bill would delete this exception from the Act, thus subjecting these records to disclosure. This bill is pending in the Assembly Governmental Organization Committee.

SB 950 (Vuich) and *AB 1463 (Hayden)*. Existing law requires banks to furnish depositors, if not physically present at the time of the initial deposit into an account, with a statement concerning charges and interest not later than ten days after the date of the initial receipt. SB 950, as introduced March 8, and AB 1463, as introduced March 7, would instead require the statement to be furnished not later than five legal business days after the date of the initial deposit. With respect to an increase in the rate of account charges or a variance in the interest rate, the bills would reduce the notice time from fifteen days prior to date of change or variance to ten legal business days.

Existing law, with specified exceptions, prohibits a commercial bank from lending in the aggregate an amount in excess of 70% of the amount of its savings and other time deposits upon the security of real property. These bills would specify that the percentage limitation applies with respect to the aggregate amount of accounts subject to a negotiable order of withdrawal, savings deposits, money market accounts, super now accounts, and other time deposits of a commercial bank, including certificates of deposit. SB 950 is pending in the Senate Banking Committee and AB 1463 is pending in the Assembly Banking Committee.

AB 1195 (Lancaster), as introduced March 6, would provide that for compensation or in expectation of compensation, a bank or trust company may, on behalf of another or others, sell, buy, lease, exchange, or offer to sell, buy, lease, or exchange, or solicit prospective sellers, purchasers, or lessees of, or negotiate the sale, purchase, lease, or exchange of any business opportunity. This bill is pending in the Assembly Banking Committee.

DEPARTMENT OF CORPORATIONS

Commissioner: Christine W. Bender
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The Department of Corporations is a part of the cabinet-level Business and Transportation Agency and is empowered under section 25600 of the California Code of Corporations. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Chapter 3, Title 10 of the California Code of Regulations (CCR).

The Department administers several major statutes. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the commissioner must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers, and investment advisors. Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud, or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The commissioner has particularly broad civil investigative discovery powers; he/she can compel the deposition of witnesses and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.

The commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plan Law, Escrow Law, Check Sellers and Cashiers Law, Securities Depositor Law, California Finance Lenders Law, and Security Owners Protection Law.

A Consumer Lenders Advising Committee advises the commissioner on policy matters affecting regulation of consumer lending companies licensed by the Department of Corporations. The committee is composed of leading executives, attorneys, and accountants in consumer finance.

MAJOR PROJECTS:

Exemption From Non-Issuer Qualification Requirements. On January 24, Commissioner Bender announced that she has issued an order certifying the interdealer quotation system of the National Association of Security Dealers, Inc., in accordance with section 25101(a) of the Corporations Code. As a result of this certification, any security issued by a person which is the issuer of any security designated as a National Market System security on an interdealer quotation system by the National Association of Security Dealers, Inc., is exempt from the non-issuer qualification provisions of section 25130 of the Corporations Code, effective January 24.

Proposed Regulatory Action Under the Escrow Law. On February 1, the Commissioner announced her intent to add new section 1727 to the Department's regulations, to implement section 17202 of the Financial Code. That statute permits an escrow agency applicant or licensee to obtain, in lieu of a surety bond, an irrevocable letter of credit approved by the Commissioner. However, no statute currently sets forth the form to be used in obtaining the letter or instructions for completing the form.

New section 1727 would set forth the form and require that: the letter be a personal obligation of the owner(s) of the escrow company; there be a board of directors' resolution authorizing the person(s) to obtain the letter of credit for the escrow company; the letter of credit be issued by a California branch of a national bank or a California-chartered bank; the beneficiary be the Department of Corporations and any person(s) who may have a cause of action against the escrow company under the Escrow Law; payment be made to the Department

upon presentment of a written demand; payment be made to other persons, after obtaining written consent from the Commissioner, upon written demand and presentment of a certified copy of a final judgment; any person who sustains an injury covered by the letter of credit may bring an action in his/her own name upon the letter for credit for the recovery of damages; and the letter of credit be automatically renewed unless written notice of nonrenewal is given.

The Department was scheduled to hold an April 12 public hearing on this proposal.

Regulatory Action Under the California Commodity Law. In October 1990, the Commissioner proposed new regulations to implement Chapter 969, Statutes of 1990, which enacted the California Commodity Law of 1990, effective January 1, 1991. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 98 for background information.) New regulatory sections 290.570 and 290.571 establish a form of notice for commodity merchants and telephonic sellers of commodity contracts to annually file with the Commissioner; amended section 250.12 reflects the authority of the Commissioner to issue interpretive opinions under the California Commodity Law of 1990. These regulatory changes were approved by the Office of Administrative Law (OAL) on January 11 and became effective on February 10.

Regulatory Action Under the Corporate Securities Law. On March 1, OAL approved the Commissioner's repeal of regulatory section 260.104, which defined "written bid for a security or a written solicitation of an offer to sell a security" for purposes of Corporations Code section 25014(b), and her adoption of new section 260.104 entitled "Unsolicited Orders." (See CRLR Vol. 11, No. 1 (Winter 1990) p. 99 and Vol. 10, No. 4 (Fall 1990) pp. 117-18 for detailed background information.)

On January 31, OAL approved several other changes to the Department's regulations under the Corporate Securities Law. Specifically, the Commissioner repealed section 260.204, which exempted from the licensing requirements of Corporations Code section 25210 certain broker-dealers who have no place of business in California and limit their offers and sales to specified securities and specified persons; amended section 260.204.1 to clarify that a licensed real estate broker is exempt from section 25210 only when the broker's business as a dealer-broker, in addition to any transactions within the exemption set forth in section 25206, is limited to the transactions set forth in section 260.204.1; expanded the exemption for licensed real estate brokers to include transactions "involving all of the outstanding securities of an existing business" if the transactions have been negotiated as transactions for "the purchase or sale of real estate or substantially all of the assets of the existing business, or both;" repealed section 260.204.1(c), which exempted a licensed real estate broker who is a "specialist in the sale of a particular type of business," under certain conditions; and included a reference to the Commercial Finance Lenders Law in section 260.204.6(a), which currently sets forth an exemption for certain persons licensed as a broker or lender under various laws.

OAL Rejects Proposed Regulatory Action Under the Personal Property Brokers Law, Consumer Finance Lenders Law, and Commercial Finance Lenders Law. On February 14, OAL disapproved the Department's adoption of new section 1460 and its amendment to section 1556, which would restrict the types of promissory notes which lenders may sell to an institutional investor and restrict the manner in which lenders may make "guaranteed loan" offers. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 99 and Vol. 10, No. 4 (Fall 1990) p. 118 for detailed background information on these proposed changes.) OAL concluded that the rulemaking record on these proposed changes failed to satisfy the necessity and consistency requirements of Government Code section 11349.1. The Department has 120 days from the date of disapproval to modify the regulatory package and return it to OAL.

Proposed Regulatory Action Under the Credit Union Law. In November 1990, the Department published notice of its intent to amend section 976 of its regulations, which concerns loans secured by real property. (See CRLR Vol. 11, No. 1 (Winter 1990) pp. 97-98 for detailed background information on these changes.) The Department accepted written comments on the changes until January 11. As a result of the comments, Department staff has revised the language of the proposed changes and hopes to publish the modified version for a 15-day comment period in April.

Proposed Regulatory Action Under the Corporate Securities Law. At this writing, the Department is still reviewing the comments it received on its proposed amendments to section 260.105.34 of its regulations, which would exempt "rated debt securities" from the non-issuer qualification requirement of Corporations Code section 25130; but would exclude from the rated debt securities exemption those debt securities which are collateralized by debt securities 5% or more of the fair market value of which are not investment grade securities (commonly referred to as "junk bonds"). (See CRLR Vol. 11, No. 1 (Winter 1991) p. 98 for background information.)

The Department is also still reviewing the public comments it received on its proposed regulatory changes to sections 260.140.8, 260.140.41, 260.-140.42, and 260.140.45, and its proposed repeal of section 260.140.41.2, relating to employee benefit plans. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 98-99 for detailed background information.) Staff intended to publish a modified version of these proposed regulatory changes for a 15-day comment period sometime in April.

Proposed Regulatory Action Under the Industrial Loan Law. Following a December 21 public hearing on its proposed regulatory changes to sections 1152, 1154, 1155, 1189, and 1190.3 under the Industrial Loan Law, Department staff modified the language of the proposed changes and published the new version for a 15-day comment period which ended on March 12. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 99 for background information on these changes.) Staff hoped to submit the rulemaking record to OAL by the end of March.

LEGISLATION:

AB 1593 (Floyd), as introduced March 8, and *SB 506 (McCorquodale)*, as introduced February 26, would transfer the licensing and regulatory functions of the Department of Corporations, the Department of Savings and Loan, and the State Banking Department to a Department of Financial Institutions, which both bills seek to create, and which would be headed by a Commissioner of Financial Institutions, appointed by the Governor and subject to Senate confirmation. AB 1593 is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness; SB 506 is pending in the Senate Committee on Banking, Commerce and International Trade.

SB 893 (Lockyer), as introduced March 7, would authorize the establishment of the California Financial Consumers' Association, which would be a private, nonprofit public benefit corporation established to inform and advise consumers on financial service matters, represent and promote the interests of consumers in financial service matters, intervene as a party or otherwise participate on behalf of financial service consumers in any regulatory proceeding, sue

on behalf of members in regard to any financial service matter, and take related actions. This bill would also impose campaign requirements for election of directors, including contribution and expenditure limits. The bill would require regulated financial institutions to enclose a prescribed notice in deposit account statements to consumers concerning the availability of membership in the association. This bill is pending in the Senate Banking Committee.

SB 935 (Roberti). Existing law sets forth specified criteria for determining whether foreign corporations are subject to the corporate laws of this state. As introduced March 8, this bill would delete existing criteria and add new criteria for determining whether a corporation, regardless of its jurisdiction or incorporation, is a "Foreign-California Corporation" subject to the corporate laws of this state; require a Foreign-California Corporation to file all reports and pay all fees that would be required if it were incorporated in this state; require a Foreign-California Corporation whose shares are publicly traded, with a market value of at least $100 million, to comply with certain requirements; and require a Foreign-California Corporation to file a report under penalty of perjury with the Department of Corporations, containing that information which is necessary for purposes of determining the applicability of specified provisions of California law. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 991 (Lancaster). The Franchise Investment Law provides that any person who offers or sells any franchise in this state must register the offer of the franchise, unless specifically exempted, with the Commissioner of Corporations. Existing law also provides that the Commissioner may summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration based on specified grounds. As introduced March 4, this bill would expand the grounds upon which the Commissioner may issue a stop order to include a finding that any person identified in the application or any officer or director of the franchisor (1) has been convicted or pled nolo contendere to a felony charge or has been held liable in a civil action involving specified fraudulent activities; (2) has had a securities registration denied, revoked, or suspended, or has been expelled from specified securities associations or exchanges; (3) is subject to any currently effective order or ruling of the Federal Trade Commission; or (4) is subject to any order or injunction relating to business activity. This bill is pending in the Assembly Banking Committee.

AB 938 (Speier), as introduced March 4, would require banks, savings associations, and credit unions to process credits to deposit accounts before processing debits, including fees for dishonored checks; require specified items drawn on an account with insufficient funds to be presented at least twice before the item is returned unpaid, unless otherwise requested by the customer who deposited the item; and limit the fees which financial institutions may charge for dishonored checks. This bill is pending in the Assembly Banking Committee.

AB 82 (Kelley). Existing law provides that any corporation may voluntarily elect to dissolve by the vote of shareholders holding shares representing 50% or more of the voting power. Whenever a corporation has elected to dissolve, it must file a certificate of election to wind up and dissolve; when the corporation has been completely wound up, a certificate of dissolution also must be filed. As amended March 5, this bill would provide that in instances where the election to dissolve is made by the vote of all outstanding shares and a statement to that effect is added to the certificate of dissolution, the separate filing of a certificate of election to wind up and dissolve is not required. This bill is pending in the Assembly Judiciary Committee.

SB 703 (Royce). The Knox-Keene Health Care Service Plan Act requires health care service plans (HCSPs) to demonstrate to the Commissioner that they are financially responsible for and may reasonably be expected to meet their contractual obligations. As part of this demonstration, existing law permits HCSPs under certain conditions to obtain insurance for medical costs in excess of $5,000 per subscriber or enrollee per year. As introduced March 6, this bill would require the Commissioner to prepare and submit a report to the legislature on or before January 1, 1993, on how the Department interprets and enforces this provision of existing law. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1141 (Woodruff). Under existing law, a HCSP must notify the Commissioner of any material modification of its plan or operations and requires the Commissioner by order to approve, disapprove, suspend, or postpone the effectiveness of the modification within twenty business days or any additional time as the plan may specify. Existing law requires the Commissioner to notify a plan in writing, stating the reason for the denial, and that the plan has the right to a hearing.

As introduced March 5, this bill would authorize a plan to expand its geographic service area, under specified conditions, if the plan has notified the Commissioner of its intent to modify its plan by expansion, and the Commissioner has not approved, disapproved, suspended, or postponed the effectiveness of the modification within the prescribed time limit. The bill would also require the Commissioner to notify a plan in writing, stating the reason for the disapproval, suspension, or postponement of a material modification, and would require the Commissioner to schedule and conduct the hearing within thirty business days of receipt of a request for a hearing. This bill is pending in the Assembly Insurance Committee.

SB 118 (Robbins), as introduced December 19, would expand the Commissioner's powers and authorities in administering the Knox-Keene Health Care Service Plan Act. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 99-100 for details on this bill.) This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 917 (Kopp), as introduced March 8, would require a HCSP that offers a pharmacy services benefit to ensure that its enrollees have access to a pharmacy service provider; this bill would require the Commissioner to adopt regulations regarding this access. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 2083 (Felando), as introduced March 8, would require that claims reviewers retained by a HCSP to review claims for health care services rendered by a licensed health care provider must hold a current license of the same license class as the health care provider being reviewed. This bill would also provide that compensation of the claims reviewer shall not be based on a percentage of the amount by which a claim is reduced for payment. This bill is pending in the Assembly Insurance Committee.

SB 366 (Robbins), as introduced February 14, would require the Commissioner of Corporations to establish and maintain a toll-free telephone number for purposes of providing consumer service information and receiving complaints with respect to HCSPs regulated by the Commissioner. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1282 (Filante), as introduced March 6, would require every HCSP, disability insurer, and nonprofit hospital service plan that covers hospital, medical, or surgical expenses on an individual

basis to offer a coverage option to individuals for health care expenditures in excess of $3,000 per insured individual per year. The bill would require the coverage options to provide rate incentives for covered individuals or enrollees to adopt "healthful lifestyles," and the rate incentives to be based on actuarial considerations related to the differences in lifestyle. The bill would require the Commissioner of Corporations to adopt guidelines defining what constitutes a "healthful lifestyle" for HCSPs. This bill is pending in the Assembly Insurance Committee.

SB 1165 (Davis), as introduced March 8, would prohibit any HCSP which offers or provides one or more chiropractic services as a specific chiropractic plan benefit, when those services are not provided pursuant to an affiliation contract, from refusing to give reasonable consideration to affiliation with chiropractors for provision of services solely on the basis that they are chiropractors. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1251 (Hauser), as introduced March 1, would establish the Bureau of Community Associations in the Department, with a Community Associations Commissioner as its chief executive and a 15-member Advisory Commission. The bill would authorize this Commissioner to employ persons and issue regulations relating to common interest developments, such as condominiums and planned developments which are managed by an association. The bill would require each community association to register with the Bureau and pay an annual fee; and require persons engaging in the business of a managing agent of a common interest development to be licensed. This bill is pending in the Assembly Committee on Housing and Community Development.

SB 948 (Vuich), as introduced March 8, would provide that any director, officer, stockholder, trustee, employee, or agent of an escrow agent who abstracts or willfully misappropriates money, funds, trust obligations, or property deposited with an escrow agent is guilty of a felony, and is subject to court-ordered restitution to the escrow agent and the Fidelity Corporation. This bill would also prohibit persons convicted of specified felonies from being an officer, director, trustee, agent, or employee of an escrow agent. This bill is pending in the Senate Judiciary Committee.

AB 889 (Mays), as introduced February 28, would extend the January 1, 1992 repeal date of section 5047.5 of the Corporations Code, which immunizes from liability directors or officers of certain nonprofit corporations who serve without compensation for acts or omissions committed in the exercise of the director's or officer's policymaking judgment. This bill, which would extend the life of this provision until January 1, 1997, is pending in the Assembly Judiciary Committee.

LITIGATION:

People of the State of California v. American Continental Corporation (ACC), the Department's civil fraud action against Charles H. Keating, Jr., the now-bankrupt ACC, and two of ACC's top officers, is still pending in federal court in Arizona under U.S. District Court Judge Richard Bilby. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 117-19 and 128-29; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 135-38 and 149-50; and Vol. 10, No. 1 (Winter 1990) pp. 103 and 113-14 for extensive background information on the Lincoln/ACC scandal.) The Department, which authorized ACC to sell junk bonds from branch offices of its subsidiary, Irvine-based Lincoln Savings and Loan, charges defendants with securities fraud, fraud in application for qualification, offer/sale of unauthorized securities, and unauthorized advertising.

Although the Department's case was filed in Los Angeles County Superior Court in March 1990, the defendants removed the case to federal court; it was then transferred to Judge Bilby along with numerous other civil actions concerning Keating, ACC, and Lincoln. Although the case is technically stayed due to ACC's bankruptcy, the Department has been permitted to file a motion for summary judgment in the case; defendants have not yet responded because they have yet to complete discovery. The Department has also filed a motion for default against Keating, for his failure to file a responsive pleading to the Department's complaint since he was served in May 1990. Both motions were scheduled for April 19 oral argument.

In Re American Continental Corporation/Lincoln Savings and Loan Association, No. 589302 (Orange County Superior Court), the class action filed on behalf of 23,000 investors who lost approximately $300 million in the collapse of Lincoln/ACC through their purchase of now-worthless junk bonds, has also been transferred to Judge Bilby. The Department was dismissed as a named defendant in this action in May 1990. Plaintiffs' objection to the transfer to federal court (triggered by defendants' filing of cross-complaints alleging federal questions) is still on appeal in the U.S. Court of Appeals for the Ninth Circuit. The March 1991 trial date in the class action has been postponed until at least January 1992. At this writing, partial settlements totalling $40 million have been negotiated and approved by the court.

Significantly, ACC's bankruptcy plan has been approved, and the claims process should start shortly. One factor considered in the approval of the bankruptcy plan is the need to commence the process as soon as possible, as many of the bondholders are elderly people who have lost their life savings. The hope is to distribute the available funds on a pro rata basis as quickly as possible. Judge Bilby recently appointed retired U.S. District Judge Irving of San Diego as a full-time settlement judge to expedite distribution of funds from existing settlements as well as to encourage additional settlements.

A related event is the recent decision of the First District Court of Appeal in *Bank of the West v. Superior Court of Contra Costa County*, 226 Cal. App. 3d 835, 275 Cal. Rptr. 39 (1991). In that case, the court found that insurance policies which provide comprehensive and general liability (CGL) coverage for "unfair business practices" against a company and its officers cover false advertising and all other violations of California's Unfair Practices Act (Business and Professions Code section 17200). The term "unfair business practices" is defined broadly in section 17200 to include any unfair or unlawful act. Thus, it appears that a prospectus and the other approaches used by ACC/Lincoln to sell the junk bonds are forms of advertising covered by this ruling. Since "negligent misrepresentation" is not an intentional tort and may be covered by insurance, such an interpretation would open up approximately $100 million in additional coverage for the ACC/Lincoln bondholders.

However, the insurance industry argues that coverage for advertising liability refers only to common law business torts, including common law (not statutory) unfair competition. Such common law unfair competition does not include consumer misrepresentation, and requires *competitive* injury. The industry also argues, more persuasively, that section 17200 is an action in equity, and restitution (not damages) is required of violators to disgorge unjust enrichment. Such disgorgement cannot be insured, since that would allow the violator to keep the fruits of the violation and socialize damage through insurance coverage. The California Supreme Court has granted review in this case, No. S019556

(Mar. 28, 1991). The final outcome will be extremely important in terms of insurance public policy and the direct liability of insurance firms. Where such liability is found, the burden will be shifted to policyholders who will pay higher premiums; policyholders which are business entities will pass those higher premium costs on to consumers.

DEPARTMENT OF INSURANCE

Commissioner: John Garamendi
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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 1,450 insurance companies which carry premiums of approximately $53 billion annually. Of these, 650 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) regulates compliance with the general rating law. Rates generally are not set by the Department, but through open competition under the provisions of Insurance Code sections 1850 *et seq.*; 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 ten 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:

First Elected Insurance Commissioner Takes Office, Freezes Auto Rates. On January 7, former state senator John Garamendi was sworn in as the state's first elected Insurance Commissioner. The change from an appointed to an elected commissioner is one of the most significant reforms accomplished by Proposition 103, enacted by the voters in 1988. In his inaugural speech, Garamendi promised to fully implement other provisions of the initiative which led to his election—which provisions have been thwarted by the insurance industry for almost three years.

Garamendi also acted to reverse the tide of rising auto insurance premiums by imposing a freeze on all future rate increases, unless and until the Proposition 103-mandated rollback liability of the company seeking the rate increase has been determined and paid. Garamendi's predecessor, Roxani Gillespie, had lifted a previous 14-month freeze on December 13, and approved rate increases for 83 companies by the time she left office on January 7. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 101 for background information.)

Also in his inaugural speech, Garamendi promised to step up DOI's investigation and prosecution of consumer complaints against insurers; install a 900 phone line or other mechanism which offers coverage information and enables consumers to make premium rate comparisons; seek legislation to force health insurers to cover those with pre-existing illnesses; and work with the legislature and the Governor to develop affordable low-cost auto and health insurance policies. Garamendi declared he would make the long-dormant Department of Insurance into "the best consumer protection agency in America."

Garamendi Scuttles Gillespie's Proposition 103 Regulations. On January 8, Commissioner Garamendi announced his plan to scrap the regulations adopted by former Commissioner Gillespie to implement Proposition 103, and to adopt his own set of rules effective March 15. And—as is usual with all Proposition 103-related actions—the insurance industry has filed suit to stop him.

Among other things, Proposition 103 required insurers to reduce their rates to November 1987 levels minus 20%, and mandates prior approval of the Commissioner on all future rate changes. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 106-08; Vol. 9, No. 4 (Fall 1989) pp. 92-94; and Vol. 9, No. 3 (Summer 1989) pp. 82-87 for extensive background information on Proposition 103.) In May 1989, the California Supreme Court upheld the constitutionality of these provisions, provided the insurer is afforded a "fair rate of return" on its investment. In announcing his intent to repeal Gillespie's regulations purporting to implement the initiative's rollback requirement (Title 10, Chapter 5, Subchapter 4.8, sections 2633.1 through 2639.5), Garamendi noted that during the years since Proposition 103 was enacted, insurers filed over 4,000 applications for exemption from the rollback obligation; not one insurer has ever been required to