section 1208 which is inconsistent with the notion that all banks may now enter the insurance marketplace. Financial Code section 1208 is an express grant of authority to a limited class of banks to sell specified types of insurance. . . . It does not, merely because of its limited permissive application, impliedly prohibit all banks not described therein generally from selling insurance."

Regarding section 772(b), the Third District noted that neither Proposition 103 nor the ballot materials accompanying the initiative made any mention of bank subsidiaries, finding "no hint either in the initiative itself or in the accompanying ballot materials that Proposition 103 was designed to allow bank subsidiaries entry into the insurance business." The court thus rejected the Superintendent's conclusion that "the clear intent of the initiative was to allow both banks and their subsidiaries to enter the insurance marketplace." The court noted that Proposition 100, a competing insurance reform initiative on the November 1988 ballot, would have expressly repealed Financial Code section 722(b). "In rejecting Proposition 100 the voters rejected the express repeal of Financial Code section 722, subdivision (b). This rejection is not insignificant."

As a result, the court affirmed the trial court's decision insofar as it denied plaintiffs' request for a writ of mandate commanding the Commissioner to cease granting insurance licenses to banks and to rescind any such license previously issued to banks, and otherwise reversed the decision, directing the trial court to issue a writ of mandate commanding the Commissioner to cease granting insurance license applications to bank subsidiaries and to rescind any insurance license previously issued to any such entity.

In ***Karoutas v. HomeFed Bank***, No. A050085 (July 23, 1991), the First District Court of Appeal recognized a common law duty requiring lenders with actual knowledge of facts materially affecting the value of property to disclose those facts to prospective bidders at a trustee's sale. HomeFed was the beneficiary under a trust deed on real property; the owners of the property subsequently defaulted. At a trustee's sale, the Karoutases purchased the property for $155,001. Prior to the sale, the Karoutases did not and could not inspect the property; after the sale, the Karoutases discovered that soil conditions and other defects in the residence would cost in excess of $250,000 to repair. The Karoutases filed a complaint against HomeFed for rescission, declaratory relief, fraud, and negligent nondisclosure, claiming that HomeFed know about the defects prior to the sale. The trial court sustained HomeFed's demurrer, finding that the absence of a disclosure duty defeated all of plaintiffs' claims.

On appeal, the principal issue was whether HomeFed, given its alleged knowledge of defects in the property and residence, had a duty to disclose the defects to the Karoutases. The court readily found that, based on precedent, the facts as stated by the Karoutases are "sufficient to raise . . . a common law duty to disclose." HomeFed did not contend that the allegations failed to establish a common law duty to disclose; rather, it argued that the comprehensive nature of the nonjudicial foreclosure statutes, which do not contain a duty to disclose, precludes the court from imposing such a duty on a beneficiary. The First District rejected HomeFed's contentions, finding, among other things, that caselaw interpreting the nonjudicial foreclosure statutes does not eliminate common law duties owed to prospective bidders over and above those required by the statutes. Additionally, the court noted that the "public interest in the prevention of fraud" overcomes the public interest in the speedy disposition of property under deeds of trust.

DEPARTMENT OF CORPORATIONS

Commissioner: Thomas Sayles
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The Department of Corporations (DOC) is a part of the cabinet-level Business, Transportation and Housing 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:

Department Facing Budget Cuts. Faced with making $2.1 million in budget cuts, Commissioner Thomas S. Sayles seriously considered the possibility of closing the Department's 30-year-old San Diego office. However, after visiting the office, Sayles decided the agency needs an enforcement presence there, noting that "if people had to go to Los Angeles to make . . . complaints, we might never hear about them and the fraudulent activity would continue." To ease the budget crunch, the Department sponsored SB 1011 (Beverly), which requires such offices to be funded exclusively through service fees; previously, the offices were partially financed through the state's general fund. SB 1011 also authorizes an increase in business registration fees, raising the maximum fee from $1,750 to $2,500. (*See infra* LEGISLATION for details on SB 1011.)

Regulatory Action Under the Health Care Service Plan Act. On August 23, Commissioner Sayles announced his proposal to amend the Department's regulations under the Knox-Keene Health Care Service Plan Act of 1975, relating to standards for Medicare supplement policies offered by health care service plans (HCSPs) under DOC's jurisdiction. The proposed amendments would revise sections 1300.63.50, 1300.64.50, 1300.64.51, 1300.67.50, 1300.67.51, 1600.67.52, and 1300.67.53, and adopt sections 1300.64.52, 1300.64.53, 1300.64.54, 1300.64.55, 1300.67.54, 1300.67.55, 1300.67.56, 1300.67.57, 1300.67.58, and 1300.67.59, Chapter 3, Title 10 of the CCR.

Through a series of statutes and regulations—including the Omnibus Budget Reconciliation Act of 1987, the Medicare Catastrophic Coverage Act of 1988 (to the extent provisions therein remain in effect subsequent to the passage of the Medicare Catastrophic Coverage Repeal Act of 1989), and the Medicare Catastrophic Coverage Repeal Act of 1989, the federal government has set forth a program for the certification of policies, certificates, and contracts offered by private HCSPs and other entities to supplement the benefits of the federal Medicare program (sometimes called "Medigap" policies). With minor exceptions, implementation of the federal certification program preempts the application of state laws and regulations governing the review, approval, and marketing of Medigap policies. However, the federal program does not apply in states with approved regulatory programs which (1) provide for the application of Medigap policy standards which are equal to or more stringent than the standards of the Model Regulation on such policies adopted by the National Association of Insurance Commissioners in 1979; and (2) require Medigap policy or contract performance which is expected to meet or exceed specified loss ratio standards.

California is a "state with an approved regulatory program," such that the federal certification program has never applied in this state. However, in order for California to maintain this status, it must amend its regulations to comply with the aforementioned federal statutes. The Health Care Financing Administration (HCFA) has conditionally approved DOC's Medicare supplement regulatory program; however, this approval is conditioned on the Department's amendment and adoption of the regulatory provisions in this rulemaking package. DOC published notice of many of these proposed regulatory changes in November 1989 (see CRLR Vol. 11, No. 1 (Winter 1991) p. 99 and Vol. 10, No. 4 (Fall 1990) pp. 104–05 for background information on these changes); however, in the interim, federal Medicare law was amended, and DOC abandoned its rulemaking effort until the law was settled.

At this writing, no public hearing is scheduled on these proposed regulatory changes; the Department accepted public comments until October 11.

On September 13, the Commission announced another rulemaking proceeding under the Knox-Keene Health Care Service Plan Act, relating to existing discrimination prohibitions, and subscriber and group contract notification requirements.

Currently, section 1300.67.10, Title 10 of the CCR, prohibits discrimination by HCSPs or plan contracts, as specified. AB 1721 (Chapter 1402, Statutes of 1990) added Health and Safety Code section 1365.5, which codifies section 1300.67.10; as a result, DOC proposes to delete section 1300.67.10.

Existing subsections (a)(6) and (a)(7) of section 1300.67.4 require subscriber and group contract provisions, as specified, to provide notification of increased payments and decreased benefits. SB 2616 (Chapter 949, Statutes of 1990) added Article 5.5 (commencing with section 1374.20) to Chapter 2.2, Division 2 of the Health and Safety Code. These new statutes require a specified written notice of changes in premium rates or coverage prior to a group contract renewal effective date. To avoid a conflict with the notification statutes, the Department proposes to amend subsections (a)(6) and (a)(7) of section 1300.67.4. Specifically, this action would delete a hand-delivery mode of forwarding the notice and provide for mailing at the most current address of record. DOC also proposes to amend subsections (a)(2)(A) and (c)(9) of section 1300.67.4 to include an appropriate reference to the CCR. At this writing, no public hearing is scheduled; the Department accepted public comments until November 15.

Proposed Regulatory Action Under the Corporate Securities Law. In July, DOC published numerous proposed regulatory changes to the Commissioner's securities qualification standards for real estate programs in the form of limited partnerships. Many of the proposed changes are intended to conform with the Guidelines of the North American Securities Administrators Association. The proposed revisions affect 53 different sections of the CCR. DOC's deadline for the receipt of public comments was September 17; at this writing, the Department is reviewing comments received.

The Department has decided not to pursue proposed amendments to section 260.105.34 of its regulations, which would have exempted certain "rated debt securities" from the non-issuer qualification requirement of Corporations Code section 25130. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 122 and Vol. 11, No. 1 (Winter 1991) p. 98 for background information.)

At this writing, the Department is completing its review of public comments received on its proposed regulatory changes to sections 260.140.8, 260.140.41, 260.140.42, its proposed repeal of section 260.140.41.2, and its proposed adoption of section 260.140.46, relating to employee benefit plans. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 122 and Vol. 11, No. 1 (Winter 1991) pp. 98–99 for background information.) The Department hoped to submit the proposals to the Office of Administrative Law (OAL) for review and approval in November.

Department Proposes Conflict of Interest Code Amendments. On June 28, the Commissioner formally announced DOC's intent to amend the Appendix to regulatory section 250.30, relating to "designated employees" for the purpose of the Department's Conflict of Interest Code. Currently, the Department's Code, adopted pursuant to the Political Reform Act, contains disclosure requirements for DOC em-

ployees in Categories A through F. Category D is applicable to designated employees who process applications or otherwise make decisions with respect to licenses or certificates under any of the laws administered by the Commissioner. DOC asserts that this category is unnecessary and proposes that it be deleted; designated employees in existing Category D would be placed in either Category B or C. According to DOC, the amendments would not result in increased disclosure requirements. DOC also proposes several other changes to its Conflict of Interest Code to reflect current working titles of employees and to delete categories of employees who no longer participate in the decisionmaking process. Public comments were due by August 30; these revisions await review and approval by the Fair Political Practices Commission.

Proposed Regulatory Action Under the Personal Property Brokers Law, Consumer Finance Lenders Law, and Commercial Finance Lenders Law. On June 28, OAL approved DOC's adoption of new section 1460 and its amendments to section 1556, to 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. 3 (Summer 1991) p. 122; Vol. 11, No. 2 (Spring 1991) p. 118; and Vol. 11, No. 1 (Winter 1991) p. 99 for detailed background information on these proposed changes.)

Proposed Regulatory Action Under the Escrow Law. At this writing, Department staff is still reviewing comments and testimony received at an April 12 hearing regarding DOC's proposed addition of section 1727 to its 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. New section 1727 would require, among other things, that the letter be a personal obligation of the owner(s) of the escrow company. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 121–22 for more detailed information.)

Proposed Regulatory Action Under the Credit Union Law. At this writing, DOC staff is still reviewing the comments received in response to its proposal to amend section 976, which concerns loans secured by real property. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 97–98 for detailed background information on these changes.)

Enforcement. On July 25, Commissioner Sayles ordered Pan American Money Order Company in Los Angeles to discontinue business and disbursement of trust funds; the Department took possession of the company effective July 25. As of June 30, the company had $977,012 in trust assets and $1,818,958 in trust liabilities. The company had pre-cleared approximately $722,246 in money orders for which no funds had yet been remitted from its sales agents. Further, the company did not know how many money orders were outstanding nor how much cash it should have had in its trust account to honor them.

On July 5, Commissioner Sayles announced his issuance of an order barring Cheryl Ann Bates of Pasadena from holding any position of employment, management, or control of any escrow agent, effective July 20. During the years 1973–86, Bates pled guilty to two criminal convictions for theft and three criminal convictions for forgery. Commissioner Sayles stated that "the public needs to have confidence that the persons working in the escrow industry demonstrate a high standard of honesty. Ms. Bates' criminal record disqualifies her from employment in this sensitive industry." The Commissioner also announced that DOC "intends to hold the independent escrow industry to a high standard of professional integrity to ensure that the public's escrow trust accounts are safe."

LEGISLATION:

SB 1011 (Beverly). Under the Corporate Securities Law of 1968, a broker-dealer is required to pay the Commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of the Department's broker-dealer program. Existing law prescribes the calculation of that pro rata share, and provides that it does not include costs of any examinations, audit, or investigation, as specified, unless those costs cannot be collected from the licensee examined, audited, or investigated. As amended September 9, this bill provides that the pro rata share is the proportion which the broker-dealer and the number of its agents in this state bear to the aggregate number of broker-dealers and agents in this state as shown by records maintained by, or on behalf of, the Commissioner; authorizes the pro rata share to include the costs of any examinations, audit, or investigation, as specified; increases various fees for filing an application for qualification of the sale of securities, and for the transfer in escrow of securities; provides for the annual payment of a fee for filing an application for an investment adviser; and establishes the State Corporations Fund, from which all expenses and salaries of DOC will be paid. This bill was signed by the Governor on October 13 (Chapter 1018, Statutes of 1991).

SB 1188 (Davis), as amended July 3, provides that causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, may be enforced against the dissolved corporation to the extent of its undistributed assets and, if any of the assets have been distributed to the shareholders, against shareholders of the dissolved corporation to the extent of their pro rata share of the claim or to the extent of the corporate assets distributed to them upon dissolution of the corporation, whichever is less. This bill was signed by the Governor on October 5 (Chapter 545, Statutes of 1991).

AB 1415 (Leslie), as amended June 25, requires a certificate of corporate dissolution filed with the Secretary of State to include an agreement by a person or corporation that assumes the tax liability, if any, of the dissolving corporation as security for the issuance of a tax clearance certificate from the Franchise Tax Board. This bill was signed by the Governor on August 2 (Chapter 309, Statutes of 1991).

SB 338 (Beverly), as amended July 11, provides that the Commissioner's certification of the interdealer quotation system of the National Association of Securities Dealers, Inc., shall remain in effect only until January 1, 1994, and shall be subject to applicable decertification proceedings.

Existing law provides that an evidence of indebtedness, and its purchasers, are exempt from constitutional usury provisions, if it is rated by specified entities or meets certain other requirements. This bill extends that exemption to an evidence of indebtedness where the issuer has any security designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, if the interdealer quotation system has been certified by DOC's Commissioner. This bill was signed by the Governor on September 11 (Chapter 390, Statutes of 1991).

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 122–23:

AB 1669 (Margolin), as amended August 30, increases the regulatory fees paid to DOC by health care service plans (HCSP) regulated by the Department pursuant to the Knox-Keene Health Care Service Plan Act. This bill was signed by the Governor on October 7 (Chapter 722, Statutes of 1991).

SB 698 (Boatwright), as amended July 16, prohibits the Secretary of State from filing articles of incorporation for any entity in which the words "industrial loan company," "investment and loan company," "thrift company," or "thrift and loan company" appear, unless the name is used in connection with articles filed for a corporation organized under the Industrial Loan Law. This bill also prohibits persons not authorized to engage in the industrial loan business from doing business under any name or title that contains those terms. This bill was signed by the Governor on October 13 (Chapter 979, Statutes of 1991).

SB 1196 (Russell). Existing law authorizes the Commissioner to petition the court for relief against certain persons who are subject to regulation by the Commissioner under the Corporate Securities Act and, in connection with that action, to seek the appointment of a receiver, monitor, conservator, or other person. As amended May 7, this bill provides that for provisions of specified laws administered by the Commissioner, upon a proper showing, an injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed, or ancillary relief may be granted. This bill was signed by the Governor on October 5 (Chapter 547, Statutes of 1991).

AB 622 (Bane), as amended August 28, provides that the cost of specified reviews, examinations, audits, or investigations made by the Commissioner shall be paid by the person subject to the review, examination, audit, or investigation, and the Commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. This bill was signed by the Governor on October 14 (Chapter 1081, Statutes of 1991).

SB 244 (Robbins). As amended July 1, this bill requires, rather than permits, the Commissioner to use a specified method in determining the costs of administration or enforcement of existing laws regulating HCSPs.

Existing law requires the Commissioner to use a deposit maintained by an insolvent HCSP to pay the claims of noncontracting HCSPs and claims of enrollees, for the costs of health care services provided by the noncontracting providers. This bill specifies that only the claims for health care services that are covered by the HCSP's contract with the enrollee shall be reimbursed by the Commissioner or, if a receiver has been appointed for the plan, by the receiver from the assets available in the deposit. This bill was signed by the Governor on September 18 (Chapter 422, Statutes of 1991).

SB 361 (Robbins), as amended April 1, requires the Commissioner to annually publish the Knox-Keene Health Care Service Plan Act of 1975, and make it available for sale to the public. This bill was signed by the Governor on July 2 (Chapter 102, Statutes of 1991).

AB 1189 (Peace), as amended July 2, provides that a proxy includes an electronic transmission authorized by a shareholder or attorney in fact. This bill was signed by the Governor on August 2 (Chapter 308, Statutes of 1991).

AB 991 (Lancaster), as amended April 4, clarifies the grounds upon which the Commissioner may summarily issue a stop order denying the effectiveness of or suspending or revoking effectiveness of any registration of a franchise, by providing that the Commissioner may issue a stop order upon a finding that the involvement of any person identified in the application or any officer or director of the franchisor in the sale or management of the franchise creates an unreasonable risk to prospective franchisees and that the person meets specified criteria. This bill was signed by the Governor on September 8 (Chapter 379, Statutes of 1991).

AB 938 (Speier), as amended June 7, would have provided that no insufficient funds check charge shall be imposed by a financial institution (including credit unions) if the account balance is positive after posting all items received for that business day. This bill was rejected by the Assembly on June 18.

AB 82 (Kelley). As amended June 28, this bill provides that in instances where an election to dissolve a corporation 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 was signed by the Governor on July 29 (Chapter 280, Statutes of 1991).

SB 118 (Robbins), as amended June 28, requires HCSPs, when requested by a public entity or political subdivision of the state with whom it has entered into a contract, to report within a reasonable time period, not to exceed sixty calendar days, the method and data used in calculating the rates of payment for the contracts the plan has entered into with the public entity or political subdivision of the state. This bill was signed by the Governor on July 29 (Chapter 280, Statutes of 1991).

SB 1165 (Davis), as introduced March 8, prohibits 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 was signed by the Governor on October 14 (Chapter 1224, Statutes of 1991).

SB 948 (Vuich), as amended September 9, provides 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 was signed by the Governor on October 14 (Chapter 1221, Statutes of 1991).

SB 488 (Mello). Existing law provides that every credit union shall obtain insurance, a guaranty of shares, or a form of comparable insurance or guaranty of shares acceptable to the Commissioner of Corporations, for the purpose of insuring its members' share accounts. As amended May 20, this bill would specify that the comparable insurance or guaranty of shares acceptable to the Commissioner is to be provided by a guaranty corporation licensed pursuant to this bill. This two-year bill is pending in the Senate Committee on Banking, Commerce and International Trade.

SB 852 (Bergeson), as introduced March 7, would authorize a HCSP to enter into a new or modified plan contract or publish or distribute, or allow to be published or distributed on its behalf, a disclosure form or evidence of coverage without having filed the same for the Commissioner's approval if the contract, disclosure form, or evidence of coverage is pursuant to a contract with the federal Health Care Financing Administration to provide Medicare benefits and services. This two-year bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1124 (Frizzelle), as introduced March 5, would prohibit HCSPs and specialized HCSPs which provide one or more optometric services from interfering with the professional judgment of a person engaged in the practice of optometry pursuant to the plan. This two-year bill, which would impose additional requirements on HCSPs relating to optometry, is pending in the Assembly Health Committee.

SB 1596 (Floyd). The California Public Records Act generally requires that records of state and local agencies be open to public inspection, with specified exceptions, including specified documents filed with the state agencies responsible for the regulation or supervision of the issuance of securities or of financial institutions. As amended April 30, this bill would revise this exception and limit it to records of any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, when the records are received in confidence and are proprietary and their release would result in an unfair competitive disadvantage to the person supplying the information or the records constitute filings or reports whose disclosure would be counterproductive to the regulatory purpose for which they are used. This two-year bill is pending in the Assembly Governmental Organization Committee.

AB 1597 (Floyd), as amended June 3, would permit the Commissioner to refuse to issue a permit for the qualification of securities in a recapitalization or reorganization unless, in addition to finding that the proposed plan and issuance of securities is fair, just, and equitable to all security holders affected, the Commissioner finds that the proposed plan does not result in the termination or impairment of any labor contract covering persons engaged in employment in this state and negotiated by a labor organization, collective bargaining agent, or other representative. This two-year bill is pending in the Senate Banking Committee.

AB 1593 (Floyd), as amended April 18, and ***SB 506 (McCorquodale)***, as amended April 8, 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 Banking Committee.

SB 893 (Lockyer), as introduced March 7, would, among other things, authorize the establishment of the California Financial Consumers' Association, 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 two-year bill is pending in the Senate Banking Committee.

SB 935 (Roberti), as introduced March 8, 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. This two-year bill is pending in the Senate Insurance Committee.

SB 703 (Royce), as amended May 9, would require HCSPs that advertise, solicit for, enter into, amend, or renew any plan contract which provides any dental services to provide prescribed basic dental services; this bill would permit the HCSPs to require certain copayments for these services. This two-year bill is pending in the Senate Insurance Committee.

AB 1141 (Woodruff), as introduced March 5, would authorize a HCSP 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. This two-year bill is pending in the Assembly Insurance Committee.

SB 917 (Kopp), as amended June 11, would require certain HCSPs that proposed to offer a pharmacy benefit or change their relationship with pharmacy providers to give written or published notice to pharmacy service providers of the plan's proposal and give those providers an opportunity to submit a proposal to participate in the plan's panel of providers on the terms proposed. This two-year bill is pending at the Assembly desk.

AB 2083 (Felando), as amended July 11, would provide that HCSPs and disability insurers that choose to retain, but do not employ, licensed health care providers to review claims for health care services that are rendered by a health care provider licensed in California, and who render opinions on final appeals concerning reimbursement of those reviewed claims, shall ensure, when reasonably available, that the reviewing licensed health care provider holds a current California license of the same license class as the provider of services being reviewed. This two-year bill is pending in the Senate Insurance Committee.

SB 366 (Robbins), as amended September 11, would require the Commissioner to prepare and publish a booklet describing for the public or potential HCSP enrollees the health care coverage regulated under the Knox-Keene Health Care Service Plan Act, and require the Commissioner 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 two-year bill is pending in the Assembly inactive file.

AB 1282 (Filante), as amended July 14, would require every HCSP, disability insurer (with specified exceptions), 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; 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; and require the Commissioner to adopt guidelines defining what constitutes a "healthful lifestyle" for HCSPs. This two-year bill is pending in the Senate Insurance Committee.

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; 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; 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 two-year bill is pending in the Assembly Committee on Housing and Community Development.

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 two-year 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 Keating, the now-bankrupt ACC (an Arizona development company owned by Keating), and two of ACC's top officers, is still pending in federal court in Arizona under U.S. District Court Judge Richard Bilby. The Department, which authorized ACC to sell junk bonds from branch offices of its subsidiary Lincoln Savings and Loan, charges defendants with securities fraud, fraud in application for qualification, offer/sale of unauthorized securities, and unauthorized advertising. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 124–25; Vol. 10, No. 4 (Fall 1990) pp. 117–19 and 128–29; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 103 and 113–14 for extensive background information on the Lincoln/ACC scandal.)

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; after a lengthy delay, the defendants finally filed a response to the motion, and a hearing was scheduled for December 9.

Jury selection in ***People v. Keating***, the state's criminal action against Charles Keating, began on August 6 amidst increased security in response to an explosive outburst by a 72-year-old woman who grabbed Keating and shouted that he had taken all of her money. On July 26, Los Angeles County Superior Court Judge Lance A. Ito decided to sever Keating's trial from that of Judith J. Wischer, former president of ACC, after prosecutors agreed with Wischer's attorney that a joint trial might be unfair to her. Her trial is expected to follow at the conclusion of Keating's trial.

Keating and Wischer are each charged with 20 counts of securities fraud in the sale of ACC bonds to purchasers who, according to the indictment, were told by Lincoln salespersons that their investments would be insured up to $100,000 by the federal government. In fact, no such guarantee existed and more than 20,000 purchasers, including many senior citizens on fixed incomes, lost an estimated $250 million when ACC declared bankruptcy in April 1989. Keating faces up to ten years in prison if convicted on six or more of the charges.

On August 21, Judge Ito ruled that jurors will be given an aiding-and-abetting instruction, which states that in order to convict Keating, they must find that he intended to help bond salespeople make untrue statements in efforts to sell the bonds, knew bond salespeople were making untrue statements in selling the bonds, and encouraged the bond salespeople to make the untrue statements.

The trial commenced on August 29 and is expected to continue through the end of the year.

In Re American Continental Corporation/Lincoln Savings and Loan Association, the class action filed on behalf of 20,000 investors who lost an estimated $250 million in the Lincoln/ACC collapse, is also pending in U.S. District Court under Judge Bilby; plaintiffs' objection to the transfer to federal court is still on appeal in the U.S. Court of Appeals for the Ninth Circuit. The trial date has been postponed until at least January 1992; partial settlements totalling $40 million have been negotiated and approved by the court.

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; 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 Cali-