



## REGULATORY AGENCY ACTION

missioner of Corporations. The application included a purported "license agreement" from Par to Par Systems. Par Systems' franchise application omitted any mention of the state administrative actions, or any of the over sixty pending civil actions involving Par.

The desist and refrain order was based upon a finding that the license agreement constitutes a franchise which was not registered under the California Franchise Investment Law. The order revoking the effectiveness of the franchise registration of Par Systems was based on the above mentioned omission of material facts which should have been in the application and the offering circular.

On December 16, 1986, a cease and desist order was issued to Professional Dental Services, Inc. (PDS) for violations of the Knox-Keene Health Care Services Plan of 1975. A notice of intention to revoke PDS's license was issued because, for at least the last eighteen months, PDS has maintained a tangible net equity deficiency. California law requires a health care service plan to maintain a minimum tangible net equity of at least \$10,000. Since this plan is a "referral plan," its tangible net equity problems are unlikely to affect its services to enrollees. The cease and desist order prohibits PDS from enrolling new members but allows the plan to continue to service existing enrollees pending further action by the commissioner.

On January 7, 1987, a cease and desist order and a notice of intention to revoke the health care service plan were issued to Apple Health and Dental Plan, Inc., also because Apple has maintained a tangible net equity deficiency.

*Publication of Investor Alert.* On January 15, in cooperation with the North American Securities Administrators Association and the Council of Better Business Bureaus, the commissioner issued the quarterly *Investor Alert*, which discusses "How to Choose and Deal With a Stockbroker." The *Investor Alert* provides information about shopping for a broker, setting up and overseeing accounts, and communicating with the broker. It also provides tips on settling disputes with the broker and contains a list of organizations offering arbitration of customer disputes. The publication is directed to an audience with minimal experience in the stock market.

### LEGISLATION:

*AB 177 (Calderon)*, as amended

March 11, would amend sections 18218.5, 22458.7, 24458.7, 22476, and 26476 of the Financial Code, relating to loans. Existing law provides for the licensure of various financial brokers and lenders by the commissioner of corporations. This bill would increase the fee chargeable by an industrial loan company, personal property broker or broker, and a consumer finance lender or broker for return by a depository institution of a dishonored check from \$5 to \$10. Certain lenders would be authorized to sell promissory notes evidencing the obligation to repay loans purchased from and made by any of those licensees to institutional investors. The collection of payments with regard to those notes would be required to be deposited and maintained in a trust account.

*AB 247 (Bane)* would amend section 6556 of, and repeal section 5614 of, the Financial Code, relating to savings associations. The provisions which state that no stock of a savings association may be sold or offered for sale to the public without a permit from the Savings and Loan Commissioner would be repealed. Also, denial of a request to establish a branch office of a savings association could no longer be based on restrictions imposed by the Savings and Loan Commissioner under an existing agreement with the Federal Home Loan Bank Board.

*AB 300 (Bronzan)*, as amended March 18, would amend section 1373 of, and add sections 1373.65 and 1373.68 to the Health and Safety Code; and would amend sections 10125, 10127, 10176, 10177, 11512.5, and 11512.8 of, and add sections 10125.5 and 11512.75 to the Insurance Code, relating to mental health. Nonprofit hospital service plans and certain health insurers are currently required to offer coverage for mental health services. Under this bill, these health insurers would be required to offer a specified level of mental health services. Offering or providing lesser or greater coverage of additional mental health services would not be precluded.

Health care service plans (except HMOs or specialized health care service plans) which provide group coverage, would be required to offer professional mental health services meeting the standards specified by this bill. This bill has been referred to the Committee on Finance and Insurance.

*AB 381 (Lancaster)* would amend section 1808.4 of the Vehicle Code. Existing law provides for the confi-

dentiality of the home address of specified persons, including attorneys employed by the Department of Justice or an office of the district attorney or public defender. Under AB 381, attorneys employed by the Department of Corporations would be included within this provision. This bill has been referred to the Transportation Committee.

*SB 6 (Robbins)* would add Part 6.5 (commencing with section 12700) to Division 2 of the Insurance Code and would amend sections 131, 1110, and 1589 of, and add section 984.5 to the Unemployment Insurance Code, relating to health insurance. Existing law does not provide for a health coverage association to provide mental health insurance to residents of this state who are not otherwise able to obtain health insurance. Such an association would be established under this bill, which would specify required terms of coverage, rate limitations, and utilization review procedures.

*SB 315 (Montoya)*, as amended March 23, is a reintroduction of last year's SB 315, and would provide for the regulation of financial planners by the commissioner of corporations. The bill would enact provisions in the Business and Professions Code to require financial planners, as defined, to be subject to licensure pursuant to the existing requirements relative to "investment advisers" or to conduct that activity under the direct supervision of a licensee. The bill would also enlarge the scope of persons subject to licensure as investment advisers.

### DEPARTMENT OF INSURANCE

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Insurance is the only interstate business wholly regulated by the several states, rather than by the federal government. In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed by the Insurance Commissioner. Insurance Codes sections 12919 through 12931 provide for the commissioner's powers and duties. Authorization for the Insurance Department is found in section 12906 of the 800-page Insurance Code.

The Department's designated purpose is to regulate the insurance industry in order to protect policyholders. Such regulation includes the



licensing of agents and brokers and the admission of insurers to sell in the state.

In California, the Insurance Commissioner licenses 1,300 insurance companies, which carry premiums of approximately \$26 billion annually. Of these, 650 specialize in writing life and/or accident and health policies.

In addition to its licensing function, the Department 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 can hold an administrative hearing to determine if 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 Department 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:

*Liquidation Proceedings.* DOI recently initiated liquidation proceedings against Mission Insurance Companies (MIC). On February 2, Commissioner Gillespie applied to Los Angeles County Superior Court for liquidation orders against MIC and its subsidiaries. MIC had been under the Commissioner's conservatorship since October 31, 1985.

*Automobile Assigned Risk Plan.* The plan provides automobile bodily injury and property damage liability insurance to people who are entitled to coverage but are unable to procure insurance through ordinary methods. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 69.) Hearings were held by DOI on April 8 and 16 to address proposed changes in the plan which will result in increased premium rates for participants. The hearings will help the Commissioner determine whether such changes are in keeping with the intent and purpose of the statutes.

#### LEGISLATION:

*AB 119 (Tucker)* was referred to the Committee on Finance and Insurance on February 9. Existing law permits insurers to set different premium rates for auto insurance for different persons according to various actuarial bases. The bill would prohibit insurers from setting premiums for private passenger auto insurance based upon any ground except the driving record of the insured or members of the named insured's household.

*AB 151 (Stirling)* was referred to the Committee on Finance and Insurance

on February 9. Existing law does not prohibit a motor vehicle liability insurer from placing the name of an insured's spouse on a policy of motor vehicle liability insurance. This bill would prohibit a motor vehicle liability insurer from requiring that, in addition to the name of an insured, the name of an insured's spouse or other members of the insured's household appear on the policy, if insurance coverage is not extended to those persons.

*AB 213 (Calderon)* was referred to the Committee on Finance and Insurance on February 18. Existing law does not require that an insurer who negotiates the check of, or who otherwise accepts payment from, an applicant for insurance who is subsequently rejected by the insurer, to pay interest to the applicant for the period of time the applicant's funds are held by the insurer. This bill would enact such a requirement, and specify the rate of interest payable to be the legal rate of interest on judgments.

*AB 230 (Polanco)* was referred to the Committee on Finance and Insurance on February 9. Existing law requires all insurers issuing policies of motor vehicle insurance to establish an assigned risk plan. This bill would provide that the plan shall provide only commercial coverage provisions effective January 1, 1989. The bill also establishes a State Automobile Insurance Fund; and provides that an insurer which cancels or fails to renew an automobile insurance policy without good cause is liable to the fund for \$1,000.

*AB 231 (Lancaster and Allen)* was referred to the Committee on Finance and Insurance on February 9. Under existing law, if the Commissioner finds that commercial liability insurance for a designated class of risk is not available, the Commissioner may authorize the formation of voluntary market assistance programs. This bill would repeal that provision and would enact a similar provision applicable generally to liability insurance instead of only commercial liability insurance.

*AB 232 (Lancaster)* was referred to the Committee on Finance and Insurance on February 9. In conjunction with AB 231, this bill would provide that if, after a hearing, the Insurance Commissioner determines that a market assistance program has failed to provide adequate liability insurance coverage, the Commissioner may order the creation of a temporary joint underwriting association.



*AB 241 (Lancaster)* was referred to Committee on Finance and Insurance on February 9. Existing law authorizes a domestic incorporated insurer, after investing an amount equal to its minimum paid-in capital in specified securities, to invest in certain bona fide hedging transactions and positions in interest rate futures contracts or options on interest rate futures contracts. Interest rate futures contracts and options on interest rate futures contracts, as defined by existing law, do not include stock indices. This bill would, with respect to life insurance, include, for the above purposes, stock indices within the definitions of interest rate futures contracts and options therefor.

*AB 242 (Lancaster)* was referred to the Committee on Finance and Insurance on February 9. Existing law prohibits a domestic incorporated fire, life, or marine insurer from making excess funds investments in purchases of, or loans upon, more than 30% of the total in par value or number of outstanding shares of the capital stock of any one corporation, with specified exceptions. This bill would add a further exception to that provision by authorizing excess funds investments of life insurers in the stock of a corporation organized to engage exclusively in the ownership or management of mortgage loan assets and the issuance of securities collateralized by such assets.

*AB 243 (Lancaster)* was referred to the Committee on Finance and Insurance on February 9. Existing law authorizes any domestic incorporated insurer which maintains certain investments equal to its required minimum paid-in capital to make excess funds investments in bonds, notes, or other evidences of indebtedness payable in U.S. dollars and issued by a corporation incorporated under the laws of an alien government, as specified. This bill would extend that authorization, with respect to life insurers, to the above investments payable in other currency, as well as U.S. money.

*AB 244 (Lancaster)* is also pending in the Committee on Finance and Insurance. Existing law authorizes an insurer to invest in securities and investments in a foreign country subject to certain conditions, including a requirement that the investments not exceed in the aggregate 4% of the capital and surplus or 2% of the total admitted assets of the insurer, whichever is less. This bill would, with respect to this requirement, authorize a life insurer to exceed those limits if permitted by the Insurance

Commissioner.

*AB 256 (Johnson)* was referred to the Committee on Finance and Insurance on February 9. Existing law prohibits an insurer from selling any security of its own issue in this state without having obtained a permit from the Insurance Commissioner. This bill would exempt any transaction by an incorporated attorney in fact of a reciprocal or interinsurance exchange if the attorney in fact is registered pursuant to the Securities Exchange Act of 1934 and is subject to regulation by the Securities and Exchange Commission.

*AB 300 (Bronzan)* was referred to the Committee on Finance and Insurance on February 9. As to nonprofit hospital service plans, certain health insurers, and certain self-insured employees welfare benefit plans, the bill would require that a specified level of mental health services be offered.

*AB 308 (Elder)* was referred to the Committee on Finance and Insurance on February 9. This bill would authorize the Insurance Commissioner to form a joint underwriting association for medical malpractice insurance for free clinics and to specify the functions and powers of the association.

*AB 355 (Eaves)* is pending in the Committee on Finance and Insurance. Existing law authorizes local agencies to enter into a joint pooling agreement to form an insurance pooling arrangement for the payment of liability losses, the arrangement to be administered by the Local Agency Self-Insurance Authority. This bill would authorize the Local Agency Self-Insurance Authority to permit participation by tax-exempt nonprofit corporations or associations.

*AB 356 (Eaves)* was referred to the Committee on Finance and Insurance on February 18. This bill would establish the State Liability Insurance Fund, to be administered by a board of directors appointed in a prescribed manner, for purposes of establishing a liability insurance program for nonprofit entities.

*AB 421 (LaFollette)* was referred to the Committee on Finance and Insurance on February 18. Existing law prohibits any controlled escrow company, title insurance company, or other person in the business of selling or furnishing to the public evidence of title to real property from paying for certain promotional material or certain evidence of title. This bill would, in addition, prohibit the furnishing of any draft issued by any such person to a prospective buyer of real property to be

deposited in escrow in lieu of a deposit of cash, check, or money order, if an amount representing the stated amount of the draft is to be subsequently deposited in escrow upon the occurrence of specified conditions.

*SB 6 (Robbins)* was referred to the Committee on Insurance, Claims and Corporations on January 29. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 70 for a discussion of this bill.)

*SB 250 (McCorquodale)* was referred to the Committee on Insurance, Claims and Corporations on February 5. This bill is essentially the same as AB 356 (Eaves).

*AB 3378 (Moore)* has been chaptered. It amends section 11628(a) of the Insurance Code and became effective on January 1, 1987. The new law requires auto liability insurers to annually report their record of loss experience, by zip code, to the Insurance Commissioner. It also permits an insurer to satisfy its reporting obligation by providing its loss data to a rating or advisory organization for submission to the Commissioner. DOI is currently developing the necessary systems and statistical plans to enforce this law.

*ACA 5 (Waters)* would allow the use of revenues from state-imposed taxes on motor vehicle fuels and fees and taxes imposed by the state upon vehicles or their use or operation to be used for the costs of operating or contracting for a uniform statewide system of motor vehicle liability insurance.

*ACA 6 (Polanco)* would provide for the election of the Insurance Commissioner. Presently, the Insurance Commissioner is appointed by the Governor to serve a four-year term coextensive with the term of the Governor.

*SB 274 (Ayala)*, as introduced February 2, would prohibit any insurer from canceling a motor vehicle insurance policy based upon an accident when the insured is not at fault, in any manner, as determined by either the accident report or the insurer.

*AB 642 (Connelly)* would prohibit an insurance agent, broker, or solicitor from accepting any consideration for a referral of an insured to a particular shop for vehicular repairs, with respect to a claim payable under commercial or noncommercial automobile comprehensive or collision coverage in an insurance policy issued through the agent or broker or by an insurer represented by the agent.

#### RECENT MEETINGS:

At the February 5 meeting of the



Consumer Advisory Board, the Board's subcommittee studying the Department of Insurance made its preliminary report. The subcommittee, which is chaired by Richard Irmas, analyzed various reports submitted by outside independent organizations to determine whether internal improvements could be made to DOI. The subcommittee reviewed assertions made by the independent organizations to determine their legitimacy. For example, one report asserts that a "revolving door" personnel problem exists at the DOI. The subcommittee reported that no statistics are kept by DOI to either validate or invalidate this assertion. Some suggested solutions include conducting a survey to determine whether this personnel problem actually exists; further investigation of the management-level turnover rate to determine whether and how it affects DOI's efficiency; and potential sources of new employees.

A second assertion made by the reports suggests that the fines and penalties set forth in the Insurance Code for improper activities are inadequate. The subcommittee agrees that these fines should be revised upward so as to constitute a proper deterrent. The subcommittee suggested a public hearing where consumers, insurers, and others affected by and subject to the penalties and fines could discuss both the fines and the issue whether the "unfair and deceptive practices" portions of the Insurance Code are still adequate.

The third assertion discussed in the subcommittee's report addresses whether DOI has the authority necessary to maintain a viable insurance marketplace. The subcommittee suggested that vagueness in DOI's enabling statutes and in its rules and regulations "undoubtedly causes some in the industry to undertake activities not in the best interest of the insuring public because their interpretations of the Code are different from those of the DOI." The subcommittee also stated that this vagueness inhibits DOI staff from taking action against licensees acting improperly. The report asserted that although DOI should take a more active investigative and regulatory stance, "this is not possible because of the restricted budget within which the DOI now functions."

The subcommittee next asserted that DOI should become the leading educator of the public regarding insurance matters. The report suggested that DOI interpret and verify conflicting claims by insurance companies and their

critics regarding income expenses, loss ratios, and combined ratios; the DOI should also publicize the reserving practices of the various insurers and comment during DOI's review of a particular company whether the reserves are appropriate. Further, consideration should be given to the use of DOI funds to develop and implement statewide a high school level course in insurance economics.

Finally, the subcommittee stated that DOI should become more involved in the rating process. While the subcommittee would oppose the imposition of "file and use"-type rate regulation, it suggested that a two- or three-year running pure loss ratio figure in a fixed percentage range be prima facie evidence that a rate is inadequate or excessive when compared to the data upon which such rates were based.

The subcommittee studying "senior citizen gap" also made a report at the February 5 meeting. Subcommittee chair Gleason Payne is taking a "wait and see" attitude, pending state and federal legislative proposals, before initiating any subcommittee proposal.

#### FUTURE MEETINGS:

To be announced.

#### DEPARTMENT OF REAL ESTATE

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The Real Estate Commissioner is appointed by the Governor and is the Department's chief officer. 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:

*Real Estate Transfer Disclosure Statement.* Effective January 1, 1987, certain transferors of real property or residential stock cooperatives of four or