educate the consumer. In addition, insurance companies have no interest in simplifying the complex language that appears in most insurance policies.

Illinois insurance consumers need an organization to unite their resources and represent their interests.

Consequently, as the Federal Trade Commission has noted, "consumers are losing billions of dollars yearly as a result of ill-informed and inappropriate life insurance purchase decisions."¹⁵ Finally, insurance companies arbitrarily discriminate among consumers. For example, insurance companies currently use a consumer's zip code to determine the individual's automobile insurance premiums. No published study has demonstrated a relationship between zip code and risk, and insurance companies have refused to produce evidence to support their automobile insurance pricing policies. As a result of these arbitrary pricing policies, consumers frequently are refused insurance or unable to obtain affordable insurance and therefore must turn to the state-run insurance market. This state-run market typically charges higher rates than the voluntary market.¹⁶

Illinois insurance consumers need an organization to unite their resources and represent their interests. The Consumers Insurance Board would perform a valuable educational and advocacy role, and balance the insurance industry lobbying power before the Illinois legislature, courts, Department of Insurance, and other public bodies.

III. THE CITIZENS UTILITY BOARD: A SUCCESSFUL MODEL

Before 1983, Illinois utility consumers were largely unrepresented

and uneducated on utility issues. When consumers lobbied the Illinois legislature to create the Citizens Utility Board ("CUB"), utility companies strenuously resisted. Utility companies argued that CUB would be superfluous and unnecessary. The utility companies argued that the Illinois Commerce Commission ("ICC") had been empowered to regulate utility companies, and that it would be a waste of resources to create another organization to monitor the utility industry. Consumer groups responded that over the years the ICC had become docile and was manipulated by utility companies. Therefore, the public interest would best be served by allowing consumers to fund and manage their own utility advocacy organization.

In 1983, the Illinois legislature created CUB to provide effective utility consumer representation before the Illinois courts and legislature, the ICC, and other agencies regulating utility companies.¹⁷ CUB is a non-profit, non-partisan organization funded solely from annual membership dues and voluntary contributions.¹⁸ Consumer members pay an annual membership fee of five dollars. Currently, CUB's membership consists of more than 150,000 consumers and its annual budget exceeds 1.7 million dollars.¹⁹

CUB is governed by a twenty-two member Board of Directors, with one Board member elected by CUB members from each of Illinois' twenty-two congressional districts.²⁰ Every Illinois rate-payer is eligible to be a CUB Director, except elected officials, public utility employees and their family members, and members of the ICC.²¹ CUB Directors establish CUB's policies and hire a staff of lawyers, accountants, and actuaries to represent consumers in judicial, legislative, and administrative forums. CUB has advocated consumer interests in gas, phone, water, and other utility issues, and won significant judicial and legislative victories. CUB played a major role in amending the Illinois Public Utilities Act.²² The amendments prevent utility companies from passing on the costs of mismanage-

ment to consumers, permit independent audits of public utilities to ensure efficient management, and created an Office of Public Council to represent utility consumers on rate increase issues before the ICC.²³

CUB experts have testified in major public utilities cases before the ICC and the Illinois courts. In 1987, the Illinois Supreme Court held that a \$495 million rate increase proposed by Commonwealth Edison and approved by the ICC was illegal.²⁴ CUB also provided expert testimony which showed that an Illinois Power nuclear reactor was not necessary to provide reliable service to consumers, and that Illinois Power's requested \$3.5 billion rate increase was not necessary to keep Illinois Power financially healthy.²⁵

CUB also has compiled information for consumers comparing long distance phone rates, and has distributed brochures explaining how to conserve energy and reduce utility bills. Finally, CUB has set up a toll-free telephone number to receive consumer complaints and answer consumer questions about utilities and utility companies.

IV. THE ILLINOIS CONSUMERS INSURANCE BOARD

Just as the imbalance of power between utility consumers and utility companies necessitated CUB, the imbalance of power between

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insurance consumers and insurance companies necessitates that the Illinois legislature create the Consumers Insurance Board

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Illinois Consumer Insurance Board (from page 41)

("CIB"). Like CUB, CIB would be a non-profit, non-partisan advocate representing consumers before the Illinois legislature, courts, Department of Insurance, and other government agencies.

In 1985, insurance industry representatives testified before the Department of Insurance in opposition to creating CIB. The insurance industry's arguments against CIB are remarkably similar to the utility industry's opposition to creating CUB. Industry representatives argue that the Illinois legislature should merely let the competition of the free market work. However, there is no "free market" for insurance in Illinois primarily because the insurance industry exemption from anti-trust suits reduces competition. Moreover, the Department of Insurance's attempts to regulate the insurance industry have resulted in arbitrary rating criteria, incomprehensible insurance policy language, and skyrocketing insurance rates. In truth, insurance companies are apprehensive that CIB would organize insurance consumers, educate them about insurance companies' prices and policy terms, and demand long-overdue insurance reforms against abusive industry practices.

As with CUB, all interested Illinois residents would be eligible to be members of CIB. CIB members would elect a twenty-two person Board of Directors to represent consumers throughout the state. All CIB members would be eligible to run for the Board of Directors, except for elected public officials, employees of the Department of Insurance, and insurance company employees. CIB's Board of Directors would be responsible for hiring a staff and implementing the policies approved by the membership.

Only a small amount of government funds need be expended to establish CIB and to alert consumers of the formation and purpose of CIB. This could be done by inserting informational and educational

materials into current government mailings. Under the statute creating CUB, government agencies are required to include CUB inserts in government mailings, but CUB is responsible for any incremental postage.²⁶ By giving CIB the means to educate and solicit members in the same manner, state and local governments can help consumers help themselves without using any tax dollars. Once established, CIB would be wholly financed through voluntary contributions and a small annual membership fee (*e.g.*, five dollars). As the history of CUB demonstrates, thousands of Illinois consumers are willing to fund an organization that would advocate consumers' interests.

CIB should be established with several goals in mind. First, CIB should work to prevent insurance companies from "redlining," that is, refusing to sell insurance to consumers who live in particular geographic areas. In addition, CIB advocates should lobby the Illinois legislature to require that insurance companies base their rates on objective criteria which are causally related to risk, rather than on such arbitrary criteria as a consumer's zip code. CIB advocates should lobby the Department of Insurance and the legislature to require that insurance companies establish a relationship between the criteria and the cost of a policy, and make this information available to consumers. Furthermore, CIB should lobby the legislature to pass a law requiring insurance companies to sell insurance to any consumer who meets the objective underwriting criteria.

Unfortunately, consumers often do not clearly understand policy terms and either purchase a policy without fully understanding the terms or rely on the broker to "explain" the policy terms. CIB should lobby the legislature to require that insurance policies be written in terms that an average consumer could understand. For example, insurance policies should be written in short sentences, avoid

technical legal terms whenever possible, be printed in a standard type size, and be clearly organized with accurate caption headings and a ready table of contents.²⁷ Frequently, consumers are unaware of many risks which affect the cost of their life, home, and auto insurance coverage. One of CIB's goals would be to produce educational pamphlets pointing out commonly unrecognized insurance risks and ways for consumers to reduce these risks.

Moreover, CIB should lobby the legislature to amend current statutes which stifle competition in the insurance industry and to enact new statutes to curb abusive insurance company practices. For example, CIB should lobby the legislature to repeal the prohibition against insurance agents offering discounts to consumers,²⁸ which discourages competition among in-

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surance agents. In addition, CIB should lobby the legislature to repeal the insurance industry's statutory exemption from anti-trust suits.²⁹ CIB could play an invaluable role in promoting true price competition in the marketplace by producing insurance buying guides that summarize and compare insurance policies. Additionally, CIB should work toward implementing a computerized price information system to help insurance consumers choose the best possible insurance coverage at the lowest possible price. A computerized system would enable consumers to make effective comparisons among available insurance policies. A prospective insurance purchaser would merely type in the various characteristics of the individual or item to be insured, and the desired

type of insurance and policy limits. The computer would then print a list of available policies, the companies offering the policies, and the cost of each policy. These computer terminals could be installed in state offices and in libraries across Illinois, and would be available to consumers for a modest fee. In all these ways CIB would encourage insurance companies to be more competitive and to bring down the cost of insurance.

V. CONCLUSION

Despite the importance of insurance to virtually every consumer, the insurance industry has failed to adequately meet the needs of consumers. Most consumers are unable to obtain the basic information necessary to effectively evaluate and compare insurance policies. At the same time, insurance industry influence upon the regulatory and legislative process overwhelms consumer input.

The Consumers Insurance Board should be created in order to address these problems and to give to consumers a voice in the Illinois legislature, courts, Department of Insurance, and other government agencies. By improving the flow of

necessary information to and from consumers and proposing tougher standards for insurance companies regarding anti-competitive and unfair trade practices, CIB would make the insurance market a level playing field for all Illinois consumers.

ENDNOTES

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8. CAL. INS. CODE §§ 1861.01-.14, 12900, 12979 (1989).
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18. CITIZENS UTILITY BOARD, *Citizens Utility Board Annual Report* (1988).
19. *Id.*
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21. ILL. REV. STAT. ch. 111 2/3, para. 906(2) (1988).
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23. *Id.* at 3980 - 4113.
24. Indep. Voters of Ill. v. Ill. Com. Comm'n, 117 Ill. 2d 90, 510 N.E.2d 850 (1987).
25. Ill. Com. Comm'n. Order, 84-0055, 87-0695, 88-0256 (Cons.) (Mar. 30, 1989).
26. See ILL. REV. STAT. ch. 111 2/3, para. 909(3).
27. These proposals are modeled after the defeated H.B. 2147. *Supra* note 5.
28. ILL. REV. STAT. ch. 73, para. 763 (1989).
29. ILL. REV. STAT. ch. 38, para. 60-5(4) (1988).