(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

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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

comply with the initiative's rollback requirement; and not one rollback application has reach final administrative action.

The Commissioner also proposed to repeal Gillespie's "prior approval" regulations (Title 10, Chapter 5, Subchapter 4.9, sections 2640.1 through 2648.5), observing that over the past year and one-half, virtually every carrier has filed applications for approval of post-rollback rates, but that prior-approval applications for only three companies have been ruled on after administrative hearings. Garamendi called Gillespie's prior approval regulations "a virtual abdication of the Commissioner's regulatory responsibilities, [in that they] fail to provide independent review or validation of insurers' claims and projections, fail to provide insurers with adequate incentives for efficient operation, and permit insurers to reap profits far in excess of just and reasonable levels."

Finally, the Commissioner announced plans to adopt his own rules concerning regulation of property-casualty insurance rates (Title 10, Chapter 5, Subchapter 4.8, sections 2641.1 through 2647.1). Garamendi's proposed rules differ substantially from Gillespie's in two major areas. First, Garamendi's rules would more expansively exclude institutional advertising, payments to affiliates, executive compensation above "reasonable levels," political contributions and lobbying, and bad faith judgments from allowable costs in calculating the "fair rate of return" to which an insurer is entitled. Further, the Garamendi rules would include investment income on a more expansive basis. The proposed rules would establish "leverage factors" for each insurance line or coverage. These "leverage factors" would establish a ratio of written premiums to surplus. In other words, the Commissioner will allow more surplus for lines of insurance where there is higher risk and the likelihood of less predictable claim payouts. This increased surplus will be an allowable capital increment upon which those high-risk insurers will be permitted to earn a somewhat enhanced return. In addition, the Commissioner's rules tighten the ability of insurers to create "loss" accounts which are not based on actual historic losses to prevent the collection of excessive premiums not necessary to achieve a fair rate of return.

However, the most controversial and important change in the Garamendi rules is the introduction of an "efficiency standard" requiring a limitation of fixed expenses as a maximum allowable ratio of historic underwriting expenses to historic earned premiums. In other words, the Commissioner will establish for each line of insurance standards for appropriate efficient operations (*e.g.*, proportion of business devoted to building, office, and other overhead expenses). This final change introduces a precedent-setting ingredient into non-natural monopoly ratesetting. Here, the Commissioner is attempting to replicate a competitive insurance marketplace by postulating a standard of performance such a marketplace would demand. Although previous rate of return policies and constitutional cases have upheld a regulator's denial of imprudent costs incurred by a monopoly utility, the Commissioner is here extending such performance standards in a non-natural monopoly setting.

If approved, these rule changes will be the guideposts in the determination of "fair rate of return" for a particular line or coverage of insurance. Where applied in the rollback context, companies will be required to refund to customers premiums paid at a level above 80% of 1987 rates unless and to the extent such payments preclude that fair rate of return. In addition, the new "prior approval" rate review system mandated by Proposition 103 requires maximum rate review whenever the "triggers" included in the initiative require it. These triggers include both substantial increases or decreases in rates or the discretionary decision of the Commissioner to review them himself. This maximum rate review may disallow any proposed increase beyond levels affording a fair rate of return to the applicant. Hence, the criteria and rules for the formulation of a "fair rate of return" by line of insurance is a critical feature in the calculation of the required refunds and of future insurance rates.

Garamendi scheduled public hearings on the proposed regulations for February 13 in Los Angeles and February 14 in San Francisco, and another hearing for the adoption of the regulations on March 15 in Los Angeles. At the March 15 hearing, however, the Commissioner deferred adoption of the regulations, instead extending the comment period and rescheduling the hearing for March 26 in Los Angeles.

In late March, a hard-line faction of 84 insurance companies joined together in a lawsuit challenging Garamendi's authority to scrap Gillespie's rollback and prior approval regulations (which the industry also opposed). At this writing, that lawsuit is pending before Los Angeles County Superior Court Judge Dzintra I. Janavs. For the first time since Proposition 103 was enacted, the industry split: a significant portion of the insurance industry refused to join in the litigation, preferring instead to attempt to negotiate with Garamendi on the regulations.

Garamendi Revises and Implements Auto Rating Factors. On March 18, Commissioner Garamendi adopted emergency regulatory changes to sections 2632.9, 2632.11, 2632.12, and 2632.12.1, Title 10 of the CCR. The gist of these changes is to allow auto insurers to implement the "rating factors" of Proposition 103 independent from revenues received. The initiative requires auto rates to be based on the insured's driving record, the number of years' experience in driving, the number of miles driven per year, and other factors which may be adopted by the Commissioner. Thus, under the March 18 emergency regulations, insurers are authorized to vary rates according to driver performance and the other criteria specified in the initiative without waiting for approval of their specific rate applications. Rather than wait for the rate proceedings to conclude, the Commissioner ordered auto insurers to adjust premiums between policyholders in a revenue-neutral manner. In other words, the insurers are to charge some policyholders more and some less, in conformity with Proposition 103's rating criteria and without changing the total revenue received from premiums. Insurers were given until June 17 to implement their "class plans" for such adjustments.

Also on March 18, the Commissioner adopted further emergency regulatory changes to sections 2632.9 and 2362.12. Here, he effectively announced that the optional rating factors adopted by his predecessor and currently being contested by the insurance industry in pending litigation (see CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 140 for details) would not be implemented by him even if he should prevail in the litigation. Garamendi announced that "the Consumer Price Index cap and the other limitations contained in those regulations...are inappropriate." More importantly, he announced that there is a need for additional data analysis for designating, defining, and assigning weights to the mandatory and optional auto rating factors.

ALJ Issues CSAA/SAFECO Rollback Recommendation. On January 7, DOI Administrative Law Judge Paul M. Geary issued his proposed ruling on the appropriate Proposition 103-mandated rate rollback/rebates for California State Automobile Association (CSAA) and SAFECO. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 101 and Vol. 10, No. 4 (Fall 1990) pp. 120-21 for extensive background information.) ALJ Geary

recommended no rollback at all for CSAA and only a 5% rollback for SAFECO (which would provide policyholders with about $27 each). At this writing, this recommendation is being reviewed by Commissioner Garamendi, who has the authority to accept the ALJ's recommendation, modify it based on the hearing record, or reject it. To the extent that Garamendi modifies DOI's rollback regulations (*see supra*), he may reject the opinion and remand it to the ALJ for a new recommendation based upon the new standards.

DOI Rulemaking. The following is a status update on DOI regulatory proceedings discussed in previous issues of the *Reporter* (see CRLR Vol. 11, No. 1 (Winter 1991) pp. 101-02 and Vol. 10, No. 4 (Fall 1990) pp. 121-22 for background information):

-Preapproval of Policy and Bond Forms. On February 4, the Office of Administrative Law (OAL) approved DOI's emergency readoption of sections 2195-2199, which establish the procedure for the Commissioner's required preapproval of policy and bond forms developed by advisory organizations. Among other things, the regulations specifically allow consumer group participation in the process of prior approval of policy forms.

-Unfair Claims Settlement Practices Regulations. In November 1990, the Department held public hearings on the proposed adoption of regulatory sections 2695.1-.10. Among other things, these wide-ranging rules would flesh out claims settlement practices which are unfair under Insurance Code section 790.03(h), and grounds for disciplinary action by DOI against the licensee. The need for these rules and their enforcement by DOI is enhanced by recent court rulings striking down third- and first-party bad faith actions. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 124; Vol. 9, No. 4 (Fall 1989) p. 97; and Vol. 8, No. 4 (Fall 1988) p. 87 for background information on the *Tricor, Zephyr Park*, and *Moradi-Shalal* cases, respectively.) On January 3, DOI released a revised version of the proposed regulatory changes, and invited public comment until January 24. At this writing, the Department has taken no action to adopt the proposed rules.

Enforcement. On February 27, Commissioner Garamendi announced his filing of unfair claims practices charges against CSAA and two other insurance companies. Citing 18 individual cases, DOI alleges that CSAA has unreasonably delayed the payment of health insurance claims. Administrative hearings on the charges have been scheduled for early June; each violation is potentially punishable by a fine of $10,000. In addition, Garamendi announced that the Department is undertaking a comprehensive market conduct examination of CSAA to determine whether the violations are even more widespread and whether they are continuing.

LEGISLATION:

SB 941 (Johnston) and *AB 2041 (Lancaster)* would create no-fault insurance in California. Existing law generally requires every driver and owner of a motor vehicle to maintain a form of financial responsibility, which generally is a policy of liability insurance. As introduced March 8, these bills would require each owner of a private passenger motor vehicle, other than a motorcycle, to maintain insurance that would provide personal injury protection benefits. The personal injury protection benefits would provide benefits for basic economic loss of up to $15,000 actual payout per person for health care expenses, for loss of earnings up to $1,000 per month, and for other benefits, as specified, regardless of fault.

The bills would also establish procedures for claiming those benefits, including requirements for arbitration of disputes in accordance with procedures specified in the bill, and establish the Conciliation and Arbitration Account in the Insurance Fund for the deposit of fees related to these provisions; provide that a tort victim has no right to recover any damages in tort for basic economic loss and, except in the case of serious injury, no right to recover noneconomic loss; and prohibit insurers from increasing premium rates for first-party benefits solely on account of prior payment of benefits or claims. AB 2041 is pending in the Assembly Insurance Committee and SB 941 is pending in the Senate Judiciary Committee.

AB 1375 (Brown), as introduced March 7, is the Assembly Speaker's alternative to the pending no-fault proposals. While it would eliminate liability for vehicular property damage in most cases (and allow those claims to be handled on a no-fault basis), it would largely leave the current fault-based tort system intact. It would maintain the current requirement of $15,000 per person and $30,000 per accident in bodily injury liability coverage, while eliminating the current requirement for $5,000 in vehicular and other property damage liability coverage and requiring instead $5,000 in nonvehicular property damage liability.

This bill would require insurers to participate in the California Auto Plan, which would sell minimum liability coverage to qualifying low-income, good drivers at a reduced, unspecified premium. The bill would also reinstate the so-called "*Royal Globe*" private cause of action for bad faith claims handling by insurers, which was invalidated by the California Supreme Court in *Moradi-Shalal v. Fireman's Fund Insurance Companies* (see CRLR Vol. 8, No. 4 (Fall 1988) p. 87 for background information). Among other things, AB 1375 would also set forth specific statutory claims practices and deadlines for handling motor vehicle insurance claims; establish a "fast-track" binding arbitration system for handling auto accident claims of $50,000 or less; require rates charged by the California Automobile Assigned Risk Plan (CAARP) to be actuarially sound; require drivers to present proof of minimum liability coverage before they can register their vehicles; and require all post-1994 vehicles to meet safety standards which are more stringent than those established under federal law and to be equipped with anti-lock brakes.

AB 1375 also seeks to increase insurance fraud investigation and prosecution by, among other things, increasing resources targeted for this purpose, requiring insurers to develop a fraud investigation, and promoting the compilation and exchange of information needed to observe the utilization patterns which are evidence of fraud. This bill is pending in the Assembly Insurance Committee.

AB 1984 (Connelly), as introduced March 8, would provide that any person engaged in the business of insurance is required to act in good faith toward, and to deal fairly with, policyholders and others, as specified. The bill would reinstate the *Royal Globe* private cause of action against an insurer for bad faith, by providing that a policyholder or other person may bring an action against an insurer or other licensee of DOI for a violation of the good faith requirement and other statutory provisions that prohibit unfair and deceptive practices, and may recover compensatory and exemplary damages. This bill is pending in the Assembly Judiciary Committee.

AB 676 (Speier). Under existing law, with certain exceptions, the arbitrary cancellation of a policy of homeowners' insurance solely because the policyholder is engaged in a licensed family day care business at the insured location subjects the insurer to administrative sanctions authorized by the Insurance Code. A similar provision of law subjecting an insurer to administrative sanctions for the arbitrary refusal to renew a policy of homeowners' insurance solely because

the policyholder is engaged in a licensed family day care business at the insured location became inoperative on January 1, 1990.

As introduced February 25, this bill would make the provisions regarding arbitrary cancellation of an existing policy applicable where the policyholder has a license to operate a family day care home, and would also subject an insurer to administrative sanctions for arbitrarily refusing to renew, accept an application for, or issue, a policy of homeowners' insurance solely because the applicant has a license to operate a family day care home at the location for which insurance is sought, except as specified. This bill would exclude losses arising out of, or in connection with, the operation of a family day care home coverage under a residential property insurance policy, unless included by a separate endorsement for which premiums have been assessed and collected. This bill is pending in the Assembly Insurance Committee.

AB 744 (Moore). DOI's Bureau of Fraudulent Claims is supported by, among other things, an assessment on insurers not to exceed $1,000 per year. As introduced February 26, this bill would, in addition to that assessment, impose an assessment of $250 on any insurer issuing, amending, or renewing any policy of automobile insurance insuring a vehicle where the named insured is, at that time, residing in Los Angeles County. The bill would require the Bureau to establish a pilot project in Los Angeles County to combat automobile insurance fraud, and the additional assessment would be used exclusively for that purpose. This bill is pending in the Assembly Insurance Committee.

AB 624 (Bane). Under existing law, it is unlawful for any automobile repair dealer to offer to any insurance agent, broker, or adjuster any fee, commission, profit-sharing, or other form of direct or indirect consideration for referring an insured to the dealer for repairs covered by the insured's policy. As introduced February 20, this bill would also provide that it is unlawful for any automobile repair dealer to offer or give any discount intended to offset a deductible required by a policy of insurance covering a motor vehicle. The bill would increase the penalty for a violation of existing law and would impose that same penalty for the offense created by this bill.

This bill would provide that any person convicted of violating those fraud provisions with respect to a policy covering a motor vehicle shall be liable for up to ten times the amount of the fraudulent claim filed with an insurer, which amount could be awarded to the prosecuting attorney, and in some instances, up to 50% of that penalty could be awarded to persons providing leads. This bill would also provide that in a civil action that has resulted in the enforcement of the above-mentioned antifraud provisions, upon motion a court may award reasonable attorneys' fees to a successful party, and that the opposing party shall be liable to the successful party for special damages of up to ten times the amount of any false or fraudulent claim filed.

This bill would also require that the registered owner of any stolen vehicle which is recovered and has sustained fire damages from which insurance benefits are sought file a statement under penalty of perjury with the registered local fire department, and would require that the registered owner of a stolen vehicle for which insurance benefits are sought shall file a theft report under penalty of perjury with the police, sheriff's department, or highway patrol. This bill is pending in the Assembly Public Safety Committee.

SB 1147 (Killea), as introduced March 8, would ensure that child molest victims have the same rights as other victims of assault to obtain medical expenses and other compensation from applicable insurance policies. This bill is pending in the Senate Judiciary Committee.

SB 921 (Committee on Insurance, Claims and Corporations), as introduced March 8, would provide that each person who offers, solicits, or delivers health coverage on behalf of any insurer shall provide a written disclosure to be delivered at the time of initial solicitation, in a specified form, and containing specified information. The bill would require each disability insurer to pay an annual fee as determined by the Commissioner, but not to exceed 15 cents, for each person covered under a plan of coverage it provides, in order to fund increased investigation and enforcement of unlawful practices. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 925 (Committee on Insurance, Claims and Corporations). Under existing law, any person or entity that provides coverage for certain health benefits, and any person or entity organized for the purpose of offering or providing health coverage for employees of two or more employers, is presumed to be subject to DOI's jurisdiction, except that those provisions do not apply to health care service plans. Existing law imposes various requirements on self-insured employee welfare benefit plans concerning the benefits that must be provided, but does not generally regulate those plans.

As introduced March 8, this bill would, among other things, regulate multiple employer welfare arrangements; define those arrangements as employee welfare benefit plans established or maintained by bona fide trade, industrial, or professional associations for the purpose of offering or providing benefits to the association members; establish requirements for a self-funded or partially self-funded multiple welfare arrangement to obtain a certificate of authority; and impose several requirements on multiple employer welfare arrangements. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 502 (Margolin), as introduced February 13, would require the Commissioner to study the extent of private health insurance or health coverage purchased by employers, employees, and individuals, and report to the legislature concerning specified issues by July 1, 1992; the bill would appropriate $275,000 from the Insurance Fund to pay the costs of the study and report. This bill is pending in the Assembly Insurance Committee.

AB 759 (Horcher), as introduced February 26, would require DOI to conduct a study on the amount of personal automobile insurance written in California by nonadmitted insurers; the study must include specified information and a report must be submitted to the Chairs of the Assembly Insurance Committee and the Senate Committee on Insurance, Claims and Corporations, no later than January 1, 1992. This bill is pending in the Assembly Insurance Committee.

AB 2042 (Lancaster), as introduced March 8, would require the California Automobile Assigned Risk Plan (CAARP) to use rates that are actuarially sound so that there is no subsidy of the plan, and require the Commissioner to approve necessary rate increases. This bill is pending in the Assembly Insurance Committee.

AB 2078 (Gotch), as introduced March 8, would reenact those repealed provisions of the Robbins-McAlister Financial Responsibility Act which require drivers to provide evidence of financial responsibility. This bill is pending in the Assembly Insurance Committee.

SB 217 (Robbins). Existing law requires the Commissioner to investigate and respond to complaints from members of the public concerning the handling of insurance claims or alleged misconduct by insurers or production

agencies; the law also requires the Commissioner to notify the complainant of receipt of the complaint within ten working days of receipt, and to notify the complainant of the final action taken on that complaint. As introduced January 23, this bill would require the Commissioner to provide the notice of the final action taken on the complaint within thirty days of that action. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 364 (Robbins), as introduced December 14, would provide that all companies providing specified insurance in this state and all nonprofit hospital plans doing business in this state must establish a toll-free telephone number to receive telephone calls regarding claims, complaints, questions, or other inquiries. The bill would also provide that insureds and policyholders be notified of the toll-free telephone number by means of a written disclosure in newly issued policies of insurance and on all billing statements. The bill would also require the Commissioner to adopt regulations implementing the provisions of this bill, which is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 784 (Robbins), as introduced March 7, would, on and after July 1, 1992, if the Commissioner has made a specified finding regarding affordability by January 1, 1992, require the Department of Motor Vehicles (DMV) to refuse registration or renewal of registration of a motor vehicle if the owner has failed to provide DMV with specified evidence of financial responsibility. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 966 (Peace), as introduced March 4, would prohibit a CAARP insurer from rejecting an application for coverage or canceling coverage back to the date of application where the application contains an omission or mistake not material to providing coverage or where the information may be ascertained from other questions and answers in the application. This bill would require the Commissioner, after public hearing, to promulgate standards and procedures for implementation of this requirement. This bill is pending in the Assembly Insurance Committee.

SB 894 (Committee on Insurance, Claims and Corporations). The Insurance Frauds Prevention Act generally prohibits various forms of insurance fraud and provides for the reporting of fraudulent claims; this law provides that it is unlawful to do certain specified acts with respect to false and fraudulent insurance claims. As introduced March 7, this bill would specify certain additional acts with respect to health care benefits that would be unlawful under that prohibition.

This bill would also enact the Health Insurance Fraud Reporting Act, providing for the exchange of relevant information relating to health insurance fraud between disability insurers and authorized governmental agencies. The bill would require disability insurers or an entity otherwise liable for any loss due to health insurance fraud to pay an annual fee in order to fund increased investigation and prosecution of fraudulent health insurance claims and the compilation of health insurance claims data. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 889 (Committee on Insurance, Claims and Corporations). Existing law requires the Commissioner to annually value, or cause to be valued, the reserve liabilities for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer. Existing law provides minimum standards for the valuation of those policies and contracts, and provides that an insurer's aggregate reserves may not be less than the aggregate reserves calculated in accordance with those methods. As introduced March 7, this bill would also require each life insurer to annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items of policies and contracts specified by the Commissioner are computed approximately, are based on satisfactory assumptions, are consistent with prior reported amounts, and comply with applicable law. This bill would also require the Commissioner to define the specifics of the opinion by regulation. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 953 (Committee on Insurance, Claims and Corporations). Existing law requires insurers to pay an annual fee determined by the Commissioner in order to fund increased investigation and prosecution of fraudulent automobile insurance claims; the fee may not exceed 50 cents annually for each vehicle insured under a policy of insurance issued in this state. After incidental expenses, 40% of funds received from 30 cents of the assessment fee is directed to DOI's Bureau of Fraudulent Claims, and 60% of the funds are distributed to local district attorneys on a population basis for investigation and prosecution of automobile insurance fraud cases. The remaining 20 cents is used to implement the law dealing with the Automobile Insurance Claims Depository. As introduced March 8, this bill would instead provide that 45% of the funds from 40 cents of the assessment fee per insured vehicle shall be distributed to the Bureau and 55% to local district attorneys for those purposes; the remaining 10 cents would be used to implement the law dealing with the Automobile Insurance Claims Depository. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 1139 (Killea), as introduced March 8, would create a limited term task force for investigating the costs, benefits, and workability of pay-as-you-drive automobile insurance, consisting of representatives of various state and local entities. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 228 (Robbins), as introduced January 24, would require that the Commissioner's annual report to the legislature and Governor include both an analysis of DOI's activities in implementing the provisions of Proposition 103 and recommendations and proposals including suggested legislation directed at furthering the purpose of Proposition 103. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 695 (Johnston). Existing law authorizes the Commissioner to seek a court order to act as a conservator or to liquidate insurers in violation of the law, or to serve on the insurer an order to correct deficiencies. As introduced March 5, this bill would provide that if an insurer has exceeded its powers or committed other acts, the Commissioner may place the insurer under administrative supervision, and the insurer would be prohibited during the period of supervision from doing certain things without the approval of the Commissioner or the supervisor. This bill, which would also provide for the review of the Commissioner's orders, is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 339 (Green), as introduced February 11, would require insurers to reduce the premium and deductible for earthquake coverage, pursuant to guidelines established by the Commissioner, where there is a greater earthquake worthiness of a structure based upon a retrofit, as verified by a qualified professional engineer employed by a named insured, where the reduction is actuarially sound. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 1 (Winter 1991) at page 102:

SB 35 (Robbins) would authorize DMV to accept an insurer's certificate which does not cover all vehicles registered to the licensee for purposes of reinstating the driver's license of a person who is deemed to be a negligent driver on the basis of his/her violation point count. This bill is pending in the Assembly Insurance Committee.

SB 110 (Robbins). As of January 1, 1992, DOI must require all new applicants for licensure as fire and casualty broker-agents or as life agents to meet prelicensing education standards; this bill would delay the operative date of those provisions to January 1, 1993. SB 110 is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 122 (Robbins) would authorize DOI's Bureau of Fraudulent Claims to impose a special assessment on insurers to fund a program to reward persons whose information leads to the arrest and prosecution of vehicle thieves or the issuance of a warrant for suspected theft ring members or chop shop operators, or the arrest and filing of an indictment or information against suspected theft ring members or chop shop operators. This bill is pending in the Senate Appropriations Committee.

LITIGATION:

On February 21, the California Supreme Court denied Allstate's petition for review in *Allstate Insurance Co. v. Gillespie*, No. S014332, but depublished the Second District Court of Appeal's opinion in the case. In that case, the Second District overturned the superior court's order compelling former Commissioner Gillespie to grant Allstate a 40% increase in its CAARP rates. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 102 and Vol. 10, No. 1 (Winter 1990) pp. 107-10 for background information on this case.)

In late March, the California Supreme Court granted a petition for review of the First District Court of Appeal's decision in *Bank of the West v. Superior Court of Contra Costa County*, 226 Cal. App. 3d 835, 275 Cal. Rptr. 39 (Jan. 4, 1991), a case of first impression. In that case, the court found that standard form 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. Although insurance coverage of intentional torts is limited by public policy and by the Insurance Code, plaintiffs commonly allege "negligent misrepresentation" to allow possible coverage. [Here, plaintiff contends not that the defendant lied, but that he made a statement and represented it to be true, while negligently not knowing whether or not it was true.]

However, the insurance industry argues that policy language covering 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 final outcome of this case 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 customers.

DEPARTMENT OF REAL ESTATE

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The Real Estate Commissioner is appointed by the Governor and is the chief officer of the Department of Real Estate (DRE). DRE was established pursuant to Business and Professions Code section 10000 *et seq.*; its regulations appear in Chapter 6, Title 10 of the California Code of Regulations (CCR). The commissioner's principal duties include determining administrative policy and enforcing the Real Estate Law in a manner which achieves maximum protection for purchasers of real property and those persons dealing with a real estate licensee. The commissioner is assisted by the Real Estate Advisory Commission, which is comprised of six brokers and four public members who serve at the commissioner's pleasure. The Real Estate Advisory Commission must conduct at least four public meetings each year. The commissioner receives additional advice from specialized committees in areas of education and research, mortgage lending, subdivisions and commercial and business brokerage. Various subcommittees also provide advisory input.

The Department primarily regulates two aspects of the real estate industry: licensees (as of July 1990, 202,408 salespersons and 98,891 brokers, including corporate officers) and subdivisions.

License examinations require a fee of $25 per salesperson applicant and $50 per broker applicant. Exam passage rates average 67% for both salespersons and brokers (including retakes). License fees for salespersons and brokers are $120 and $165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of most residential subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The public report serves two functions aimed at protecting buyers of subdivision interests: (1) the report requires disclosure of material facts relating to title, encumbrances, and similar information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting the project. The commissioner will not issue the public report if the subdivider fails to comply with any provision of the Subdivided Lands Act.

The Department publishes three major publications. *The Real Estate Bulletin* is circulated quarterly as an educational service to all real estate licensees. It contains legislative and regulatory changes, commentaries and advice. In addition, it lists names of licensees against whom disciplinary action, such as license revocation or suspension, is pending. Funding for the *Bulletin* is supplied from a $2 share of license renewal fees. The paper is mailed to valid license holders.

Two industry handbooks are published by the Department. *Real Estate Law* provides relevant portions of codes affecting real estate practice. The *Reference Book* is an overview of real estate licensing, examination, requirements and practice. Both books are frequently revised and supplemented as needed. Each book sells for $15.

The California Association of Realtors (CAR), the industry's trade association, is the largest such organization in the state. As of November 1990, approximately 144,500 licensed agents are members. CAR is often the sponsor of legislation affecting the Department of Real Estate. The four public meetings required to be held by the Real Estate Advisory Commission are usually on the