

# DEPARTMENT OF INSURANCE

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Insurance is the only interstate business wholly regulated by states rather than the federal government. In California, this responsibility rests with the Department of Insurance (DOI or the Department), organized in 1868 and headed (as of 1988) by an elected Insurance Commissioner. Insurance Code sections 12900 through 12938 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 1,000-page Insurance Code; the Department's regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

The California DOI is the nation's largest state consumer protection agency. The Department's designated purpose is to regulate the insurance industry to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of companies to sell insurance products in the state. Nearly 1,400 employees work at DOI to oversee more than 1,400 insurance companies and license more than 420,000 agents, brokers, adjusters, and business entities. In the ordinary course of business, DOI annually processes more than 8,000 rate applications, issues approximately 200,000 licenses (new and renewals), and performs hundreds of financial reviews and examinations of insurers doing business in California. DOI annually receives more than 170,000 consumer assistance calls, investigates more than 37,000 consumer complaints, and, as a result, recovers more than \$84 million a year for consumers. DOI annually receives and processes tens of thousands of referrals regarding suspected fraud against insurers and conducts criminal investigations resulting in thousands of arrests every year.

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 collects more than 175 different fees levied against insurance producers and companies. The Department performs the following consumer protection functions:

(1) it 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) it reviews and approves/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;

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

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

(5) it 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 ordering 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's Consumer Services Division (CSD) is responsible for gathering and responding to consumer inquiries and complaints regarding insurance companies or producers. CSD maintains four separate bureaus: Consumer Communications Bureau; Claims Services Bureau; Health Claims Bureau; and Rating and Underwriting Services Bureau. CSD operates the Department's

toll-free complaint line. Through its bureaus, CSD responds to requests for general information; receives, investigates, and resolves individual consumer complaints against insurance companies, agents, and brokers; tracks trends in code violations; and cooperates with law enforcement to bring deterrent compliance actions. Cases which cannot be resolved by CSD are transferred to DOI's Legal Division, which is authorized to file formal charges against a licensee and take disciplinary action as appropriate, including cease and desist orders, fines, and license revocation.

The Department's Fraud Division was established in 1979 to protect the public from economic loss and distress by actively investigating and arresting those who commit insurance fraud. The Fraud Division is currently composed of four separate fraud programs: automobile; workers' compensation; property, life, and casualty; and disability and health care.

## **HIGHLIGHTS**

### **Department Responds to Impacts from Another Devastating Wildfire Season**

Starting in August 2020, the Department took the following actions to address consumer issues resulting from the 2020 wildfire season:

In an August 20, 2020 [press release](#), DOI urged residents to keep all receipts accrued during evacuations due to wildfires in order to be eligible for cost reimbursement from their insurance company. The Commissioner noted that "thousands of residents across California who have been ordered to evacuate due to wildfires may have homeowners' or renters' insurance coverage to help with evacuation and relocation costs, even if their homes are not damaged or destroyed."

In an August 21, 2020 [notice](#), Commissioner Lara directed health insurers to guarantee health care access during wildfire emergencies and mail-order prescription drug delays. Lara noted

that if mail-order prescription drugs cannot be provided within a medically appropriate time period, insurers must take steps to ensure access and arrange for insureds to obtain their drugs at network retail pharmacies or, if necessary, from out-of-network pharmacies.

According to a September 3, 2020 [press release](#), DOI reported complaints from policyholders that their insurance companies are not covering adequate expenses resulting from the wildfires. The policyholders claim the insurers are terminating their Additional Living Expenses (ALE) benefits after two weeks, unless the policyholder can prove the property damage due to fires makes their home uninhabitable. In some cases, ALE benefits are cut off due to the insurance companies' delay in getting out to see the home and verify damage. In response to these complaints, Commissioner Lara released a [notice](#) on September 3, 2020, directing insurance companies to continue providing ALE benefits when insureds' homes are inaccessible or uninhabitable or mandatory evacuations are still in effect as a result of wildfires.

In response to the size and severity of this wildfire season, DOI is taking various actions to stabilize the market for policyholders, according to a September 16, 2020 [press release](#). Commissioner Lara stated these actions include: (1) developing home-hardening standards that are consistent, based in fire science, and apply to all insurance companies; (2) giving transparency to consumers about their wildfire risk score and what they can do to reduce it (insurance companies use wildfire risk scores to determine which homes they will write and the premium they charge); (3) creating insurance incentives recognizing home hardening, mitigation of properties, and community mitigation actions; and (4) requiring that insurance companies seek adequate and justifiable rates to protect the solvency of the market. The Commissioner stated that he will use his authority under California law and Proposition 103 to enact the regulations. DOI's efforts come

at a time when recent DOI data shows that insurance is continually harder to find and more expensive in high-risk fire areas due to more intense wildfire seasons.

On October 19, 2020, Commissioner Lara held a [Virtual Homeowners' Insurance Investigatory Hearing](#) regarding possible regulatory changes to address the challenges that homeowners face when seeking and maintaining insurance in high wildfire risk regions of California. As a result of the hearing, attended by more than 500 homeowners, first responders, advocates, and insurance representatives, Commissioner Lara announced that he would take further action to protect policyholders based on the input received at the hearing.

On November 6, 2020, the Commissioner issued [Bulletin 2020-11](#) to all admitted and non-admitted insurers writing residential property insurance in California setting a mandatory moratorium on insurance companies non-renewing or cancelling residential property insurance policies after the declaration of a state of emergency. Citing Insurance code section 675.1(b)(1), the Bulletin precludes insurers from canceling or refusing to renew homeowners' insurance policies in specified zip codes within or adjacent to a fire perimeter for one year after the declaration of a state of emergency. It goes on to list the various state of emergency declarations issued by the Governor in August and September 2020 and specifies each corresponding fire and impacted zip code.

The Commissioner and DOI will hold another [virtual meeting](#) on December 10, 2020 “regarding potential administrative and regulatory changes to incentivize home-hardening and discuss models that are based in fire science to protect lives and property.”

## **Senate Bill 872, Sponsored by DOI, Changes Insurance Regulations During States of Emergency**

[SB 872 \(Dodd\)](#), as amended August 12, 2020, amends sections 2051.5 and 2060 of, and adds sections 2061 and 2062 to, the Insurance Code, regarding insurance coverage during states of emergency, such as wildfires. Previous law required insurance coverage for additional living expenses incurred due to a covered loss relating to a state of emergency for a period of no less than 24 months and, in the event of a total loss of the insured structure, prohibited a policy from limiting or denying payment of the building code upgrade cost or the replacement cost on the basis that the policyholder decided to rebuild at a new location or to purchase an already built home at a new location. SB 872 extends these time periods and expands protections for policyholders.

According to a bill analysis, groups such as the Consumer Federation of California, Rural County Representatives of California, and United Policyholders supported SB 872. Those in support argued SB 872 would help provide relief for property owners suffering losses after an emergency. Those in opposition, including insurance companies and associations, claimed the bill would increase the cost of homeowner insurance.

Specifically, SB 872: (1) prohibits policies that provide coverage for additional living expenses from limiting the policyholder’s right to recovery if the insured home is uninhabitable by a covered emergency, but authorizes an insurer to provide a “reasonable alternative remedy”; (2) requires additional living expenses coverage to be provided for at least 2 weeks, with additional 2-week extensions, “in the event of a state of emergency and an order of civil authority restricting access to the home”; (3) requires damages be available to a policyholder to use to rebuild or replace the insured home at another location in the amount that would have been recoverable had the

insured home been rebuilt at its original location, at the same value; (4) requires the insurer to provide an advance payment for living expenses and to accept an inventory of contents in “any reasonable form”; and (5) requires the insurer to offer a “60-day grace period for payments of premiums for policies on property located within an area defined in a declared state of emergency for a period of 60 days after the emergency.”

In a September 3, 2020 [press release](#), Commissioner Lara restated his support and sponsorship of SB 872 as part of the Department’s efforts to help policyholders affected by California wildfires. On September 29, 2020, Governor Newsom signed SB 872 into law (Chapter 261, Statutes of 2020).

## **Department Enforces Regulations Over Bail Bonds as Discussions of Reform Move Forward**

On July 15, 2020, the Department issued a [press release](#) stating that an investigation by DOI of an unlicensed immigration bond company led to a \$5.5 million [settlement](#). After an investigation and subsequent Cease and Desist Order on December 11, 2019, Libre by Nexus, Inc. agreed to stop transacting immigration bonds in California, cease the use of GPS ankle monitors, issue credits of \$420 to some participants, and submit oversight of its business practices to DOI, a total value of \$5.5 million.

As outlined in the press release, the immigration bonds system is prone to abuse by taking advantage of Spanish-speaking immigrants in detention and their families, who do not know how the bond system functions. Libre specifically misled immigrants by telling them the money went to pay off their immigration bond when it was only for the GPS tracking device, forcing the

participants to pay excessive and unnecessary costs, without making payments towards their bond amount.

This enforcement action occurs as DOI attempts to push for reforms to the bail industry, including licensure of the agents. Bail bond agents must be [licensed](#) through DOI. In February 2018, former DOI Commissioner Dave Jones issued [recommendations](#) for reforming California’s bail system, including that California needs to address its inequitable bail system that detains people who are unable to afford bail while releasing wealthier people who are able to pay bail, and that California needs to improve the oversight and regulation of the bail industry.

DOI regulates the bail bond business in accordance with the Bail Bond Regulatory Act, passed in 1937, and incorporated into sections 1830 to 1830.42 of the Insurance Code. According to DOI [webpage](#) on bail bonds, “a bail bond is a surety bond, which is posted by a bail bond company to the court as a guarantee for an arrestee’s appearance at all court dates. The court will release an arrestee from detention upon posting of the bail bond. Bail bonds are underwritten and issued by licensed bail agents which act as the appointed representatives of licensed surety insurance companies.”

On August 26, 2020, the California Supreme Court issued an [order](#) requiring trial courts to take into account an individual’s circumstances and ability to pay when setting a defendant’s bail, instead of using bail schedules. This order binds trial courts to a portion of [In re Humphrey](#), 19 Cal. App. 5th 1006 (2018), pending final resolution of the case. California Attorney General Xavier Becerra [joined the request](#) to require the individualized assessments.

On November 3, 2020, California voters defeated Proposition 25, which would have upheld [SB 10 \(Hertzberg\) \(Chapter 244, Statutes of 2018\)](#), ending the cash bail system for defendants awaiting trial.



Interested persons can view bail [enforcement actions](#) and [file complaints](#) through the Department website.

## **Department Issues Cease and Desist Orders to Protect Consumers from Illegal Extended Warranty Contracts**

Between April and October of 2020, DOI issued multiple cease and desist orders preventing unlicensed businesses from illegally selling Vehicle Service Contracts (VSCs), or extended warranties. VSCs typically provide extra coverage for damages incurred by mechanical failures as well as some routine services such as oil changes and glass replacement. VSCs must be filed with DOI, unless sold by a vehicle manufacturer, and can only be sold through Department of Motor Vehicle licensed car dealerships. Further, companies selling the VSCs must have preapproved back-up insurance.

On April 29, 2020, DOI issued a [cease and desist order](#) against Omega Vehicles, LLC doing business as Delta Auto Protect as well as its manager, Charles Seruya, for selling VSCs to twenty-eight individual consumers dating back to 2015. DOI alleges that Delta Auto Protect and Seruya were not licensed by DOI, systematically denied claims, sold contracts without filing with DOI first, and used an unapproved back-up insurance company. In the order, DOI demanded that Delta Auto Protect and Seruya stop selling VSCs and rescind all unlicensed insurance actions. DOI further alleged in its order that these violations of the Insurance Code may constitute felonies and be subject to fines of up to \$500,000.

Subsequently, on October 9, 2020, DOI filed an amended [cease and desist order and order to show cause](#) against Seruya and Delta Auto Protect, for selling over \$2 million in illegal VSCs. Since the initial order, additional discovery revealed that over 1,000 California consumers fell

victim to Seruya’s actions. DOI alleges that Delta Auto Protect and Seruya could potentially face a \$5,000-per-day penalty for conducting insurance transactions without a license.

On August 26, 2020, DOI issued a [cease and desist order](#) against Elite Integrity, LLC, doing business as Auto Protection Plus (APP) in Orange County, as well as its controlling manager, Kamisha Daniel, for selling illegal VSCs since 2018. DOI alleges that APP and Daniel directly and illegally sold VSCs without a license to several California residents, a violation of the requirement that sales of VSCs be conducted through DOI. DOI ordered APP and Daniel to stop selling VSCs immediately and cease acting as an insurer in any capacity in which they are not licensed.

DOI’s May 4, 2020 [press release](#) and August 28, 2020 [press release](#) direct Californians who purchased these illegal VSCs to contact the designated DOI investigators. DOI also has a [complaint hotline](#) for similar claims.

## **Department Takes Steps to Protect the Rights of the LGBTQ+ Community**

On June 12, 2020, Commissioner Lara issued a [statement](#) disapproving the Trump Administration’s reversal of non-discrimination protections under section 1557 of the Affordable Care Act. Without heeding the warning and dissatisfaction from [18 state insurance commissioners](#) (including Lara) last year, the Trump Administration eliminated certain health plan protections for LGBTQ+ individuals. The Commissioner stated that this new policy sacrifices the health and safety of an already vulnerable community and was made with the “intent to harm [the] LGBTQ community.”

Additionally, on June 15, 2020, the Commissioner put all California health insurers on [notice](#) following the federal action. In the notice, the Department of Insurance reminded state health insurers that California antidiscrimination laws must still be adhered to regardless of the Trump Administration’s removal of gender identity and sexual orientation protections. Among other things, the antidiscrimination requirements in California include a prohibition against refusing to accept an application or issue an insurance policy, or canceling insurance policies in a manner that discriminates on the basis of a person’s race, color, religion, sex, gender, gender identity, gender expression, national origin, ancestry, or sexual orientation.

On July 9, 2020, Equality California, a nonprofit that works towards LGBTQ+ rights, joined Plaintiffs National Women’s Law Center, Transgender Law Center, Transgender Legal Defense & Education Fund, Harvard Law School Center for Health Law and Policy Innovation in filing a [complaint](#) against the Trump Administration. *Boston Alliance of Gay, Lesbian, Bisexual & Transgender Youth (BAGLY), et al. v. U.S. Department of Health & Human Services, Alex M. Azar, et al.*, Case No. 1:20-cv-11297 (D. Mass.). The lawsuit challenges the ‘Rollback Rule’ as undermining LGBTQ+ healthcare protections against discrimination in section 1557 of the Affordable Care Act. Equality California has [publicly commended](#) Commissioner Lara as the first openly LGBTQ+ individual to be elected statewide in California.

Consumers who allege they have been subject to unlawful discrimination should contact the Department of Insurance’s Consumer Complaint Center at 1-800-927-4357 or submit a complaint on the website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

## **Climate Insurance Working Group addresses Climate Change and Insurance Costs**

On May 20, 2020, the Department’s Climate Insurance Working Group issued [draft recommendations](#) regarding state policies that are directly related to major climate change issues, including extreme heat, flood and sea levels rising, and wildfires. The recommendations included launching an extreme heat risk campaign targeted at local and state governments, decisionmakers, senior public health officials, emergency management and sustainability staff, as well as a process for mitigating extreme heat costs. Regarding floods and sea level rising, the working group recommended maintaining a digital database of any previously flooded properties that is searchable and potentially required for property disclosures, and development of maps of high flood risk areas for the purpose of discouraging development in those areas. The working group additionally recommended increasing community-level mitigation through the creation of Climate Hazard Abatement Districts, encouraging “Firewise Communities,” and making other changes to planning and zoning laws.

The DOI Climate Insurance Working Group’s recommendations regarding wildfires and insurance included the development of the long term “high fire risk/severity zones” and regularly updated maps on an online database. It was noted that these maps need to be expanded to include existing urban landscapes as well as a factor in future predictions for climate change and land-use trends. The working group also urged Commissioner Lara to develop “additional performance standards and data collection to enhance [the] understanding of California Firewise communities.” The Firewise Program, created by the National Fire Protection Association (NFPA), teaches people how to adapt to living with wildfire and encourages neighbors to work together to prevent

losses. The working group calls for strengthening the documentation of Firewise Program successes that incorporate nature-based strategies.

Similarly, a June 1, 2020 [report](#) from the group Ceres, an environmental nonprofit, encouraged the development of a database of insurance products that reduce emissions and result in greater sustainability. On July 14, 2020, Commissioner Lara [announced](#) the launch of the [Climate Smart Insurance Products Database](#), which provides a consumer-oriented list of green insurance policies. DOI created this database to assist consumers in seeking and understanding the effects of climate change on various insurance policies. The intent of DOI is to encourage insurance policy innovation across various insurance products, including commercial, homeowner's, and car insurance. The database lists over 400 products currently available to consumers and businesses that provide options like green-rebuild coverage, a pathway to building back stronger and more energy-efficient, and lower-emission buildings and vehicles; lower premiums for low-emission vehicles; discounts for green energy use and energy efficiency certification; discounts for businesses who operate hydrogen and hybrid electric buses; and policies that protect low-income communities and natural ecosystems. According to the press release, the database was first previewed in July 2020 at an international virtual conference with the [United Nations Finance Initiative: Principles for Sustainable Insurance](#), which included over 700 participants from 60 countries.

Shortly after the database rollout, on [August 13, 2020](#), Commissioner Lara was named the Co-Chair of the National Association of Insurance Commissioners (NAIC) Climate and Resiliency Executive Task Force. This Task Force will address climate risks that insurance companies and consumers face nationwide. Earlier this year, the NAIC identified climate risk as a top strategic focus for insurance regulators in 2020. Climate change has driven the cost of insurance up in

California, mostly due to the increasing destruction from California wildfires. Last year, the Department [data showed](#) that insurance is becoming harder to obtain in high wildfire-risk areas. The recent actions by DOI and Commissioner Lara to focus on sustainability and green insurance are the state's latest efforts to mitigate the rising costs of insurance and to ensure coverage for all Californians.

## **RULEMAKING**

The following is a status update on recent rulemaking proceedings that DOI has initiated:

- **Rulemaking Petition Decision: Consumer Federation Petition re Refunds for Automobile Insurance due to COVID 19- Pandemic:** On April 21, 2020, Commissioner Lara released a decision denying in part a March 23, 2020 petition by the Consumer Federation of California Education Foundation (CFCEF), requesting that the Commissioner hold a public hearing to evaluate the rate and premium relief appropriate for commercial and personal automobile insurance, and asking the Commissioner to issue a bulletin to insurers directing them to develop mechanisms for informing and re-rating policyholders who reduced the number of miles driven in response to the COVID-19 pandemic. The Commissioner denied the request for the public hearing, but on April 13, 2020 issued [Bulletin 2020-3](#) to all property casualty and workers compensation insurers, acknowledging that the overall risk of loss for private passenger automobile insurance is lower due to the pandemic, and also recognizing that these reductions in risk extend beyond the automobile line of insurance referenced in the Petition. Accordingly, “to protect consumers and to provide consistent direction to the insurance industry,” the Commissioner ordered insurers in various lines of insurance to make an initial premium refund for the months of March and April to all adversely impacted California policyholders within 120 days.

- **Eyewitness Identification Procedures:** On June 18, 2020 the Department [held](#) a telephonic public discussion regarding its proposed adoption of sections 2698.22, 2698.23, 2698.24, 2698.25, and 2698.26, Title 10 of the CCR relating to Eyewitness Identification Procedures. The proposed [text](#) sets forth specific rules and procedures to be observed when Department employees conduct eyewitness identification procedures during their investigations. At this writing, the Department has not yet formally noticed its intent to adopt these regulations with the Office of Administrative Law (OAL).

- **Medicare Supplement New or Innovative Benefits Guidance:** On June 30, 2020, DOI issued [guidance](#) to insurance companies issuing approved Medicare Supplement insurance plans with new or innovative benefits in the State of California following the enactment of [SB 407 \(Monning\) \(Chapter 549, Statutes of 2019\)](#). That bill, which became effective on January 1, 2020, section 10192.91(f) of the Insurance Code to require issuers of Medicare Supplement plans to notify current and prospective policyholders and certificate holders of any plans with new or innovative benefits approved for sale in California, and that such notices must be standardized to allow for consumer comparison of these benefits, out-of-pocket costs, and premiums. The Department posted the guidance after posting a [draft version](#) of the guidance, and considering public comment.

- **Special Investigative Units (SIU):** On July 30, 2020, DOI issued its [final statement of reasons](#) with respect to its proposal to amend sections 2698.30, 2698.33–2698.41, Title 10 of the CCR to clarify the proper procedures for insurers running SIU and establish more consistent standards by which insurers are to conduct and report fraud investigations. According to the Department, the proposed action will also update the regulations to align it with current practice

and technology, increase the overall effectiveness of insurer investigations, and provide the Department with additional tools to monitor compliance. The Department originally published notice of its intent to amend these provisions on July 19, 2020, after considering comments received during a pre-notice workshop. [see [24:2 CRLR 167–168](#); [25:1 CRLR 195–196](#)]. DOI [released](#) its [third amended text](#) on April 21, 2020, with a public comment period that expired on May 6, 2020. OAL approved the [final text](#) on June 30, and they became effective on October 1, 2020.

## LEGISLATION

### Department Responsibilities

- [AB 2049 \(Cooley\)](#), as amended March 2, 2020, amends sections 922.4, 922.41, 922.43, and 922.85, and adds section 922.425 to the Insurance Code to require a reinsurer to provide the Commissioner with audited financial statements in English; allow reinsurance agreements to be counted as “credits” on the balance sheet of an insurer under specified conditions; and require the Commissioner to create and publish a list of reinsurers that satisfy the specified requirements. Governor Newsom signed AB 2049 on September 11, 2020 (Chapter 71, Statutes of 2020).
- [AB 2157 \(Wood\)](#), as introduced on February 10, 2020, as it relates to DOI, repeals and adds section 10112.81 of the Insurance Code to require procedures established by DOI to include a process for each party in an insurance dispute to submit into evidence information that will be kept confidential from the other. The bill requires the organization to conduct a de novo review of the claim dispute based solely on the information and documents submitted into evidence



by the parties. Governor Newsom signed AB 2157 on September 29, 2020 (Chapter 278, Statutes of 2020).

## **Licensee Rights**

- [SB 1255 \(Committee on Insurance\)](#), as amended July 30, is the Committee's omnibus bill that amends multiple sections of the Insurance Code to provide procedural flexibility to the Department when holding a hearing to suspend or revoke a license for alleged misconduct against seniors; clarify when a life insurer can restrict access to policy withdrawals; resolve ambiguities in the Department's licensing statutes; and prohibit discrimination in life insurance against HIV positive applicants. Governor Newsom signed SB 1255 on September 26, 2020 (Chapter 184, Statutes of 2020).

## **Reporting by Insurers**

- [SB 1192 \(Bradford\)](#), as amended May 26, 2020, amends section 11400 of, and adds sections 11401.5, 11401.6, and 11401.7 to the Insurance Code to require firefighters, police officers, or peace officers' benefit and relief associations that administer self-funded long-term disability and long-term care plans to periodically file an actuarial opinion with the Department, and would impose reporting, reserve, and disclosure requirements on the associations. It would also impose regulatory fees on the associations, to be used by the Department for administrative costs necessary to regulate the associations and enforce the requirements of the bill. Governor Newsom signed SB 1192 September 30, 2020 (Chapter 365, Statutes of 2020).

## **Fires and Other Emergencies**

- [SB 872 \(Dodd\)](#), as amended August 12, 2020, amends sections 2051.5 and 2060 of, and adds sections 2061 and 2062 to, the Insurance Code to expand several consumer protections

relating to living expenses, time to collect replacement value, contents coverage, and relocation after a loss. According to the author, the bill codifies some of the voluntary procedures DOI requested that insurers follow in the wake of California's destructive wildfires in 2017 and 2018. Specifically, the bill requires insurers to provide advance payments of a portion of ALE and personal contents coverage after a state of emergency; accept alternative forms of inventories for claims for lost contents; provide a 60 day grace period for nonpayment of premiums; expands minimum time periods to collect replacement cost value to commercial properties; define and expand what is covered under ALE; and expands coverage to commercial property loss. Governor Newsom signed SB 872 September 29, 2020 (Chapter 261, Statutes of 2020).

- [AB 3012 \(Wood\)](#), as amended August 5, 2020, amends sections 678, 1063.1, 1063.5, 1063.14, 2051.5, 2060, 10095, and 10103.7 of the Insurance Code to improve policyholder rights with respect to wildfire insurance claims, including provisions that ALE may not be limited if the home is uninhabitable; permits an insurer to cure habitability in lieu of making ALE payments, clarifies damages calculations when insureds choose to rebuild their home; entitles policyholders to recover up to 30% of the dwelling structure coverage up to \$250,000 without inventory or actual replacement; and requires a specified notice to be included with a nonrenewal of homeowners' insurance. Governor Newsom signed AB 3012 on September 29, 2020 (Chapter 258, Statutes of 2020).

## **Health Care**

- [AB 2118 \(Kalra\)](#), as amended August 25, 2020, and as it applies to DOI, adds section 10181.46 to the Insurance Code to require health insurers to annually report to DOI, by October 1, 2021, specified information on premiums, cost sharing, benefits, enrollment, and trend

factors for products in the individual and small group markets. The bill also requires the Department, beginning in 2022, to annually present the information required by the bill at the public meeting regarding large group rates and at a public meeting of the board of Covered California. Governor Newsom signed AB 2118 on September 29, 2020 (Chapter 277, Statutes of 2020).

The following bills, reported in Volume 25, No. 2 (Spring 2020), died in committee or otherwise failed to be enacted during the 2019–2020 legislative session: [AB 2453 \(Nazarian\)](#), relating to long-term care benefits of life insurance policies and requirements to consider an applicant’s ability to pay for coverage; [AB 2159 \(Wood\)](#), relating to prohibitions on establishing lifetime or annual limits on the dollar value of benefits for an insured; [AB 2640 \(Gonzalez\)](#), relating to a prohibition on requiring prior authorization for genetic biomarker testing for an insured with metastatic or advanced stage 3 or 4 cancer; [AB 2203 \(Nazarian\)](#), relating to a prohibition on health insurers imposing cost sharing on a covered insulin prescription; [SB 961 \(Gonzalez\)](#), relating to life and disability income insurance coverage for HIV-positive individuals; [AB 2474 \(Chen\)](#), relating to information provided to policy holders who do not renew their policies; [SB 1033 \(Pan\)](#), relating to the Insurance Commissioner’s power to review a health care service plan or insurer’s policies; [AB 1931 \(Voepel\)](#), relating to publishing contact information of licensees who have been granted a protective or restraining order; [SB 1161 \(Rubio and McGuire\)](#), relating to reports made by insurers who provide property insurance; [AB 1852 \(Daly\)](#), relating to insurers’ provision of payment to property insurance holders who have suffered loss due to a natural disaster; [AB 3329 \(Daly\)](#), relating to payment to insured victims of fire damage; and [SB 1199 \(McGuire and Jackson\)](#), relating to the establishment of the Commission on Home Hardening.

# LITIGATION

- *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 918 (2020). On July 8, 2020, the United States Supreme Court issued an [opinion](#), authored by Justice Thomas, holding that the Departments of Health and Human Services, Labor, and Treasury have the authority under the Affordable Care Act to promulgate rules exempting employers with religious or moral objections from providing contraceptive coverage to their employees.

In 2017, the Trump administration issued new rules expanding an exemption from the Affordable Care Act's birth control mandate, requiring most employers to include contraceptives in health insurance coverage, to allow private employers with religious or moral objections to opt out of providing this coverage without notice to employees. Pennsylvania and New Jersey challenged this expansion to the birth-control mandate exception, arguing the new rules violate both the ACA and federal laws governing administrative agencies. The federal district court sided with the states and blocked the government from enforcing the rules in the United States. A federal appeals court upheld the ruling. The Trump administration and the Little Sisters of the Poor, a Catholic organization, appealed to the United States Supreme Court.

On July 8, 2020, DOI Commissioner Lara issued a [press release](#) responding to the Supreme Court's decision. Commissioner Laura stated,

The Department of Insurance will continue to protect the right of women to access safe and effective reproductive health care. With few exceptions, insurance policies regulated by the Department of Insurance that provide prescription drug coverage are required by California law to include contraceptive coverage without cost-sharing. These protections continue, despite the Trump Administration attack on such coverage and the Supreme Court's decision.

California Insurance Code section 10123.196 requires California insurance companies to provide coverage for contraceptives, without cost sharing, with a very narrow religious exemption.

***The Inns by the Sea v. California Mutual Ins. Co., Case No. 20CV001274 (Super. Ct. Monterey County)***. On April 20, 2020, the Inns by the Sea, a chain of five boutique hotels located along the California coastline, filed a complaint in Monterey Superior Court against its insurance company alleging that its losses resulting from business closures mandated by the COVID-related State of Emergency orders constituted a direct physical loss or damage under the “all risk” property insurance policy, and thus, denial of the claim was improper. The plaintiff argued that the discussion surrounding physical loss should not be whether there is a physical loss or not, but rather, could a policyholder reasonably expect their policies to cover the virus.

With businesses closing and no federally backed insurance available to specifically cover COVID-19, business owners and insurers have been forced to litigate over whether existing business interruption insurance should cover losses due to the virus. Over 1,000 business interruption cases have been filed against insurance companies across the United States due to the pandemic halting or weakening business. Further, with stay-at-home orders, the travel industry has been particularly affected with a decrease in overall travel. Although not all disputed policies in these lawsuits are the same, judges across the U.S. and California are being asked to address several common questions such as: Do government closures trigger coverage? What constitutes “physical loss or damage” to property? And do any virus exclusions apply?

Based on this commonality, after the superior court [granted](#) defendant’s demurrer and dismissed the case. On October 16, 2020, plaintiff petitioned the Supreme Court of California to bypass the appellate court proceedings and receive an immediate ruling on an open question: what

constitutes physical loss or damage in a coronavirus-related business interruption insurance suit?  
(Case No. S265034). At this writing, the Supreme Court has not ruled on the matter.