



AB 394 (Cortese). Existing law defines the term "inclosure" for the purposes of the California Horse Racing Law, as, among other things, with respect to a live racing meeting, all areas of the racing association's grounds, as designated by the racing association and approved by CHRB, excluding the public parking lot. As introduced February 14, this bill would delete the language that excludes the public parking lot from the foregoing definition of "inclosure." [S. GO]

RECENT MEETINGS

At its June 23 meeting, CHRB adopted an administrative policy for its equine drug testing program. The stated purposes of the policy are to provide guidelines for stewards in adjudicating cases where mitigating circumstances are found to exist, to establish a policy permitting exoneration of the accused or the imposition of lesser penalties than those suggested by the guidelines in cases where mitigating circumstances are found, to recognize in regulatory form that legitimate veterinary therapy is necessary for the health and welfare of the horse, and to clarify section 1844(d), Title 4 of the CCR, regarding authorized levels of listed therapeutic substances in post-race urine test samples, within specified limits. According to the policy, mitigating circumstances should be found to exist where a preponderance of the evidence presented at the hearing establishes to the satisfaction of the stewards that the presence of the drug substance detected resulted from accidental or environmental contamination of feed or other substances present in the horse's surroundings, unless it is shown that such accidental or environmental contamination could have been prevented had reasonable precautions been taken; the accused licensee would be the person expected to take such reasonable precautions; and the accused licensee failed to take such reasonable precautions. The policy also states that mitigating circumstances should be found to exist where a preponderance of the evidence presented at the hearing establishes to the satisfaction of the stewards that the presence of the drug substance detected was the result of third-party intervention or tampering with the horse, which the accused licensee could not reasonably have been expected to prevent.

FUTURE MEETINGS

January 23 in Arcadia.
February in San Mateo.
March 22 in Arcadia.
April 24 in Los Angeles.
May 31 in Emeryville.

June 21 in Sacramento.
July 24 in Del Mar.
August 23 in Del Mar.
September 20 in San Mateo.
October 18 in Arcadia.
November 15 in Cypress.
December 13 in Los Angeles.

DEPARTMENT OF INSURANCE

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Insurance is the only interstate business wholly regulated by the several states, rather than by the federal government. In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed by the Insurance Commissioner. Insurance Code sections 12919 through 12931 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 800-page Insurance Code; the Department's regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

The Department's designated purpose is to regulate the insurance industry in order to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of insurers to sell in the state.

In California, the Insurance Commissioner licenses approximately 1,300 insurance companies which carry premiums of approximately \$63 billion annually. Of these, 600 specialize in writing life and/or accident and health policies.

In addition to its licensing function, DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects more than 170 different fees levied against insurance producers and companies.

The Department also performs the following functions:

- (1) regulates insurance companies for solvency by tri-annually auditing all domestic insurance companies and by selectively participating in the auditing of other companies licensed in California but organized in another state or foreign country;
- (2) grants or denies security permits and other types of formal authorizations to applying insurance and title companies;
- (3) reviews formally and approves or disapproves tens of thousands of insurance policies and related forms annually

as required by statute, principally related to accident and health, workers' compensation, and group life insurance;

(4) establishes rates and rules for workers' compensation insurance;

(5) preapproves rates in certain lines of insurance under Proposition 103, and regulates compliance with the general rating law in others; and

(6) becomes the receiver of an insurance company in financial or other significant difficulties.

The Insurance Code empowers the Commissioner to hold hearings to determine whether brokers or carriers are complying with state law, and to order an insurer to stop doing business within the state. However, the Commissioner may not force an insurer to pay a claim—that power is reserved to the courts.

DOI has over 800 employees and is headquartered in San Francisco. Branch offices are located in San Diego, Sacramento, and Los Angeles. The Commissioner directs 21 functional divisions and bureaus.

The Underwriting Services Bureau (USB) is part of the Consumer Services Division, and handles daily consumer inquiries through the Department's toll-free complaint number. It receives more than 2,000 telephone calls each day. Almost 50% of the calls result in the mailing of a complaint form to the consumer. Depending on the nature of the returned complaint, it is then referred to Claims Services, Rating Services, Investigations, or other sections of the Division.

Since 1979, the Department has maintained the Bureau of Fraudulent Claims, charged with investigation of suspected fraud by claimants. The California insurance industry asserts that it loses more than \$100 million annually to such claims. Licensees currently pay an annual assessment of \$1,000 to fund the Bureau's activities.

MAJOR PROJECTS

Quackenbush Proposes New Auto Insurance Rating Factors. On September 22, Commissioner Quackenbush published notice of his intent to repeal existing section 2632.4(a) and adopt new sections 2632.4(a), 2632.5, 2632.7, 2632.8, 2632.9, 2632.11, and 2632.15, Title 10 of the CCR, to specify the mandatory and optional rating factors to be used in determining rates and premiums for private passenger automobile insurance, the manner in which rating factors may be used by insurers ("class plans"), the use of data, and the establishment of data banks.

Historically, auto insurance rates have varied substantially based on age and ZIP



code (among other factors). Hence, persons living in some urban areas pay extraordinary insurance premiums, based not on a risk associated with them personally, but on a high claims record applicable to some of their neighbors. Proposition 103, enacted by the voters in 1988, requires that three mandatory factors be used to determine auto policy premiums, in decreasing order of importance: (1) driving safety record, (2) number of miles driven annually, and (3) number of years of driving experience. The initiative also permits the Insurance Commissioner to adopt, by regulation, other factors "that have a substantial relationship to the risk of loss."

Both of Quackenbush's predecessors, Roxani Gillespie and John Garamendi, tried and failed to adopt permanent auto rating factors to implement this provision of Proposition 103 throughout their terms; in the interim, each approved and reapproved emergency regulations, sections 2632.5 and 2632.7, every 120 days for the past six years. In February 1995, Commissioner Quackenbush also adopted those sections on a temporary basis pending his preparation of new auto rating rules [15:2&3 CRLR 183-84; 15:1 CRLR 110-11, 113]; he re-adopted these rules—again on an emergency, 120-day basis—in June and again in December, pending adoption and approval of the rules published in September.

Quackenbush's rules proposed in September would define the three mandatory factors. Proposed section 2632.5(c)(1) would specify that a driver's safety record is to be derived from public DMV records, similar records from other jurisdictions, and the driver's "principally at fault accidents"; driving under the influence offenses will yield the highest surcharges. Proposed section 2632.5(c)(2) defines the number of miles driven as the mileage the insured vehicle will be driven during the ensuing twelve months. Section 2632.5(c)(3) defines "years of experience" as the number of years of licensed driving in any jurisdiction rated on the insured vehicle. Motorcycle driving experience is calculated separately.

Proposed subsection 2632.5(d) sets forth 15 optional rating factors which insurers may use in determining rates and premiums. The factors are as follows: type of vehicle; vehicle performance capabilities; type of use; percentage of use by the rated driver; multi-vehicle households; academic standing of the rated driver; completion of defensive and driver training courses; vehicle characteristics; gender of the rated driver; marital status of the rated driver; persistency; non-smoker; other factors which the insurer can demonstrate

bear a substantial relationship to the risk of loss are not otherwise illegal; relative claims frequency; and relative claims severity. These specifications are similar to the emergency rating rules already in effect.

The most important change is the adoption in these rules of a method assuring the substantial reduction of ZIP code as a basis for rates. The proposed method requires that credible loss data be gathered for each of the three mandatory criteria (safety record, miles driven, and years of experience) and the fourth category of optional criteria. Each of these four must be weighted respectively in declining strength, so that safety record is the most influential and the optional criteria are the least influential.

Under the proposed rules, auto insurers are given 120 days to submit class plans which comply with the standard. Historical cost data must be retained.

The proposed rules won praise from consumer groups and opposition by the insurance industry at a December 1 hearing in Los Angeles. At this writing, DOI staff is compiling all the comments received during the public comment period.

In the meantime, at the behest of the insurance industry, Assemblymember David Knowles is pursuing AB 341, which would codify in statute the emergency rating factors currently in the CCR (*see* LEGISLATION), despite the fact that a December 1994 DOI report indicated that they fail to comply with the intent of Proposition 103. [15:1 CRLR 110] Consumer groups have promised strong opposition to this measure. If enacted, the measure may also be vulnerable to court challenge as failing to "further the purposes" of Proposition 103 (*see* LITIGATION for discussion of the *Amwest* case).

Commissioner Adopts Emergency Rate Hearing Procedures. On August 18, Commissioner Quackenbush published—and the Office of Administrative Law (OAL) approved—emergency regulations governing ratemaking proceedings under the Proposition 103 regime of rate review. These rules—sections 2649.1–2660.3 (nonconsecutive), Title 10 of the CCR—will remain in effect for 120 days. In the meantime, the Commissioner published notice of his intent to adopt them permanently on September 22, and held a public hearing on them on November 6.

The proposed rules spell out the details for pleadings, public notice of rate applications, petitions for hearing, time limitations, response and answer, hearing, administrative law judge (ALJ) authority, discovery, evidentiary rules, order of proof, stipulations and settlements, post-

hearing briefs, oral argument, and petitions for reconsideration.

In general, the rules parallel the procedures adopted by the Public Utilities Commission (PUC). For example, direct testimony is not presented in the hearing but is submitted to all parties 30 days in advance of the hearing, resulting in an oral proceeding focusing on cross-examination. Once a notice of hearing has been filed, the rules include a ban on *ex parte* communications which is stricter than the PUC counterpart. No contact may occur between any party to such a proceeding (including intervenors) and any employee of the Department (except employees of the Rate Enforcement Bureau or the administrative law bureau); contact with the assigned ALJ is prohibited. The rules are unclear as to whether the clerk of the ALJ may receive private communications, and it appears that the Commissioner himself may not be included in the prohibition—a noteworthy omission, as all final rate decisions are made by the Commissioner.

At this writing, the emergency rules are still in effect, and DOI staff is compiling and responding to the comments received at the November 6 public hearing for submission to OAL.

Commissioner Adopts Emergency Intervenor Compensation Rules. Also on August 18, Commissioner Quackenbush published emergency rule changes repealing existing sections 2615.1–2622.5 and adopting new sections 2661.1–2662.8, Title 10 of the CCR. This action repeals Commissioner Garamendi's "intervenor compensation" regulations and replaces them with new procedures whereby interested parties may obtain intervenor status in specified DOI proceedings and subsequent intervenor compensation where they represent consumers and make a substantial contribution to the adoption of any order, regulation, or decision of the Commissioner, under Insurance Code section 1861.10 (added by Proposition 103).

The emergency regulatory action was approved by OAL on August 18 and put into effect immediately. To justify "emergency" rulemaking, the Commissioner cited imminent rate rollback hearings which are expected to draw consumer intervention. Subsequently, on September 29, the Commissioner published notice of his intent to adopt the emergency rules on a permanent basis, and scheduled them for a November 13 public hearing in Los Angeles.

Effective participation in the Insurance Commissioner's proceedings by consumer groups was a widely advertised benefit of Proposition 103, and section 1861.10 was included to counter the tradi-



tional domination of agency proceedings by insurers and occasional highly organized policyholders. However, Commissioner Quackenbush's emergency and proposed new permanent rules are substantially less favorable to intervention than are the rules they replace. The notice published on the proposed permanent rules avoids comparison with Commissioner Garamendi's intervenor compensation regulations by including in the required "Comparison with Existing Law" section a comparison with Quackenbush's identical emergency rules.

The new rules allow the Commissioner's Public Advisor to inspect the records of intervenors seeking compensation, deny possibility of advance payment, requires "substantial contribution" to be "evidenced by specific citations in the administrative record," and provides for the reduction of an award where the intervenor's contribution to the proceeding is "substantially duplicative" of any other party (including DOI staff).

At this writing, the emergency rules are still in effect and in fact were readopted by DOI for another 120-day period on December 19; DOI staff is compiling and responding to the comments received at the November 13 public hearing for submission to OAL.

Other DOI Rulemaking. The following is a status update on other DOI rulemaking proceedings discussed in detail in previous issues of the *Reporter*:

• **CAARP Producer Certification and Performance Standards.** On November 28, OAL approved DOI's new rules pertaining to the certification of "insurance producers" (licensed auto insurance agents) who may sell auto insurance policies under the California Automobile Assigned Risk Plan (CAARP), the system for providing coverage to those who are denied insurance by private insurers. The regulations implement SB 1721 (Johnston) (Chapter 1092, Statutes of 1994), which added new Insurance Code section 11622.5, by adopting sections 2431.1, 2431.2, and 2431.3, Title 10 of the CCR. The regulations establish performance standards for producers to remain certified, and include recordkeeping and enforcement details for the "CAARP Manager," who is expected to report producer violations to the CAARP Advisory Committee and the Commissioner. [15:2&3 CRLR 185; 15:1 CRLR 113]

• **Revised CAARP Auto Insurance Rules.** In February 1995, DOI held a public hearing on proposed new sections 2400-2441, Title 10 of the CCR, regulatory amendments which would govern how CAARP obligations are to be met by insurers and allocated among them. Insur-

ance Code section 11620 requires the Commissioner to adopt a reasonable plan to apportion applicants unable to procure insurance through ordinary means. The previous allocation rules have become outdated by assigned risk law, market experience, and the impact of Proposition 103. [15:2&3 CRLR 185; 15:1 CRLR 113]

At this writing, no action has been taken on these regulations. DOI staff have indicated they put this project on the back burner in order to concentrate on finalizing the CAARP producer certification and performance standards (*see above*). The one-year effective date of the notice of these proposed regulations expired on December 30; thus, DOI must republish the notice if it wishes to pursue these regulatory changes.

• **Anti-Redlining Regulations.** On June 2, Commissioner Quackenbush published notice of his intent to substantively amend section 2646.6, Title 10 of the CCR, the anti-redlining regulation which requires insurers to submit detailed data on the extent to which they are servicing the needs of the entire community. [15:2&3 CRLR 185-86; 14:4 CRLR 124-25] DOI held a public hearing on the proposed amendments on July 17, and issued a revised version of the proposal on November 17.

If adopted, the November proposal will significantly relax DOI's existing anti-redlining regulations. First, the proposed changes would require only those insurers with annual premiums exceeding \$10 million for specified lines of insurance to annually file a Community Service Statement (CSS), a voluminous document indexed by ZIP code detailing insurers' sales and servicing of insurance policies and the racial identities of their customers in underserved communities. The existing rules require all insurers writing non-auto line policies subject to anti-redlining regulations to file a CSS annually.

Second, the proposed revisions would provide that insurers subject to anti-redlining regulations may provide a Strategic Plan for Underserved Communities (SPUC) in lieu of compliance with section 2646.6 of the CCR, rather than meet the current requirement of an annual CSS. SPUCs must contain, among other things, a description of the underserved communities which are the subject of the plan, a description of how the plan will increase insurance underwriting, the effect it will have on investment, and a description of any consumer education programs.

Third, the proposed revisions would allow any insurer subject to these regulations to submit to the Commissioner "Evidence Demonstrating An Existing Pres-

ence in Underserved Communities" ("Evidence") in lieu of compliance with section 2646.6 of the CCR. The revisions provide that such "Evidence" must include a description of the underserved community, and at least one of the following: data which indicate the insurer's current level of underwriting in the underserved community, information indicating the insurer's current business relationships with community representatives and community leaders, current level of agency appointments, current level of investment, current loss prevention programs, current consumer education programs, incentive programs, or any additional current programs which demonstrate an existing presence in the underserved community.

Finally, the proposed revisions provide that if the Commissioner determines that an insurer is not complying with the stated goals of an SPUC or has submitted materially misstated "Evidence," the Commissioner must notify the insurer within 30 days and the insurer must submit a corrective plan within 30 days of the notification. Under this proposal, an insurer failing to comply with the proposed revisions must file a CSS annually for two years proceeding the determination.

Commissioner Quackenbush has suggested that the changes will allow insurers greater flexibility in increasing their presence in underserved communities while avoiding the allegedly high cost and delays caused by the current requirements. At this writing, the revised version of section 2646.6 *et seq.*, Title 10 of the CCR, is scheduled for another public hearing on January 18 in San Francisco.

• **Objective Rating Criteria for Non-Auto Lines of Insurance.** Proposition 103 provides major risk evaluation factors which must be used in determining rates for auto insurance customers (*see above*), but other lines of insurance are bound only by the statutory prohibition against "excessive, inadequate, or unfairly discriminatory" premiums. Prior to leaving office, Commissioner Garamendi proposed new sections 2360.0-2360.7, Title 10 of the CCR, to establish objective rating criteria in the property and casualty lines of insurance. These regulatory changes were suspended by Commissioner Quackenbush upon assuming office. [15:2&3 CRLR 186; 15:1 CRLR 111-12]

On October 2, Quackenbush revised the text of these regulations in response to written and oral public comments, and issued a document entitled *Study of Risk Placement Practices of California Property and Casualty Insurers*. Among other things, the changes to section 2360 *et seq.*



replace the language "eligibility criteria" with the language "eligibility guidelines," suggesting that insurers may not have to adhere to the rating factors which they formulate. Section 2360.2 provides only that "the Eligibility Guidelines shall be sufficiently detailed to determine the appropriate rating plan for the insured" and that qualified individuals under these guidelines should be offered insurance at the lowest rate for which he or she has qualified.

Following a 15-day public comment period, Commissioner Quackenbush approved the revised version of these regulations and submitted them to OAL, which approved them on December 12.

Commissioner Approves Increase in Workers' Compensation Pure Premium Rate. On August 24, Commissioner Quackenbush held a hearing on a proposed increase of the workers' compensation pure premium rate averaging 18.7%. Pursuant to the Insurance Code, a rating organization is permitted to develop pure premium rates and submit them to the Commissioner for approval. The Insurance Code does not authorize the Commissioner to compel insurers to adopt the rates; the rates are only advisory. The Commissioner approved an increase of slightly more than 11%.

The Commissioner's review of these premiums occurred during the same week a Los Angeles County Superior Court jury held that the State Compensation Insurance Fund, the state's largest workers' compensation insurer, had violated section 17200 of the Business and Professions Code, committing an "unfair or unlawful" act in competition by systematically overcharging businesses by reserving funds for possible claims at unjustifiable levels. After a trial in *Notrica v. State Compensation Insurance Fund*, the court ordered the Fund to comply with Labor Code section 3762 allowing employers access to their claim files. On August 18, a jury assessed punitive damages of \$20 million against the Fund for fraud and bad faith. The Commissioner has yet to address the abuses revealed in this matter, and may be somewhat limited jurisdictionally.

Commissioner Directs New Homeowner Rate Application Requirements. Pursuant to Insurance Code Section 1861.05(b), the Commissioner announced in September that beginning on January 1, 1996, a complete rate application for homeowners' insurance should take into account specific, community-wide fire mitigation measures that are designed to reduce the risk of widespread fire and limit the damage caused by residential area

fires. New rate applications should describe any discounts for policyholders whose communities have adopted or required those measures.

The Commissioner based this directive on the fact that in the wake of disasters, local communities have taken significant, positive steps to require their citizens to reduce the risk of widespread fire damage, including increasing the width of traffic lanes in residential areas, requiring the clearing of brush and debris near structures, adopting stricter residential building codes (e.g., mandating the use of fire-resistant roofing materials), and requiring sprinklers in new and remodeled residential construction. In many cases, the approaches and methods designed to reduce community-wide fire damage were developed with the input and advice of the local citizens and their elected representatives. To be considered complete, all homeowners' rate applications submitted to the Commissioner should describe community-wide fire mitigation measures that would result in discounts for policyholders whose communities have adopted or required those measures. The schedule of rating factors should be of sufficient particularity to permit Department examiners to determine whether the risk was properly rated and supported by actuarial opinion.

The Commissioner found that insurance rate credits (discounts) are an appropriate way to recognize those actions because of the direct correlation between the probability of an event and the cost of insuring against that event. Specifically, as the likelihood of a fire and the extent of damage caused by it decreases, the price of fire insurance should also decrease.

As part of regular field examinations, DOI examiners will review whether individual homeowners in the identified communities have been rated and credited correctly for the community-wide fire mitigation efforts, according to the rating plan submitted by the company and approved by the Commissioner.

No-Fault Auto Insurance Initiative Qualifies for Ballot. The "Voter Revolt" organization has once again turned its attention to the insurance industry. Voter Revolt is sponsoring Proposition 200, a no-fault auto insurance initiative slated for the March 1996 ballot. The initiative is opposed by the California Association of Consumer Attorneys (formerly the California Trial Lawyers Association) and many consumer groups. Additional opponents include Harvey Rosenfield, the original author of Proposition 103 and founder of Voter Revolt. Following the passage of Proposition 103, the "Voter Revolt" organization and trade name was retained by a

group opposed to the position of Rosenfield and others on the issue of no-fault; Rosenfield left and formed a new organization, the Proposition 103 Enforcement Project.

Voter Revolt began the no-fault campaign in the summer of 1994. After a year of door-to-door canvassing, they were joined by Andrew Tobias, author of the insurance industry exposé *The Invisible Bankers*, and Silicon Valley-based entrepreneur and philanthropist Tom Proulx, creator of the money management software *Quicken*. These two led the list of contributors who helped raise \$2.1 million to run the petition drive during the summer of 1995. The initiative was endorsed by the Taxi and Para-Transit Association of California, the California Trucking Association, the California Chamber of Commerce, Governor Wilson, and the California Republican Party.

The proposition has been grouped with two other initiatives, Propositions 201 and 202, which would respectively limit securities fraud plaintiff cases and attorneys' contingency fees under some circumstances. Opponents of Proposition 200 have labelled these three measures "the terrible 200s" in their advertising, while proponents have satirized attorneys bringing "slaphappy" suits.

Supporters of Proposition 200 claim that their proposal would eliminate the need for accident victims to sue the other driver to get their claims paid, saving the \$2.5 billion per year which currently goes to personal injury attorneys; eliminate the inequity of uninsured drivers receiving benefits in some accidents although not contributing to insurance costs (25% of California's drivers are uninsured); and decrease fraud claims. Proposition 200's sponsors cite the disparity between California and Michigan, which has a no-fault system and reports one-third the number of "soft" or unverifiable injuries (e.g., whiplash and emotional distress).

Proposition 200 would eliminate most pain and suffering awards except through optional policies, excepting only three situations from its limitations on damages—it would allow private suits where the other driver is under the influence, transporting hazardous waste, or fleeing a felony. Adherents cite the nonpartisan Rand Institute for Civil Justice, which concluded in a study of a similar plan that the average driver who buys the minimum statutory policy under the plan will pay 39% less for greater potential coverage.

Opponents of Proposition 200 argue that increased efficiencies have not occurred in no-fault states, that reliance on insurance payment without attorneys



often results in unjustified claim denial, and that the ceilings will allow a wealthy driver guilty of gross negligence to avoid liability for the full extent of harm caused others. Television ads opposing the measure have stressed the conservative motto "accountability."

Proponents rebut by contending that under the current system, the injured driver will generally pay her attorney one-third of the money she receives from the negligent driver. And they note that 25% of California drivers are uninsured (presumably not the most responsible drivers). These individuals are generally incapable of providing any redress through insurance or personal assets, leaving compensation limits to lower "uninsured motorist coverage" in the victim's own policy (*i.e.*, similar to the basic no-fault concept that one's own policy covers damage to the policyholder regardless of who is at fault).

Other components of Proposition 200 include mandatory arbitration to settle disputes over claim payments. If the initiative passes, it would become effective on July 1, 1997. However, most observers expect it to be defeated at the polls. Only Proposition 202, the attorney contingency fee limitation, is given a realistic chance of passage.

Earthquake Insurance Controversy Continues. During late 1994, many insurance firms threatened to cease selling new homeowners policies or to pull out of California entirely, allegedly because of huge claim payouts (\$12.5 billion) from the 1994 Northridge earthquake, combined with California's requirement that homeowners insurance include a quake coverage option (Insurance Code section 10081). The insurance industry pressed for a new state-backed insurance pool to replace the now-defunct Recovery Fund created by the Deukmejian Administration after the 1989 Loma Prieta earthquake, while consumer groups protested any proposal to eliminate the requirement to offer coverage, sought required homeowner insurance renewals, and opposed any state subsidy or bailout of the insurance industry. Consumer groups, including the Proposition 103 Enforcement Project, contended that the "crisis" was largely manufactured by the industry, that insurance profits have been and continue to be high, and that the prospect of occasional claim pay-outs is a contracted-for part of the insurance business. [15:2&3 CRLR 186]

In response to the situation, Commissioner Quackenbush extended the authorization of the California Fair Access to Insurance Requirements (FAIR) program—a nonprofit pool established to assure the availability of property insurance to per-

sons denied coverage. Similar in concept to the CAARP system for auto insurance, all property insurance carriers are required to cover a share of the pool's underwriting proportionate to its market share. One rationale for this system is the requirement of virtually all lenders that property insurance be secured as a condition of any loan to purchase the property; without the chance to borrow, homeownership is problematic for most.

Meanwhile, the legislature considered competing proposals, including SB 58 (Lewis) which would repeal the required offer of earthquake coverage. On September 16, the legislature passed AB 1366 (Knowles) and AB 13 (McDonald). AB 1366 allows insurers to modify earthquake coverage at point of renewal to "barebones" coverage of the primary residence with an increase in the allowable deductible from 10% to 15% of the value of the building. Coverage for contents is limited (to \$5,000 or 10% of structural cost), as is coverage for living expenses during rebuilding (to \$1,500). Typical costs are expected to be about \$800 per year for a typical \$200,000 home; current premiums are at about \$600 for broader coverage. Notwithstanding these changes, the state's largest home insurer, State Farm, announced that it would not lift its moratorium on new homeowner policies, holding out for complete removal of risk.

AB 13 authorizes the Insurance Commissioner to set up a California Earthquake Authority to issue earthquake policies and eventually relieve the industry of the burden entirely. The new Authority must receive a favorable ruling from the Internal Revenue Service that income earned from what may be a \$10.5 billion fund is not subject to federal taxation. The pool would be funded with \$1 billion from the industry, \$1 billion in premiums collected during the first year, \$2 billion in reinsurance, and up to \$5 billion more if needed from the insurance industry. Critics charge that the plan removes an obligation to insure against a basic hazard from the industry. Currently, premiums for earthquake insurance earn substantial income which is taxed; the payment of premiums to this Authority which earns its money tax-free increases the taxes which must be paid by others. Commissioner Quackenbush announced that the industry could be free of any liability with 15 years.

The Governor signed both bills, which take effect on January 1 (*see* LEGISLATION).

On October 16, Commissioner Quackenbush released a bulletin interpreting the minimum coverage requirements of AB 1366. Insurers are allowed to choose between two coverage options:

- set a dwelling coverage limit, with a deductible at 15% of that amount and no coverage for contents unless the deductible is exceeded; if the dwelling is damaged beyond the deductible, contents loss could be limited to 10% of the total damage to the dwelling; or

- offer a flat \$5,000 contents limit and the deductible would be 15% of the dwelling coverage limit; contents coverage would start after the deductible is exceeded. A contents-only policy limited to \$5,000 with a \$750 deductible would comply with the law.

These interpretations of the legislation are highly favorable to insurers. Critics note that they were issued as a "bulletin," although they are clearly a form of rulemaking requiring notice, comment, and OAL review pursuant to the Administrative Procedure Act.

■ LEGISLATION

AB 1366 (Knowles). Under existing law, a policy of residential property insurance may not be issued or initially renewed by any insurer unless coverage for loss or damage caused by an earthquake is offered. As amended September 12, this bill requires an insurer to offer earthquake coverage subject to minimum dwelling and contents coverage requirements substantially less than is currently required.

Existing law provides that if an insured accepts an offer of earthquake coverage, it must be continued at the applicable rates and conditions, unless coverage is terminated. This bill instead provides that earthquake coverage must be continued at the applicable rates and conditions only for the policy term. An insurer is permitted to modify the terms and conditions of a policy at any renewal, enabling the insurer to offer an alternative "barebones" policy (*see* MAJOR PROJECTS). The bill requires the Insurance Commissioner to approve coverage provisions and a coverage disclosure summary; revises required disclosure statements; and specifies that the California FAIR Plan Association issue earthquake coverage in the amounts specified in the bill. This bill was signed by the Governor on October 14 (Chapter 939, Statutes of 1995).

AB 13 (McDonald). As noted above, existing law requires insurers that sell residential property insurance to offer coverage for the peril caused by earthquake. Existing law also requires these insurers to offer earthquake coverage every other year to an insured in connection with the continuation, renewal, reinstatement, or replacement of a residential property insurance policy. As amended September 12, this bill creates the California Earth-



quake Authority, which will be authorized to issue policies of basic residential earthquake insurance (as defined) under certain conditions. These conditions include a determination by the Internal Revenue Service that the Authority is exempt from federal income tax, a requirement for certain commitments from insurers and reinsurers, and enactment of a subsequent statute that expressly authorizes the Authority to issue policies of earthquake insurance. Insurers would be able to meet the requirements to offer residential earthquake coverage by participating in the Authority, as specified, and would provide claims and policyholder services on behalf of the Authority. The Authority would be governed by a board of directors and advised by an advisory panel, with specified members and duties.

The bill provides for the Authority to obtain its initial operating capital from insurers representing not less than 75% of the market for residential property insurance in California. The Authority is also required to seek contracts of reinsurance and investment of private capital in the Authority. If the Authority's available capital is reduced to certain levels through payment of claims, the Authority would be able to assess participating insurers in order to raise additional funds, up to specified amounts.

The bill also provides that if the Authority exhausts all of its resources and no additional funding is available, the Authority is required to develop a plan to pay claims on a pro rata or installment basis. This bill was signed by the Governor on October 16 (Chapter 944, Statutes of 1995).

SB 1327 (Johnston), as amended May 9, provides that no person may perform an earthquake risk assessment of a condominium project on a specific site for the purpose of underwriting a federally related loan secured by that project unless the analytical assumptions and methodology used in the assessment have been approved by the Insurance Commissioner. This bill was signed by the Governor on June 5 (Chapter 54, Statutes of 1995).

SB 882 (Rosenthal). Existing law requires the Insurance Commissioner to establish a program to investigate complaints and respond to inquiries regarding insurers; the program includes procedures for mediation of complaints. As amended August 30, this bill requires DOI to establish a pilot program for the mediation of certain disputes over claims arising out of the Northridge earthquake of 1994 and any subsequent earthquake, excluding specified claims. Pursuant to the bill, DOI will contract with a diverse pool of medi-

ators to provide mediation services, and may provide training to them. An insured is not required to participate in mediation; however, an insurer may be so required. If both the insured and an insurer participate, neither party is required to accept an agreement proposed during the mediation. If the insured elects to have counsel present for the mediation, the insurer may also have counsel present. If an insured elects to participate, the insured may rescind the settlement agreement within three days after reaching the agreement unless the insured has counsel at the mediation who signs the settlement agreement. A mediator is authorized to protect information from disclosure if the mediator determines that the materials are privileged or otherwise confidential. In addition, all statements by the parties, negotiations, and documents produced at the mediation are confidential, subject to DOI's access for the purpose of evaluating the mediation program or to comply with reporting requirements, and other provisions of law concerning discoverability and admissibility of documents. DOI is authorized to adopt regulations to implement the program. These provisions will become inoperative on July 1, 1998, and will be repealed on January 1, 2000. The Commissioner is required to report on the pilot program to the Governor and the legislature. This bill, which took effect immediately as an urgency statute, was signed by the Governor on October 12 (Chapter 848, Statutes of 1995).

SB 267 (Rosenthal). Existing law prohibits a person in the business of financing the purchase of real or personal property or lending money on the security of that property from requiring that the borrower negotiate any insurance through any particular agent, but provides that this provision does not prevent a person from approving or disapproving, for reasonable cause as determined by regulatory authority, the insurer underwriting the insurance. As amended July 28, this bill provides that no person making a loan of money on the security of residential real property shall reject a policy of fire and casualty insurance underwritten by an insurer chosen by the borrower for any reason that the lender would not also impose on an insurer were it making the choice.

The bill also provides that when a lender or purchaser of a mortgage on real property has required and obtained a copy of the insurance policy covering that real property, the lender or purchaser shall provide a copy of the insurance policy or other evidence of insurance acceptable to the purchaser to a subsequent purchaser of the mortgage, servicing agent, or insur-

ance tracking service with whom the lender or purchaser subsequently contracts. This bill was signed by the Governor on October 12 (Chapter 857, Statutes of 1995).

SB 905 (Leslie). Existing provisions of law that regulate insurance rates provide that a person is qualified to purchase a good driver discount policy if, among other things, he/she has been licensed to drive a motor vehicle for the previous three years and meets certain traffic violation criteria over that period. The "good driver discount" is required by Proposition 103, a 1988 initiative statute that may be amended by the legislature only by a two-thirds vote and in furtherance of its purpose. As amended May 11, this bill excludes from eligibility for a good driver discount a person who has been convicted of certain driving under the influence (drug or alcohol) related driving offenses or vehicular manslaughter while under the influence within the previous seven years. This bill was signed by the Governor on October 4 (Chapter 565, Statutes of 1995).

SB 672 (Lewis). Existing law requires the filing of an annual report on an insurer's assigned-risk automobile insurance business as to loss ratio, loss adjustment expense ratio, expense ratio, and combined ratio. The Insurance Commissioner may require insurers with combined ratios that are 10% above the mean combined ratio to report additional information. That information is a public record and is required to be reported by the Commissioner annually to the legislature. Existing law provides for the reporting of other information under the Rosenthal-Robbins Auto Insurance Nondiscrimination Law, which information is confidential. As amended September 8, this bill repeals that provision in the assigned risk law and, instead, requires that information to be filed in the annual record of loss statements required to be filed under the Rosenthal-Robbins Auto Insurance Nondiscrimination Law. This bill was signed by the Governor on October 10 (Chapter 755, Statutes of 1995).

AB 1602 (Poochigian). Existing law requires uninsured motorist coverage for personal injury or death to be included in a policy of motor vehicle insurance unless waived by the insured; and provides that no cause of action accrues under that coverage unless, within one year, suit is filed against the uninsured motorist, agreement as to the amount due has been concluded, or the insured has formally instituted arbitration proceedings. As amended September 1, this bill requires the insured to notify the insurer of the arbitration proceedings, in writing. It also requires the arbitration to be concluded within specific



time periods. This bill was signed by the Governor on October 9 (Chapter 738, Statutes of 1995).

SB 306 (Rosenthal). Under existing law relating to automobile insurance policies, an insurer is required to deliver or mail to the named insured a written or verbal offer of renewal of the policy or a notice of nonrenewal, at least 20 days prior to policy expiration. As amended July 6, this bill requires that notice of nonrenewal be delivered or mailed at least 30 days before policy expiration. In addition, if an insured declines a verbal offer of renewal, the insurer must deliver or mail to the insured written confirmation of the offer and rejection. The bill also applies the notice of nonrenewal requirements applicable to automobile insurance policies to other insurance policies, and provides that an increase of premium on an individual life insurance policy that provides for premium changes by the insurer is not effective unless written notice is delivered to the policyholder.

Under existing law, for a policy of individual life insurance that is cancelled by the insured or owner, the insurer is required to return to the insured or owner all unearned premiums and other moneys due the insured or owner in relation to that policy as expeditiously as possible, but in no event more than 45 days from the date the insurer is notified that the insured or owner has cancelled the policy. This bill provides when a cancellation or surrender of a life insurance policy is effective. This bill was signed by the Governor on October 12 (Chapter 791, Statutes of 1995).

AB 1152 (Bordonaro). Existing law provides for the licensure and regulation of health care service plans (HCSPs) by the Commissioner of Corporations; willful violation of any of these provisions is a misdemeanor. Existing law also provides for the regulation of policies of disability insurance and nonprofit hospital service plan contracts by the Insurance Commissioner. Existing law requires HCSPs, disability insurers, and nonprofit hospital service plans to provide coverage for certain benefits and services. As amended August 30, the bill requires, by July 1, 1996, HCSPs that provide coverage on a group basis, certain group disability insurance policies that provide coverage for hospital, medical, or surgical benefits, and certain nonprofit hospital service plan contracts that provide coverage on a group basis to file a written policy with the Department of Corporations or DOI regarding coverage for enrollees, insureds, or subscribers receiving services during a current episode of care from a noncontracting provider. The bill provides

that the written policy shall include, among other things, a description of the process used to facilitate the continuity of patient care, and the review process of requests to continue services with an existing provider. The bill requires that a copy of the policy be provided to enrollees, insureds, and subscribers. This bill was signed by the Governor on October 3 (Chapter 504, Statutes of 1995).

SB 761 (Greene). Existing law requires HCSP contracts, disability insurance policies, and nonprofit hospital service plan contracts that provide hospital, medical, or surgical expense coverage under the plan of an employer subject to federal continuing medical insurance requirements, known as "COBRA," to permit an employer to provide extended coverage to eligible former employees and their spouses. In order to be eligible for extended coverage, the employee is required to be over 60 years of age on the date employment ends, and must have worked for the employer for at least the five prior years. Existing law also requires any employer subject to these provisions to provide continuation coverage for an eligible employee and the employee's spouse, if the employee continues coverage under COBRA. The coverage begins after the COBRA coverage ends, on the same terms as the COBRA coverage, at a premium not to exceed 213% of the applicable group rate, as defined, and continues until a specified event. As amended September 6, this bill requires the insurers and plans that provide hospital, medical, or surgical expense coverage under an employer-sponsored plan for an employer subject to COBRA to offer that continuation coverage to former employees, as specified. It also imposes this requirement on carriers providing replacement coverage, and places certain notification duties upon former employers as respects the availability of continuation coverage beyond the date coverage under COBRA ends. This bill was signed by the Governor on October 1 (Chapter 489, Statutes of 1995).

AB 852 (Hoge). Under existing law, an insurer may not cancel a policy of commercial insurance except for specified reasons, and no change in rates, reduction in limits, or change in conditions is effective unless upon 30 days' notice, and only if based on specified reasons. Existing law provides that these limits do not preclude the imposition, pursuant to the policy and while the policy is in force, of limitations or exclusions upon coverage by a policy insuring dentists or physicians against professional liability if certain requirements are met. As amended October 4, this

bill instead provides that these limits do not preclude the imposition of remedial underwriting action upon coverage insuring dentists or physicians against professional liability if certain requirements are met. This bill was signed by the Governor on October 4 (Chapter 600, Statutes of 1995).

AB 853 (Hoge). Existing law authorizes two or more domestic reciprocal insurers to merge, and sets forth procedures for that merger. As amended September 8, this bill enacts provisions for the merger of a reciprocal insurer organized after 1974 to provide medical malpractice insurance with another domestic reciprocal insurer, or with a domestic or foreign incorporated insurer, subject to various procedures.

Existing law sets forth special procedures applicable to the merger or consolidation of a domestic mutual insurer with another admitted mutual insurer. This bill makes those provisions applicable to a merger or consolidation with another insurer, without restriction that it be a domestic mutual insurer and revises those provisions. Among other things, it specifies that provisions relating to conversion of an incorporated mutual life or life and disability insurer into an incorporated stock life insurer do not apply to such a transaction. The bill revises requirements for the plan and agreement for merger or consolidation, to require approval by the board and a statement of any consideration of directors, officers, or employees; and increases the fee for the certificate of approval. The bill also provides that in the event a mutual insurer is merged, consolidated, or part of a reorganization under those provisions, and the surviving, consolidated, or continuing company is an incorporated stock insurer, the plan shall provide for the manner of converting or exchanging the equity interests of members into shares. It provides that, notwithstanding any other provision of law, the conversion or exchange constitutes full payment and discharge of the members' property interest in the domestic mutual insurer and the members have no other rights with respect to their property interests except for rights relating to certain continuing debt or equity interests. This bill was signed by the Governor on October 9 (Chapter 728, Statutes of 1995).

AB 1024 (Aguiar). Existing law prohibits an admitted insurer from assuming or reinsuring any of the liability of a non-admitted insurer on insurance upon subject matter located in this state, except where the admitted insurer assumes the entirety of that insurance of the nonadmitted insurer together with all the liabilities



arising therefrom. As amended September 7, this bill eliminates that prohibition. It instead provides that no admitted insurer shall assume or reinsure the liabilities of a nonadmitted insurer upon subject matter located in this state for the purpose of circumventing rate and form provisions or nonadmitted insurer provisions. It specifies a penalty of not to exceed \$5,000, or any other corrective order, for a reinsurance agreement in violation of this prohibition. The bill also requires the Insurance Commissioner to issue a bulletin to govern the reporting by admitted insurers of their reinsurance transactions with nonadmitted insurers.

Existing law provides for the liquidation or rehabilitation of insurers that become insolvent in proceedings by the Insurance Commissioner. Under existing law, in those proceedings, mutual debts or credits between the insurer and other persons are set off except in certain circumstances. This bill specifies that mutual debts or credits are set off, whether arising out of one or more contracts. It also provides that no set-off is allowed for obligations that arise from business and are assumed and then ceded back, and provides for set-off for obligations expressly approved by the Commissioner.

Existing law provides that after an order of liquidation, certain transactions occurring within four months prior to the application for the order are voidable by the Commissioner. This bill instead provides that certain transfers are preferences, and provides that any preference may be avoided by the liquidator if certain conditions are met. It also provides that every transfer made or suffered and every obligation incurred within one year prior to filing a successful petition for conservation or liquidation is fraudulent as to then or existing and future creditors if made or incurred without fair consideration or with actual intent to hinder, delay, or defraud existing or future creditors. This bill was signed by the Governor on October 4 (Chapter 580, Statutes of 1995).

AB 1274 (McDonald). Under existing law, in the Insurance Commissioner's application for an order for the liquidation of a domestic corporation in the insurance business, or at any time thereafter, the Commissioner may apply for, and the court is required to make, an order dissolving the corporation. As amended September 8, this bill also provides that at any time during proceedings for the liquidation of certain domestic insurance corporations the Commissioner may apply for, and the court shall make, an order to permit the Commissioner to sell the charter and license of the corporation while con-

tinuing to administer and distribute the remaining assets.

Under existing law, upon making an order to liquidate an insurance business, the Commissioner is required to publish a notice to the policyholders. The order and notice shall require claimants to file claims within six months of the first date of publication. This bill instead provides that the claims shall be filed within six months to one year, at the Commissioner's discretion. This bill also vests discretion in the Commissioner regarding liquidations.

Under existing law, the above notice is required to be published in a newspaper of general circulation in the county in which the proceeding is pending. This bill requires that the notice also be published in specified counties. This bill was signed by the Governor on October 4 (Chapter 578, Statutes of 1995).

AB 1307 (Cunneen). Existing law requires that on and after January 1, 1995, each insurer ("person") and other entities that pay insurance taxes whose annual taxes exceed \$20,000 may make payment by electronic funds transfer. Existing law imposes a penalty of 10% of the taxes due on any person required to remit taxes by electronic funds transfer who remits those taxes by means other than an appropriate electronic funds transfer. As amended August 21, this bill makes certain clarifying and related changes in those provisions, including changing a reference from "person" to "insurer" and, among other things, providing that payment is deemed complete on the date the electronic funds transfer is initiated if settlement occurs on or before, rather than before, the banking day following the date the transfer is initiated.

Existing law requires, on or before the first day of April, a surplus line broker to file an annual statement with the Commissioner containing an account of the business transmitted or done, as defined, by the surplus line broker for the prior year. The date on which the surplus line broker prepares a bill or invoice for payment of all or a part of premiums due is considered the date on which business was done, subject to certain provisions on installment payment of premiums. Existing law provides that if a premium is billed and payable in installments, the invoice date of the first installment shall be no more than 60 days after the policy effective date and no more than 60 days after the insurance was placed with a nonadmitted insurer, and thereafter each installment shall be no more than one installment period after the invoice date of the immediately preceding installment. This bill instead requires the filing of that annual statement to be on or

before the first day of March, annually, and would revise the reporting requirements regarding receipt of installment premiums to provide that the amount of gross premium to be reported, if premiums are billed and payable in installments, shall be the amount of the installment premium, subject to specified conditions.

Existing law requires, on or before the first day of March each year, the Commissioner to notify by mail certain surplus line brokers that they are required to make specified monthly tax payments with the notice the Commissioner is required to mail installment payment forms. This bill deletes those provisions and instead requires, on or before the first day of February each year, the Commissioner to mail payment forms. It also specifies that certain deficiency assessment appeal provisions with respect to insurers are applicable to surplus line brokers. This bill was signed by the Governor on October 9 (Chapter 721, Statutes of 1995).

AB 702 (Cunneen), as amended June 27, requires, commencing January 1, 1997, specified DOI licensees to prominently affix, type, or cause to be printed on certain materials the licensee's license number in type the same size as any indicated telephone number, address, or fax number. The license number is required to appear on business cards, written price quotations for insurance products, and specified print advertisements for insurance products. The Insurance Commissioner is authorized to initiate an enforcement action and levy certain fines to enforce the requirement, and licensees may apply to the Commissioner for relief from the penalty for reasonable cause. This bill was signed by the Governor on July 30 (Chapter 217, Statutes of 1995).

AB 1150 (Morrissey), as amended July 5, authorizes the Commissioner to develop informational sheets in non-English languages regarding the terms used in insurance policies. This bill further provides that the development of informational sheets or the use of these informational sheets by insureds, insurers, agents, brokers, or the state shall not be interpreted as creating a duty or obligation to provide additional information or insurance policies in a non-English language. The bill provides that its provisions do not prevent an insurer or licensee from advertising an insurance policy, or the availability of a foreign language informational sheet, or the availability of a translation of an insurance policy, in a language other than English if the advertisement clearly states that the insurance policy is only available in English. The bill also specifies that in the case of a dispute, the insur-



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ance policy is controlling. This bill was signed by the Governor on October 13 (Chapter 909, Statutes of 1995).

SB 87 (Kopp). Existing law provides that the written consent of the Attorney General is required prior to the employment of counsel for representation of any state agency or employee in any judicial proceeding. There is an express exception provided to specified state agencies and to the Insurance Commissioner with respect to certain delinquency proceedings. As amended August 29, this bill deletes the exception provided to the Commissioner and removes the specific authority of the Commissioner to employ counsel in connection with delinquency proceedings. This bill also makes legislative findings that it is in the best interest of the state that the Attorney General be provided with the resources needed to perform specified duties.

Under existing law, the Attorney General is authorized to appoint and employ any legal counsel that he/she deems necessary to assist the Commissioner in the performance of his/her duties. This bill states that in the institution and prosecution of all insurance delinquency proceedings, the general provisions requiring written consent of the Attorney General to employ counsel shall apply. The bill states the intent and finding of the legislature that it is in the best interest of the people of the State of California that the Attorney General and the Insurance Commissioner consult and cooperate in regard to utilizing agency counsel of DOI in delinquency proceedings. This bill was signed by the Governor on October 13 (Chapter 893, Statutes of 1995).

SB 1053 (Solis). Existing law sets forth various findings concerning insurance fraud prevention. As amended August 24, this bill also sets forth a finding that underreporting payroll in order to pay a lower workers' compensation premium results in significant additional premium costs and an unfair burden to honest employers. This bill also provides for the investigation of the fraudulent reporting of payroll or facts to obtain insurance at an improper rate by DOI's Bureau of Fraudulent Claims.

Existing law requires an insurer to report when it knows the identity of a person suspected of committing workers' compensation insurance fraud. This bill also requires reports when an insurer knows the identity of an entity suspected of committing workers' compensation insurance fraud, and makes related changes.

Under existing law, it is a crime for any person to willfully misrepresent any fact in order to obtain workers' compensation

insurance at less than the proper rate. This bill instead provides that it is unlawful to make or cause to be made any knowingly false or fraudulent statement of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance for the purpose of reducing the premium, rate, or cost of the insurance. This bill was signed by the Governor on October 13 (Chapter 885, Statutes of 1995).

SB 58 (Lewis), as amended July 15, would suspend existing law requiring homeowners insurers to offer earthquake insurance from the effective date of the bill until the Insurance Commissioner certifies to the Secretary of State that, in the Commissioner's opinion, federal legislation has been enacted that creates a nationwide program that adequately insures losses due to earthquake, insurers do not have to comply with the preceding provisions. In addition, the bill would provide that, if an offer of earthquake coverage is accepted, the coverage must be continued only for the policy term, provided the residential property insurance policy is not cancelled by the named insured or the insurer.

Existing law provides that an insurer may not refuse to renew, reject, or cancel a policy of residential property insurance after an insured has accepted an offer of earthquake insurance solely because the insured has accepted that offer, unless the policy is terminated by the insured. This bill would provide that an insurer may refuse to renew a policy if the decision to refuse is based on sound underwriting principles, if the Commissioner finds that the exposure to potential losses will threaten the solvency of the insurer or place the insurer in a hazardous condition, if the insurer has a reduced opportunity to obtain reinsurance, or for other specified grounds. These provisions would be repealed upon certification by the Commissioner to the Secretary of State that specified federal legislation creating a nationwide earthquake insurance program has been enacted. [*Conference Committee*]

SB 266 (Rosenthal), as amended July 15, would require a homeowners insurer to offer earthquake coverage only on the primary dwelling insured by the policy, subject to minimum dwelling contents coverage requirements.

Existing law provides that if an insured accepts an offer of earthquake coverage, the coverage must be continued at the applicable rates and conditions, unless the named insured or the insurer terminates the coverage. This bill would, instead, provide that the earthquake coverage must be continued at the applicable rates and

conditions only for the policy term. An insurer would be permitted to modify the terms and conditions of a policy at any renewal if the policy meets specified minimum coverage requirements. An insurer would be required to give specified notice to an insured if the coverage is modified. [*Conference Committee*]

AJR 23 (Hauser), as amended April 27, memorializes the President and the Congress to prevent the Federal Home Loan Mortgage Corporation from imposing new earthquake insurance requirements for condominiums upon California. [*S. Jud*]

AB 1083 (Archie-Hudson), as introduced February 23, would require any insurer providing coverage for motor vehicle insurance to act in good faith toward, and deal fairly with, current and prospective policyholders and other persons intended to be protected by any policy of motor vehicle insurance. This bill would authorize policyholders or third-party claims against an insurer or licensee for violation of specified laws and regulations prohibiting unfair competition and unfair or deceptive acts or practices, thus reversing the California Supreme Court's decision in *Moradi-Shalal v. Fireman's Fund Insurance Companies*, 46 Cal. 3d 287 (1988), and reinstating the so-called "Royal Globe" cause of action. [*A. Ins*]

AB 341 (Knowles) is a controversial bill which would—among other things—codify in statute the optional automobile premium rating factors which have been adopted as emergency regulations by three different Insurance Commissioners over the past six years (see MAJOR PROJECTS). The bill would also codify the "sequential analysis" method of weighting the various optional factors, such that the optional factors (including geographical territory or ZIP code where the automobile is housed) could outweigh the three mandatory factors established in Proposition 103 as the primary basis of auto premium rates (number of miles driven annually, driving record of the insured, number of years of driving experience of the insured). Opponents of this measure argue that one of the major goals of Proposition 103 was to outlaw so-called "territorial rating" (rates based on ZIP code rather than on factors specific to the individual driver), and this bill would reinstate territorial rating contrary to the initiative. [*A. Inactive File*]

SB 968 (Johnston). Under existing law added by Proposition 103, insurers issuing private passenger automobile insurance are required to offer good driver discount policies. Existing law requires agents or representatives representing in-



urers under common ownership, management, or control to provide good driver coverage at the lowest rates applicable within the common ownership, management, or control group. As amended June 26, this bill would provide that this requirement also applies even if the agent, company representative, or submitting producer is not appointed by the affiliated company with the lowest rate. It would require all insurers that offer private passenger automobile insurance through appointed agents to appoint each of their agents for all their affiliated companies. [A. Ins]

SB 49 (Lockyer), as amended July 19, would make major changes in the existing tort system for automobile accident cases. Among other things, the bill would modify the existing "collateral source rule," which makes inadmissible, in an action to recover damages for an injury, evidence of benefits that the injured party is entitled to receive from collateral sources. SB 49 would provide that in a third-party action for personal injury arising out of the operation or use of a motor vehicle, the recovery shall be reduced by amounts paid as a medical payment benefit under a policy of motor vehicle insurance.

SB 49 would also establish a division of small claims court for automobile claims involving between \$5,000 and \$10,000, and would permit representation by attorneys in those cases, subject to various limits.

Existing law establishes various discovery procedures prior to trial of an action. This bill would require the mutual exchange of information in connection with third-party claims that seek or contest a claim for money damages arising from a motor vehicle accident. The bill would also permit the use of a medical injury profile as evidence in a third-party action involving a nonserious bodily injury.

Existing law provides for judicial arbitration of claims where the amount in controversy does not exceed \$50,000. This bill would require judicial arbitration of motor vehicle accident claims involving third-party liability for bodily injury if the amount in controversy does not exceed \$50,000. The bill would provide for sanctions in certain instances.

Existing law requires the adoption of trial court delay reduction rules. Under existing law, parties may agree to a single continuance within thirty days of service of pleadings. This bill would permit agreement for a continuance at any time following service of responsive pleadings and prior to the status conference. This change would be repealed on July 1, 1998. The bill would also permit a second continu-

ance in certain cases involving motor vehicle accidents until January 1, 2000.

Existing law does not generally limit fees that health care providers may charge. This bill would provide that the charges for health care services that are incurred as a result of an injury arising from a motor vehicle accident may not exceed specified amounts.

Existing law prohibits certain false and fraudulent acts in connection with insurance claims. This bill would provide for a five-year sentence enhancement and prohibit probation if the false claim, along with previous false claims, involves \$100,000 or more.

Existing law requires owners and operators of motor vehicles to maintain liability insurance. Existing law requires that insurance be in the amount of \$15,000 for bodily injury to one person, subject to a limit for bodily injury of \$30,000, and in the amount of \$5,000 for property damage. This bill would reduce those amounts to \$10,000, \$20,000, and \$3,000, respectively. It would permit insureds to waive the property damage coverage if they are good drivers and purchase minimum coverage, but would require medical payment coverage. This bill would also provide that policies include binding arbitration of third-party disputes concerning property damage or nonserious bodily injury unless waived.

Existing law provides for payment under uninsured motorist coverage where the owner or operator is unknown only if the injury arose out of physical contact between the uninsured vehicle and the insured or with an automobile which the insured is occupying. This bill would provide for payment in that circumstance only if the bodily injury has arisen out of action of the motorist that caused physical contact between property of that motorist and the insured or with an automobile which the insured is occupying.

Existing law does not authorize motor vehicle liability and casualty insurers to require insureds and other claimants for motor vehicle repair costs to have those repairs performed at a repair facility under contract to the insurer. This bill would authorize policies issued by these insurers to require insureds and other claimants for repair of motor vehicle damage in this state to have those repairs done at repair facilities designated by, and under contract with, the insurer. The bill would limit monetary liability of insurers to the cost of repairs at a repair facility under contract with the insurer.

This bill would require the Department of Motor Vehicles (DMV) to require, upon registration of a motor vehicle, evidence

satisfactory to DMV that the owner of the motor vehicle is in compliance with the financial responsibility laws.

Under existing law, DMV may refuse to issue or renew a driver's license to any person who is a negligent operator. The determination of whether a person is a negligent operator is based on the number of traffic violation points the person acquires within a specified period. Under existing law, certain traffic violations are given a value of two points and others one point. The bill would provide that a violation of the provision requiring the wearing of a seatbelt does not result in a violation point count.

Existing law requires various reports to be made by persons involved in motor vehicle accidents. This bill would require certain reports to the person's insurer and to the insurer for a person against whom a claim will be made.

Existing law requires persons involved in accidents to present their driver's license and other information on request, in certain instances. This bill would require that presentation without request, and would require presentation of proof of financial responsibility.

The bill would require DMV to include information concerning these requirements in its "Drivers Information Handbook," and to test for knowledge of these requirements. [A. Ins]

AB 650 (Speier), as amended August 28, would require DMV to require, upon application for renewal of registration of a vehicle, any one of several forms of evidence that the applicant is in compliance with the financial responsibility laws of this state, except as specified.

Existing law requires every driver and every owner of a motor vehicle to be able, at all times, to establish financial responsibility, as defined, for the vehicle. This bill would require every person who drives upon a highway a motor vehicle required to be registered in this state to provide evidence of financial responsibility for the vehicle upon demand of a peace officer.

The bill would authorize a court to order the impounding of the vehicle of a person who violates the financial responsibility provision, in addition to the penalties specified above. The bill would authorize the release of an impounded vehicle to the legal owner or registered owner of the vehicle under specified circumstances. The bill would also authorize dismissal of charges related to violation of the financial responsibility provision upon receipt of written evidence of financial responsibility, as defined, by the clerk of the court and would authorize the clerk to collect a \$10



transaction fee for each case so dismissed. The bill would exempt a person from the provisions described above if the person was driving, with the permission of the person's employer, a motor vehicle owned, operated, or leased by that employer, would make the provision applicable to the employer, and would require a notice to appear issued pursuant to the above provision to be issued to the employer rather than the driver. The bill would require the driver to notify the employer of the receipt of the notice to appear not later than five days after receipt.

The bill would prohibit a person from knowingly providing false evidence of financial responsibility when requested by a peace officer pursuant to the financial responsibility provision specified above. The bill would prohibit a peace officer from stopping a vehicle for the sole purpose of determining whether the vehicle is being driven in violation of the financial responsibility provision. The bill would provide that no public entity or employee, or any specified person or organization, is liable for any loss, detriment, or injury resulting from failure to request evidence of financial responsibility, inaccurately recording that evidence, or as a result of the driver producing false or inaccurate financial responsibility information. [A. *Inactive File*]

AB 1752 (Knowles), as introduced February 24, would require DOI to conduct a "closed claim" study of automobile accident insurance claims, designed to identify the insurance loss costs associated with automobile insurance. This bill would require that the study be completed by July 1, 1996, and that a written report be presented to the Governor and legislature no later than that date. This bill would appropriate \$250,000 from the Insurance Fund to DOI for purposes of this study. [A. *Ins*]

SB 1229 (Killea), as introduced February 24, would modify California's tort liability and insurance laws by implementing "no-fault" automobile insurance and limiting the recovery of non-economic damages in automobile accident cases. It would establish a first-party no-fault system for resolving auto accident cases; a first-party personal injury protection no-fault policy would provide coverage for basic economic loss (including medical care, wage losses, and incidental expenses of up to \$25 per day per person) of up to \$15,000. Tort liability for basic economic losses (up to \$15,000) would be eliminated. This policy would cost good drivers \$220 until July 1, 1997, and thereafter may be increased to an actuarially sound rate pursuant to the Proposition 103 rate approval process.

As noted, this bill would also limit tort liability and insurance coverage for non-economic damages (e.g., pain and suffering). Persons would be unable to pursue claims or be sued for non-economic damages unless the injury is "serious," as defined. [S. *Jud*]

SB 464 (Rosenthal), as amended July 1, would provide that no policy of property insurance may be cancelled or non-renewed by the insurer for a specified time if any claim that affects insurability relating to damage to the insured premises due to an officially declared disaster remains unresolved. The bill would authorize the Insurance Commissioner to adopt regulations to govern the determination of whether an outstanding claim affects insurability. The bill would require a notice of cancellation or nonrenewal that is mailed while a claim is pending to contain a specified notice.

The bill would allow insurers to non-renew property insurance policies under certain circumstances, including when the insurer offers to arbitrate an unresolved claim and the insured refuses, as specified. [A. *Ins*]

AB 1839 (Figueroa). Existing law requires the Insurance Commissioner to establish a program to receive complaints and inquiries, investigate complaints, prosecute insurers when appropriate and pursuant to specific guidelines, and respond to complaints and inquiries by members of the public concerning the handling of insurance claims, as specified. As amended June 27, this bill would authorize DOI to request an insurer or other licensee to respond to the Department concerning any consumer complaint received by DOI regarding that insurer or licensee and would require the insurer or licensee to respond as soon as practicable but no later than 21 calendar days after receipt of a request to do so from DOI. [S. *Desk*]

AB 854 (Hoge). Existing law generally prohibits the intentional and nonconsensual eavesdropping on, or recording of, a confidential communication. However, existing law also provides that specified law enforcement officers acting within the scope of their authority shall not be prohibited from overhearing or recording any communication that they could lawfully overhear or record prior to January 1, 1968. As amended April 6, this bill would make the latter provision applicable to DOI's Chief of the Bureau of Fraudulent Claims or any investigators designated by the Chief.

Existing law provides that DOI's Chief of the Bureau of Fraudulent Claims and designated investigators are peace officers whose authority extends to any place in the state for the purpose of performing

their primary duty or when making an arrest; these peace officers may carry firearms only if authorized and under those terms and conditions specified by DOI. This bill would delete the above provisions and provide instead that the DOI Chief and designated investigators are peace officers whose authority extends to any place in the state, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to insurance fraud. These peace officers would be authorized to carry a loaded firearm. [A. *PubS*]

AB 859 (Campbell). Existing law requires an insurer that provides certain types of commercial insurance or workers' compensation coverage to provide notice if the insurer will not renew the policy or, for commercial insurance policies, will condition renewal of the policy upon specified changes in the policy terms. As amended May 8, this bill would provide that the insurer must attach a premium and loss history report for the preceding five years to the notice of nonrenewal, for certain types of commercial insurance, and to the notice of nonrenewal for workers' compensation insurance policies. The notice requirement would not apply to professional liability insurers. [A. *Ins*]

AB 1112 (Rogan). Existing law provides for enforcement of various child support delinquency provisions by the district attorney. As introduced February 23, this bill would provide that insurance companies shall notify the state Department of Social Services (DSS) prior to making any payment equal to or in excess of \$3,000, in order for DSS to determine if a child support order or judgment exists. [A. *Ins*]

SB 1217 (Polanco). Under the federal Community Reinvestment Act, lending institutions are required to advertise and make available mortgages in low- and moderate-income markets. As amended May 10, this bill would encourage insurers admitted in California to make community development investments, as defined. The investments should be designed to promote job creation, small business development, or microenterprise development in low-income or very low-income communities. The Insurance Commissioner would be required to compile information and report concerning community development investments by insurers. [S. *Inactive File*]

AB 1557 (Lee). Existing law does not require insurers admitted to transact the business of insurance in this state to invest in low-income and very low-income communities in this state, as a condition of maintaining a certificate of authority. As



amended April 19, this bill would enact the Community Investment Act to require admitted insurers that generate a specified income to invest in economically targeted investments in low-income and very low-income communities in this state. [A. Ins]

AB 1278 (McDonald). Under existing law, an insurer doing business in this state is required to make and file with the Insurance Commissioner annual statements exhibiting its condition and affairs. As introduced February 23, this bill would require, as part of these annual statements, a community investment report that states specified information regarding the type, number, and dollar amount of economically targeted investments. [A. Ins]

AB 1619 (Tucker), as introduced February 24, would—with respect to private passenger automobile liability, private passenger automobile physical damage, commercial automobile liability, and homeowners' multiple peril—require insurers issuing those policies to annually file, under penalty of perjury, with the Insurance Commissioner, a community service statement disclosing the number and total of earned premiums, and identifying race or national origin of applicants and insureds, as specified. [A. Ins]

AB 1746 (Knowles). Existing law contains two different provisions that require a notice to be included on insurance application and claim forms as to the penalty for fraud. As amended April 17, this bill would repeal these provisions.

Existing law contains two provisions making insurance fraud a crime, one of which is to remain in effect until January 1, 1999. This bill would provide that the other provision shall become operative on January 1, 1999.

Among other things, these existing provisions make it unlawful to knowingly present a false or fraudulent claim for the payment of a loss. This bill would also provide that it is unlawful to knowingly present a false or fraudulent claim for the payment of an injury. [S. Ins]

AB 1748 (Knowles). Existing law provides an application process whereby a self-funded or partially self-funded multiple employer welfare arrangement may apply for a certificate of compliance to do business in this state. In determining the qualification of a multiple employer welfare arrangement, the Insurance Commissioner is required to consider various enumerated factors. As introduced February 24, this bill would additionally require the Commissioner to consider evidence submitted and certified by management to demonstrate compliance with requirements to become eligible for a certificate of compliance. [A. Ins]

AB 1719 (Isenberg). The California Constitution requires the California Citizens Compensation Commission to establish the annual salaries of members of the legislature, the Governor, the Lieutenant Governor, the Attorney General, the Controller, the Insurance Commissioner, the Secretary of State, the Superintendent of Public Instruction, the Treasurer, and members of the state Board of Equalization. As amended April 26, this bill would require the salary of those state officers to be reduced by the amount of any state or local retirement allowance received by the officer and require retirement allowance information to be furnished to the Controller. [A. Inactive File]

SB 354 (Rogers). Existing law, to be repealed effective January 1, 1998, sets forth requirements for mandatory prelicensing and continuing education requirements with respect to licensure as a fire and casualty broker-agent or as a life agent. The Insurance Commissioner must appoint a curriculum board to develop the prelicensing and continuing education curriculum. The curriculum board shall develop or recommend specified courses of study covering certain lines of insurance and course study on ethics, among other things. As amended April 27, this bill would delete that date of repeal and, in addition, provide for an agency management or business practices course study. It would also provide that courses of study in agency management or business practices may account for up to eight hours of the course or program requirement for license renewal. [A. Floor]

SB 1179 (Rosenthal). Existing law requires life insurers to file an annual risk-based capital report concerning various risks to the insurer's assets. It requires certain actions by insurers based on the report, and, in some instances authorizes the Insurance Commissioner to take action. As amended March 30, this bill would repeal and reenact these provisions to make them applicable to life and health insurers and to property and casualty insurers generally. [S. Floor]

SB 1323 (Senate Committee on Insurance). Existing law authorizes the Insurance Commissioner to issue a certificate of authority for a grant and annuity society, which is authorized to receive a transfer of property in exchange for payment of an annuity. A grant and annuity society is required to comply with specified requirements, including the maintenance of a reserve fund adequate to meet future annuity payments. As introduced March 16, this bill would revise the method of computing the reserve fund, by revising the method for computing annuities under

agreements made on and after January 1, 1992, and permitting the Insurance Commissioner to authorize other tables of mortality. [S. Floor]

AB 115 (McDonald), as amended August 28, would prohibit a HCSP and a life or disability insurer from refusing to accept an application, refusing to enroll or insure, refusing to issue or renew coverage, canceling coverage, or denying coverage because the applicant for health coverage and life or disability insurance or any person who is or would be covered is, or has been, a victim of domestic violence. [S. Inactive File]

■ LITIGATION

In *Amwest Surety Insurance Co. v. Wilson*, 11 Cal. 4th 1243 (Dec. 14, 1995), the California Supreme Court affirmed a 1993 holding of the Second District Court of Appeal invalidating a 1990 statute which exempted surety companies from the rollback and prior approval provisions of Proposition 103, because the statute did not "further the purposes" of the initiative and is thus beyond the authority of the legislature. [14:2&3 CRLR 139; 14:1 CRLR 108; 13:2&3 CRLR 130] The decision marks a signal victory for the Proposition 103 Enforcement Project directed by Proposition 103 author Harvey Rosenfield. Sponsored by surety insurance interests, AB 3798 was enacted in 1990 by unanimous vote of both houses and signed by the Governor. Because Proposition 103 was an initiative statute enacted by direct vote of the People, the California Constitution allows it to specify whether it may be amended without subsequent electoral vote or whether such a vote is required. As is common, Proposition 103 provides that the legislature may so amend its provisions without popular vote, but only where the amendment "further the purposes" of the measure. The court held that the inclusive nature of the measure (covering insurance in general) implied coverage of surety insurance, although not specifically listed, such that a bill exempting surety insurance from Proposition 103's coverage does not further its purposes.

In *Montrose Chemical Corporation of California v. Admiral Insurance Company*, 10 Cal. 4th 645 (July 3, 1995), the California Supreme Court examined the rules regarding third-party liability for a continuous deterioration type of injury. In *Prudential-LMI Com. Insurance v. Superior Court*, 51 Cal. 3d (1990), the court considered the allocation of liability for an injury occurring over many policy terms and discovered at a later date in a first-party context (where the insurer is paying the policyholder, rather than a person in-



jured by the policyholder). In this case, Montrose allegedly disposed of hazardous waste before the period of Admiral's insurance coverage began. The Supreme Court held that standard CGL coverage includes bodily injury and property damage that occurs during the policy period—even if initially caused by preceding events. In the case of successive policies (sometimes by different insurers), a deteriorating type of injury and property damage is covered by "all policies in effect during those periods."

The *Montrose* case involved the production of DDT from 1947 until 1972; after the pesticide's domestic ban, Montrose continued production until 1982 for export. Seven different carriers covered Montrose from 1960 to 1986, with Admiral involved only during the 1982-1986 period. Admiral argued that it had no duty to defend and no coverage obligation since there was no dumping during the policy period and no "occurrence" under the policy triggered its coverage; rather, the problem was an uninsurable "loss in progress" at the time it wrote its first policy in 1982. The court agreed that such a limitation may be appropriate in the first-party context where one is insuring against liability from an act or event, but that coverage for injuries to third parties by the insured is based on injury, not event. The impact of this decision may be momentous in terms of the insurability of any enterprise with a latent liability for a preexisting hazard.

In *Quintano v. Mercury Casualty Company*, 11 Cal. 4th 1049 (Dec. 6, 1995), the California Supreme Court ruled that the statute of limitations governing uninsured motorist claims does not apply to claims based on underinsurance coverage, if the claim against the underinsured motorist is settled. The court reasoned that the basic differences in the settlement process for uninsured motorist coverage and underinsured motorist coverage make it clear that the legislature did not intend the statute of limitations for the former to apply also to the latter. Chief Justice Malcolm Lucas held that in an uninsured motorist situation, the insured is not required to pursue legal action against the uninsured motorist before making a claim under the policy, whereas under Insurance Code section 11580.2, underinsured coverage is only available after the insured has obtained payment in the amount of the tortfeasor's policy limits.

Manufacturers Life Insurance Company v. Superior Court (Weil Insurance Agency, Inc., Real Party in Interest), 10 Cal. 4th 257 (June 1, 1995), involves the important interplay between state antitrust statutes (Business and Professions Code

section 16700 *et seq.*), the Unfair Competition Act (Business and Professions Code section 17200 *et seq.*), and the unfair business practice provisions of the Insurance Code itself (Insurance Code section 790 *et seq.*). [15:1 CRLR 116-17; 14:4 CRLR 131; 14:2&3 CRLR 139] Manufacturers Life contended that antitrust law does not apply to insurance, and that the exclusive remedy for unfair business practices vests with the Insurance Commissioner under section 790 *et seq.* of the Insurance Code. Affirming the First District Court of Appeal's decision, the court held that life insurance has not been granted a general exemption from antitrust law coverage, and that state antitrust law and the Unfair Competition Act generally provide remedies which are coextensive and cumulative to those available to the Commissioner under the Insurance Code (*e.g.*, license revocation). However, the court held that where a violation is alleged of the Insurance Code provisions alone, it is not for that reason an "unfair or unlawful" act in competition giving rise to the additional remedies of the Unfair Competition Act. This limitation is not likely to be a problem for plaintiffs, given the possibility of alleging unfair or unlawful acts separate and apart from the Insurance Code's unfair practice provisions.

NEW MOTOR VEHICLE BOARD

Executive Secretary:
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Pursuant to Vehicle Code section 3000 *et seq.*, the New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles (DMV). Most licensees deal in cars or motorcycles.

NMVB is authorized to adopt regulations to implement its enabling legislation; the Board's regulations are codified in Chapter 2, Division 1, Title 13 of the California Code of Regulations (CCR). The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

On August 10, Governor Pete Wilson announced the reappointment of Marie Brooks and Michel Padilla to the Board. Brooks is the president and founder of Ellis Brooks Chevrolet-Pontiac-Nissan-Geo in San Francisco; she has served on NMVB since 1992. Padilla is the president of Gateway Chevrolet in Anaheim; he has served on NMVB since 1992.

MAJOR PROJECTS

Protest/Petition Actions. The matter of *Gunderson-Ihle Chevrolet, Inc., v. Chevrolet Motor Division, General Motors Corporation* (Protest No. PR-1380-93) was first brought before NMVB in June 1994. Gunderson-Ihle and three other Chevrolet dealers (whose protests were later withdrawn) instituted this action to preclude Chevrolet from carrying out its intention to relocate Clippinger Chevrolet from its location in Covina to a West Covina site off the Interstate 10 Freeway in Gunderson-Ihle's market area. Gunderson-Ihle claimed that the relocation would adversely affect its permanent investments; there would be an adverse effect on the retail motor vehicle business and the consuming public in the relevant market area; the establishment of an additional franchise would be injurious to the public welfare; the existing Chevrolet dealers in the relevant market area are providing adequate competition and convenient consumer care for Chevrolet motor vehicles including adequate motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel; and the establishment of an additional dealership would not increase competition and would not be in the public interest. Finally, Gunderson-Ihle claimed that Chevrolet made oral and/or written promises to Gunderson-Ihle, as part of Chevrolet's "Project 2000," that it would have an exclusive freeway dealership location on the I-10 freeway from Ontario to the Pacific Ocean, inducing Gunderson-Ihle to relocate to its current location, a move it would not have made had it known Chevrolet would ultimately attempt to relocate Clippinger to the proposed site.

After reviewing the evidence submitted by the parties, the administrative law judge (ALJ) decided that Gunderson-Ihle failed to show good cause for not allowing the relocation of Clippinger; this proposed decision was adopted by NMVB on August 25, 1994. [14:4 CRLR 194] Having exhausted its remedy with NMVB, Gunderson-Ihle asserted its claim within Los Angeles County Superior Court, which eventually ordered discovery of any and all documents pertaining to Chevrolet's "Project 2000" and remanded the matter to NMVB.