



REGULATORY AGENCY ACTION

effective order of the Securities and Exchange Commission, the securities administrator of any other state, or any national securities association or exchange whereby that person's registration is revoked or suspended or that person's membership is suspended or terminated.

Finally, in addition to other technical changes, the bill specifies that a court may appoint a monitor, designated fiduciary, or officer of the court, in addition to the currently allowed receiver or conservator, to exercise the powers of a corporation's officers, directors, partners, trustees, or others in an action brought by the Commissioner to enforce compliance with the Corporate Securities Law of 1968 or any rule or order of law.

This bill is pending in the Senate Banking and Commerce Committee.

SB 2838 (Greene) would delete the cost of living adjustment limitations upon the assessment paid to the Commissioner by licensed escrow agents. In addition, the bill would make willful untrue statements of material fact in any application, notice, or report filed with the Commissioner unlawful (misdemeanor or felony) and subject to a fine. This bill is also pending in the Senate Banking and Commerce Committee.

SB 315 (Montoya) was reactivated in January, has passed the Senate, and is pending in the Assembly Finance and Insurance Committee at this writing.

As amended on April 5, *SB 315* would enact provisions in the Business and Professions Code to require those who hold themselves out as financial planners to make specified disclosures to prospective clients, including disclosures regarding the planner's educational background, training and expertise, potential conflicts of interest, and relevant convictions. The disclosures must be made in writing if the client so requests. Failure to make required disclosures could result in a \$500 civil penalty. (For a related discussion regarding financial planners, see *supra* agency report on DEPARTMENT OF BANKING.)

AB 2030 (Seastrand), a companion bill of *SB 315*, would include within the definition of "financial adviser," financial planners and other persons who, as an integral component of other financially related services, provide specified investment advisory services to others for compensation and as part of a business, or who hold themselves out as providing these investment advisory services to others for compensation. This bill would thus subject financial planners to the Department of Corporations' regis-

tration requirements applicable to investment advisers. *AB 2030* is pending in the Senate Business and Professions 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 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.

MAJOR PROJECTS:

Consumer Insurance Advisory Panel Members Named. On March 28, Insurance Commissioner Roxani Gillespie appointed seven members to a newly-formed Consumer Insurance Advisory Panel for the Department of Insurance. This panel replaces an earlier consumer advisory board which the Commissioner disbanded in 1988. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 81; Vol. 7, No. 4 (Fall 1987) p. 77; and Vol. 6, No. 3 (Summer 1986) pp. 52-53 for background



information.) The panel will advise the Department on methods of improving services and on the creation of new services. It will also assist in the development and distribution of consumer information and educational materials.

The panel members are: Dezie Woods-Jones, Assistant Dean of Student Services for the Peralta Community College District; Ronald Cisneros, citizens assistance advisor, affirmative action officer, and personnel analyst for the City of Salinas; Betty Jo Toccoli, owner and president of Total One Development Center, a business consulting firm; Jim Contreras, majority owner and chief financial officer of Cumbre, Inc., which owns Contreras, Medina and Associates Insurance Services and Quantum Pacifica Insurance Services; Robert Wilson, Director of Health Benefits and Insurance for the Retired Public Employees' Association; and Dennis Wong, president of the Mandarin Pharmacy in San Francisco.

The seventh panel member is the Commissioner's representative, Jim Mueller, chief of the Department's Consumer Affairs Division.

Homeowners Complaint Survey. The Department of Insurance has issued the results of its "Homeowners Complaint Survey." The study focused on the 25 companies which write approximately 85% of the homeowners insurance business in California. Data was drawn from the Department's record of the number of complaints received by the Department in 1986. The survey provides a breakdown for the five larger as well as the twenty smaller companies, and reports data by both claim and non-claim related complaints. Among the larger companies, State Farm narrowly ranked first in consumer satisfaction, with USAA and 20th Century ranking first among the smaller companies. One insurance group, Republic Financial Services (which includes Southern Insurance and Vanguard Insurance) had a complaint ratio that exceeded one per 1,000. Free copies of the survey are available from the Department of Insurance, 600 S. Commonwealth Avenue, Los Angeles, CA 90005.

Child Care Liability Insurance. As reported in CRLR Vol. 8, No. 1 (Winter 1988) p. 81, the Commissioner held hearings in November to determine whether she would authorize a joint underwriting association (JUA) for child care liability insurance. In January, the Commissioner issued her report from the hearings.

The Commissioner has determined that at this time there is no need for a

child care JUA. Citing the testimony of insurers and child care providers at the hearing, she recognized a continuing problem of affordability, but not of availability. In searching for a solution to the affordability problem, the Commissioner has instructed the Department to conduct a survey of child care providers. The Department will also seek ways to better publicize the voluntary market assistance program, Cal-Care.

Child care advocates reacted to the report with dismay. Abby Leibman, Directing Attorney of Community Programs at Public Counsel, stated that the Commissioner's response is "too little, too late." After two years of documenting the problem for the Department, advocates were extremely disappointed that the Commissioner should approach the ongoing crisis by deciding to conduct a survey.

LEGISLATION:

Initiatives. As reported in CRLR Vol. 8, No. 1 (Winter 1988) at pp. 81-82, numerous insurance initiatives are being circulated for the November ballot. That issue contains a full description of each measure discussed below. Several developments during the last few months will have long-term significance for the development of the insurance debate:

-Senator Alan Robbins has joined the initiative movement by introducing a legislative measure identical to the initiative cosponsored by the Center for Public Interest Law (CPIL) and Consumers Union (CU). This measure would require that drivers buy a minimum no-fault auto policy from the state when they register their vehicles. As a result, CPIL and CU have withdrawn their initiative.

-The California Trial Lawyers Association (CTLA) has filed suit against a no-fault ballot initiative being circulated by the insurance industry. CTLA claims that the industry's initiative violates the state constitution's prohibition against multiple-subject initiatives.

-CTLA and the California Bankers Association have thrown their support behind the initiative sponsored by ICAN. This support is important for its financial as well as political backing. Banks have lobbied for the right to sell insurance in California, and the ICAN initiative contains such a provision. (For background information, see *supra* agency report on INSURANCE CONSUMER ACTION NETWORK.) At this writing, CTLA has apparently dropped its own ballot initiative in favor of ICAN's.

SCA 38 (Rosenthal) would create the Insurance Commission, with prescribed membership, powers, and duties. The Commission would be required to disapprove any insurance rate filed with the Commission which is excessive, inadequate, or discriminatory. Insurers' fees would fund the operations of the Commission. SCA 38 is pending in the Senate Committee on Constitutional Amendments.

SB 6 (Robbins) would establish a health coverage association to provide health insurance to residents of the state who are not otherwise able to obtain health insurance. The bill would specify required terms of coverage, rate limitations, and utilization review procedures. This bill has passed the Senate and is pending in the Assembly Committee on Finance and Insurance.

SB 1468 (Marks). Existing law requires a variety of health insurance plans to offer coverage for alcoholism and chemical dependency. This bill would extend this requirement to self-insured employee welfare benefit plans. SB 1468 is also pending in the Assembly Finance and Insurance Committee.

SB 1738 (Kopp). Under the current Assigned Risk Plan (the state-sponsored program for drivers who cannot obtain auto insurance on the open market), there is a penalty point system for motor vehicle convictions. This bill would provide that those regulations do not apply to the unintentional lapse of motor vehicle registration or driver's license renewal. SB 1738 is pending in the Senate Committee on Insurance, Claims and Corporations.

SB 1744 (Lockyer). Existing law provides that when an insured has the right to select independent counsel under an insurance policy, the insurer may exercise its right to require counsel to possess certain minimum qualifications. This bill changes a permissible minimal requirement from five years' tort litigation practice to at least five years of litigation practice. SB 1744 is pending in the Senate Judiciary Committee.

SB 2344 (Lockyer) would require each insurer doing business in the state to pay a prescribed fee for each automobile insurance policy it issues in this state in order to fund the investigation and prosecution of fraudulent automobile insurance claims. SB 2344 was scheduled for an April 5 hearing in the Senate Committee on Insurance, Claims and Corporations.

SB 2184 (Robbins) would prohibit any insurer issuing an automobile collision or comprehensive policy from



REGULATORY AGENCY ACTION

refusing to issue such a policy of insurance based solely on the age of the automobile. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1205 (Waters) would have created the California Insurance Commission, but died in committee.

AB 1190 (Waters) would have removed the current exemption from anti-trust laws enjoyed by the insurance industry and created a no-fault insurance program called the California Motor Vehicle Repairs Act. The bill died in committee.

AB 2220 (Waters) contained a ban against discriminatory underwriting policies by insurers, and would have authorized increased penalties for insurance fraud. It died in committee.

AB 2787 (Waters). Existing law does not require health care service plans and other group insurance programs to offer treatment for infertility. This bill would require that infertility treatment be offered. The bill has been referred to the Assembly Finance and Insurance Committee.

AB 2900 (Johnston). Current law prohibits the use of AIDS blood tests for the determination of insurability. This bill would remove that prohibition, and authorize health care service plans, nonprofit hospital service plans, and life and disability insurers to establish mandatory and uniform minimum requirements for assessing AIDS risk for purposes of determining insurability. It would become operative only if AB 600 is enacted and becomes operative on or before January 1, 1989. This bill also indefinitely extends the Insurance Information and Privacy Protection Act, which governs the collection, use, and disclosure of information gathered in connection with insurance transactions. The bill is pending in the Assembly Committee on Finance and Insurance.

AB 600 (Isenberg), as amended February 29, would establish the California Catastrophic Health Insurance Program, which would provide health insurance to residents of the state who are not otherwise able to obtain health insurance. The bill would establish standards for the scope of coverage, rate limitations, and subscriber eligibility and enrollment.

AB 2845 (Calderon) would establish a no-fault automobile insurance program. It also includes public hearings and prior state approval of auto insurance rates. AB 2845 is pending in the Assembly Committee on Finance and Insurance.

AB 3421 (McClintock) would author-

ize AIDS blood testing for determination of insurability. AB 3421 is also pending in the Assembly Committee on Finance and Insurance.

AB 3798 (Floyd) would require the state to publish a comparison of insurance rates. This bill is pending in the Assembly Committee on Finance and Insurance.

AB 3683 (Frazee) would require insurance companies to reduce premiums for drivers between 18 and 25 years of age who have successfully completed a driving improvement course. AB 3683 is pending in the Assembly Committee on Finance and Insurance.

AB 4036 (Mojonnier) would also end the prohibition against using AIDS to determine a person's insurability. This bill is pending in the Assembly Finance and Insurance Committee.

AB 4460 (Connelly) would require the Insurance Commissioner to consider specified factors in determining whether a reasonable degree of competition exists within certain lines of insurance. This bill would, on and after January 1, 1989, prohibit insurers (with specified exceptions) from using any rate unless the insurer has made a filing with the Department with respect to that rate. Insurers would be required to make a filing for any change in rate; if the change exceeds applicable percentage amounts, it would be required to be approved by the Commissioner, based on specified criteria. The Commissioner would be authorized to hold public hearings concerning those changes. AB 4460 is pending in the Assembly Finance and Insurance Committee.

AB 4317 (Connelly) is very similar to *AB 1108 (Connelly)*, which was vetoed by the Governor last September. AB 4317 would establish standards for insurance policies which supplement Medicare benefits (also known as "medigap" insurance). The bill would require medigap policies to contain a notice that purchasers have a thirty-day examination period during which they may return the policy. The bill would require other specified disclosures in medigap policies; set minimum loss ratios for medigap policies; and require insurers to annually file those loss ratios. AB 4317 is pending in the Assembly Finance and Insurance Committee. (For a comprehensive discussion of medigap insurance issues, see CRLR Vol. 7, No. 1 (Winter 1987) p. 1.)

LITIGATION:

On February 16, the Commissioner announced that a settlement had been reached with the Hartford Group. The

Department of Insurance had initiated an administrative proceeding against seven companies in the group.

Under the settlement, Hartford agreed to pay a \$70,000 fine and to adopt internal procedures to eliminate Department concerns over its ratesetting practices for individual insurance policies. The Department's concerns arose last year in the course of a routine examination of commercial insurers' rating policies. The proceedings by the Department began in October 1987, when the companies were called to a hearing for non-compliance with California regulations.

The companies in the group are: Hartford Fire Insurance Company, Hartford Casualty Insurance Company, Twin City Fire Insurance Company, New York Underwriters Insurance Company, Hartford Accident and Indemnity, New England Insurance Company, and First State Insurance Company.

FUTURE MEETINGS:

To be announced.

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%