not include a nonprofit organization operated on a cooperative basis by and for independent retailers, under specified conditions. This bill was signed by the Governor on October 2 (Chapter 1380, Statutes of 1989).

SB 1212 (Keene), as amended July 12, requires, among other things, that prior to acquiring 10% or more of the capital stock or of the capital of an industrial loan company, the person seeking the acquisition shall make written application to the Commissioner requesting written consent for the acquisition. This bill was signed by the Governor on September 21 (Chapter 663, Statutes of 1989).

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *AB 1125 (Chandler)*, which would specify that a director of a nonprofit mutual benefit corporation is required to perform his/her duties in a matter the director believes to be in the best interests of the members of the corporation; *AB 1666 (Wright)*, which would exempt specified transactions from qualification with the Commissioner under the Corporate Securities Law of 1968; *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; *AB 10 (Hauser)*, which would create the California Health Insurance Program; *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; and *SB 1444 (Boatwright)*, which authorizes 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.

DEPARTMENT OF INSURANCE

Commissioner: Roxani Gillespie
(415) 557-3245
Toll Free Complaint Number:
1-800-233-9045

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 re-established 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 Freezes Statewide Auto Insurance Rates and Schedules Hearings to Implement Portions of Proposition 103. In the wake of a consumer lawsuit alleging that she has refused to comply with the state Administrative Procedure Act (APA) in implementing Proposition 103, Commissioner Gillespie on October 2 imposed an immediate six-month freeze on private passenger auto insurance rates. The freeze came at a time when several insurance companies had made known their intention to substantially raise auto insurance rates before November 8, the date upon which the initiative's "prior approval" system became effective (that is, no rate may be changed unless the Commissioner has approved it). The action cancelled a 5.9% increase the Farmers group had planned to implement on November 1, and State Farm's anticipated 29-36% increase of "problem driver" rates by November 8. (See CRLR 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.)

Commissioner Gillespie also announced

that separate hearings would begin simultaneously on October 30 for discussion of methods to implement key portions of Proposition 103, enacted by California voters in November 1988. One hearing will center on the applications of almost 450 insurance carriers for exemptions from the rollback mandated by the measure. The main task at this adjudicatory proceeding, which might take months, will be the definition of "fair rate of return," the court-ordered measuring stick for exempting companies from the otherwise required rollback of rates to a level 20% below November 1987 rates. In upholding Proposition 103, the California Supreme Court held in May that a company should be exempt to the extent the required cut prevents the company from receiving a fair rate of return on equity. The Commissioner subsequently set an 11.2% profit as a fair rate of return—a figure criticized by consumer advocates and the Attorney General as being both too high and unlawfully conceived (*see infra*).

The other hearing is intended to result in emergency rules on the initiative's auto rating criteria and good driver discount. Proposition 103 requires that auto 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." The measure also requires companies to offer a special rate for good drivers. Consumer groups had criticized the Commissioner for refusing to commence APA rulemaking proceedings to define "good driver" and to determine which "other factors" may be considered in setting rates. Commissioner Gillespie indicated that, following the hearing commencing on October 30, she would adopt emergency regulations for implementation of the rating criteria section of Proposition 103 by the end of November.

Upon the announcement of the rate freeze and hearings, insurance industry representatives questioned the Commissioner's authority to freeze rates and suggested a legal challenge may be forthcoming. As authority for her action, the Commissioner cited language in the Supreme Court's decision giving her the power to set an interim rate.

Meanwhile, Commissioner Gillespie's announcement appeared to moot a consumer suit seeking a writ of mandate and injunctive and declaratory relief filed against the Commissioner on September 7. The action—brought by the Proposition 103 Insurance Action Intervention Team, Voter Revolt, the Center for Public Interest Law, and the Los Angeles chapter of the NAACP—alleged that Commissioner Gillespie violated the APA by "unilaterally, arbitrarily and capriciously deciding (or ignoring) issues of fundamental importance in the rulemaking process." The action sought a court order to force the Commissioner to: (1) abandon any regulation she adopted unilaterally and without public hearings; (2) hold rulemaking hearings or a generic adjudication proceeding to determine what constitutes a "fair rate of return"; (3) hold hearings on all matters requested by the Attorney General or the Intervention Team; and (4) immediately start the rulemaking process as required by the APA to determine additional auto rating criteria. Commissioner Gillespie's plans to hold an adjudicatory proceeding on rollback exemptions and a separate hearing aimed at creating emergency regulations on additional ratings factors appear to cover the requests made of the court in the consumer lawsuit.

Commissioner Gillespie's early October announcement followed a turbulent summer. In May, the Commissioner announced a June 3 deadline for filing applications for exemptions from the Proposition 103 rollback requirement, and the response was overwhelming. Some 443 property/casualty insurance companies submitted 850 boxes containing 3,922 applications for exemptions in various lines of insurance coverage.

The Commissioner then scheduled a series of public informational hearings "to solicit comment on proposed language for regulations implementing Proposition 103." But the hearings—held on June 19-20 in Los Angeles and June 22-23 in San Francisco—were termed a "farce" and "an insurance industry convention" by supporters of Proposition 103. Industry representatives used the stage to declare the need for continued use of territorial factors in determining insurance rates—a procedure the measure sought to discontinue or, at least, diminish. Insurers and consumer advocates could agree only that any implementation of Proposition 103 would likely result in litigation.

In July, Attorney General John Van de Kamp urged the Commissioner to adopt "tough rules" for evaluating insurance company financial statements. Close scrutiny, the Attorney General said, would unveil "bogus claims" and "manipulated numbers" that would ultimately result in rebates to all consumers. Commissioner Gillespie, however, rejected "the generic approach," because of the diversity of companies.

On July 24, the Commissioner announced that 230 insurance companies had voluntarily rolled back their rates as directed by Proposition 103. But the cuts mostly aided businesses and none of the reduced rates were for personal auto insurance.

A week later, Commissioner Gillespie tentatively ordered seven major insurance companies to roll back rates for lines other than automobile coverage. But in announcing her first Proposition 103 enforcement action—$305 million in rollbacks for non-auto policies offered by 20th Century, Allstate, California State Automobile Association, Progressive Casualty, Safeco, United Services Automobile Association, and State Farm Fire and Casualty—the Commissioner also stated her belief that insurers generally lose money on auto coverage and announced that 11.2% would be considered a fair rate of return in evaluating rollback exemption applications. The figure, she said, was based on a fifteen-year industry average.

Advocates of Proposition 103 responded on August 8 by requesting hearings on all of the nearly 450 applications for rollback exemptions. They charged that Commissioner Gillespie was biased in favor of insurers, claiming that there were no numbers to support the 11.2% figure.

Territorial rating was the primary topic during a week of hearings in San Diego (August 14), Los Angeles (August 15), Fresno (August 16), San Francisco (August 17), and Eureka (August 18). Proposition 103 advocates attacked the rating system. In Los Angeles, the system was assailed for discriminating against the poor in the inner city, where rates are the highest. And in rural areas, where the elimination of a driver's residence as a factor could result in increased rates, territorial rating was supported.

On August 22, Commissioner Gillespie tentatively ruled that more than 200 insurance companies—including industry giants State Farm Mutual, Farmers, Automobile Club of Southern California, and Mercury Casualty—would be exempt from Proposition 103 rollbacks. The four companies alone write more than one-third of California's auto insurance policies. She also set exemption review hearings for thirteen companies and determined others would be placed on a slow track for which the review process "could drag on as long as ten years." The Commissioner's announcement enraged con-

sumer advocates. Harvey Rosenfield, author of Proposition 103, denounced her review process as a "kangaroo court." And a week later, Walter Zelman, Executive Director of California Common Cause, wrote a letter to Governor Deukmejian, urging him to assume personal responsibility for implementing the measure. Commissioner Gillespie, Zelman wrote, was "clearly floundering." The letter was dismissed as a political move by a spokesperson for the Commissioner. Gillespie had announced her candidacy for the elected Insurance Commissioner post, and Zelman was then a potential—and now official—candidate for the office (*see infra*).

On September 6, however, Commissioner Gillespie reversed her position, ruling that State Farm, Farmers, Auto Club, and Mercury would be subject to immediate hearings on their applications for exemption from the rollbacks. "The four will be asked to open their books to the public," the Commissioner said. Rosenfield called the Commissioner's announcement "a major reversal, a correct reversal."

Then, on September 12, Commissioner Gillespie announced an interruption of the ongoing rate rollback hearings for Allstate and Safeco insurance companies in order to hold "generic" hearings to create a master plan for determining rate rollbacks under Proposition 103. This announcement was also applauded by consumer groups.

Before the master plan hearings could be scheduled, however, those plans were set aside by the Commissioner's more specific implementation plans, announced on October 2.

Commissioner Gillespie Files Candidacy Declaration. On June 16, Commissioner Gillespie filed a declaration of candidacy with the state Fair Political Practices Commission. This is seen as the first step toward becoming a candidate for her job when it becomes an elective office next year. However, a spokesperson for DOI said that Gillespie has not yet made a decision to run for office; instead, she is "just exploring the possibility that she may run." In August, Commissioner Gillespie started a series of press conferences and hearings to discuss Proposition 103. This move was seen by some news reporters as the unofficial beginning of Gillespie's campaign for the elected position of Insurance Commissioner. In November 1988, Gillespie had ruled out running for the office, but recently has come under increasing pressure to run from Republican leaders.

Walter Zelman, Executive Director of California Common Cause and an oft-mentioned potential candidate for the Democratic nomination, announced on September 22 that he was seeking a leave of absence to "explore" a run for the office in the June 5 primary. He became the third candidate actively seeking the Democratic nomination, joining Board of Equalization member Conway Collis and Los Angeles television commentator Bill Press. Other potential candidates include Republicans Tom Skornia of San Jose, a proponent of tort reform, and state Senator John Doolittle of Roseville.

Commissioner Holds Hearings on Assigned Risk Insurance. Due to increasing problems with assigned risk auto insurance policies and a rate increase request by the California Automobile Assigned Risk Plan (CAARP) board, Commissioner Gillespie scheduled four hearings during August for discussion on the subject. The hearings took place on August 21 and 22 in San Francisco, and on August 24 and 25 in Los Angeles. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 85 for background information.)

CAARP was enacted in California in 1947 so that drivers with poor records, unable to obtain affordable auto insurance or any insurance at all, could obtain insurance at reasonable rates. The plan was also intended to protect good drivers from uninsured bad drivers. Originally, CAARP rates were higher than non-CAARP rates; but recently, in southern California, the reverse has been true such that good drivers are alleging that they are unable to buy auto insurance (a prerequisite to obtaining CAARP insurance) so they might become eligible for the assigned risk plan. This has caused a staggering increase in the number of assigned risk drivers. Nine out of every ten CAARP drivers in the state are from southern California. The influx of drivers from non-assigned risk to assigned risk has caused the plan to operate at a deficit. Good drivers make up the deficit by paying higher rates that subsidize drivers in the assigned risk plan. To combat this problem, the CAARP board requested a 112% increase in private passenger auto rates.

At the August 24 hearing in Los Angeles, Commissioner Gillespie criticized the CAARP program as "riddled with problems [and] fraud." In addition, Gillespie leveled criticism at the CAARP board, alleging that there was a lack of leadership in administering the plan.

The following day, DOI Presiding Administrative Law Judge J.L. Whitfield called for an analysis of a purported $116 billion insurance industry surplus to determine whether it should be used to absorb the CAARP deficit. In 1987, the CAARP deficit was $262 million, with estimates of $400 million for 1988, and $600 million this year.

Several witnesses presented testimony which revealed numerous cases where wealthy individuals with good driving records (who could obtain the more expensive non-assigned risk insurance) bought the "cheaper" assigned risk insurance. Opponents of the proposed rate increase said it would drive a large number of indigent motorists out of the insurance market. Other concerns included the possible deportation of aliens with poor driving records, clogging of the courts, the inability of public transportation to handle increased ridership, and low-income drivers cutting back on food and clothing purchases to pay the higher rates. Insurers testified that non-assigned risk drivers subsidize CAARP drivers to the tune of $60 to $75 per vehicle.

Regarding a request to order a study of salaries paid to top insurance executives, ALJ Whitfield declined, questioning the relevance of such data. However, he did say the item would be considered in reconvened hearings in San Francisco scheduled for mid-September.

DOI Issues Health Care Insurance Guides. On July 5, DOI announced that consumers could obtain free copies of a DOI publication which helps consumers make informed decisions about long-term care insurance. The guide discusses the laws relating to long-term care insurance, the common provisions of such insurance policies, coverage limitations, and referrals for questions or problems. On August 14, DOI offered another free publication called *Health Insurance When You're Not In A Group.* The purpose of this guide is to help consumers make informed choices on individual health insurance. The booklet explains how various plans work, offers suggestions on applying for coverage and filing claims, and provides referral information for questions and problems. Copies of either guide are available by calling DOI's toll-free hotline at (800) 233-9045.

DOI Accuses Insurance Agency of Defrauding Senior Citizens. On June 26, DOI accused Escobar's Insurance Agency, Inc., a Modesto insurance agency, of defrauding approximately 680 senior citizens in a scheme to generate higher sales commissions. A DOI investigation has resulted in allegations that Escobar's Insurance Agency told agents to mis-

represent Medicare benefits to induce clients to switch from one insurer to another. The switch in insurers resulted in higher commissions for the agency. Additionally, DOI alleges that agents misled seniors into believing that higher premiums would provide better benefits, and that agents encouraged seniors to keep two overlapping policies in effect, thus causing costly and unneeded double coverage. The Department seeks to suspend or revoke the licenses of the agency and its principals, and has scheduled a hearing for March 12-16, 1990.

DOI Orders Insurers to Quit California Business. On June 15, Commissioner Gillespie ordered two Illinois insurers, Mead Insurance and Amalgamated Labor Life, to stop doing business in California because both insurers were threatened with insolvency. Similarly, on August 10, DOI barred Modern Pioneers' Life Insurance Company of Phoenix because of solvency problems. All companies involved are disallowed from conducting business in California pending the outcome of a hearing.

LEGISLATION:

AB 580 (Banes), as amended September 13, repeals Article 10 (commencing with section 1861) of Part 2 of Division 1 of the Insurance Code, which limits auto insurers to an after-tax underwriting profit of 5% on earned premiums. This bill was signed by the Governor on September 26 (Chapter 933, Statutes of 1989).

SB 1709 (Robbins), as amended August 21, amends section 1858.2 of the Insurance Code. Under section 1858.2, the Insurance Commissioner may hold a hearing concerning the validity of an insurance rating plan or rating system after a complaint by an aggrieved person or if the Commissioner orders an insurer to correct a noncompliance and the insurer fails to establish that the noncompliance does not exist. This bill requires the Commissioner to issue his/her decision in these cases no later than 60 days after completion of the hearing. This bill was signed by the Governor on September 30 (Chapter 1176, Statutes of 1989).

AB 2429 (Hill) would make changes to the Business and Professions Code, the Civil Code, the Evidence Code, the Insurance Code, and the Vehicle Code. Initially, this bill would provide 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. Additionally, this bill would provide that each owner of a motor vehicle must maintain insurance that would provide required loss benefits with an overall limit of $35,000; persons injured in a motor vehicle accident would generally be entitled to receive those benefits regardless of fault. This bill would also establish a Consumer-Industry Advisory Committee to advise the Insurance Commissioner regarding motor vehicle insurance. Finally, this bill would require insurers to reduce premium rates on January 1, 1990, for private passenger automobile insurance by 20% below the corresponding rates in effect April 30, 1989, as specified, and would prohibit rate increases for this insurance until January 1, 1991, except for a change in risk or if the Insurance Commissioner determines the rate threatens the financial condition of the insurer. This bill is a two-year bill pending in the Assembly Committee on Finance and Insurance.

AB 2470 (Wright), which would require 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, expressly indicating those insurance acts and practices which were affected by statutes chaptered during the preceding year, is a two-year bill pending in the Assembly Committee on Finance and Insurance.

The following is a status update of bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 83-86:

SB 5 (Roberti), which would have facilitated the formation of a nonprofit organization to advocate for consumers in insurance-related proceedings, and would have required insurers to notify policyholders by mail of their ability to join the organization, failed passage in the Assembly on September 15.

SB 6 (Robbins), as amended August 28, would have created 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 bill was vetoed by the Governor on September 30.

SB 44 (Robbins), as amended August 30, requires motor vehicle insurers to disclose available discounts, such as good driver, senior driver, student, and multiple car discounts, at the time of offering to issue or renew a policy. Insurers are also required to disclose the discounts to their agents and brokers, and to require them to make the required disclosure to applicants. This bill was signed by the Governor on October 1 (Chapter 1272, Statutes of 1989).

SB 103 (Robbins) would have provided that any insurer that fails to renew or cancels 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, would be required to offer to renew and would be liable to policyholders for the cost of a replacement policy. This bill failed passage in the Assembly on May 8.

SB 167 (Lockyer), as amended September 6, requires all civil actions pending on or after July 1, 1990, in a municipal court which has adopted judicial arbitration, which involve a claim against a single defendant for money damages as a result of a motor vehicle collision, except those heard in small claims court, to be submitted to judicial arbitration within 120 days of the filing of the defendant's answer to the complaint, unless that deadline is extended by the court for good cause. This bill was signed by the Governor on September 25 (Chapter 894, Statutes of 1989).

SB 205 (Hart), which would have set forth rules regarding the election and functions of the post of Insurance Commissioner, failed passage in the Senate on June 29.

SB 458 (Robbins), as amended August 24, requires the Commissioner to either issue or deny a certificate of authority within 180 days of the date the application is perfected. This bill was signed by the Governor on September 22 (Chapter 708, Statutes of 1989).

SB 1360 (Robbins), as amended September 7, would have required DOI to establish a telephonic insurance information system to give insurance consumers basic insurance information. This bill was vetoed by the Governor on September 26.

SB 1361 (Robbins), as amended September 15, provides that, in order to qualify for a good driver discount policy, within the last three years the person must not have accumulated more than one motor vehicle violation point count, as specified, more than one dismissal after attending driving school other than a dismissal made confidential by this bill, been in violation of a provision prohibiting a minor driving a vehicle with 0.05% or more blood alcohol, or been at fault in certain accidents. This bill was signed by the Governor on October 2 (Chapter 1465, Statutes of 1989).

SB 1363 (Robbins), as amended September 11, provides that a person engaged in the business of insurance who

violates provisions relating to unfair and deceptive acts is liable for a penalty of up to $5,000 for each act, or $10,000 for a willful violation for each act. This bill was signed by the Governor on September 24 (Chapter 725, Statutes of 1989).

SB 1364 (Robbins), as amended September 11, provides that a person who violates provisions relating to insurance rates is liable for a penalty of up to $5,000 for each act, or $10,000 for each act for a willful violation. This bill was signed by the Governor on September 24 (Chapter 726, Statutes of 1989).

SB 1534 (Marks), which, as amended September 1, would have required DOI to establish a centralized information and referral service for information about health coverage, was vetoed by the Governor on September 26.

AB 2267 (Connelly), as amended August 21, provides that for long-term care insurance all insurers, brokers, agents, and others engaged in the business of insurance owe a policyholder a duty of honesty, and a duty of good faith and fair dealing. This bill was signed by the Governor on September 21 (Chapter 631, Statutes of 1989).

AB 2315 (Brown), the Speaker's "comprehensive cost-containment proposal" which sought to provide affordable liability auto insurance for people unable to obtain or afford such insurance, was vetoed by the Governor on October 2.

SCR 13 (Robbins), as amended August 24, requires the Senate Office of Research to report its findings relating to a study of disability insurers and nonprofit hospital service plans to determine the number of insurers and plans that currently provide specified mental health coverage and the need therefor. This resolution was chaptered on September 15 (Chapter 122, Resolutions of 1989).

AB 27 (Johnston), which prohibits 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, was signed by the Governor on September 25 (Chapter 824, Statutes of 1989).

AB 103 (Connelly) reenacts 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 was signed by the Governor on September 12 (Chapter 372, Statutes of 1989).

AB 186 (Floyd), was amended on July 17 to delete previous language prescribing the functions of DOI's Bureau of Fraudulent Claims and creating it to exist indefinitely.

AB 327 (Floyd), as amended September 7, specifies that existing provisions of law regarding motor vehicle liability insurers do not prohibit an insurer from limiting its insurance to persons who are or formerly were in governmental or military service and their spouses, dependents, and former dependents. This bill was signed by the Governor on September 29 (Chapter 1128, Statutes of 1989).

AB 60 (Isenberg), as amended September 13, creates the California Major Medical Insurance Program to provide health insurance to state residents who are not able to obtain it in the private sector. This bill was signed by the Governor on September 29 (Chapter 1168, Statutes of 1989).

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *ACA 46 (Waters)*, which, as amended August 30, would end the insurance industry's exemption from paying investment income taxes; *SB 3 (Roberti)*, which would create the Insurance Consumer Advocate's Office in the state Department of Justice; *SB 207 (Boatwright)*, which would require insurers subject to Proposition 103 ratesetting regulation to submit a quarterly report to the Commissioner relating to the Commissioner's ratesetting procedures; *SB 464 (Robbins)*, which 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; *SB 604 (Green)*, which would require, among other things, the Commissioner to annually report to the legislature on defined property/casualty insurance lines; *SB 709 (Stirling)*, which 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; *SB 795 (Deddeh)*, which would make 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 extend the prior approval requirement to rate changes imposed between now and the implementation of Proposition 103's prior approval structure in November; *SB 1232 (Kopp, Davis)*, which would allow 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 reinstate 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 provide that no 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; *SB 1518 (Nielsen)*, which would prohibit the Insurance Commissioner from being employed in the insurance industry for two years after leaving office; *SB 1695 (Keene)*, which would enact changes in DOI's Bureau of Fraudulent Claims; *SB 868 (Bradley)*, which would create an assigned risk plan for health insurance similar to the one that currently exists for automobile insurance; *AB 1156 (Bane)*, which would prohibit, among other things, insurers from monopolizing or attempting to monopolize any class of insurance; *AB 1721 (Friedman)*, which would prohibit life and disability insurers and health care service plans from discriminating, as to eligibility or rates, on the basis of sexual orientation; *AB 1952 (Moore)*, which would supplement provisions of Proposition 103 which require casualty insurers to file an application for any rate change with the Insurance Commissioner; *SCR 22 (Robbins)*, which would request a freeze in assigned risk auto insurance premium rates until January 1, 1990, or until the DOI has received certain cost data; *AB 10 (Hauser)*, which would create the California Health Insurance Program within the Department of Health Services; *AB 37 (Bane)*, which 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; *AB 121 (Johnston)*, which would require 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 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; *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 require DOI and the Department of Motor Vehicles to directly accept 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; *AB 354 (Johnston)*, a modified "no-fault" bill which would require 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; *AB 451 (Johnston)*, regarding the qualifications that must be met in order to qualify for a good driver discount policy; and *AB 744 (Calderon)*, which would give California drivers a choice between obtaining traditional, liability-based policies or no-fault coverage.

LITIGATION:

A U.S. District Court judge dismissed *In re Insurance Antitrust Litigation*, No. C88-1688 WWS (U.S.D.C. N.D.Cal.), a lawsuit brought by the attorneys general of nineteen states, including California, alleging that 32 American and British insurance companies conspired to restrict the availability and coverage of commercial liability insurance, thus driving up the price. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 87; Vol. 9, No. 1 (Winter 1989) p. 76; and Vol. 8, No. 4 (Fall 1988) p. 87 for detailed background information.) Immediately following the ruling of U.S. District Judge William J. Schwarzer on August 21, California Attorney General John Van de Kamp announced he would appeal the decision to the U.S. Ninth Circuit Court of Appeals. On July 28, Judge Schwarzer had issued a notice of intended decision to dismiss the action because the domestic insurers are immune from the McCarran-Ferguson federal antitrust laws. As to the British insurers, Judge Schwarzer intended to dismiss because the court lacks subject matter jurisdiction. Following a hearing on the proposed ruling, the court issued a final ruling on the same grounds.

In *Zephyr Park, Ltd. v. Superior Court*, No. D010472 (Aug. 30, 1989), the Fourth District Court of Appeal held that first-party bad-faith actions against insurers are barred by the rule in *Moradi-Shalal v. Fireman's Fund Ins. Co.* (See CRLR Vol. 8, No. 4 (Fall 1988) p. 87 for background information.) The court ruled that the rationale behind *Moradi-Shalal*, though a third-party case, applies to first-party situations as well. Thus, first-party bad-faith claims are abolished if filed after the date of the *Moradi-Shalal* decision.

On August 22, a three-judge panel of the Second District Court of Appeal ruled that auto insurers are not immune from the state's unfair business practice statutes, and must bear the cost of collision damage waivers on rental autos for policyholders. In *Beatty v. State Farm Mutual Automobile Ins. Co.*, No. B038845, plaintiff had an auto insurance policy with State Farm which provided for a rental car in the event plaintiff's car was being repaired. Plaintiff took his car in for repair after an accident, and State Farm paid the fee for the rental car but refused to pay for a $140 collision damage waiver fee for the rental. Plaintiff filed a class action alleging unfair business practices. The suit was dismissed at the superior court level, but the court of appeal reversed, holding that the insurer is not exempt from the Unfair Business Practices laws, Business and Professions Code section 17200 *et seq.*, and should pay for the waiver. The case was remanded for further proceedings.

On July 17, the California Supreme Court ruled that attorneys hired by insurers cannot be sued for bad faith in failing to settle with an insured. In *The Doctors' Company v. Superior Court*, Nos. S003148 and S003588, the plaintiff argued that the insurer's attorneys conspired with the insurer to withhold a deposition from the insurer's medical expert so that the expert would testify favorably for the insurer. The court held that the attorneys could not be liable for bad faith because the statutory duty to settle in good faith applies "solely" to insurers. The attorneys were not insurers, but rather, agents, and therefore "not subject to that duty." In *Doctor's*, the Court overruled a 1983 opinion by the First District Court of Appeal, *Wolfrich Corp. v. United States Automobile Ass'n*, 149 Cal. App. 3d 1206 (1983).

In a lawsuit filed on June 13 by a candidate for the elective Insurance Commissioner post, San Francisco attorney Ray Bourhis charged that DOI and Commissioner Gillespie have "systematically" failed to enforce California insurance law and that the Department routinely "destroys evidence" of violations by insurers. The suit alleges that DOI does not prosecute insurers who violate provisions outlawing unfair competition and deceptive practices.

The complaint alleges that "tens of thousands" of complaints have been filed over the past thirty years, and the Department and Gillespie have "never enforced or prosecuted a single...violation in any of those cases." Bourhis alleged that a DOI official had told him that it is the Department's practice not to prosecute Insurance Code violations. Instead, if complaints could not be resolved by agreement with the insurer, "that's the end of it."

Additionally, the complaint alleges that Gillespie and the Department have "illegally denied and continue to deny public access to their records and files." Bourhis, when requesting records relating to the above-mentioned complaints, was told that such records were not available because DOI policy calls for destruction of the materials "within two to six months of the filing."

The complaint seeks an order directing Gillespie to outline in writing the reasons for not prosecuting alleged violations and to require her to maintain files on consumer complaints and make them available for public inspection.

Gillespie defended her actions by pointing to recent fines that may be assessed against insurers for unfair claims practices. Furthermore, she justified the destruction of complaints by opining that retention of the files "would be just a very, very excessive file system."

At this writing, the case is still pending.

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.