



a tender offer or written proposal for approval of a reorganization is made to some or all of a corporation's shareholders by an interested party, an affirmative written opinion as to the fairness of the consideration to the shareholders of the corporation is required to be delivered to the shareholders. The opinion must be provided by a person who is not affiliated with the offeror, and who engages in the business of advising others as to the value of properties, businesses, or securities.

The following is a status update of bills discussed in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 89-91:

AB 3076 (Stirling) was signed by the Governor on September 16 (Chapter 928, Statutes of 1988), and requires the Attorney General, by July 1, 1989, to study methods of enforcement of the law as it relates to consumer complaints against foreign corporations.

AB 3313 (Chandler) was signed by the Governor on August 22 (Chapter 513, Statutes of 1988). It extends existing law relating to the procedure a corporation is required to follow to redeem its certificated securities to the redemption of uncertified securities.

AB 3758 (Stirling), which makes various changes in the General Corporation Law relating to the organization and dissolution of corporations formed thereunder, was signed by the Governor on September 15 (Chapter 919, Statutes of 1988).

AB 3836 (N. Waters), which amends the statute allowing a corporate agent designated for service of process to resign as such agent, was signed by the Governor on July 13 (Chapter 352, Statutes of 1988).

AB 4371 (Lancaster), which (among other things) deletes the requirement that the Commissioner and the Regional Director of Region VI of the National Credit Union Administration notify each other when either authorizes a new credit union or the expansion of the field of membership of an existing one, was signed by the Governor on August 25 (Chapter 578, Statutes of 1988).

AB 4609 (Stirling), which permits directors to hold office for a shorter term than the presently-required annual term under specified conditions, was signed by the Governor on August 22 (Chapter 495, Statutes of 1988).

AB 4649 (Stirling), which extends to all nominee holders the requirement that broker-dealers, in whose name or for whom securities are held, must certify to

a foreign corporation upon request the number of shares held for beneficial owners with addresses in this state and outside this state, was signed by the Governor on September 16 (Chapter 953, Statutes of 1988).

SB 6 (Robbins), which would have established a state risk pool to provide health insurance coverage to persons who have been turned down because of a preexisting condition or who cannot afford to purchase coverage, was vetoed by the Governor on September 30.

SB 1755 (Lockyer), as amended in conference committee on August 26, was signed by the Governor on September 22 (Chapter 1204, Statutes of 1988). The bill provides that no claim for punitive damages arising out of the professional negligence of a health care provider shall be included in a complaint or other pleading unless permitted by court order. The bill also prohibits a cause of action against a person serving without compensation as a director or officer of certain nonprofit corporations on account of any negligent act or omission by that person within the scope of that person's duties from being included in a complaint, unless the plaintiff has established evidence that substantiates that claim and files a verified pleading and supporting affidavits.

SB 2260 (Keene) was signed by the Governor on September 29 (Chapter 1521, Statutes of 1988). It authorizes, for a specified five-year period, tax credits under the Personal Income Tax Law and Bank and Corporation Tax Law for the greater of \$25 per month per covered individual or 25% per month of the costs incurred during the taxable or income year by an eligible small employer to provide health coverage for an eligible individual and the individual's dependents.

SB 2578 (Robbins) was signed by the Governor on September 24 (Chapter 1339, Statutes of 1988). It requires the Commissioner to suspend for a period not exceeding twelve months or to bar from any position of employment, management, or control any broker-dealer, officer, director, partner, agent, employee of, or person performing similar functions for a broker-dealer, if that person has been convicted of any act or omission in violation of specified criminal offenses.

SB 315 (Montoya), which would have required financial planners to make specified disclosures to their clients, was defeated in the Assembly Finance and Insurance Committee.

AB 3028 (Lancaster) was signed by

the Governor on August 23 (Chapter 537, Statutes of 1988). Its provisions exempt student loans made pursuant to the Public Health Service Act from certain requirements relating to commencement, amount, and duration of periodic repayment schedules.

AB 3362 (Elder) was signed by the Governor on August 20 (Chapter 427, Statutes of 1988). It will (among other things) amend an existing provision that an industrial loan company shall not make any loan or purchase or discount any other obligation that provides for a repayment of principal over more than 120 months; this bill extends that period to 120 months and 30 days.

AB 3366 (Johnston), which revises certain definitions under the Franchise Investment Law, was signed by the Governor on August 25 (Chapter 562, Statutes of 1988).

AB 4372 (Lancaster), which amends various provisions relating to credit unions, was signed by the Governor on August 27 (Chapter 651, Statutes of 1988).

SB 2636 (Russell) was signed by the Governor on August 25 (Chapter 598, Statutes of 1988). This bill allows the Commissioner to extend an exemption under the Corporate Securities Law of 1968.

SB 2838 (Greene), which authorizes the Commissioner to impose a one-time supplemental assessment of up to \$150 on licensed escrow agents, was signed by the Governor on September 24 (Chapter 1300, Statutes of 1988).

The following bills died in committee or were dropped by their author: *AB 600 (Isenberg)*, which would have established the California Catastrophic Health Insurance Program; *AB 2900 (Johnston, Isenberg)*, which would have removed the present prohibition against use of an AIDS blood test for determination of insurability; *SB 1922 (Montoya)*, which would have required the Department to study nonprofit mutual benefit corporations in the field of trade associations and labor unions; and *AB 2030 (Seastrand)*, which would have included financial planners within the definition of "investment adviser".

DEPARTMENT OF INSURANCE

Commissioner: Roxani Gillespie
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REGULATORY AGENCY ACTION

ness 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 400, 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 will advise the Department on methods of improving existing services and on the creation of new services. It will also assist in the development and distribution of consumer information and educational materials.

In June, Commissioner Roxani Gillespie was appointed by President Reagan to the Supplemental Health Insurance Panel. This panel is chaired by the Secretary of the U.S. Department of Health and Human Services and determines whether state regulation of medicare supplement insurance meets federal standards. Three other state insurance commissioners are members of the panel.

In May, Governor Deukmejian appointed Raymond G. Bacon as Chief Deputy Insurance Commissioner. Mr. Bacon retired in May as a senior vice president of Fireman's Fund.

MAJOR PROJECTS:

Insurance Company Political Contributions. In September, California

Common Cause and the Center for Public Interest Law petitioned the DOI to conduct a rulemaking proceeding and adopt the following rule: "All insurance companies licensed within the State of California shall reduce their respective premiums by the *pro rata* share of contributions made by each company or a controlling entity to political campaigns during the calendar year 1988; unless they can affirmatively demonstrate that such contributions were funded exclusively by shareholders."

The petition came in response to the announced intention of California insurance companies to spend \$43 million on initiative campaigns in 1988, with additional campaign funds going to candidates. This figure is greater than the amount of money spent by either party in the last presidential campaign, and more money than has ever been spent on any political campaign in American history.

In proposing this rule, the two consumer organizations sought to ensure that the costs of insurance industry's political campaigns are segregated from costs prudently necessary to do business in California in DOI's consideration of rate increase requests, and that the costs of political campaigns are not assessed to insurance consumers.

On October 5, the Commissioner declined to grant the petition, based upon her finding that the subject of the petition is the participation of the insurance industry in a political campaign, and that the petition "in substance, ...requests the Department to enter that process and, in effect, take sides.... It is the Department's policy to abstain from interjecting itself into the political arena under the guise of discharging regulatory duties." The Commissioner also declined to accept the consumer groups' analogy between the insurance industry, which is exempt from the antitrust laws and subject to no meaningful rate regulation, and regulated utilities, which must fund their political activities from stockholders' profits and not ratepayers' monies.

Commissioner Orders Automobile Rate Hike Review. On June 22, the Commissioner issued a bulletin (No. 88-6) ordering that all increases in private passenger automobile insurance rates of 10% or more must be filed with the Department, retroactive to January 1.

The order came in response to prospective rate hikes by California insurers in anticipation of possible rollbacks and restrictions of automobile insurance rates which may result from the passage



of insurance initiatives on the November ballot. (See *infra* LEGISLATION.)

While the Commissioner claimed that this action will prevent "arbitrary rate hikes in anticipation of what might happen later this year," under this order, insurers may continue to implement rate increases at will, but must submit actuarial or other data supporting the rate increase. DOI will review the data within sixty days, and determine whether the increase is justified. The Commissioner emphasized that she is empowered to perform these functions by Insurance Code section 1852, which states that insurance rates in California may not be excessive, inadequate, or unfairly discriminatory; and section 790.06, which allows the Commissioner to intervene to ameliorate unfair practices in rate fixing.

Department Issues Automobile Insurance Complaint Ratio Study. On June 7, the Commissioner issued a complaint ratio study of the 35 carriers which provide the majority of automobile insurance in California. The study, prepared by the Department's Consumer Affairs Division, assigned ranks to insurers based on the number of complaints the Department received per 1,000 cars the company insured in 1987. Claim complaints included denials, delays, and unsatisfactory settlements. Non-claim complaints included nonrenewals, cancellations, and premium refunds.

The report ranked USAA, Cal State Auto Association, State Farm, and California Casualty as the four least complained-of companies, with Nationwide (including Colonial Insurance), Motors Insurance Corporation, Balboa, and Insurance Company of the West occupying the bottom four positions. Free copies may be obtained by calling the Department's toll-free number, (800) 233-9045.

Department Issues Auto Claim Guide. In August, the Department issued a 13-page guide entitled "So You've Had An Auto Accident—What Next?" The guide was prepared to inform consumers what to expect when filing a claim with their insurance company, and contains an accident checklist. Free copies of the pamphlet may be obtained at Department's offices or by calling the Department's toll-free number.

Department Issues Medigap Insurance Guide. In September, the Department issued a kit explaining dishonest sales techniques employed by some sellers of medicare supplement insurance ("medigap" insurance). The kit includes a ten-step guideline along with forms designed to protect consumers from

deceptive tactics and the purchase of duplicative or unnecessary policies. The kit, along with a pamphlet entitled "Buyer's Guide to Medicare Supplement Insurance for Californians", may be obtained by calling the Department's toll-free number. (For a detailed discussion of medigap insurance, see CRLR Vol. 7, No. 4 (Fall 1987) p. 1.)

LEGISLATION:

Initiatives. The following is summary of each of the four insurance reform initiatives on the November 8 California ballot. (For background information, see CRLR Vol. 8, No. 3 (Summer 1988) p. 92; Vol. 8, No. 2 (Spring 1988) p. 87; and Vol. 8, No. 1 (Winter 1988) pp. 81-82.)

Proposition 100, sponsored by the Insurance Consumer Action Network and the California Trial Lawyers Association, would:

- require insurance companies to reduce motor vehicle insurance rates for defined "good drivers" to 20% below those charged on January 1, 1988;

- require the DOI to hold public hearings to review and approve rate changes that exceed 7.5% for personal lines and 15% for commercial lines of insurance;

- eliminate territorial rating schemes unless the insurer can show "clear and convincing evidence that such a method is a valid indicator of claims experience";

- affirm the current system of at-fault motor vehicle liability, thereby prohibiting the no-fault system;

- provide that attorneys' fees for all types of cases are to be negotiated by the attorney and the client, and are not to be set by law;

- create an Office of Insurance Consumer Advocate in the state Department of Justice;

- create a Senior Bureau of Investigations in the DOI to assist senior citizens with health care insurance;

- require the DOI to establish a system to provide consumers with information comparing the prices of automobile insurance;

- require insurance companies to pay an annual fee to finance investigations of automobile insurance fraud;

- require insurance companies to act in good faith toward, and deal fairly with, their policyholders and third parties;

- prohibit the Insurance Commissioner and the Insurance Consumer Advocate from being employed by an insurance company, insurance trade association, or any insurance broker or agent for one year after leaving their positions;

- end the antitrust exemption enjoyed by the insurance industry. Under the current rule, insurers use recommendations from the Insurance Services Office to collectively set rates;

- allow banks to sell insurance; and
- eliminate the law which currently prohibits insurance agents and brokers from giving discounts or rebates to those who buy insurance from them.

Proposition 101, sponsored by Coastal Insurance Company and Assembly-member Richard Polanco, would:

- require insurance companies to reduce their rates for bodily injury liability and uninsured motorist portions of motor vehicle insurance policies by approximately 50%. These portions account for 40% of the total premium;

- limit claims for noneconomic losses for bodily injury (pain and suffering) resulting from the use of a motor vehicle to 25% of economic loss. These limits do not apply to situations in which the injuries resulted in death or in serious and permanent injury or disfigurement;

- limit attorney contingency fees to 25% of the economic losses recovered by the injured person if a claim is filed with an insurance company; and

- expire at the end of December 1992.

Proposition 103, the Voter Revolt Insurance Consumers Initiative, has the support of the Access to Justice Foundation and consumer advocate Ralph Nader. This initiative would:

- roll back by 20% many lines of insurance, including homeowner, business, and auto insurance. It is the only initiative which provides for a rate roll-back on non-automobile insurance;

- require the Insurance Commissioner to hold public hearings on any proposed rate change in excess of 7% on personal lines of insurance and 15% on commercial lines. These changes would be subject to the approval of the Commissioner, and insurance carriers would be required to make public financial records supporting the changes;

- eliminate territorial rating schemes, except where the Commissioner has determined that a substantial risk exists in that area that would warrant increased rates;

- end the antitrust exemption of the insurance industry;

- make the office of Insurance Commissioner, beginning in 1990, an elected rather than appointed position;

- allow banks to sell insurance;

- prohibit insurers from cancelling or failing to renew a policy without a "substantial increase in the hazard insured against"; and



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-create a nonprofit corporation to represent the interests of insurance consumers in hearings before the legislature or the DOI.

Proposition 104, sponsored by the insurance industry, would:

-establish a no-fault system of automobile insurance which would pay specific policy limits for medical expenses, lost wages, and funeral benefits that are not covered by other sources, such as workers' compensation;

-eliminate the right to sue for damages that fall within the policy limits, but retain the right to sue to recover costs in excess of those limits;

-prohibit recovery for noneconomic losses such as pain and suffering, except in cases involving death or serious and permanent disfigurement or injury;

-limit plaintiff's attorney contingency fees in motor vehicle accident cases to 15% of the basic no-fault limits recovered, 33.3% of the first \$50,000 recovered over the basic benefits, 25% of the second \$50,000 recovered over the basic benefits, and 15% of the recovery over \$100,000;

-require insurance companies to reduce some of their premium rates for two years by 20%;

-permit but not require "good driver" discounts;

-prohibit DOI former employees from representing insurance companies on issues pending before the Department or in which the person participated, for one year after leaving the Department;

-prohibit the Commissioner and other public officials from setting or approving insurance rates other than those for workers' compensation and assigned-risk insurance;

-make provisions of the current Insurance Code more difficult to change. Any changes to the current statute would require a two-thirds (instead of a majority) vote in the state legislature, or passage of another initiative by the voters; and

-invalidate all other insurance initiatives, if it receives more votes than the other measures.

Proposition 106, also sponsored by the insurance industry, would limit the amount of contingency fees which attorneys may charge clients for their services in tort cases. The limits are 25% of the first \$50,000 recovered, 15% of the next \$50,000 recovered, and 10% of the amount recovered over \$100,000.

SB 1972 (Robbins), which would have required automobile insurers to provide for an appropriate reduction in premium rates of motor vehicle liability

insurance of at least 10% for any named insured or household member who commutes to work by public transportation or by means other than any motor vehicle for which the principal operator is insured, was vetoed by the Governor on September 30.

The following is a status update on bills described in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 92-94:

SB 2464 (Kopp) requires car rental agencies to notify customers that the collision damage waiver offered in standard car rental agreements may duplicate coverage in the customer's own car insurance policy. This bill was chaptered on August 22 (Chapter 466, Statutes of 1988).

SB 2598 (Green) requires an insurer to notify its insured with a pending claim under his/her residential fire or property insurance policy for loss due to corrosive soils of the expiration of the applicable statute of limitations thirty days before that date. This bill was chaptered on August 31 (Chapter 737, Statutes of 1988).

SB 2768 (Robbins) requires any advertisement for term life insurance directed to individuals 55 years of age or older to contain prescribed information regarding the decrease of benefits with age and directing the consumer to examine the benefits and limitations of the policy prior to purchase. This bill also authorizes the Insurance Commissioner to develop and adopt a term life insurance monetary value index to be disclosed in all advertisements of that form of insurance and on all policies and certificates of insurance. This bill was signed by the Governor on September 27 (Chapter 1473, Statutes of 1988).

AB 3637 (Moore, LaFollette) was defeated in the Senate. This bill would have required the Insurance Commissioner to report on the effect of basing automobile insurance premiums solely on individual driving records.

AB 4325 (Bane) limits the underwriting profit on private passenger automobile insurance policies to 5%, and requires a refund or credit to policyholders for premiums paid in excess of that limit, commencing July 1, 1991. The bill became law without the Governor's signature on October 1 (Chapter 1639, Statutes of 1988).

AB 4329 (Frazee) prohibits a certificate of group disability insurance advertised or marketed in this state from being issued on or after January 1, 1989, to any person 55 years of age or older in this state pursuant to a group master insurance policy issued or delivered in

another state, unless the certificate and master policy have been filed with and approved by the Commissioner. This bill was signed by the Governor on September 24 (Chapter 1322, Statutes of 1988).

AB 4567 (Ferguson) was signed by the Governor on September 30 (Chapter 1564, Statutes of 1988). This bill authorizes redevelopment agencies to finance necessary insurance premiums during the construction or rehabilitation of rental housing, emergency shelters, transitional housing, and residential care facilities operated for defined low-income households.

SB 6 (Robbins) would have established a health coverage association to provide health insurance to residents of the state who are not otherwise able to obtain health insurance; the bill was vetoed by the Governor on September 30.

SB 1468 (Marks), which would have required self-insured employee welfare benefit plans to offer coverage for alcoholic and chemical dependency programs, was also vetoed by the Governor on September 30.

SB 1744 (Lockyer) revises the experience requirements for attorneys eligible to be chosen by an insured as independent counsel. This bill was signed by the Governor on September 21 (Chapter 1114, Statutes of 1988).

SB 2344 (Lockyer), which requires insurers doing business in California to fund the prosecution of fraudulent automobile insurance claims, was signed by the Governor on September 30 (Chapter 1609, Statutes of 1988).

SB 2184 (Robbins) prohibits, with prescribed exceptions, any insurer issuing an automobile collision or comprehensive policy from refusing to issue the policy based solely on the age of the automobile insured, if the market value of the automobile exceeds \$2,500. This bill was signed by the Governor on September 24 (Chapter 1290, Statutes of 1988).

AB 3798 (Floyd), which requires the Commissioner to publish a comparison of insurance rates, was signed by the Governor on September 28 (Chapter 1503, Statutes of 1988).

AB 4317 (Connelly) establishes standards for medigap insurance policies; requires such policies to contain a notice that purchasers have a thirty-day examination period during which they may return the policy; requires other specified disclosures in medigap policies; sets minimum loss ratios for medigap policies and requires insurers to file those



loss ratios annually; and regulates the advertising of medigap policies. This bill was signed by the Governor on September 24 (Chapter 1320, Statutes of 1988).

The following bills died at the end of the legislative session:

AB 600 (Isenberg), which would have established the California Catastrophic Health Insurance Plan; *SCA 38 (Rosenthal)*, which would have created the Insurance Commission, with prescribed membership, powers, and duties; *AB 2787 (Waters, et al.)*, which would have required health care service plans to offer group infertility treatment coverage; *SB 2900 (Johnston, Isenberg)*, which would have removed the current prohibition against the use of an AIDS blood test for the determination of insurability; *SB 2043 (Robbins)*, which was intended to be a legislative alternative to the ballot initiatives; *SB 2534 (Robbins)*, which would have required monthly installment payments to be made available to those insured by the state assigned risk auto insurance plan; *SB 2774 (Roberti)*, which would have required the Department of Health Services to study the unmet needs of the medically uninsured and under-insured population and the impact of policy alternatives; and *AB 4250 (Allen)*, which would have required the Commissioner to report on the problem of sodium sulfate and other elements as they affect damage claims filed under the homeowner insurance policies.

LITIGATION:

Bad Faith Decision Overturned. In August, the California Supreme Court overruled the controversial decision of *Royal Globe Insurance Co. v. Superior Court*, 23 Cal. 3d 880 (1979), which established the third-party bad faith cause of action in California. The ruling in *Moradi-Shalal v. Fireman's Fund Insurance Companies*, No. L.A. 32222, 88 D.A.R. 10717 (August 18, 1988), eliminates the right of persons injured by the negligence of an insured party to sue that party's insurance company for a bad faith refusal to pay on an insurance claim under the California Unfair Practices Act.

The opinion states that "[n]either section 790.03 nor section 790.09 was intended to create a private civil cause of action against an insurer that commits one of the various acts listed in section 790.03, subdivision (h). The contrary *Royal Globe* holding reportedly has resulted in multiple litigation or coerced settlements, and has generated confusion and uncertainty regarding its application."

The court also urged the Insurance Commissioner to "continue to enforce the laws forbidding [unfair] practices to the full extent consistent with our opinion." The Commissioner may enforce administrative sanctions against insurers in the form of cease and desist orders, suspensions, or fines up to \$55,000.

Harvey Levine, president-elect of the California Trial Lawyers Association, who argued the case before the court, criticized the decision, saying that it gives insurers "a new license to handle claims with impunity." Levine also asserted that the ruling indicates a need for legislation in the areas of claims handled by insurers, and pointed out that Proposition 100 would create a statutory cause of action against insurers for bad faith handling of a claim.

Antitrust Suit. Ten more states have joined a suit filed by Attorney General John Van de Kamp and eight other state attorneys general in March of this year against 31 insurers and underwriters. The suit alleges that the companies used public statements to coerce and intimidate their fellow insurers into eliminating their coverage of long-term pollution damages, limiting their coverage of customer legal costs, and adopting a type of insurance form which allegedly reduces insurers' liability on long-term claims. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 91 for background information.) The suit, *In re Insurance Antitrust Litigation* (C88-1688WWS), was filed in U.S. District Court in San Francisco and will be heard by Judge William W. Schwarzer. The action is still in the pretrial stage, and the court has advised the parties to file any motions by December.

Gender in Rate Setting. In August, the California Supreme Court rejected a request by the American Civil Liberties Union to depublish a court of appeal opinion permitting insurers to set different rates for men and women. The Second District Court of Appeal had ruled in May in *Fiske v. Gillespie*, 200 Cal. App. 3d 1243 (1988), that no actual controversy existed in the suit since it did not allege that the parties had exhausted their remedies with the Department of Insurance.

Initiatives. Also in August, the Supreme Court rejected requests to remove two measures from the November 8 ballot. The court unanimously refused to take jurisdiction over petitions in *Insurance Industry v. Eu*, No. S005716, an attempt to disqualify Proposition 100; and *Owen v. Eu*, No. S006715,

against Proposition 104. (See *supra* LEGISLATION.)

FUTURE MEETINGS:

To be announced.

DEPARTMENT OF REAL ESTATE

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

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

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

In sales or leases of most residential subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The public report serves two functions aimed at protecting buyers of subdivision interests: (1) the report requires disclosure of material facts relating to title, encumbrances, and similar information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting the project. The commissioner will not issue the public report if the subdivider fails to comply with any pro-