until January 19.

Proposed HCSP Quality Assurance Guidelines. The Commissioner also proposes to amend section 1300.70, Title 10 of the CCR, to establish mandatory requirements governing the structure, elements, and implementation of internal quality of care review systems for HCSPs.

The proposed rule will require HCSPs to have a written quality assurance plan which describes the goals, objectives, and organization of the program. The written plan is required to evidence that the HCSP has assumed ultimate responsibility for quality assurance activities, although quality assurance responsibilities are permitted to be delegated within the plan or to a contracting provider. In the event quality assurance responsibilities are delegated, the delegated group must maintain records of its activities and report to the HCSP's governing body at least quarterly. The proposed regulation sets forth specific requirements for quality assurance activities which are delegated to a participating provider medical group. Specific requirements are also set forth for plans having capitation or risk-sharing contracts. The proposed regulation will require that the implementation of a plan's quality assurance program be supervised by a designated physician, or in the case of a specialized plan, a licensed professional provider.

The proposed regulation sets forth the factors upon which the Department will focus in assessing a HCSP's quality assurance program. It will require that a HCSP's quality assurance program address service elements including accessibility, availability, continuity of care, and utilization of services. Plans will be required to have a mechanism which monitors specified factors to oversee the quality of care provided in an inpatient setting.

The Commissioner accepted comments on these proposed amendments until January 19.

Regulatory Changes Approved. The Office of Administrative Law (OAL) recently approved the Department's amendment to section 260.140.84, Chapter 3, Title 10 of the CCR, regarding investment company expense limitations. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 79 for detailed background information.) This amendment became effective on September 21.

LEGISLATION:

AB 1929 (Epple) permits a listed corporation, as defined, to adopt provisions to its articles of incorporation or bylaws with the approval of the corporation's outstanding shares, as specified, to divide the board of directors into two or three classes to serve for terms of two or three years, respectively, or to eliminate cumulative voting, or both. Further, the bill provides that a member of a classified board of directors may not be removed if the votes cast against the removal of the director or not consenting in writing to the removal would be sufficient to elect the director if voted cumulatively, under certain conditions. This bill was signed by the Governor on September 26 (Chapter 876, Statutes of 1989).

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at pages 91-92:

AB 2259 (Bentley), which would authorize a parent company to merge into its subsidiary corporation, is pending in the Assembly Finance and Insurance Committee.

AB 2499 (Wright) would have authorized licensed escrow agents who meet prescribed financial criteria to use the title "security escrow company." This bill would also have authorized the Commissioner to define and determine liquid assets for purposes of these criteria. This bill died in committee.

SB 503 (Stirling) would permit the director of a corporation, in performing his/her duties as a director in good faith, to consider and act in the best interests of the public as well as in the best interests of the corporation and its shareholders. This bill is pending in the Assembly Judiciary Committee.

AB 10 (Hauser), which would have created the California Health Insurance Program, died in committee.

AB 657 (Floyd), which would have permitted the Commissioner to refuse to issue a permit for qualification of securities in a recapitalization or reorganization unless its issuance is fair, just, equitable, and in the public interest, died in committee.

AB 1125 (Chandler), which would have specified that a director of a nonprofit mutual benefit corporation is required to perform his/her duties in a manner the director believes to be in the best interests of the members of the corporation, died in committee.

AB 1666 (Wright), which would exempt specified transactions from qualification under the Corporate Securities Law of 1968, is pending in the Senate Banking and Commerce Committee.

SB 526 (Russell), which would have increased the time period for filing an application with the Commissioner to qualify any security for which a registration statement has been filed under the Securities Act of 1933, died in committee.

SB 1444 (Boatwright), which would have authorized the merger of corporations and limited partnerships, setting forth the procedure to effectuate the merger and specifying the effect of the merger on the creditors of the entities involved in the merger, died in committee.

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 Codes 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 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. It receives more than 900 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, Investigations, or other sections of the USB.

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.

A Consumer Advisory Panel (CAP) has been named by the Commissioner as an internal advisor to DOI. CAP members are appointed by the Commissioner. The Panel's function is to advise the Department on methods of improving existing services as well as the creation of new services. Additionally, the CAP aids in the development and distribution of consumer educational and informational materials.

MAJOR PROJECTS:

Commissioner Starts the Proposition 103 Implementation Process, But Judge Grants Rate Hikes to Two Companies. November 8, 1989 marked the one-year anniversary of the passage of Proposition 103. It was also the date upon which the Commissioner's 103-mandated "prior approval" power was scheduled to commence, allowing her to reject insurance company proposals for arbitrary or excessive rate increases. The prior approval authority was designed to put the finishing touches on implementation of the landmark measure, which also called for a rollback of insurance rates to 20% below November 1987 levels. But instead of a day of celebration for ratepayers and for the consumer advocates who created the initiative, November 8 was a day of disappointment tempered by growing optimism. The rate rollbacks had failed to materialize, allowing the state's insurers to make (according to the estimates of consumer advocates) some $2.1 billion more than they should have and earn at least $84 million in additional interest—a sum which more than reimburses the insurance industry for the $80 million it spent unsuccessfully campaigning against Proposition 103.

The optimism, however, was the result of Commissioner Gillespie's first steps toward implementing the measure. After a consumer lawsuit was filed against Gillespie in September, alleging that she had improperly failed to comply with the state Administrative Procedure Act (APA) in implementing Proposition 103, the Commissioner froze auto insurance rates for six months and announced that formal regulatory hearings would commence on October 30—to develop a rating system for determining auto insurance premiums, to establish regulations for the mandated 20% "good driver discount", and to define what constitutes a "fair rate of return" for insurers. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 92-94 for extensive background information on the consumer lawsuit, the rate freeze, and the announced hearings; see Vol. 9, No. 3 (Summer 1989) pp. 82-87 and Vol. 9, No. 1 (Winter 1989) pp. 73-76 for extensive background information on Proposition 103.)

By December, Commissioner Gillespie's efforts had produced several emergency rules. Most significant among them were rating guidelines which appeared to greatly diminish the importance of a driver's address in determining his/her premium rate. Abolition of territorial rating—also known as "ZIP code rating" or "redlining"—was one of the top priorities of the Proposition 103 drafters. The practice, which made a driver's ZIP code the primary factor in determining the rate, was seen as the cause of the great disparity between urban and suburban and, particularly, urban and rural insurance rates. Proposition 103 sought to resolve the problem by requiring that insurance carriers base their rating criteria on, in decreasing order: (1) a driver's safety record; (2) annual mileage driven; (3) years of driving experience; and (4) "such other factors as the commissioner may adopt by regulation that have a substantial relationship to the risk of loss."

Commissioner Gillespie's emergency regulations released on December 5 reaffirmed the three "mandated factors"—safety record (taking into consideration all traffic violations and at-fault accidents during the previous three years by the insured and any other drivers of the insured vehicle); number of miles driven annually; and years of driving experience. They also set forth 22 "optional factors" which may be utilized by insurers in their rating plans, including type of vehicle; make and model of vehicle; cost of repair or replacement of vehicle as measured by age or model year, price, cost, or value; design characteristics of the vehicle related to injury prevention, damageability, or repairability; vehicle characteristics, including engine size, safety and protective devices, and theft deterrent devices; vehicle performance capabilities, including alternations made subsequent to original manufacture; type of use of vehicle (person, business, farm, commercial, etc.); usage patterns of the vehicle, including daily or weekly commuting; multi-car households; completion of driver training or defensive driving courses; primary or occasional usage of the vehicle; theft rates; average repair garage labor rates; average medical and hospital costs; average wage and income levels; litigation rates; population density; vehicle density; accident/claims frequency, including injury and fatality

rates; number of uninsured vehicles; and average claims costs.

The regulations require that a "sequential regression analysis" be used to give the greatest weight to driver safety record, the second greatest weight to the number of miles driven, the third greatest weight to years of driving experience, and less weight still to the optional factors. Insurers, according to the regulations, may select the order of importance of the optional factors, but their weighing is subject to approval by the Commissioner. Also, consideration of "race, language, color, religion, national origin, ancestry or political affiliation" is forbidden.

Commissioner Gillespie simultaneously announced an emergency regulation ordering insurers to prepare a "good driver" plan, offering 20% discounts to drivers who have no more than one moving violation during a three-year period. She ordered insurers to submit rating systems taking the above factors into account, and furnishing a good-driver discount, within 180 days.

Consumer advocates were split over the significance of the emergency regulations. Some applauded the rules for staying true to Proposition 103's mandate; others were wary, fearing that the number of territorial considerations represented by some of the optional factors—population density, vehicle density, average wage and income levels, number of uninsured vehicles—could cumulatively blunt the impact of the three mandated factors and continue to leave inner-city drivers holding a bigger bill.

On the same day she unveiled the emergency rating regulations, Commissioner Gillespie announced that she would not allow annual increases in premiums which exceed the previous year's Consumer Price Index (CPI). The index in 1988 was 4.4%. In making the announcement, Gillespie—the former insurance executive who months earlier had been accused of siding with her former colleagues and ignoring the people's mandate—said she was ready for a fight. "While I cannot satisfy everyone, I will not stand for Californians to be charged with unfair, arbitrary, and discriminatory rates," she told reporters. "If I have to crawl into the litigation ring and slug out my decisions with 700 insurers or anyone else to prevent this, so be it."

The Commissioner found herself in the litigation ring less than two weeks later. Four companies filed identical lawsuits in three different courts challenging the emergency regulations. Under heavy pressure from the industry and against strong opposition from consumer advocates, including Proposition 103 sponsor Voter Revolt and the Center for Public Interest Law, the Commissioner gave in and agreed to stay the effective date of the Department's new rules until at least February 28, in exchange for the industry's agreement to stay their lawsuits and abide by the existing freeze imposed October 2.

Meanwhile, a Los Angeles judge who had earlier upheld Gillespie's freeze on auto insurance rates ruled on December 18 that two of the state's largest insurance companies—Farmers and Allstate—could substantially increase their rates. Farmers was allowed to impose a 5.9% rate hike statewide, and Allstate was permitted to increase the rates of "bad drivers" among its California Automobile Assigned Risk Plan (CAARP) policyholders by 40%. In *Farmers Insurance Exchange v. Gillespie*, No. C739931, the company asked Superior Court Judge Miriam A. Vogel to block the Commissioner's six-month freeze. On October 10, Judge Vogel upheld the freeze, but gave the Department until November 30 to promulgate ratemaking regulations. In December, when the final apparatus for determining fair rates was not yet in place, Judge Vogel ruled that the companies could increase their rates.

Gillespie announced that she would appeal the decision and that she would issue a notice to Farmers that she will require a justification of its rates. Such a request from the Commissioner would prevent the company from raising its rates. However, attorneys for Farmers said the judge's order authorizes an increase effective January 1, 1990, regardless of the Insurance Commissioner's actions. Her only remedy, the lawyers suggested, would be to hold hearings after the increases are in place and, if the rates are found to be excessive, order refunds of premiums. But the insurer would surely appeal that order in the courts, causing the issue to drag on for years.

The judge's ruling—allowing an increase well above the CPI limit set by Commissioner Gillespie—seems to undermine the Commissioner's power to pre-approve auto rates and sends a message to other insurers whose rates were frozen by Gillespie on October 2 that they are out from under the Commissioner's control. Judge Vogel stressed, however, that the *Farmers* decision is limited in scope because Farmers had announced its rate increase in September—a week before Commissioner Gillespie announced the freeze.

Judge Vogel's decision in the *Allstate* case (*see infra* LITIGATION for details) was expected to have a much greater impact on CAARP insurance rates statewide. Her setting of an "interim" 40% increase to allow Allstate to get a "fair return" until Proposition 103 is fully implemented will likely be extended to all companies offering assigned risk policies. The increase would affect some 400,000 "bad drivers" among the 1.2 million people enrolled in the assigned risk system. Vogel noted that Proposition 103 allows policyholders to receive refunds from insurers if the rates are ultimately deemed excessive. However, if it is later determined that policy rates have failed to give insurers a fair rate of return, there is no regulation that requires consumers to pay their insurance carrier to make up the difference. Therefore, the judge reasoned, the interim rate increase is the only means to protect the insurance companies' interests until firm guidelines are implemented.

The term "fair rate of return" has not yet been defined by the Commissioner. In upholding most of Proposition 103 in May 1989, the California Supreme Court determined that "fair rate of return" would be the dividing line in determining the extent to which companies should be exempt from the mandated rollback to November 1987 rates minus 20%. Said one insurance attorney after Judge Vogel's ruling: "The state Supreme Court said that insurance companies are entitled to a fair rate of return. And what the insurance industry is waiting for, what everyone is waiting for, is: `What is the fair rate of return?'" The Commissioner's generic adjudicatory proceeding to define "fair rate of return" and other cost/ratio standards, which commenced on October 30 in San Bruno, is ongoing at this writing. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 92-93 for background information.)

Consumer advocates, meanwhile, were angered by Vogel's ruling. They contended that, under the decision, insurance companies will be able to keep on charging high rates and, if there are refund orders, leave it up to consumers to wait through years of appeals

before they get their money back.

The day after Vogel's decision, Harvey Rosenfield of Voter Revolt told a news conference that he plans to place a measure on the November 1990 ballot that would create a state insurance agency to replace private companies. If approved, the "Proposition 103 Enforcement Act" and its California Auto Plan would take effect if industry averages show by September 1992 that rates have not been rolled back in compliance with Proposition 103 and that more than 15% of California's drivers are uninsured. (See supra report on ACCESS TO JUSTICE FOUNDATION for details.)

On a slightly different front, Commissioner Gillespie announced proposed regulations setting forth procedures for rate-change applications by insurers, including the award of reasonable advocacy fees to intervenors "representing, in the judgment of the Insurance Commissioner or administrative law judge, an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding." The regulations also set forth procedures for reimbursing witnesses. Such compensation is considered vital by supporters of Proposition 103 to ensure that consumers are represented at the hearings, and not just the insurance companies which can afford attorneys and witness fees. Commissioner Gillespie held a series of public hearings on the proposed regulations on November 28-30 and December 1.

Another provision of Proposition 103 also has led to litigation. Proposition 103 permits banks and other financial institutions to sell auto insurance, and insurance agents, unsurprisingly, have sued to block the added competition. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 81 and 88 for background information.) As of the end of the year, the Commissioner had approved the license applications of nine California banks wishing to sell fire and casualty insurance. Financial institutions now licensed to sell auto insurance are First Interstate Bank of California, Security Pacific Bank of California, Bank of Yorba Linda, First Trust Bank (Ontario), General Bank (Los Angeles), Mechanic's Bank of Richmond, San Diego Trust & Savings, Savings Bank of Mendocino County and Western Bank (Los Angeles).

Commissioner Denies 112% CAARP Rate Increase. Following public hearings throughout the fall, Commissioner Gillespie denied on December 18 a proposal by the CAARP governing board to increase premium rates by 112%. Additionally, on October 26, the Commissioner proposed significant changes to regulations governing CAARP. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 94 and Vol. 9, No. 2 (Spring 1989) p. 85 for background information.)

CAARP was instituted in 1947 to provide state-mandated minimum liability insurance for drivers who are unable to obtain it in the voluntary market. It was designed to cover only bad drivers. However, many good drivers ignored the requirement that they must first be unable to obtain insurance through the voluntary market, and turned to CAARP either because they could not find affordable insurance, or because they could obtain lower rates from CAARP. Because CAARP is subsidized by the higher rates that good drivers pay, the influx of good drivers to CAARP simultaneously decreased the source and amount of subsidy while it increased the size of the subsidy needed to keep CAARP solvent. As a result, CAARP suffers losses of over $1 million each day.

The proposed regulation changes are designed to eliminate fraud and inefficiency from CAARP. Specifically, the changes will require: (1) an applicant to certify, under penalty of perjury, that he/she is unable to acquire insurance on the voluntary market, and include the names of at least two insurers which denied coverage within the past 60 days; (2) specific personal information about the driver, vehicle, and agent or broker submitting the application; (3) the manager of CAARP to examine all applications and randomly audit at least 5% of them; (4) all participating brokers and agents qualified to sell auto insurance to certify to CAARP's Governing Committee that they will act honestly and in good faith in complying with all laws governing CAARP, not make false statements to CAARP or insurers, and not aid any applicant in making false statements with respect to CAARP; in turn, the Governing Committee will certify the qualifying brokers and agents; and (5) the commission rate to be adjusted from 12% to 10%.

Moreover, the proposed changes will establish: (6) procedures for making coverage effective at the time of application; (7) the Commissioner's ability to take appropriate action against any insurer issuing policies to ineligible applicants; (8) specific performance standards that insurers must meet in the processing of CAARP's business; and (9) specific performance standards that producers must meet in the processing of CAARP's business. A public hearing to consider the proposed changes was scheduled for January 25-26 in Los Angeles.

The Commissioner's denial of CAARP's requested 112% rate hike was motivated by the Commissioner's fear that approval of the increase "could make insurance through [CAARP] unaffordable, ultimately increasing the number of uninsured drivers in California." In addition to denying the rate increase, Commissioner Gillespie ordered the CAARP Governing Board to submit a strategy within ninety days to implement a two-tiered system of rates—one tier at the subsidized rate, consisting of drivers who demonstrate need; and a second tier at higher rates for drivers able to pay for the full cost of coverage.

Another reason behind the Commissioner's denial of the rate increase, ordering of the "two-tiered" plan, and the proposed regulation changes is the Commissioner's suspicion that CAARP's losses are caused by "bad housekeeping." She vowed that such losses will not be "passed on to the state's drivers."

Commissioner Modifies Workers' Compensation Regulations. On November 29, Commissioner Gillespie adopted the proposed decision of Deputy Insurance Commissioner Peter Groom regarding amendments and modifications to DOI's workers' compensation regulations located at sections 2350 and 2353, Title 10 of the CCR. Sections 2350 and 2353 deal with premium rates and worker classifications. The Workers' Compensation Insurance Rating Bureau of California (the Bureau) proposed an overall premium rate increase of 5.9%. The DOI's decision rejected that rate and ordered the Bureau to recompute its rates based on an increase of 4.9%.

The Bureau's proposal of new rules governing the application of experience modifications to employers whose ownership changes but whose day-to-day management and employee complement remain the same was approved by the Commissioner.

Finally, the Bureau made various proposals with respect to worker classifications. All were approved by the Commissioner with the exception of the

Bureau's proposal for a new classification for truckers who haul logs. This proposal was rejected.

The new rules took effect on January 1, 1990.

DOI Orders Insurers and Agents to Quit Doing Business in California. On November 28, DOI ordered Pacific Standard Life Insurance Company (Pacific) to quit conducting business throughout the United States pending the outcome of a December 20 public hearing. Pacific is charged with operating in a hazardous manner in that it has a negative surplus of more than $54 million.

Similarly, on December 6, Euro-American, a British West Indies surplus lines insurer, was ordered to quit. Euro-American is accused of selling professional liability insurance in California without a license, and through agents not authorized to sell such insurance. Additionally, DOI contends that Euro-American is in violation of California laws with respect to allowable percentages of an insurer's assets that may be invested in long-term investments. A December 26 hearing was scheduled.

Gillespie Bows Out of Race for Insurance Commissioner. On December 4, Commissioner Gillespie announced that she would not seek election as Insurance Commissioner when her appointed position becomes elective next year. The Commissioner stated that her decision was "based upon my desire to serve the people of California as Insurance Commissioner throughout 1990 unencumbered by the distractions of political fund raising and a divisive political campaign."

Meanwhile, on November 22, Walter Zelman resigned his post as director of California Common Cause, to ready himself for the upcoming election. Although he did not formally announce his candidacy at that time, Zelman said he had "every intention of running." In addition, he called upon fellow candidates to limit their primary campaign spending to $750,000, and encouraged them to refuse contributions from the insurance industry. Other potential candidates include state Senate John Garamendi, former Los Angeles news commentator Bill Press, state Board of Equalization member Conway Collis, San Jose tort reform proponent Tom Skornia, and Ray Bourhis, a San Francisco lawyer and victorious plaintiff in a lawsuit against Commissioner Gillespie (*see infra* LITIGATION).

LEGISLATION:

SB 1405 (Boatwright). Existing law provides for a penalty of imprisonment in the state prison for 2, 3, or 5 years for performing specified acts relating to defrauding an insurer. The same penalty is applicable with respect to false or fraudulent insurance claims, in addition to a fine not to exceed $25,000, or by both the imprisonment and the fine. This bill increases that fine to $50,000, and mandates the fine with respect to false or fraudulent insurance claims. It also provides for a two-year enhancement for subsequent convictions, as specified, in both instances. This bill was signed by the Governor on September 24 (Chapter 730, Statutes of 1989).

SB 924 (Vuich). Nothing in existing statutes specifically regulates competition in the provision of title insurance. This bill requires an applicant for a license to operate an underwritten title company, an applicant for a certificate of authority to act as a title insurer, or title insurance entity applying for a securities permit (1) to demonstrate to the Insurance Commissioner that its plan of operation will not result in reliance for more than 50% of its closed title orders from defined controlled sources, and (2) to indicate to the Commissioner that the applicant intends to actively compete in counties where the applicant intends to do business. This bill also requires persons issued these entitlements to make submissions as required by the Commissioner to enable the Department to determine the nature and extent of efforts to actively compete. This bill was signed by the Governor on September 11 (Chapter 344, Statutes of 1989).

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at pages 95-97:

ACA 46 (Waters) would end the insurance industry's exemption from paying investment income taxes. This proposed constitutional amendment is pending in the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments.

SB 3 (Roberti), which would create the Insurance Consumer Advocate's Office in the state Department of Justice, is pending in the Assembly Finance and Insurance Committee.

SB 207 (Boatwright) would require insurers subject to Proposition 103 rate-setting regulation to submit a quarterly report to the Commissioner relating to the Commissioner's ratesetting procedures. This bill is pending in the Assembly Finance and Insurance Committee.

SB 464 (Robbins) would provide that the ownership or financial control, in part, of an insurer by any other state, the United States, or by a foreign government, or by any political subdivision or agency thereof, shall not restrict the Commissioner from issuing or renewing or continuing in effect the license of that insurer to transact insurance business in this state, under specified conditions. Although this bill was enrolled to the Governor on September 12, it was returned and is pending with the Chief Clerk of the Assembly.

SB 604 (Green) would require, among other things, the Commissioner to annually report to the legislature on defined property/casualty insurance lines. This bill is pending in the Assembly Finance and Insurance Committee.

SB 1518 (Nielsen) would prohibit the Insurance Commissioner from being employed in the insurance industry for two years after leaving office. This bill is pending in the Assembly Finance and Insurance Committee.

SB 1695 (Keene), which would enact changes in DOI's Bureau of Fraudulent Claims, is pending in the Assembly Finance and Insurance Committee.

AB 1721 (Friedman) would prohibit life and disability insurers and health care service plans from discriminating, as to eligibility or rates, on the basis of sexual orientation. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SCR 22 (Robbins) would request a freeze in CAARP premium rates until January 1, 1990, or until DOI has received certain cost data. This resolution is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 37 (Bane) would provide that a person guilty of insurance fraud or filing false claims would be liable for a penalty of ten times the amount of the claims, plus reasonable attorneys' fees, in addition to any other penalty already provided by law. This bill is pending in the Senate Judiciary Committee.

AB 451 (Johnston), regarding the qualifications that must be met in order to qualify for a good driver discount policy, is pending in the Senate Committee on Insurance, Claims and Corporations.

The following bills died in committee: *AB 2429 (Hill)*, which would have provided, among other things, that the

Cartwright Act, which prohibits and specifies civil and criminal remedies for defined acts in restraint of trade, applies (with specified exceptions) to the business of insurance with respect to all personal lines of property and casualty insurance; *AB 2470 (Wright)*, which would have required the Insurance Commissioner, in cooperation with the State Department of Banking, to annually produce a workbook for the purpose of showing changes in state law affecting insurers, agents, and brokers; SB *709 (Stirling)*, which would have required auto insurers to pay a $500 reward to persons who find and report to law enforcement agencies stolen vehicles covered by the insurer; *SB 795 (Deddeh)*, which would have made persons who submit false or fraudulent motor vehicle policy claims to insurers liable for twice the amount of the claims plus reasonable attorneys' fees; *SB 1144 (Robbins)*, which would have extended the prior approval requirement to rate changes imposed between now and the implementation of Proposition 103's prior approval structure; *SB 1232 (Kopp, Davis)*, which would have allowed drivers to meet the state financial responsibility requirement by selecting either conventional liability coverage or a no-fault policy created by this bill; *SB 1329 (Marks, Rosenthal)*, which would have reinstated a private third-party cause of action against an insurer for violation of the obligation of good faith dealing under the Insurance Code; *SB 1298 (Ayala)*, which would have provided that no rate for private passenger automobile insurance shall be found to be excessive if the overall rate of return for underwriting and investment is less than 10% of the premiums collected; *AB 868 (Bradley)*, which would have created an assigned risk plan for health insurance similar to the one that currently exists for automobile insurance; *AB 1156 (Bane)*, which would have prohibited, among other things, insurers from monopolizing or attempting to monopolize any class of insurance; *AB 1952 (Moore)*, which would have supplemented provisions of Proposition 103 which require casualty insurers to file an application for any rate change with the Insurance Commissioner; *AB 10 (Hauser)*, which would have created the California Health Insurance Program within the Department of Health Services; *AB 121 (Johnston)*, which would have required that every insurer who cancels or fails to renew policies in violation of Proposition 103 must offer the insured the right to renew or reinstate the policy; *AB 243 (Calderon)*, which would have created a three-year pilot project in which DOI's Bureau of Fraudulent Claims, the Franchise Tax Board, and the Los Angeles County District Attorney's Office would cooperate in the investigation and prosecution of false or fraudulent insurance claims; *AB 249 (Floyd)*, regarding the qualifications a person must meet in order to be eligible for a good driver discount policy; *AB 263 (Floyd)*, which would have required DOI and the Department of Motor Vehicles to directly accept applications for automobile liability insurance under the state's assigned risk plan and would have prohibited those departments from charging any commission with respect to the applications; *AB 354 (Johnston)*, a modified "no-fault" bill which would have required each owner of a private passenger motor vehicle, other than a motorcycle, to maintain insurance that would provide personal injury protection benefits of up to $15,000 actual payout per person for health care expenses; and *AB 744 (Calderon)*, which would have given California drivers a choice between obtaining traditional, liability-based policies or no-fault coverage.

LITIGATION:

On December 18 in *Allstate Insurance Co. v. Gillespie*, No. C744670, Los Angeles Superior Court Judge Miriam Vogel granted a request by Allstate to increase its CAARP premium rates by 40%. This decision was in direct conflict with a contemporaneous denial by the Commissioner of a 112% rate increase request by CAARP's governing board (*see supra* MAJOR PROJECTS). Commissioner Gillespie vowed to appeal the decision immediately.

In San Francisco Superior Court, Judge John Dearman ordered Commissioner Gillespie to prosecute errant insurance companies, and to save consumer complaints for six months. The case, *Bourhis v. Gillespie*, No. 907349, was decided in November. A petition for reconsideration was granted and resulted, on December 15, in a new ruling reinforcing the original order. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 97 for background information on the case.)

The lead plaintiff, Ray Bourhis, a candidate for Commissioner Gillespie's position in this year's election, said that Gillespie and her department systematically destroyed thousands of consumer complaints brought against insurance companies every two months, even though as many as 80% of the claims were valid. Moreover, of the 53,000 complaints filed in 1988, DOI did not prosecute a single case.

Judge Dearman held that Gillespie failed to exercise her discretionary power to prosecute insurance companies that violate the law. In addition, he held that she and DOI had not complied with Insurance Code requirements to hold hearings in cases where consumers had registered legitimate claims against insurers. The court based its ruling on the fact that valid complaints made to DOI rose between 50-400% in the last five years but, during the same period, only three orders to show cause were issued. Judge Dearman ordered the Commissioner to begin hearings. DOI said it would appeal the decision.

An August 1988 lawsuit filed in Los Angeles Superior Court alleges that State Farm Mutual Automobile Insurance Company methodically deprives policyholders of dividends by accumulating and retaining a surplus reserve well in excess of industry standards. The lawsuit seeks $634 million in damages and also sought an injunction preventing State Farm from using those funds to campaign against the various insurance initiatives before California voters in the November 1988 election. Injunctive relief was denied. The case, *Barnes v. State Farm*, No. CA001131, is currently involved in discovery proceedings.

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Commissioner: James A. Edmonds, Jr.
(916) 739-3684

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