



## REGULATORY AGENCY ACTION

the Senate Committee on Health and Human Services.

*AB 60 (Isenberg)*, which would establish the California Catastrophic Health Insurance Program, is pending in the Assembly Ways and Means Committee.

*SB 6 (Robbins)*, which would create the California Health Coverage Association, is pending in the Senate Appropriations Committee.

### DEPARTMENT OF INSURANCE

Commissioner: Roxani Gillespie

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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 provide for the Commissioner's powers and duties. Authorization for the Insurance Department is found in section 12906 of the 800-page Insurance Code.

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 1,300 insurance companies, which carry premiums of approximately \$26 billion annually. Of these, 650 specialize in writing life and/or accident and health policies.

In addition to its licensing function, the DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects over 120 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.

Through the California Insurance Code, the Commissioner has the power to order a carrier to stop doing business within the state, but does not have the power to force a carrier to pay a claim, a power reserved to the courts. The Commissioner may hold an administrative hearing to determine whether a particular broker or carrier is complying with state law.

The Commissioner is aided by a staff of over 500, located in San Diego, Sacramento, Los Angeles and San Francisco, the Department's headquarters. The Commissioner directs ten functional divisions and bureaus, including the recently reestablished Consumer Affairs Division. This division has been expanded and now includes the Rate Regulation Division. The Consumer Affairs Division is specifically designed to make the DOI accessible to consumers and more accountable to their needs and questions.

The Consumer Service Bureau (CSB) is part of the Consumer Affairs Division and handles daily consumer inquiries. CSB receives over 300 calls each day. Almost 50% of those 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 policy services, investigation or CSB.

Since 1979, the Department has maintained the Bureau of Fraudulent Claims, charged with investigation of suspected fraud by claimants. The California insurance industry claims losses of more than \$100 million annually to such claims. Licensees pay an annual fee of \$150 to fund the Bureau's activities.

A Consumer Advisory Panel has been named by the Commissioner as an internal advisor to the Department of Insurance. The panel advises the Department on methods of improving existing services and on the creation of new services. It also assists in the development and distribution of consumer information and educational materials.

### MAJOR PROJECTS:

*Fireman's Fund Ordered to Stop Cancelling Policies.* On January 18, in its first enforcement order under Proposition 103, the DOI ordered the Fireman's Fund insurance group to stop cancelling automobile insurance policies. The company had refused to renew approximately 5,000 auto policies and instead offered only six-month extensions of the policies. Under Proposition 103, companies may only cancel or refuse to renew policies for nonpayment of premiums, fraud, or material increase in the hazard insured against. The Department held a public hearing on January 18, and the administrative law judge hearing the matter recommended a ruling against Fireman's Fund. The Commissioner accepted the ruling, and ordered the insurer to comply with the order. Under the terms of the order, Fireman's was required to cease sending out notices of nonrenewal, rescind any notices it had previously issued, renew all auto policies, and reinstate any insured non-renewed since November 8, 1988. The company indicated that it plans to appeal the decision to the courts.

*Travelers Decision Reached.* Following a January 7 public hearing (see CRLR Vol. 9, No. 1 (Winter 1989) pp. 73-74 for detailed background information), DOI issued an order requiring Travelers Insurance to renew all of its auto policies cancelled since November 8, 1988, and rescind all the notices of nonrenewal it had issued. DOI Chief Counsel John Faber, who presided at the hearing, had recommended a more lenient course of action, but was overruled by the Commissioner. The Commissioner refused to reveal Faber's original recommendation.

If Travelers violates the final order, it would be liable for fines up to \$10,000 per day per company, to a maximum of \$100,000 per company. The company maintained that the cancellations were part of its plan to withdraw from the California insurance market. Less than ten days after the issuance of the final order, Travelers asked the California Supreme Court to overturn the order. The company has promised to comply with the order during the appeal.

*State Farm Settles Over Rating Practices.* In November, DOI cited State Farm for rating practices which the Department said unfairly discriminate against new customers. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 74 for background information.) DOI ordered the company to cease its practice of diverting new customers, regardless of the



customers' risk profile, to its higher-priced subsidy, State Farm Mutual auto insurance plan. State Farm refused to comply with the order, and requested a public hearing on the matter. On January 26, the Commissioner set a hearing date for March 9 and 10. The day before the hearing, Commissioner Gillespie announced that State Farm had agreed to settle the charges. Under the terms of the agreement, the company is required to file with DOI a schedule under which it will identify eligible policyholders, place them in the less costly "preferred plan", and refund or credit excess premiums collected.

*Department Holds Hearing on State Farm Rate Increase.* On March 20, the Department held a public hearing in which State Farm was required to justify its recent increases in private passenger automobile rates. Two days after settling with DOI regarding unfair rating practices, the company announced an increase in premiums amounting to an average of 9.6%. In what one consumer advocate present at the hearing called an "actuarial document dump", company representatives presented hours of testimony designed to show that the company has been losing money in California as a result of, among other things, the increase in costs of paying bodily injury and uninsured motorist claims. One of State Farm's actuaries, Jerry Hillhouse, said that, under his analysis, the company would have to request a 32.2% increase to remain competitive.

The Commissioner agreed to allow consumer representatives to appear at the hearing, but refused to grant them intervenor status under Proposition 103. Harry Snyder, West Coast Director of Consumers Union, Steven Miller of Insurance Consumer Action Network, Robert Hunter of National Insurance Consumer Organization, and Senator Alan Robbins all appeared at the hearing to represent consumer interests. Mr. Snyder told the Commissioner that the hearing was a "kangaroo court", and accused her of "making up the rules as she went along." Deputy Commissioner Fermin Ramos said that since the hearing was not required to be conducted pursuant to the Administrative Procedure Act, he would conduct it as he saw fit, and that the consumer representatives were only being called "intervenor" for ease of identification—they were not permitted to act as intervenors. Consumers Union had previously filed suit in an unsuccessful effort to force Commissioner Gillespie to conduct the hearing under the procedures for rate

increases outlined by Proposition 103.

At this writing, State Farm's increase will stand, and the company will continue to charge the higher rates until the Department issues its decision.

*Commissioner Rejects Proposition 103 Rulemaking Proposal.* In February, Commissioner Gillespie rejected a petition for emergency rulemaking filed by several consumer groups (including Consumers Union and the Center for Public Interest Law) to implement the effective provisions of Proposition 103, and also rulemaking preparatory to the implementation of the rollback and freeze provisions of the initiative once the stay imposed upon them has been lifted. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 17 and 76 for background information.)

In rejecting the petition, an attorney for the Department called a procedure to adopt regulations "in advance of the Court's anticipated guidance...premature and precipitous." The Department also asserted that no legal requirement exists to set the required standard for insurer relief under the new legislation, and that since the relief anticipated turns on the particular facts of each case and the financial circumstances of each insurer, an attempt to devise any guidelines would result in standards too broad or too detailed. In addition, counsel indicated that the rulemaking process could take so long that it may invalidate the need for regulations implementing the rollback/freeze waiver procedure, which is effective only until November 8, 1989. Consequently, according to the response to the petition, the Department will be "approaching rulemaking with caution in this situation."

*Proposition 103 Enforcement Costs.* In February, Commissioner Gillespie filed a deficiency request with the Department of Finance for authorization to spend \$5.4 million more than DOI had been budgeted for the fiscal year ending in June. The funds are set to be used to hire 200 employees to assist in the implementation of Proposition 103. In November, the Commissioner had said that she planned to eventually add 300 employees to her staff of 515 and increase the \$33 million budget by another \$18 million. (See Vol. 9, No. 1 (Winter 1989) p. 74.) The budget request for the next fiscal year, which Governor Deukmejian has since filed with legislature, does not contain the increase requested by the Commissioner. Under provisions of Proposition 103, the Department may pass the cost of enforcement of the new law on to the insurance companies.

*DOI Licenses Banks.* The Department of Insurance has granted the applications of three banks to conduct the sale of insurance in California. First Interstate Bank of California, Security Pacific National Bank, and Mid-State Bank of Arroyo Grande applied for certificates of authority to sell insurance after the passage of Proposition 103, which (among other things) cleared the way for California-chartered banks to sell insurance. First Interstate requested a license to sell life and disability insurance, while Security Pacific applied to sell fire and casualty insurance in addition to life and disability lines. A group of insurance agents have filed suit in an attempt to block the banks from entering the insurance market (see *infra* LITIGATION).

*Assigned Risk Premium Increase Asked.* In February, the California Assigned Risk Plan (ARP) requested an increase that would raise the cost of the average policy written under the plan by 112.3%. The ARP, which covers about 6% of the state's drivers, was created in 1947 to provide coverage for drivers who are not able to obtain insurance on their own because they have been rejected by insurers as high risks. Under the plan, each insurance company in the state is required to cover a percentage of high-risk insureds in a proportion equal to their share of the California auto insurance market.

The plan's governing committee asserts that it is losing \$1 million per day under the current rate structure. The Commissioner said that she will set a hearing date to consider the proposed increase.

*ABA Study Recommends Federal Insurance Regulation.* In December, a twelve-member commission of the American Bar Association issued a report calling on the federal government to take part in the regulation of the insurance industry. The panel called for the repeal of the McCarran-Ferguson Act, which exempts the insurance industry from antitrust law, and leaves the regulation of the insurance industry to the states. The commission also urged that an agency with subpoena powers investigate whether improper industry collusion manipulates insurance cost and availability.

*California Auto Premiums Third Highest.* The A.M. Best Company's annual survey of insurance costs, issued in January, indicates that California drivers paid the third highest automobile insurance premiums in 1987, with an average premium that year of \$623. The two most expensive states were Massachu-



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setts and New Jersey. The national average was reported to be \$487, and Iowa (\$256), South Dakota (\$295), and Alabama (\$307) were the three least expensive states. The survey did not take into account state-to-state variations in required coverage or other factors that may affect comparison between states.

**DOI Places Two Insurers in Conservatorship.** In February, Commissioner Gillespie was appointed conservator of Coastal Insurance Company and National Service Insurance Company. The Department petitioned the court for the conservatorship of Coastal on the grounds that it was insolvent in excess of \$40 million. DOI plans to take steps to liquidate the company. National Service Insurance Company provided comprehensive and collision coverage for Coastal Insurance Company, and had been served with a cease and desist order in November 1988. Claims against National Service will continue to be paid by the company.

**DOI Issues Guide to Workers' Compensation.** In February, the Department issued a pamphlet entitled "Understanding Workers' Compensation Insurance." The booklet answers questions regarding coverage, benefits and rating practices. Free copies are available at DOI offices or by calling the Department's toll-free number.

### LEGISLATION:

**SCR 13 (Robbins)** would require the Insurance Commissioner to conduct a study of disability insurers, self-insured employee benefit plans, and nonprofit hospital plans to determine the number of those organizations that provide mental health coverage and determine the need for such coverage. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

**SCR 22 (Robbins)** comes in response to a request by the state assigned risk auto insurance office for a premium increase of over 100% (see *supra* MAJOR PROJECTS). This bill would request a freeze in assigned risk auto insurance premium rates until January 1, 1990, or until the DOI has received certain cost data and explanations for the increase. This resolution is pending in the Senate Committee on Insurance, Claims and Corporations.

**SB 6 (Robbins)** would create the California Health Coverage Association to provide basic health care coverage and optional catastrophic health care coverage to eligible persons and employers beginning January 1, 1991. Health care benefits payable by the Association

would be limited to \$40,000 per year and catastrophic benefits to a \$500,000 lifetime maximum, and would require payments of deductibles and copayments by insured persons. The Association would select an insurance carrier or health plan to administer the Association's insurance contracts, which would carry the risk of loss. Part of the funds for the Association would be derived from the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund, created by the passage of Proposition 99 in November, 1988. A March 8 amendment to this bill prescribed an 8% commission on the placement of policies and made minor technical changes. A hearing is pending in the Senate Committee on Insurance, Claims and Corporations.

**SB 167 (Lockyer)** would require that automobile accident claims under \$25,000 be submitted to an arbitration system, rather than adjudicated by lawsuit. A claim would be directed to a commission ninety days after the filing of an answer to the claim. Under current law, actions are not referred to arbitration unless both parties agree. Under this proposal, if either party disagrees with the decision of the arbitrator and takes the case to court, that party could be liable for the arbitrator's fees and the costs of operating the court, including the judge's salary, if the appeal is found to be without merit. This bill is pending in the Senate Judiciary Committee.

**SB 205 (Hart)**. Under Proposition 103, the post of Insurance Commissioner will become an elected position commencing with the November 1990 election. This bill would prohibit any campaign contribution or loan to a candidate for Insurance Commissioner from insurance agents, brokers, institutions, support organizations, and businesses regulated by the Department of Insurance, as well as political committees that have received contributions from any of the above entities, their officers, or employees. It would also require a candidate for the office of Insurance Commissioner to file a statement of income for a prior two-year period. The Commissioner would be prohibited from making or influencing a decision to approve or disapprove an application for an insurance rate change if he/she has received more than \$250 in contributions from the insurer or its representatives. This legislation would also prohibit the Insurance Commissioner from being employed by an insurer or other licensee of the DOI for two years after leaving office. This bill is pending in the Senate

Committee on Governmental Organization.

**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. The reports and their contents would be public records, and the Commissioner would be required to transmit a copy of each report to the Joint Legislative Budget Committee with 48 hours of its receipt. Since this bill seeks to amend Proposition 103, it must pass by a two-thirds vote. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

**AB 10 (Hauser)** would create the California Health Insurance Program within the state Department of Health Services to arrange to provide health services through public and private health insurance plans. The bill would authorize the imposition of premiums on employees and employers and would provide for the subsidy of premiums imposed on persons who are not able to pay. This bill is pending in the Assembly Committee on Finance and Insurance.

**AB 27 (Johnston)** would prohibit disability insurers, nonprofit hospital plans, and health care service plans from requiring an applicant for hospital, medical, or surgical coverage, to first qualify for life or disability loss of income insurance by being tested for HIV antibodies. This prohibition already exists, but AB 27 would amend section 799.09 of the Insurance Code to clarify the prohibition. Under existing law, insurers providing life or disability loss of income insurance may require, as a condition of coverage, that an applicant be tested for HIV antibodies. This legislation seeks to prevent insurers from circumventing the HIV-test prohibition applying to medical coverage by requiring that the applicant acquire life or disability loss of income insurance for which he/she must submit to the HIV test. This bill is pending in the Assembly Ways and Means Committee.

**AB 37 (Bane)**. Existing law provides that a person who commits insurance fraud may be imprisoned in state prison for two to five years, and/or pay a fine not exceeding \$25,000. This bill would add section 556.5 of the Insurance Code to 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 claim, plus reasonable attorneys' fees, in addition to any other penalty already provided by law. This bill is pending in the Assembly Committee on Finance and Insurance.



*AB 60 (Isenberg)* would establish the California Catastrophic Health Insurance Program to provide health insurance to state residents who are not able to obtain it in the private sector. The initial cost of creating the program and establishing the fund, with an appointed board to administer it, would be advanced from the state's Disability Fund, part of the Employment Development Department. This bill is pending in the Assembly Committee on Finance and Insurance.

*AB 103 (Connelly)* would reenact a section of the Insurance Code repealed by Proposition 103. That section prohibited insurance agents and others in the insurance business from receiving any financial benefit or other consideration for making referrals to automobiles repair facilities. Because this bill seeks to amend Proposition 103, it must be passed by a two-thirds vote. This bill is pending in the Assembly Finance and Insurance Committee.

*AB 121 (Johnston)* would freeze insurance premiums pending the decision of the California Supreme Court on Proposition 103 (*see infra* LITIGATION). This bill would also require every insurer who cancels or fails to renew policies in violation of Proposition 103, since its passage, to offer the insured the right to renew or reinstate the policy. The bill was rejected by the Assembly, eight votes short of the two-thirds majority necessary for its passage; Assembly-member Johnston intends to seek reconsideration.

*AB 186 (Floyd)*. Under current law, the Department of Insurance's Bureau of Fraudulent claims is scheduled to "sunset" on January 1, 1992, if the legislature does not act to extend its life. This bill prescribes the functions of the Bureau and creates it to exist indefinitely. The Bureau would be subject to the direction of the Commissioner; its purview would include all criminal violation of insurance fraud; and it would be required to prosecute these violations if a district attorney declines to prosecute them. The bill would also require automobile liability insurers to pay a fee of up to ten cents per policy they write for deposit in a special account created by the bill in the Insurance Commissioner's Regulatory Trust Fund to investigate and prosecute fraudulent automobile insurance claims. This bill is pending in the Assembly Committee on Finance and Insurance.

*AB 243 (Calderon)* would create a three-year pilot project in which DOI's Bureau of Fraudulent Claims, the Fran-

chise Tax Board, and the Los Angeles County District Attorney's Office would cooperate in the investigation and prosecution of false or fraudulent insurance claims. The bill would require the team to submit annual reports of its activities, and a final report appraising the team's activities and the feasibility of extending the project statewide. This bill is pending in the Assembly Committee on Finance and Insurance.

*AB 249 (Floyd)* and *AB 451 (Johnston)* would amend language in the Insurance Code created by Proposition 103 (section 1861.02) which requires automobile insurers to offer a good driver discount policy beginning on November 9, 1989. In order to be eligible for this discount, a driver must have been licensed to drive for the previous three years and must not have had more than one conviction for a moving violation during that time. The two bills would add to those qualifications, requiring that the insured must not have been convicted of driving under the influence of alcohol or other drugs. Since these bills seek to amend statutory language created by Proposition 103, they require a two-thirds vote to pass. At this writing, both bills are pending in the Assembly Committee on Finance and Insurance.

*AB 263 (Floyd)* would require the DOI and the Department of Motor Vehicles to directly accept applications for automobile liability insurance under the state's assigned risk plan. This bill would also prohibit those departments from charging any commission with respect to such applications and prohibit the premiums charged under these policies from carrying any amount to defray the cost of commissions. This bill is pending in the Assembly Committee on Finance and Insurance.

*AB 327 (Floyd)* would extend standards and protections that DOI has imposed on medigap insurance to all senior health insurance, including an increase in the minimum loss ratio for individual senior health policies to 65% and a prohibition on the sale of duplicative policies. It would also establish a Seniors' Bureau of Investigation within DOI to investigate and implement provisions relating to senior health insurance. This bill is pending in the Assembly Committee on Finance and Insurance.

*AB 744 (Calderon)* is a rival no-fault bill to Assemblymember Johnston's AB 354 (*see infra* for summary of AB 354). This bill would give California drivers a choice between obtaining traditional, fault-based policies or no-fault coverage. No-fault policyholders would not have

the option to sue for claims arising under their policies, and would immunize those policyholders from suit by others. In exchange, they would receive what the bill's author calls a "generous benefit package" with an upper limit of \$500,000. The package would include unlimited medical benefits and 80% of wage loss. This bill is pending in the Assembly Committee on Finance and Insurance.

*AB 850 (Connelly)* would repeal section 1208, amend section 772, and add sections 780 and 781 to the Financial Code. Sections 772 and 1208 are the two provisions of the Financial Code that restrict the sale of insurance by banks after Proposition 103's endorsement of such sales (*see infra* LITIGATION). The bill would also outlaw "tie-ins"—the practice by which the provision of one service or commodity is conditioned upon the acceptance of a second service or commodity—to prevent banks from conditioning the obtaining of a car loan on the right to be the insurer of that car. Included in this legislation is a provision limiting the total investment of a bank selling insurance to 10% of the capital stock and surplus of the bank. This bill is pending in the Assembly Committee on Finance and Insurance.

The following is a status update of legislation described in detail in CRLR Vol. 9, No. 1 (Winter 1989) at pages 74-75:

*SB 3 (Roberti)*, which would create the Office of the Insurance Consumer Advocate in the Department of Justice, is pending on the Senate floor at this writing.

*SB 5 (Roberti)*, which would make it unlawful for an insurance company to force new customers to buy insurance from subsidiaries at rates higher than those charged for existing policyholders in similar risk categories, was amended on January 23 to remove penalties for insurers who cease writing policies in California. This bill is also pending on the Senate floor.

*SB 103 (Robbins)*, which would impose a potential penalty of 25-50% of total premiums on insurance companies that refuse to renew 10% or more of their existing policies without good cause, was amended in January to eliminate potential constitutional problems by making it non-retroactive. However, insurance industry lobbyists contend that the constitutional problems still exist, because the legislation still appears to penalize actions taken before the bill's introduction. The Senate approved this bill on a vote of 27-9, and referred it



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the Assembly.

*AB 354 (Johnston)* is a no-fault insurance proposal modeled after the New York system. The bill would require each owner of a motor vehicle other than a motorcycle to provide insurance that would provide first-party benefits. The no-fault benefits would compensate economic loss of up to \$50,000 per person for health care expenses, for loss of earnings up to \$2,000 per month. The bill provides that a tort victim would have no right to recover any damages in tort for basic economic loss, and except in the case of serious injury, would have no right to recover noneconomic losses. This bill is pending in the Assembly Committee on Finance and Insurance.

### LITIGATION:

*Proposition 103.* On March 7, the California Supreme Court heard oral argument in *Cal-Farm Insurance Co. v. Deukmejian*, No. S007838, the insurance industry's challenge to Proposition 103. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 75-76 for background information.)

In the arguments, plaintiffs focused on three main contentions. First, Proposition 103 would create a private corporation to represent consumers in insurance matters, and formation of such a corporation is unconstitutional under Article 2, Section 12 of the California Constitution. Second, implementation of the proposition would result in a \$125 million tax revenue shortfall, and would violate the tax rate set forth in Article 3, Section 28 of the California Constitution. Howard Rothman, attorney for the insurers in this case, argued that such a change in the gross premium tax could only properly be made by a two-thirds majority vote of the legislature. Third, the provision requiring rollback, reduction, and freeze of premium rates relies on an arbitrary 20% reduction figure, and does not consider the insurers' right to a fair rate of return on their investments. In regard to the severability argument—that is, whether some portions of the proposition that meet constitutional requirements could be effective if others are invalidated—Mr. Rothman asserted that the test is whether the electorate would have voted for Proposition 103 if it knew the initiative contained unconstitutional portions, and called the initiative an example of "bait and switch."

The defendants divided their allotted time for argument among Attorney General John Van de Kamp, Karl Manheim of Loyola School of Law, and Burlingame attorney Joseph Cotchett. The Attorney General assured the court that regulations

implementing the proposition could be drafted to assure that any adjudication regarding rates would be fair to the insurance companies, and asserted that regulatory reform is necessary in view of the "sloth and inefficiency" of the insurance companies that have resulted in inflated premiums. Van de Kamp also countered that the provision in Article 2, Section 12 of the California Constitution regarding private corporations applies only to the identification in legislation of specific corporations, and was introduced to prevent a lottery company from administering a lottery it was proposing to the electorate.

Under the court's policy of deciding cases within ninety days of oral arguments, a decision is expected before June 5.

*Agents Object to Insurance Sales by Banks.* In January, Independent Insurance Agents and Brokers of California petitioned Insurance Commissioner Gillespie to rule on whether banks are qualified to be granted licenses to sell insurance. Proposition 103 repealed Insurance Code section 1643, which prohibited banks from selling insurance. However, two sections which appear to bar bank insurance sales remain in the Code. One of the sections (section 1208) prohibits banks from selling insurance in towns where the population is less than 5,000; the other (section 772) prevents bank subsidiaries from selling insurance.

The Commissioner denied the group's request for an investigation and public hearing on the matter, and deferred to a January 4 interpretive opinion of State Banking Department Superintendent Howard Gould, who concluded that the Financial Code provisions were "impliedly" repealed by the initiative. (See *supra* agency report on BANKING DEPARTMENT for additional information on this issue.)

The Independent Insurance Agents and Brokers, joined by the Professional Insurance Agents Association of California and Nevada, the California Association of Life Underwriters, and the Independent Insurance Agents of America, filed suit in Sacramento Superior Court to block the approval. The suit—which names a number of banks, Commissioner Gillespie, and Superintendent Gould among the defendants—alleges that "[n]either the Banking Department nor the Department of Insurance conducted any of the rulemaking procedures required by the California Administrative Procedure Act before adopting the Superintendent's determination." The court denied the agents' request for a tempor-

ary restraining order staying the licenses already granted to three banks—First Interstate Bank of California, Security Pacific National Bank, and Mid-State Bank of Arroyo Grande.

The case, *Sanford v. Gillespie*, No. 360783, will be heard by acting Presiding Judge James T. Ford in Sacramento.

### DEPARTMENT OF REAL ESTATE

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The Real Estate Commissioner is appointed by the Governor and is the chief officer of the Department of Real Estate (DRE). The commissioner's principal duties include determining administrative policy and enforcing the Real Estate Law in a manner which achieves maximum protection for purchasers of real property and those persons dealing with a real estate licensee. The commissioner is assisted by the Real Estate Advisory Commission, which is comprised of six brokers and four public members who serve at the commissioner's pleasure. The Real Estate Advisory Commission must conduct at least four public meetings each year. The commissioner receives additional advice from specialized committees in areas of education and research, mortgage lending, subdivisions and commercial and business brokerage. Various subcommittees also provide advisory input.

The Department primarily regulates two aspects of the real estate industry: licensees (as of September 1988, 216,365 salespersons, 90,211 brokers, 17,332 corporations) and subdivisions.

License examinations require a fee of \$25 per salesperson applicant and \$50 per broker applicant. Exam passage rates average 55% for salespersons and 47% for brokers. License fees for salespersons and brokers are \$120 and \$165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of most residential subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The public report serves two functions aimed at protecting buyers of subdivision interests: (1) the report requires disclosure of material facts relating to title, encumbrances, and similar information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting