ther provide that the fee for filing the application for registration of the offer to sell a franchise is $675 rather than $450; the fee for the filing of renewal of registration is $450 rather than $150; and the fee for filing a material, rather than major, modification is $50. The bill would add a fee of $675 for filing an application for the approval of written notice of violation. This bill is pending in the Assembly Ways and Means Committee.

The following is a status update of bills described in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 83-84:

AB 1125 (Chandler), as amended May 2, would specify that a director of a nonprofit mutual benefit corporation is required to perform duties in a manner the director believes to be in the best interests of the members of the corporation. This bill is pending in the Assembly Judiciary Committee.

AB 705 (Lancaster), as amended April 20, would provide that a certificate to act as a credit union remains in full force and effect until surrendered and accepted by the Commissioner, or until suspended or revoked by the Commissioner with proof of bond coverage, including fraud, dishonesty, and faithful performance coverage. AB 705 passed the Assembly on June 7 and is pending in the Senate Committee on Banking and Commerce.

AB 657 (Floyd), which would permit 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, is still pending in the Assembly Finance and Insurance Committee.

AB 1666 (Wright), as amended May 11, would exempt specified transactions from qualification with the Commissioner under the Corporate Securities Law of 1968, where the exchange of securities is in consideration of the issuance of securities of another corporation if, among other things, the corporation to be acquired has 35 or fewer security holders; all security holders of the corporation to be acquired have consented to the transaction in writing; and each recipient security holder has represented that the acquisition of the securities in the transaction is for the holder's own account and not with a view to or for sale in connection with any distribution of the security. This bill is pending in the Assembly Ways and Means Committee.

SB 290 (Greene), as amended May 3, provides that a copy of the latest statement required to be filed by a foreign corporation relating to operations and designating an agent for service of process is sufficient evidence of the appointment of an agent for service of process. SB 290 passed the Senate on May 25 and is pending in the Assembly Judiciary Committee.

SB 275 (Campbell), which would eliminate the notice requirement as a condition of exemption of specified securities from qualification with respect to the offer or sale of securities, is still pending in the Senate Appropriations Committee.

SB 269 (Stirling), which would delete the prepayment of minimum tax upon filing a certificate to change status from a nonprofit public benefit corporation to a nonprofit mutual benefit corporation, passed the Senate on May 25 and is pending in the Assembly Judiciary Committee.

SB 526 (Russell), which would increase 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, is still pending in the Senate Banking and Commerce Committee.

AB 10 (Hauser), which would create the California Health Insurance Program, is still pending in the Assembly Finance and Insurance Commission.

AB 60 (Isenberg), as amended April 24, would establish the California Catastrophic Health Insurance Program, providing for scope of coverage, rate limitations, deductibles, co-payments, and method of operation, including authority to contract with public and private entities for program administration, and subscriber eligibility and enrollment. This bill is still pending in the Assembly Ways and Means Committee.

SB 6 (Robbins), as amended May 9, would create the California Health Coverage Association. This bill is still pending in the Senate Appropriation Committee.

SB 317 (Stirling), which provides that certain nonprofit corporations organized prior to January 1, 1971, and which have never filed an annual statement could be subject to suspension by the Secretary of State, passed the Senate on May 11 and is pending in the Assembly Judiciary 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 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 sig-

nificant 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:

Commissioner Outlines Proposition 103 Rollback Exemption Process. In May, Commissioner Gillespie unveiled the application form and set forth the process that she has determined is necessary for an insurer to be exempted from the 20% rollback called for under Proposition 103. The proposition, which was passed by voters in the November 1988 election, was upheld by the California Supreme Court on May 4 (*see infra* LITIGATION). Among other things, the new law requires that insurance premiums be rolled back to 20% below their November 1987 levels, unless the insurer can show that doing so will prevent the company from earning a fair rate of return. The Commissioner said that she will determine what constitutes a fair rate of return on a case-by-case basis, but indicated some general guidelines that she would use in the process.

The Commissioner announced that her decisions on exemptions would be on a line-by-line basis; that is, one profitable line of insurance will not be made to subsidize other less profitable lines. She also said that her decisions would be based on the amount of profit the companies made on operations and investments in California only.

Insurers seeking exemptions were required to file an application with the DOI for each line of insurance for which they seek relief by June 3, the date the Supreme Court's Proposition 103 decision became final. A company filing an application need not roll back its premiums while the application is under consideration.

The application asks for the company's California figures as to premium income, claims losses paid and incurred, reserves, expenses, and investment income. As part of the application process, a company must also include: (1) a calculation of its rate of return, expressed as a percentage of company equity, which would result from the Proposition 103-mandated premium level; the rate of return must also be expressed as a percentage of the company's earned premium; (2) a statement of the applicant company's justification as to why the rolled-back premium would be confiscatory; (3) a calculation of the rate of return which would result from the premium level that it is seeking as relief from the rollback; and (4) a statement of the applicant's justification as to why the relief rate it suggests would result in a "fair rate of return."

Companies seeking relief must pay $2,500 for each application they submit, but the charge for all applications submitted at once will not exceed $5,000. These fees will go to pay for the labor hours that DOI personnel expend processing the applications, and any amount paid in excess of the hours charged by DOI will be refunded to the insurer. Hours expended in excess of the filing fee will be charged to the insurer.

All of the applications received by the deadline were scheduled to be approved or set for hearing by early August; the Commissioner has vowed that final decisions on all of the applications will be finished by November 8, 1989, when the "prior approval" portion of the new law goes into effect.

Proposed Regulations for Rate Hearings. In May, both Insurance Commissioner Gillespie and the Center for Public Interest Law submitted proposed rules for the implementation of the rate review process required by Proposition 103.

Among other things, the Commissioner's rules outlined eligibility requirements for intervenor status at hearings for rate increases and procedures at the hearings. Under the Commissioner's proposed rules, intervenors will have to make "substantial" contributions to the hearings and must meet a "significant financial hardship" standard to receive intervenor fees from the state. Hearings on the Commissioner's proposed rules were scheduled for late June in Los Angeles and San Francisco.

The rules proposed by the Center for Public Interest Law (CPIL) outline specific requirements that an insurance company must meet in order to be exempted from rate rollbacks under the terms of Proposition 103. Company reserves would be limited to one-third of the premiums collected from customers in a line of insurance, unless a company could show that the line is particularly risky, and therefore in need of a larger reserve. Under current law, one-third of premiums collected is the minimum reserve a company must maintain. The regulations would also restrict companies from the practice of charging customers for predicted future losses. The rules would also keep companies from charging policyholders for political expenditures an insurer makes.

CPIL submitted the same set of rules in January, but the Commissioner rejected them because Proposition 103 was then the subject of litigation in the Supreme Court. The Commissioner was scheduled to respond to the proposed rules by June 16, either by setting them for public hearing or denying the proposal with an explanation for the denial.

Consumer Groups Urge Denial of State Farm Increase. In response to State Farm's request that the Commissioner approve a premium rate increase of 9.6% (see Vol. 9, No. 2 (Spring 1989) p. 85 for detailed background information), the Insurance Consumer Action Network, Consumers Union, and California Common Cause released their analysis of the insurance company's application to the Commissioner. The coalition of consumer groups asserts that State Farm is "overcapitalized and inefficient" and that even at the current rate, the company's pre-

miums are excessive. In fact, said the groups, based upon their analysis of the data submitted in conjunction with the request, a rate cut of 30% would be more appropriate than any rate increase.

The groups pointed to several reasons why the request should be denied:

-State Farm has a capital surplus of $18.6 billion. This surplus represents a ratio of one dollar of surplus to every dollar collected in premiums. According to a survey by A.M. Best, most other auto insurers maintain a surplus-to-premium ratio half that size.

-The groups estimated that policyholders provided $3 billion for investments to the company in 1988. Estimating a 9% return on that investment, that figure would provide a yield of $228 million.

-State Farm indicates that it maintains an expense ratio of 29.2%, which the groups called inefficient.

-Asserting that the company is underestimating premium income, the groups said that State Farm ignores "the tendency of the policyholders to upgrade to more expensive cars."

-The company collected $12.3 million in "membership fees" in 1987, but does not report this figure in the amount of premiums collected, making the company's income seem artificially low.

DOI Budget Increased. In May, Commissioner Gillespie announced that the Governor has agreed to include a request that the Department of Insurance be allocated $59.5 million for fiscal year 1989-90 in the budget he submits to the legislature. The total number of employees working for DOI will increase from 571 to 788 under the new funding. DOI was allocated $35.3 million for fiscal year 1988-89.

Aetna to Stop Writing California Policies. Four days after the California Supreme Court's ruling on Proposition 103 (*see infra* LITIGATION), Aetna Life and Casualty announced a moratorium on the writing of new property and casualty insurance policies in California. While the company announced that it will continue to renew its present policies, it will no longer write new policies for auto, homeowner, and commercial liability insurance, all of which are lines of insurance affected by the passage of Proposition 103. The moratorium will not apply to workers' compensation and life insurance, lines which are not subject to the proposition. A company spokesperson said that the ban will remain in effect "at least until some of the issues that weren't resolved by the court are resolved by the Insurance Department." Aetna is the ninth largest property and casualty insurer in the California, and is based in Connecticut.

Workers' Compensation Audit. In April, the state Auditor General's Office released a audit of the the California workers' compensation insurance system. The audit, which was commissioned by the state legislature, reported that in a five-year period in which insurers' costs went up 60%, the Commissioner allowed an 85% increase in premiums. According to the report, the profit margin for this line of insurance went from $240 million in 1983 to $1.4 billion in 1987. The maximum weekly benefit a sick or injured worker can receive is $224 per week, an amount that places the California maximum benefit among the lowest compensation levels in the nation. The Commissioner sets premium rates for workers' compensation with the aid of the Workers' Compensation Insurance Bureau, an entity within DOI which conducts hearings and makes recommendations to the Commissioner on workers' compensation insurance. The Bureau's most recent request for an increase in premiums was denied; rates were instead lowered by 1%. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 74 for background information.)

Industry Warned on Rating Practices. In April, the Commissioner issued a notice in which she said that "cash-flow underwriting, inappropriate or undocumented application of rating plans, and destabilizing practices in the rating areas will, as in the past, not be tolerated." Department personnel who monitor compliance with rating statutes (Chapter 9 of Part 2 of Division 1 [Rates and Ratings and Other Organizations] of the Insurance Code) have been directed to keep a close watch on these specific activities by insurers. According to DOI, a "soft market" currently exists in the insurance market, characterized by insurers loosening their underwriting standards, lowering rates to attract customers, and accepting more risks. The Commissioner asserts that what she calls "undisciplined ratings practices"—prevalent in a soft market—encourage an extreme swing to a "hard market", characterized by the public's increased difficulty in obtaining insurance and higher costs for coverage. According to Commissioner Gillespie, "Soft markets can also result in financial instability and insolvency. And it is customers who eventually pick up the tab for insolvencies through assessments on their policies by the California Insurance Guarantee Association."

DOI Charges Companies with Ratings Violations. In April, DOI charged seven insurers with what Commissioner Gillespie called "sloppy ratings practices," and issued them notices of noncompliance. Maryland Casualty Company, Northern Insurance Company of New York, and Assurance Company of North America were cited for ratings errors in private passenger auto, commercial package and commercial monoline coverage that resulted in inequitable rate structures for customers in the same risk category. Federal Insurance Company, Pacific Indemnity Company, Vigilant Insurance Company, and Alliance Insurance Company were cited for rating violations in liability coverage sold to insure company officers and directors. According to DOI, these four insurers failed to maintain reasonable records documenting the basis of premiums they charged for this coverage. The seven companies were given ten days to comply, or appear at a public hearing.

Non-Renewal Warnings. In April, DOI warned six more insurers to stop issuing notices of nonrenewal, bringing to 17 the number of insurance companies so cited. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 73-74 for detailed background information.) The companies, National Indemnity, AIU Insurance, Central Mutual Insurance, All America Insurance, Dairyland Insurance, and Sentry Insurance appeared at public hearings to defend their positions. The Commissioner ordered the companies to discontinue their practice of issuing notices of nonrenewal, and to rescind all such notices previously issued; renew all California policies; and reinstate any policyholder who has not been renewed and has failed to find other coverage, if the nonrenewal was effective after November 8, 1988. Under the terms of Proposition 103, insurers may refuse to renew their policies only in cases of fraud, nonpayment of premium, or a substantial increase in the risk insured against.

Department Issues Guides. DOI has issued two more guides for people planning to buy insurance. *Consumers Guide to Group Health Insurance* and *Financing Your Insurance Premium: A Consumer's Guide* are both available at DOI offices or by calling the DOI's toll-free number.

LEGISLATION:

ACA 46 (Waters). This proposed amendment to the California Constitution, as amended June 12, would end the insurance industry's exemption from paying investment income taxes. Currently, insurers are liable for taxes only on

the gross income they derive from premiums. Under the terms of this bill, income from investments earned in California would be taxed at a rate of 9.3%. Conway Collis, a member of the state Board of Equalization, estimated that the tax would generate $250 million in revenue per year. This legislation is currently pending in the Assembly Committee on Revenue and Taxation.

SB 44 (Robbins) would require motor vehicle insurers to disclose available discounts, such as good driver, senior driver, student, and multiple car discounts, at the time of an offer to issue or renew a policy. Insurers would also be required to disclose the discounts to their agents and brokers, and to require them to make the required disclosures to applicants. This bill passed the Senate on April 27 and is now pending in the Assembly Committee on Finance and Insurance.

SB 458 (Robbins), as amended May 10, would amend section 700 of the Insurance Code to require the Commissioner to issue or deny applications for certificates of authority within 180 days of the date the application is perfected, to encourage new carriers to enter the insurance market. This bill passed the Senate on June 22 and is pending in the Assembly Committee on Finance and Insurance.

SB 464 (Robbins), which would amend section 699.5 of the Insurance Code, is meant to increase competition in the insurance industry by repealing the prohibition on the sale of insurance in California by companies that are owned or controlled by foreign governments. The bill passed the Senate on May 26 and is now pending in the Assembly Committee on Finance and Insurance.

SB 604 (Green), as amended May 8, would require the Commissioner to make an annual report to the legislature on property and casualty insurance coverages deemed to be unavailable or unaffordable. The Commissioner would be required to employ an independent loss reserve specialist to report whether the insurers' loss adjustment expenses are above the limit designated by the National Association of Insurance Commissioners. It would also require insurers to provide designated loss information, for a reasonable fee, to policyholders who request it. The bill, which passed the Senate on May 25, is pending in the Assembly Committee on Finance and Insurance.

SB 709 (Stirling), which is pending in the Senate Committee on Insurance, Claims and Corporations, would require auto insurers to pay a $500 reward to persons who find and report to law enforcement agencies stolen vehicles covered by the insurer. An April 24 hearing was cancelled at the author's request.

SB 795 (Deddeh) would make persons submitting false or fraudulent motor vehicle policy claims to insurers liable for twice the amount of the claim plus the reasonable attorneys' fees expended by the insurer. This legislation is pending in the Senate Judiciary Committee.

SB 1144 (Robbins). With the passage of Proposition 103, any changes in insurance rates after November 8, 1989 are subject to the prior approval of the Insurance Commissioner. This bill would extend the prior approval requirement to rate changes imposed between now and the implementation of Proposition 103's prior approval structure in November. The bill states that no rate increase will be approved in the absence of a showing that the insurer is substantially threatened with insolvency. SB 1144 is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 1232 (Kopp, Davis) would allow drivers to meet the state financial responsibility requirement by selecting either conventional liability coverage or a no-fault policy created by this legislation. Additionally, this bill would require insurers that offer motor vehicle liability coverage to also offer coverage providing for the payment of no-fault benefits. The no-fault policy would pay first-party benefits covering health care costs, lost wages, and other losses. This bill is similar to provisions of AB 744 (Calderon), but differs in that, at this writing, it does not yet spell out the scope of medical or wage-loss benefits it proposes. According to Senator Davis, those figures would be supplied by the insurance companies and trade associations that are assisting in the drafting of this legislation. The bill is pending in the Senate Judiciary Committee, as well as the Senate Committee on Insurance, Claims and Corporations. A May 8 hearing was cancelled at the authors' request.

SB 1298 (Ayala), as amended in April, provides that no insurance rate for private passenger automobile insurance shall be found to be excessive if the overall rate of return for underwriting and investment income is less than 10% of the premiums collected. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 1329 (Marks, Rosenthal) would reinstate a private third-party cause of action against an insurer for violation of the obligation of good faith dealing under Insurance Code section 790.03(h). The right of a private party to sue under that statute arose in the 1979 case of *Royal Globe Insurance Co. v. Superior Court*, 23 Cal. 3d 880, and was struck down in August 1988 in *Moradi-Shalal v. Fireman's Fund Insurance Co.*, 46 Cal. 3d 473. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 87 for background information.) If passed, the new law would state that a bad faith suit may not be filed until there is a final adjudication on the underlying claim of liability. This bill passed out of committee, but was placed in the inactive file at Senator Marks' request.

SB 1360 (Robbins) would establish a computer system to provide a comparative quotation system for insurance premiums. This system would be accessible from stand-alone computers in public places, and the consumer would pay a fee of not more than $10 for the first ten referrals. This bill is pending in the Senate Appropriations Committee.

SB 1361 (Robbins) would require property and casualty insurance policies to be accompanied by a risk reduction program, and would require that rate change applications filed with the Commissioner include the risk reduction program. This legislation passed the Senate on May 18, and is pending in the Assembly Committee on Finance and Insurance.

SB 1363 (Robbins), as amended May 9, would provide that a person engaged in the business of insurance who violates existing provisions relating to unfair and deceptive acts is liable for a penalty of up to $1,000 for each act, or $5,000 for a willful violation for each act. This bill passed the Senate on June 1, and is pending in the Assembly Committee on Finance and Insurance.

SB 1364 (Robbins). Under current law, an insurer who violates an order from the Commissioner to stop selling insurance at rates found to be excessive, inadequate, or unfairly discriminatory may be fined $10,000 in total or $100,000 in total for willful violations. This bill would additionally provide that a person who violates certain provisions relating to rates is liable for a penalty of up to $1,000 for each act, or $5,000 for each act for a willful violation. The proposal passed the Senate on June 1, and is pending in the Assembly Committee on Finance and Insurance.

SB 1518 (Nielsen), as amended in April, would impose a two-year prohibition on the Insurance Commissioner from being employed in the insurance industry after leaving office. It would also provide that the office of Insurance Commis-

sioner is to be a nonpartisan office. SB 1518 passed the Senate on May 11, and is pending in the Assembly Committee on Finance and Insurance.

SB 1534 (Marks), which is pending in the Senate Appropriations Committee, would require the Commissioner to create a six-county pilot project to establish a centralized information and referral system for information about health care insurance.

SB 1695 (Keene) would enact changes in DOI's Bureau of Fraudulent Claims similar to those of AB 186 (Floyd) (discussed below) making the Bureau subject to the direct supervision of the Commissioner and authorizing the Bureau to directly prosecute some violations of law. The bill passed the Senate on June 8, and is pending in the Assembly Committee on Finance and Insurance. *AB 895 (Wright)*, which would make these same changes, is also pending in the Assembly Committee on Finance and Insurance.

AB 868 (Bradley) would create an assigned risk plan for health insurance similar to the one that currently exists for automobile insurance. This bill is currently pending in the Assembly Committee on Finance and Insurance.

AB 1156 (Bane) would prohibit insurers from monopolizing or attempting to monopolize any class of insurance; prohibit agreements to adhere to rates, refuse to provide or withhold any class of insurance, or commit any act of boycott, coercion or intimidation; and would also prohibit rating organizations from precluding any insurer from making independent rates. This bill is pending in the Assembly Committee on Finance and Insurance.

AB 1721 (Friedman, et al.), as amended May 11, would prohibit life and disability insurers from discriminating in eligibility, terms of coverage, or rates on the basis of sexual orientation, marital status, living arrangements, occupation, gender, beneficiary designation, and zip code or other territorial designation. This legislation is pending in the Assembly Ways and Means Committee.

AB 1952 (Moore) would supplement provisions of Proposition 103 which require casualty insurers to file an application for any rate change with the Insurance Commissioner. The legislation would require the insurer's application to include certain information not required by Proposition 103. Additionally, insurers would be required to notify by mail each of their policyholders affected by a proposed rate change. Finally, this bill would define when rates are to be deemed inadequate or excessive. This bill is pending in the Assembly Committee on Finance and Insurance.

AB 2267 (Connelly), as amended May 17, would mandate that long-term care insurers and agents owe customers a duty of honesty, good faith, and fair dealing, and would provide that no insurer, broker, or agent shall cause a policyholder to replace a long-term care insurance policy unnecessarily. This bill is pending in the Assembly Committee on Ways and Means.

AB 2315 (Brown) is Assembly Speaker Willie Brown's "comprehensive cost-containment proposal" unveiled at a May 22 Sacramento press conference. The bill seeks to provide affordable liability automobile insurance for people unable to find or afford such coverage, and to reduce uninsured motorist premiums for all drivers. As introduced, the bill would offer qualified low-income persons a minimum liability insurance policy for $350 per year; good drivers with moderate or higher incomes would be able to buy the same policy for $500.

The bill would preserve the tort system for resolving auto accident claims, but would also establish an optional fast-track binding arbitration system for claims of $50,000 or less. AB 2315 also includes several provisions designed to cut insurers' claims costs by reducing injuries, death, property damage, and fraud, including proposals to toughen enforcement of mandatory seat belt laws, required periodic safety inspections of vehicles, required safety bumpers, and strengthened standards for child safety seats. The bill would also add $1 to the cost of vehicle registration to adequately fund the investigation and prosecution of auto insurance fraud, to encourage a crackdown on fraud in California.

AB 2315 was scheduled for a June 21 hearing in the Assembly Finance and Insurance Committee.

The following is an update of bills discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at pages 86-88 and Vol. 9, No. 1 (Winter 1989) at pages 74-75:

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 resolution is now pending in the Senate Appropriations Committee.

SCR 22 (Robbins), which would request a freeze in assigned risk auto insurance premium rates until January 1, 1990, or until the Department of Insurance has received certain cost data, is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 6 (Robbins), as amended May 9, 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. This legislation, which was vetoed by the Governor last year, passed unopposed out of the Senate Insurance, Claims and Corporations Committee, and is now pending in the Senate Appropriations Committee.

SB 167 (Lockyer) would require that automobile accident claims under $25,000 be submitted to an arbitration system, rather than adjudicated by lawsuit. This bill passed the Senate on May 26, and is pending in the Assembly Judiciary Committee.

SB 205 (Hart) would set forth rules regarding the election and functions of the post of Insurance Commissioner, including restrictions on contributions and loans, and conflict-of-interest rules regarding decisions on proposed rate changes. It would also restrict the Commissioner from working for an insurer for two years after leaving office. The legislation is pending on the Senate floor.

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 passed the Senate on June 1, and is pending in the Assembly Committee on Finance and Insurance.

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 bill passed in the Assembly by a vote of 65-0, and has been sent to the Senate, where it is pending in the Committee on Health and Human Services.

AB 37 (Bane) 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 on the Assembly floor.

AB 60 (Isenberg), as amended June 12, 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. This program would be limited to persons who have met the definition of an employee, as specified, their dependents, and employers that have contributed to the Unemployment Fund. This bill is pending in the Assembly Committee on Ways and Means.

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 automobile repair facilities. This bill has passed the Assembly and has been sent to the Senate, where it is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 121 (Johnston), which would require that every insurer who cancels or fails to renew policies in violation of Proposition 103 to offer the insured the right to renew or reinstate the policy, was placed in the inactive file at the author's request.

AB 186 (Floyd). Under current law, DOI's Bureau of Fraudulent claims is subject to sunset on January 1, 1992 if the legislature does not act to extend its life. As amended April 11, this bill prescribes the functions of the Bureau and creates it to exist indefinitely. This bill passed the Assembly on May 25, and is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 243 (Calderon) would create 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. 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. The two bills would add to the qualifications in the proposition, requiring that the insured must not have been convicted of driving under the influence of alcohol or other drugs for three years prior to application. AB 249 is pending in the Assembly Committee on Finance and Insurance, while AB 451 is pending in the Assembly Ways and Means Committee.

AB 263 (Floyd) would require DOI and the Department of Motor Vehicles to directly accept the applications for automobile liability insurance under the state's assigned risk plan and would prohibit those departments from charging any commission with respect to the applications. This legislation is pending in the Assembly Committee on Finance and Insurance.

AB 327 (Floyd). Existing law regulates insurance policies to supplement Medicare. As amended May 17, this bill would enact parallel provisions applicable to other senior health insurance, as well as provide for a 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 Ways and Means Committee.

AB 744 (Calderon), as amended May 1, is a rival no-fault bill to Assemblymember Johnston's AB 354 (discussed below). This bill would give California drivers a choice between obtaining traditional, liability-based policies or no-fault coverage. No-fault policyholders would not have the option to sue for claims arising under their policies, and the system 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), as amended May 22, would repeal section 1208 of the Financial Code, amend section 772 and add section 780. Sections 772 and 1208 are two provisions of the Financial Code that restrict the sale of insurance by banks after Proposition 103's endorsement of such sales. This bill is pending in the Assembly Ways and Means Committee.

SB 3 (Roberti), as amended April 17, would create the Insurance Consumer Advocate's Office in the state Department of Justice. This body would have the authority to intervene on behalf of consumers in any judicial or administrative proceeding related to insurance. SB 3 is currently pending on the Senate floor. *SB 41 (Green)*, which would create a similar entity, is pending in the Senate Appropriations Committee.

SB 5 (Roberti). A provision of Proposition 103 declared invalid by the California Supreme Court would have required certain insurers to enclose a notice in policy or renewal bills concerning the policyholder's opportunity to join a nonprofit corporation to advocate consumer interests. (*See infra* LITIGATION.) As amended May 15, this bill would add a similar provision applicable to every insurer. This bill passed the Senate on May 22, and is pending in the Assembly Committee on Finance and Insurance.

SB 103 (Robbins), as amended March 27, provides that any insurer that fails to renew or cancels, as prescribed, at least 5% of its policies of private passenger automobile insurance during any thirty-day period between the effective date of the bill and November 8, 1989, shall be required to offer to renew and shall be liable to policyholders for the cost of a replacement policy. Those insurers would also be liable for a penalty imposed by the Insurance Commissioner and for the costs of hearings. This legislation passed the Senate in February, but has twice failed on the Assembly floor. Senator Robbins plans to push for reconsideration.

AB 354 (Johnston), as amended June 15, 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 narrowly passed out of the Assembly Finance and Insurance Committee, and is now pending in the Assembly Ways and Means Committee.

LITIGATION:

Proposition 103 Upheld. On May 4, the California Supreme Court unanimously upheld most of the provisions of Proposition 103, an insurance reform initiative that was approved by the voters in November. (See Vol. 9, No. 2 (Spring 1989) p. 88 and Vol. 9, No. 1 (Winter

1989) pp. 73-76 for detailed background information.) The court struck down only two sections of the initiative, leaving intact the rollback in auto insurance rates to 20% below the levels in effect on November 8, 1987.

In the opinion, written by Justice Allen Broussard, the court stated that "except for the insolvency standard, the provisions of Proposition 103 relating to the setting of rates, and procedures for the adjustment of rates, do not on their face deprive insurers of due process under the state or federal Constitutions." The "insolvency standard" refers to a portion of the initiative, section 1861.01(b), which provides for relief from rate reduction for insurance companies that are "substantially threatened with insolvency." The court determined that the insolvency standard is too high a test, and that "[o]ver the long term the state must permit insurers a fair return; we do not perceive any short term conditions that would require depriving them of a fair return."

On the subject of the statute's limitation on the power of insurers to refuse to renew policies, section 1861.03(c), the court ruled that the provision may apply "to policies in effect when the initiative was enacted," as well as policies written after the law's passage. Insurers had argued that any such restriction would unconstitutionally impair their right to contract freely. The court pointed out that insurance companies may end their obligation to their insureds by withdrawing from the California market through the procedure outlined in Insurance Code section 1070 *et seq.*, and surrender of their certificates, rather than through refusals to renew.

In section 1861.10(c), Proposition 103 provided for the formation of a consumer advocacy corporation, and would have required insurers to include a notice in premium envelopes inviting policyholders to become members of that group. The Court found that formation of such a corporation would violate article II, section 12 of the California Constitution, which forbids an initiative statute from identifying a private corporation to perform any function.

Each of the provisions struck down by the Court were found to be severable from the viable portion of the initiative.

The court did not rule on the insurers' argument that the proposition's requirement that the State Board of Equalization adjust the gross premium tax imposed upon insurance companies would violate several provisions of the California Constitution. The initiative calls for an increase in the tax to prevent the state from losing revenue as premiums—the base upon which the tax is figured—are reduced. A decision on this matter would be inappropriate, the court declared, because of article XIII, section 32 of the California Constitution, which states: "No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax." The court went on to state that the appropriate time to adjudicate this issue would be after an insurance company had paid this increased tax and files suit for a refund of the payment.

In late May, the insurance companies which brought the suit announced their decision not to appeal the decision of the California Court to the U.S. Supreme Court.

Antitrust Suit. The Attorneys General of the eighteen states suing 32 insurance companies for alleged conspiracy recently filed briefs in response to motions to dismiss filed in December by the insurers. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 76 and CRLR Vol. 8, No. 4 (Fall 1988) p. 87 for detailed background information.) According to the states, the insurers and reinsurers engaged in an "overarching conspiracy" and used "boycott, coercion and intimidation" to restrict the availability and coverage of commercial liability insurance, as well as drive up the price.

The states countered the insurers' assertion that under the terms of the McCarran-Ferguson Act, which exempts insurance companies from most of antitrust law, they are permitted to enter into in an "agreement on policy terms." Asserting that the agreement amounts to a boycott, the Attorneys General argued that any immunity under McCarran-Ferguson would be removed.

In the December motions, the insurance companies contended that the states should not be permitted to assert claims as to the policy provisions, since the commissioners of the various states approved their use. In response, the Attorneys General pointed out that even in states that did approve the policy language, such authorization did not endorse "coercive conduct" on the part of the insurers.

The states also pointed out that McCarran-Ferguson applies only to insurance companies that are regulated by state law. The sale of reinsurance, insurance sold to insurance companies, is not regulated by the states. Since reinsurance agencies are therefore not exempt from antitrust law, their alleged collusion with insurance companies strips the insurance companies of protection as well.

The insurers' dismissal motions in the case, *In re Insurance Antitrust Litigation*, No. C88-1688WWS (U.S.D.C. N.D.Cal), were set for a hearing on July 7. The suit is being heard in San Francisco by Judge William W. Schwarzer, a former antitrust defense attorney.

DEPARTMENT OF REAL ESTATE

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). 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