



its pro rata share of all cash and expenses incurred in administration of the Escrow Law. The total assessment may not exceed the amount of the first assessment adjusted for changes in cost of living. This bill would, notwithstanding the cost-of-living adjustment limitation, authorize the Commissioner to impose a one-time supplemental assessment of up to \$150. This bill passed the Senate on May 26 and is pending in the Assembly Finance and Insurance Committee.

## 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 com-

panies;

(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.

## MAJOR PROJECTS:

*Proposed Medigap Regulations.* Insurance company abuses in selling supplemental insurance policies to Medicare recipients have been the topic of much public debate over the last two years. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 1 for background information.) On March 29, the Insurance Commissioner announced proposed actions to adopt, amend, and/or repeal its regulations relating to the sale of these policies. The Department reports that it will substantially adopt the National Association of Insurance Commissioners' Model Rules and Interpretive Guidelines Governing Advertisements of Medicare Supplement Insurance. In summary, the regulations will establish a consolidated body of regulations implementing, interpreting, and making specific provisions of the Unfair Practices Act; establish minimum standards and guidelines for disclosure of supplemental policy information; establish a procedure for the pre-use filing of advertising materials; and amend or repeal duplicative and/or conflicting regulations.

*California Sues Insurers and Underwriters.* In March, Attorney General John Van de Kamp and eight other state attorneys general filed suit against 31 insurers and underwriters, alleging that they conspired to sharply reduce liability coverage available to public agencies and to eliminate all insurance coverage for environmental damage due to pollution, including spills and long-term seepage. The suit alleges specifically that Allstate Insurance Co., Aetna Casualty and Surety Co., Hartford Fire Insurance Co., and CIGNA Corp. conspired with Lloyd's of London, the Insurance Services Office, and 25 other companies. The Department of Insurance is not participating in the suit.

*Department Issues New Ratemaking Guidelines.* In an attempt to prevent erratic rate swings in the insurance market, the Commissioner issued new ratemaking guidelines for insurers. The bulletin mandates two methods for calculating claims costs as a part of setting a premium for California policies. The first method requires insurers to use their own loss experience to calculate claims costs. The second allows them to use the figures supplied by any licensed rating organization, such as the Insurance Services Office. The major thrust of the bulletin seems to be to require



insurers to better document their rating and underwriting methods.

**Workers' Compensation Program.** The Commissioner appointed two new members to the Workers' Compensation Insurance Rating Bureau (WCIRB), expanding the board pursuant to recently-enacted legislation from 15 to 17 members. The legislation required one member to represent organized labor and one to represent insured employers. Attorney Thomas E. Rankin, research director for the California Labor Federation, AFL-CIO, will represent organized labor. Stephen J. Lehtonen, executive vice president of the Plumbing-Heating-Cooling Contractors of California, will represent insured employers.

In separate action, on April 20, the Joint Legislative Audit Committee instructed the Auditor General to conduct a comprehensive examination of the state's workers' compensation program. The audit will focus on methods of processing information and claims; cost-effective handling of contested claims; the effectiveness of the vocational rehabilitation program; the ratesetting process of the WCIRB and the Department of Insurance; and numerous staffing issues.

**Enforcement Actions.** The Department has recently announced the following enforcement actions:

-National Benefit Life Insurance Company was ordered to defend its television advertising for a life insurance program at a public hearing on May 20. The advertisement in question featured Dick Van Dyke. The Department reviewed the ads, determined that they violate the Unfair Practices Act and the Department's advertising regulations, and ordered the company to prove otherwise at the hearing.

-Luxury and Rental Auto Purchasing Group, Inc. of St. Louis, Missouri, and S.I.R. Services, Inc. of Las Vegas, Nevada, have been ordered to stop selling auto insurance as part of a group purchasing plan. They are charged with operating as an insurance company without a license. A public hearing was scheduled for May 11.

-Bel-Aire Insurance Company of St. Louis, Missouri has been ordered by the Department to stop conducting business in California pending the outcome of a June 1 hearing as to the company's solvency. Bel-Aire's principal business was providing liability insurance through purchasing groups formed in Missouri under the Federal Risk Retention Act.

-Norcal Mutual Insurance Company and the Northern California Physicians

Council were ordered to appear at a public hearing on July 11 to answer complaints of cancellation of medical malpractice insurance coverage.

-Cadillac Insurance Company, which sold title insurance in California, has been issued a cease and desist order. The Department alleges that the Detroit-based company was transacting business without a license.

-Reliable Insurance Company has been placed in conservatorship by the Department, and the Commissioner has applied for an order of liquidation.

**Department Issues Territorial Rating Study.** On May 2, the Department released a report comparing the coverage of thirteen sample insurance companies for six different profiled drivers. The study was to provide information as to the impact of territorial rating by zip code on California auto insurance rates. According to the Department, the study shows that abolition of territorial rating would increase rates for approximately two-thirds of the state's drivers. It also showed that good drivers receive less expensive coverage. A free copy of the survey—entitled "Auto Insurance Premium Survey"—is available from the Department.

## LEGISLATION:

**Initiatives.** As reported in CRLR Vol. 8, No. 2 (Spring 1988) at page 87 and Vol. 8, No. 1 (Winter 1988) at pages 81-82, numerous insurance reform initiatives have been circulated for the November ballot. The following is a status update on the various measures:

-On April 15, the California Trial Lawyers Association (CTLA) won its lawsuit challenging the insurance industry's no-fault insurance initiative, on grounds that the original initiative improperly concerned more than one subject matter. (See *infra* LITIGATION.) The industry immediately circulated another no-fault initiative, and submitted 700,000 signatures in late May. In late June, Secretary of State March Fong Eu announced that the industry's measure has qualified for the ballot. The insurance industry has also submitted 560,000 signatures toward the qualification of a second ballot initiative, which would limit attorney contingency fees in most tort cases.

-The Insurance Consumer Action Network (ICAN) initiative, backed by CTLA, the California Bankers' Association, and Attorney General John Van de Kamp, has qualified for the ballot.

-The Voter Revolt Insurance Consumers Initiative, which has been called

the "grass roots" consumer initiative and has the support of consumer advocate Ralph Nader and the Access to Justice Foundation, secured the required 372,178 valid signatures and has also qualified for the November ballot. Immediately after the qualification announcement, the insurance industry sued the Voter Revolt campaign, on ground that its initiative violates the single-subject rule.

-The Polanco Initiative, which would cut in half the rates for bodily injury and uninsured motorists portions of auto insurance and limit noneconomic losses such as pain and suffering, qualified for the ballot in mid-June.

**SB 2043 (Robbins)** was substantially amended on May 9 and is intended to be a legislative alternative to the ballot initiatives. Among other things, it would provide that notwithstanding any other provision of law, the Cartwright Act applies, with certain exceptions, to the business of insurance with respect to all personal lines of insurance (thus removing the insurance industry's exemption from antitrust laws). This bill would also require the Insurance Commissioner to consider specified factors in determining whether a reasonable degree of competition exists, and would provide for the consideration of investment income in addition to specified existing factors.

SB 2043 would also require motor vehicle liability insurance rates to be reduced on January 1, 1989, so that rates for specified coverage are 20% less than the rates in effect on April 30, 1988; would generally prohibit increases until January 1, 1990; and would limit increases until January 1, 1991. This bill would also provide that insurer rate filings are public documents. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

**SB 2464 (Kopp)**, as amended April 27, would require car rental agencies to notify customers, both orally and in writing, that the collision damage waiver offered in standard car rental agreements may duplicate coverage that the customer maintains under his/her own car insurance policy prior to entering into a contract for the lease or rental of a motor vehicle. This bill is pending on the Assembly floor at this writing.

**SB 2534 (Robbins)** would require monthly installment payments to be made available to those insured by the state assigned risk auto insurance plan. This bill passed the Senate on May 19 and is pending in the Assembly Finance and Insurance Committee.



*SB 2598 (Green)*, as amended June 20, would require, with prescribed exception, any insurer whose insured has made a claim under his/her fire or residential property insurance policy for loss due in part or in whole to corrosive soils, and whose claim is pending, to notify, at least thirty days before the expiration of the applicable statute of limitations, its insured in writing of the statute of limitations applicable to the insured's claim for damage, and would provide for tolling of the statute for failure to provide this notice. This bill would specify that once a final determination of coverage has been made by the insurer under the policy, the insured shall have sixty days from written notification of the coverage determination or the specified period of time under the policy, whichever occurs at a later date, to initiate any suit or further action. This bill passed the Senate on May 5 and is pending in the Assembly Finance and Insurance Committee.

*SB 2768 (Robbins)*, as amended June 22, would require any advertisement for term life insurance directed to individuals 55 years of age or older to contain certain prescribed information. The bill would specify that if the benefits of the advertised policy or certificate decrease with the insured's age or with policy or certificate duration, while the premium remains approximately constant, that fact shall, in a print or broadcast advertisement, be disclosed.

The bill would also require television and radio advertisements for term life insurance to contain a specified statement directing the examination of benefits and limitations of the policy prior to its purchase. The bill would authorize the Insurance Commissioner to develop and adopt a term life insurance value index to be disclosed in all advertisements of term life insurance for individuals 55 years of age or older, and on all policies and certificates of insurance. This bill passed the Senate on May 12, and is pending in the Assembly Finance and Insurance Committee. (For detailed background information on medigap policy abuse, see CRLR Vol. 7, No. 4 (Fall 1987) p. 1.)

*SB 2774 (Roberti)*, as amended April 18, would require the Department of Health Services to study the unmet needs of the medically uninsured and underinsured population and the impact of policy alternatives. This bill is pending in the Senate Appropriations Committee.

*AB 3637 (Moore, LaFollette)*, as amended June 22, would require the Commissioner to assess and prepare a

report on the effect of basing automobile insurance premiums for each type of automobile insurance coverage solely on individual driving records and to submit the report to the legislature. This bill passed the Assembly on May 12 and is pending in the Senate Appropriations Committee.

*AB 4250 (Allen)*, as amended May 25, would require the Commissioner to study and prepare a report on the problem of sodium sulfate and other natural elements as they relate to damage claims filed with insurers under homeowner insurance policies. This bill passed the Assembly on June 9 and is pending in the Senate Committee on Insurance, Claims and Corporations.

*AB 4325 (Bane)*, as amended May 18, would limit the underwriting profit for California on private passenger automobile insurance policies to 5%, and would require a refund or credit to policyholders for premiums paid in excess of that limit. This bill is pending in the Senate Insurance, Claims and Corporations Committee.

*AB 4329 (Frazee)*, as amended June 15, would prohibit, with prescribed exceptions, a certificate of group disability insurance from being issued or delivered on or after January 1, 1989, to any person 55 years of age or older in California pursuant to a group master insurance policy issued or delivered in another state unless the certificate and master policy has been filed with and approved by the Insurance Commissioner. This bill is also pending in the Senate Committee on Insurance, Claims and Corporations.

*AB 4567 (Ferguson)*, as amended April 18, would authorize redevelopment agencies to finance the cost of fire and liability insurance for rental housing, emergency shelters, transitional housing, and residential care facilities operated for defined lower income households. This bill is pending in the Senate Local Government Committee.

The following is a status update on bills described in detail in CRLR Vol. 8, No. 2 (Spring 1988) at pages 87-88:

*SB 6 (Robbins)*, which would establish a health coverage association to provide health insurance to residents of the state who are not otherwise able to obtain health insurance, is still pending in the Assembly Finance and Insurance Committee.

*SB 1468 (Marks)*, which would require self-insured employee welfare benefit plans to offer coverage for alcoholic and chemical dependency programs, is also still pending in the Assembly Fi-

nance and Insurance Committee.

*SB 1744 (Lockyer)*, which would change the experience requirements for attorneys eligible to be chosen by an insured as independent counsel, passed the Senate on May 12 and is pending in the Assembly Judiciary Committee.

*SB 2344 (Lockyer)*, which would require insurers doing business in California to fund the prosecution of fraudulent automobile insurance claims, passed the Senate on June 2 and is pending in the Assembly Finance and Insurance Committee.

*SB 2184 (Robbins)*, as amended April 14, would prohibit, with prescribed exception, any insurer issuing an automobile collision or comprehensive policy from refusing to issue the policy based solely on the age of the automobile to be insured, if the market value of the automobile exceeds \$2,500. This bill passed the Senate on April 21 and is pending in the Assembly Finance and Insurance Committee.

*AB 2787 (Waters, et al.)*, which would require health care service plans and health care service plans which are health maintenance organizations, disability insurers, and self-insured employee welfare benefit plans to offer group infertility treatment coverage, passed the Assembly on June 9 and is pending in the Senate Insurance, Claims and Corporations Committee.

*AB 2900 (Johnston, Isenberg)*, as amended June 9, would remove the current prohibition against the use of an AIDS blood test for the determination of insurability. This bill is pending on the Assembly floor at this writing.

*AB 3421 (McClintock)*, which would have authorized AIDS blood testing in determining insurability, failed passage in the Assembly Finance and Insurance Committee on June 2.

*AB 600 (Isenberg, et al.)*, which would establish the California Catastrophic Health Insurance Program, is pending in the Senate Industrial Relations Committee.

*AB 3798 (Floyd)*, which would require the Commissioner to publish a comparison of insurance rates, passed the Assembly and is pending in the Senate Insurance, Claims and Corporations Committee.

*AB 4317 (Connelly)*, which, as amended April 20, would establish standards for medigap insurance policies; require such policies to contain a notice that purchasers have a thirty-day examination period during which they may return the policy; require other specified disclosures in medigap policies; set mini-



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mum loss ratios for medigap policies; and require insurers to annually file those loss ratios, passed the Assembly on June 9 and is pending in the Senate Insurance, Claims and Corporations Committee.

*SCA 38 (Rosenthal)*, which would create the Insurance Commission with prescribed membership, powers, and duties, is still pending in the Senate Insurance, Claims and Corporations Committee.

The following bills died in committee or were dropped by their authors: *SB 1738 (Kopp)*, regarding unintentional lapse of a driver's license and penalty points in the Assigned Risk Plan; *AB 2845 (Calderon)*, which would have established a no-fault insurance program; *AB 4036 (Mojonnier)*, which would have authorized AIDS testing to determine insurability; and *AB 4460 (Connelly)*, which would have required the Insurance Commissioner to consider specified factors when determining whether a reasonable degree of competition exists within certain lines of insurance.

## DEPARTMENT OF REAL ESTATE

*Commissioner: James A. Edmonds (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, subdivision and commercial and business brokerage. Various subcommittees also provide advisory input.

The Department primarily regulates two aspects of the real estate industry: licensees (185,878 salespersons, 89,548 brokers, 15,538 corporations) and subdivisions.

Licensee examinations require a fee

of \$25 per salesperson and \$50 per broker. Exam passage rates average 45% for salespersons and 53% for brokers. License fees for salesperson and broker are \$120 and \$165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of certain subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The report contains various disclosure statements relating to title, encumbrances and similar information. Recent legislation mandates that a purchaser be given the latest financial report for the project in addition to governing instruments and disclosure of any delinquent assessments. The commissioner will not issue the public report if the subdivider fails to comply with any provision of subdivision law.

The Department publishes three major publications. The *Real Estate Bulletin* is circulated quarterly as an educational service to all real estate licensees. It contains legislative and regulatory changes, commentaries and advice. In addition, it lists names of licensees against whom disciplinary action, such as license revocation or suspension, is pending. Funding for the *Bulletin* is supplied from a \$2 share of license renewal fees. The paper is mailed to valid license holders.

Two industry handbooks are published by the Department. *Real Estate Law* provides relevant portions of codes affecting real estate practice. The *Reference Book* is an overview of real estate licensing, examination, requirements and practice. Both books are frequently revised and supplemented as needed. Each book sells for \$10.

The California Association of Realtors (CAR), the industry's trade association, is the largest such organization in the state. Approximately 105,000 licensed agents are members. CAR is often the sponsor of legislation affecting the Department of Real Estate. The four public meetings required to be held by the Real Estate Advisory Commission are usually on the same day and in the same location as CAR meetings.

### MAJOR PROJECTS:

*Regulatory Changes.* On March 18, the Office of Administrative Law (OAL) approved the adoption of sections 2831.2 and 3010.5 of Title 10 of the California Code of Regulations. Section 2831.2 requires that a record of reconciliation of all trust funds received and disbursed must be maintained. Section 3010.5 con-

cerns the Commissioner's determination of qualifications for instructors of continuing education classes.

OAL also approved the amendment of numerous DRE regulations in Title 10, including changes to sections 2763 (materials that an examinee may use during the course of the license examination); 2792.16 (voting of common interest subdivision associations); 2792.17 (meeting of common interest subdivision associations); 2831 (maintenance of trust fund accounts); 2840 (Approved Borrower Disclosure Statement); 2950 (handling of escrow by a broker); 3003 (Commissioner's disapproval of continuing education course offerings); 3006 (criteria for approval of course offerings); 3007 (advertising and promotion for continuing education classes); 3008 (continuing education offerings not to be approved); 3010 (the Commissioner's withdrawal of approval for continuing education courses); 3102 (application for payment from the Recovery Account); and 3104 (service of correspondence and notices concerning the Recovery Account).

*Enforcement Policy.* During the spring, Commissioner James A. Edmonds, Jr., expressed his views on DRE's current enforcement policy. The Commissioner believes that the "DRE is doing the job that Governor Deukmejian expects it to do." The Commissioner also feels the DRE is providing protection for the consumer as well as service to the real estate licensees and their related industries through its "nonsense" enforcement policy.

This enforcement policy includes pursuing, as appropriate, minor violations of the law which can, and often do, lead to more serious violations. The DRE will also pursue major fraud transactions. Commissioner Edmonds has cited two major potential negative influences which must be overcome by new licensees, including the attitude that "everybody does it" and the difficulty in drawing the distinction between "spirited salesmanship and unethical or illegal practice." Commissioner Edmonds believes the California Real Estate Licensing Law and the rules and regulations are written in a practical manner, and that these negative influences will be overcome through the effective communication of these statutes and regulations.

*Monitoring of Continuing Education.* The DRE has released information on its Continuing Education Monitoring Program. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 83.) This program was