

2010

2009-2010 Legislative Summary

Assembly Committee on Insurance

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California State Legislature
Assembly Committee on Insurance

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LEGISLATIVE SUMMARY

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November 10, 2010

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To Assembly Members and All Interested Parties:

The following is a summary of all the bills that were referred to the Assembly Insurance Committee during the 2009-2010 session. The bills are organized in numerical order and their status noted at the end of the 2009-2010 session.

The summary of each bill is not intended to be a definitive or comprehensive statement of the provisions of the bill. For more detailed information about any bill, please go to the Assembly's web page at www.assembly.ca.gov and click on "Legislation."

In addition to policy hearings on insurance legislation, the Assembly Insurance Committee held two oversight hearings addressing key issues. The hearings topics were: California's Unemployment Insurance Program, which focused on the State's Administration of the program and its serving of the needs of California's unemployed. Secondly, a joint hearing of the Assembly Insurance Committee and Senate Banking, Finance and Insurance Committee regarding Proposition 17, which would have allowed auto insurance companies to base their prices in part on a driver's history of insurance coverage.

For additional information regarding this summary or other activities of the committee, please contact the committee staff at (916) 319-2086.

Respectfully,

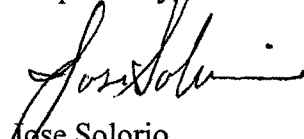

Jose Solorio
Chair

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Appendix 2 – March 24, 2010 – Joint Hearing Assembly Insurance Committee and Senate Banking, Finance and Insurance Committee: Proposition 17. Allows Auto Insurance Companies to Base their Prices in Part on a Driver's History of Insurance Coverage: Initiative Statute.

ASSEMBLY INSURANCE COMMITTEE
2009-2010
LEGISLATIVE SUMMARY

Assembly Bills

AB 41 (Coto) – Insurance: community development investments.

Extends until January 1, 2015, the sunset date on the requirement that insurers provide the Insurance Commissioner with information on community development investments. Requires major insurers to develop, and file with the commissioner no later than July 1, 2011, a "community development investment" policy that expresses the insurer's goals for community development investments. Requires the commissioner to establish a link on its internet website providing public access to each insurer's community development investments information.

Status: Chapter 340, Statutes of 2010.

AB 43 (Blakeslee) – California Earthquake Authority: employees.

Would have removed the 25-person limit on the number of Authority employees subject to civil service provisions, and would have authorized the Authority to contract for the services of a chief mitigation officer. Would have established the responsibilities of the chief mitigation officer.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"While I am supportive of the California Earthquake Authority (CEA) contracting for the services of a Chief Mitigation Officer to be responsible for the mitigation activities of the CEA, I cannot support the provision in this bill eliminating the limit on the number of civil service employees that can be employed by the CEA."

AB 76 (Yamada) – Life and Annuity Consumer Protection Fund.

Extends the sunset date of the Life and Annuity Consumer Protection Fund administered by the Department of Insurance from January 1, 2010 to January 1, 2015. Requires the Department of Insurance to annually publish on its website a report that consolidates designated statistics summarizing DOI's life insurance and annuity consumer protection activities and descriptions of departmental education programs for educating consumers about these products, and their purchase, use and related matters of consumer interest.

Status: Chapter 75, Statutes of 2009.

AB 128 (Coto) – Workers' compensation: cancer presumption.

Would have established a life-time workers' compensation cancer presumption for public safety professionals (e.g.: fire firefighters, police officers, highway patrol) with substantial years of service credit. Would have eliminated the five-year cap imposed following the termination of employment on a workers' compensation cancer presumption for tens of thousands of public safety personnel statewide.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 280 (Blakeslee) – California Earthquake Authority: retrofit programs: grants.

Would have authorized the California Earthquake Authority to establish a grant or loan program to retrofit specified "soft-story" buildings. Soft-story buildings are those with a ground floor less stable than upper floors, most often due to commercial or parking spaces on the first floor.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 299 (Committee on Insurance) – Insurance.

Makes a series of technical and noncontroversial changes to laws governing the authority and duties of the Insurance Commissioner and insurance companies to clarify and update existing law.

Status: Chapter 234, Statutes of 2009.

AB 328 (Charles Calderon) – Electronics transactions: exceptions.

Authorizes insurance companies to send certain insurance notices electronically, and authorizes insurance companies to pay claims by electronic funds transfers.

Status: Chapter 433, Statutes of 2009.

AB 361 (Bonnie Lowenthal) – Workers' compensation: treatment authorization.

Precludes an employer from refusing to pay for workers' compensation medical treatment services if the employer has approved those services prior to the time the medical provider treated the claimant.

Status: Chapter 436, Statutes of 2009.

AB 381 (Block) – Unemployment compensation disability benefits: academic employees.

Allows community college districts to elect to provide state disability insurance coverage to academic employees who are permanent, part-time, or temporary; and, to management, confidential, and employees who are not part of a bargaining unit.

Status: Chapter 437, Statutes of 2009.

AB 384 (Ma) – Unemployment compensation: disability benefits: payment of benefits.

Would have deleted the requirement to include an imprinted statement on payments of unemployment compensation and disability benefits. Would have also made technical, nonsubstantive changes to those provisions.

Status: Subsequently changed into a non-insurance bill to address an unrelated subject.

AB 389 (Saldana) – Long-term care insurance.

Modifies the reasonable expected loss ratio of previously issued long-term care insurance policies if the insurer files a rate revision after January 1, 2010.

Status: Chaptered 101, Statutes of 2009.

AB 409 (Garrick) – California Insurance Guarantee Association: insurer insolvency.

Revises the California Insurance Guarantee Association law to clarify that assessments to pay claims of insolvent insurers shall be based upon a uniform percentage applied to the share of direct written premium of participating insurers for the base year, as that share is

initially determined from the insurers' first Annual Financial Statement filing following the base year, and then as updated yearly from subsequent annual Financial Statement filings. This method conforms the statute to long-standing administrative practice.

Status: Chapter 105, Statutes of 2009.

AB 470 (Niello) – Insurance information; confidentiality.

Authorizes an insurance institution, agent, or insurance-support organization to disclose information to an insured's lawyer from an accident report, supplemental report, investigative report or the actual report from a governmental agency which the insured is entitled to obtain under specified provisions of the Vehicle Code or Government Code.

Status: Chapter 112, Statutes of 2009.

AB 483 (Buchanan) – Workers' compensation: Internet Websites.

Requires the Workers' Compensation Insurance Rating Bureau to establish an internet website that identifies whether an employer is insured for its workers' compensation obligations.

Status: Chapter 241, Statutes of 2009.

AB 493 (Tran) – Employment and Benefits Appeals Board.

Would have eliminated the Workers' Compensation Appeals Board, the California Unemployment Insurance Appeals Board, and the California Occupational Safety and Health Appeals Board, and would have transferred their duties to a new board.

Status: Failed passage in the Assembly Insurance Committee.

AB 516 (Niello) – Workers' compensation: temporary disability.

Would have repealed the minimum level of temporary disability benefits which an injured worker can receive.

Status: Failed passage in the Assembly Insurance Committee.

AB 519 (Solorio) – Vehicles: towing fees and access notice.

Establishes and requires a person that charges for towing or storage to post a specified copy of "Towing Fees and Access Notice" that contains specific information regarding a vehicle owner's rights and responsibilities if the vehicle is towed, and requires that it be posted in the office area of the storage facility in plain view of the public and also require that copies be made readily available to the public.

Status: Chapter 566, Statutes of 2010.

AB 586 (Ma) - Workers' compensation: employees of the City and County of San Francisco: leaves of absence.

Narrows an exclusion of certain safety officers employed by the City and County of San Francisco from the law that provides full pay for up to one year for the officers if injured on the job.

Status: Chapter 74, Statutes of 2010.

AB 591 (DeLaTorre) -- Individual health care coverage premium rates.

Would have prohibited a health care service plan or health insurer from increasing the premium rate it charged a subscriber or policyholder of an individual contract or policy for a period of 90 days beginning with the date the provision became operative.

Status: Held in the Senate Appropriations Committee.

AB 601 (Garrick) -- Motor vehicle insurance: special assessments.

Extends the sunset on a 30-cent fee per vehicle insured in California until January 1, 2015 to support a variety of consumer protection functions of the Department of Insurance and to support public outreach concerning California's low-cost automobile insurance program.

Status: Chapter 247, Statutes of 2009.

AB 615 (Niello) -- Workers' compensation.

Would have required an employer to provide a claim form and a notice of potential eligibility for workers' compensation benefits within one working day of receiving notice or knowledge of an employee's injury that results in lost time beyond the employee's work shift at the time of injury or that results in medical treatment beyond first aid.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 664 (Skinner) -- Workers' compensation. Hospital employees: presumption.

Would have established several workers' compensation presumptions for more than 500,000 employees at hospitals statewide, including workers at public, private, and non-profit hospitals.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 679 (Garrick) -- Insurance: adverse underwriting decisions.

Would have required an insurance company or agent to provide an applicant or policyholder the reasons for an adverse underwriting decision in writing or to advise him or her orally that he or she has a right to receive the reasons in writing if he or she so requests.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 725 (Jones) -- Auto insurance: low-cost automobile insurance.

Would have extended from January 1, 2011, to January 1, 2016, the sunset date of the Low-Cost Automobile Insurance Program, and would have renamed the program.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"While I recognize the need to provide low cost automobile insurance to low income drivers, the effectiveness of this program is questionable given the number of policies in effect and low participation rate amongst the uninsured. Since the law this bill is looking to extend does not expire until January 1, 2011, I encourage the author and sponsor to take the next year to examine the results of the program and determine if any changes are needed to the program to ensure its success."

AB 784 (Gaines) – Insurance transactions: nonadmitted insurers.

Would have provided that a nonadmitted insurer that is affiliated with a California domestic insurer shall not be deemed to be transacting insurance in California as long as all California business written by the nonadmitted insurer is transacted by and through a surplus lines broker licensed in California.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 800 (Duvall) – Insurance omnibus.

Makes several licensing-related changes in the Insurance Code, including requiring the filing of license applications by means of electronic service, and adopts changes needed to increase the conformity of California's insurance laws with the producer Licensing Model Act of the National Association of Insurance Commissioners.

Status: Chapter 254, Statutes of 2009.

AB 801 (Duvall) – Workers' compensation: individual identifiable information.

Would have authorized the Department of Insurance to access information from the Workers' Compensation Information System for purposes of investigating and prosecuting insurance fraud.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 802 (Duvall) – Insurance fraud: release of information: other unlawful activity.

Would have required insurers to release to specified government agencies any unlawful activity uncovered in the course of an insurance fraud investigation, when requested.

Status: In the Senate Banking, Finance and Insurance Committee.

AB 812 (DeLaTorre) – Insurance reports.

Originally, the bill would have required the Insurance Commissioner (IC) to modify the form and method in which quarterly statements are filed by insurers with the IC. As amended, would have required health plans and health insurers to report to the California Department of Managed Health Care and the California Department of Insurance the medical loss ratio for each policy issued amended or renewed in California each year.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 816 (Hagman) – Unemployment insurance: Employment Training Fund.

Would have repealed the express authority of the Legislature to appropriate funds from the Employment Training Fund to finance the local assistance portion of the welfare-to-work activities under the CalWORKS Program.

Status: From committee: Filed with the Chief Clerk pursuant to Joint Rule 56.

AB 866 (Niello) – California Earthquake Authority.

Revises the due date of the California Earthquake Authority Annual Report from May 1st of each year to August 1st of each year and provides for its publication on the CEA website.

Status: Chapter 480, Statutes of 2009.

AB 879 (Hernandez) – Workers' compensation: self-insurers: financial audits.

Would have required workers' compensation self-insurers to file an annual audited financial statement and an actuarial analysis with the Office of Self-Insurance Programs within the California Department of Industrial Relations.

Status: Held in Senate Banking, Finance and Insurance Committee.

AB 933 (Fong) – Workers' compensation: medical treatment.

Would have required physicians in the workers' compensation system who conduct utilization review to be licensed in the State of California.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill would require a physician conducting utilization review in the workers' compensation system to be licensed in California. Such a requirement would be inconsistent with how utilization review is conducted in other areas of medicine and not in line with best practices nationwide. The proponents of this measure have not demonstrated a need for this disparity in treatment."

AB 948 (Logue) -- Workers' compensation: supplemental job displacement benefits.

Would have provided that a mandatory notice to an injured worker relating to supplemental job displacement benefits can be delayed until such time as work restrictions are known, if these restrictions are not known at the time notice is currently required.

Status: From committee without further action pursuant to Joint Rule 62(a).

AB 954 (Jones) – Insurance Commissioner: regulations.

Would have required the California Department of Insurance to use the Administrative Procedures Act when adopting rules, regulations, or insurance standards recommended by the National Association of Insurance Commissioners, with specified exceptions.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 982 (Tran) – Structured settlements: transfers.

Would have clarified several aspects of the sale or transfer of a structured settlement. A structured settlement relates to tort settlements that are converted to an annuity-like product, with periodic payments that may have tax advantages.

Status: Held in Senate Judiciary Committee.

AB 989 (Block) – Senior insurance: actions against insurers.

Would have authorized any person who is harmed as a result of a violation of the senior insurance laws to bring a civil action for compensatory damages and any other remedies otherwise provided by law.

Status: From committee: Filed with the Chief Clerk pursuant to Joint Rule 56.

AB 1011 (Jones) – Insurance: green incentives.

Makes findings and declarations relating to California's role in greenhouse gas reduction, and includes green investments as community development investments. Requires the

Commissioner, on the department's Internet Web site, to biennially identify those insurers that make investments that qualify as green investments and the aggregate amount of identified insurer investments in green investments. The bill extends the date for repealing those provisions to January 1, 2015.

Status: Chapter 418, Statutes of 2010.

AB 1051 (Fletcher) – Veterans: Pooled Self-Insurance Fund.

Consolidates the Department of Veterans Affairs Home Loan Program's (Program) four insurance reserve funds into the Pooled Self-Insurance Fund (Pooled Fund), and allows the VA to purchase insurance related to the Program from the monies appropriated from the Pooled Fund. Maintains the four reserve funds as sub-funds within the Pooled Fund and requires that any internal sub-fund borrowing be repaid in full within three years.

Status: Chapter 502, Statutes of 2009.

AB 1054 (Coto) – Motor vehicle insurance: rates.

Would have specified that no retrospective adjustment of an approved rate may be ordered if the insurer has complied with the rate approval order of the Insurance Commissioner, and would have provided that credit card expenses incurred by an insurer are not part of an "efficiency standard" adopted by the Insurance Commissioner for rate making purposes.

Status: Died on inactive file.

AB 1093 (Yamada) – Workers' compensation.

Provides that a "personal relationship" or "personal connection" is not established, for purposes of determining a claim for workers' compensation benefits, solely on a third-party aggressor's beliefs regarding race, religious creed, color, national origin, age, gender, disability, sex, or sexual orientation where the employee-victim is believed by the third-party to be a member of one of the protected classes.

Status: Chapter 272, Statutes of 2009.

AB 1117 (Fuentes) – State Compensation Insurance Fund: board.

Clarifies that a board member of the State Compensation Insurance Fund (SCIF) is not disqualified by virtue of a conflict of interest from considering issues before the board due to the fact that the board member is a policyholder or employee of a policyholder of SCIF.

Status: Chapter 136, Statutes of 2009.

AB 1179 (Jones) – Motor vehicle insurance: damage assessments.

Modifies the required content of the Auto Body Repair Consumer Bill of Rights, which the Department of Insurance must then incorporate into future editions, to include information informing consumers that they have a right, including when pursuing an insurance claim for repair of that vehicle, to seek and obtain an independent repair estimate directly from a registered auto body repair shop.

Status: Chapter 141, Statutes of 2009.

AB 1200 (Hayashi) – Motor vehicle insurance: damage assessments.

Allows insurers to provide automobile insurance claimants with specified information regarding the services and benefits available during the claims process.

Status: Chapter 387, Statutes of 2009

AB 1214 (Nava) – Fire insurance: underwriters' corps: liability.

Requires personnel retained by an insurance company to protect structures threatened by a wildfire to check in with, and follow the instructions of, the incident commander in charge of fighting the fire.

Status: Chapter 517, Statutes of 2009

AB 1227 (Feuer) – Workers' compensation: public employees: leaves of absence.

Extends "4850" leave of absence benefits to a broader range of safety officers.

Status: Chapter 389, Statutes of 2009.

AB 1298 (Coto) – Unemployment Insurance Program.

Would have modified the taxable wage base and the tax rates payable on wages used to finance the Unemployment Fund, as well as increased the income disregard amount. Specifically, the bill would increase the taxable wage base from \$7,000 to \$16,600 per employee per year, set the top tax rate at 7.5% rather than 5.4%, and increase the amount that a part-time worker (who is also partially unemployed) may earn to \$200 rather than \$25 per week, without a reduction in unemployment benefits.

Status: Held in the Assembly Insurance Committee.

AB 1413 (Coto) – Fire insurance coverage.

As considered by the Committee, the bill would have provided that a policyholder is entitled to recover the extended or guaranteed replacement amount from an insurer after a total loss regardless of whether the homeowner rebuilds the home on the same site.

Status: The bill was subsequently changed to a non-insurance bill. Vetoed by the Governor.

AB 1447 (John A. Perez) – State Compensation Insurance Fund: audits.

Declared the State Compensation Insurance Fund to be a state agency for purposes of authorizing the Bureau of State Audits to conduct financial and performance audits of SCIF, and requires SCIF to include a specific disclaimer in any advertising.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill would clarify that the State Compensation Insurance Fund (SCIF) is a state agency for purposes of the Bureau of State Audits (BSA) and its audit, evaluation, and investigatory jurisdiction and would impose a requirement that all SCIF advertising include a disclaimer indicating it is self-supported and not funded by the State of California.

This bill is unnecessary. Insurance Code Section 11873(b) already explicitly provides that SCIF is subject to audits by the State Auditor. Furthermore, the BSA has performed audits of SCIF several

times in the past three years."

AB 1521 (Jones) –Health care coverage: solicitation.

Would have prohibited the variation of compensation a health care service plan or a health insurer pays to a solicitor for the sale or offer of, or application for, an individual health plan contract or insurance policy that would have depended on the health status, claims experience, industry, or occupation of the individual.

Status: Held in the Senate Appropriations Committee.

AB 1564 (Committee on Insurance) – Workers' compensation.

Would have deleted the provision providing that the labor-management agreement may include a vocational rehabilitation or retraining program and would make conforming changes.

Status: Died pursuant to Art. IV, Sec. 10 (c) of the Constitution.

AB 1565 (Committee on Insurance) – Insurance.

Would have made technical corrections to laws governing insurance including correcting references that govern the manner in which the Insurance Commissioner may withdraw the approval of forms for credit life and disability insurance.

Status: Subsequently changed to a non-insurance bill. Placed on the Revenue and Taxation Committee suspense file.

AB 1597 (Jones) – Automobile insurance: assigned risk plans: low-cost automobile insurance.

Extends the sunset date of the low-cost automobile insurance program until January 1, 2016, and makes related changes to that law.

Status: Chapter 234, Statutes of 2010.

AB 1603 (Solorio) –Workers' compensation – temporary partial disability.

Would have required that an employee be deemed to be temporarily partially disabled during the period when the employee's disability is permanent and stationary, no more than 60 days have elapsed after the date the employee was informed that his or her disability is permanent and stationary, the employer has not offered the employee regular, modified, or alternative work, or informed the employee that it will not offer the employee regular, modified, or alternative work.

Status: Held in the Assembly Insurance Committee.

AB 1608 (Garrick) –Motor vehicle insurance: special assessment.

Would have required that the amount of a special purpose assessment be determined by the Insurance Commissioner, and that the amount not exceed \$0.30 per insured vehicle. Would have also required that 66.7% of the special purpose assessment be used to fund specified consumer service functions of the Department of Insurance, relating to motor vehicle insurance. The remaining 33.3% of the special purpose assessment would be used to fund the improvement of certain consumer functions of the department, relating to motor vehicle insurance.

Status: Held in the Assembly Insurance Committee.

AB 1696 (Bill Berryhill) – Death benefits: payment duration.

Extends workers' compensation death benefits until the youngest child attains 19 years of age if the child is still attending high school and is receiving the benefits as a child of certain public safety employees killed in the performance of duty.

Status: Chapter 361, Statutes of 2010.

AB 1708 (Villines) Insurance: surplus line brokers.

Requires the total capital and surplus requirement for a nonadmitted insurer to be on the List of Eligible Surplus Lines Insurance (LESLI list) be at least \$45,000,000, and the amount of assets to be used in calculating capital and surplus that consist of cash and other specified types of securities to be at least \$25,000,000. Provides that if a nonadmitted insurer on the LESLI list does not meet the capital and surplus requirements as of January 1, 2011, that insurer would be required to have at least \$30,000,000 of capital and surplus as of December 31, 2011, and at least \$45,000,000 of capital and surplus as of December 31, 2013.

Status: Chapter 362, Statutes of 2010.

AB 1804 (Hagman) Employment Training Fund.

Would have required that moneys in the Employment Training Fund be appropriated only for specified employment training purposes, and would have prohibited the use of those moneys for any other purpose.

Status: Held in the Assembly Appropriations Committee.

AB 1827 (Arambula, Solorio) Workforce development: one-stop career centers.

Would have required the Employment Development Department to provide staffing for unemployment insurance benefits assistance in one-stop career centers.

Status: Held in the Assembly Appropriations Committee.

AB 1837 (Gaines) Insurance transactions: nonadmitted insurers.

Authorizes an insurer domiciled in California to have common directors with an affiliated nonadmitted insurer provided those common directors do not constitute the majority of the voting authority of the nonadmitted insurer and do not perform any management functions for the nonadmitted insurer in California. Authorizes an insurer domiciled in California to perform specified administrative, claims adjusting, and investment management services on behalf of an affiliated nonadmitted insurer that has qualified as an eligible surplus line insurer.

Status: Chapter 581, Statutes of 2010.

AB 1868 (Jones) Insurance life: disability: discretionary clauses.

Would have prohibited the Insurance Commissioner (IC) from approving any disability insurance policy that includes a provision that would reserve discretionary authority to the insurer to determine eligibility for benefits, and would have voided life or disability policies that contain these discretionary clauses.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill would prohibit the Insurance Commissioner from approving any disability or life insurance policy if it includes a provision that would reserve discretionary authority to the insurer to determine eligibility for benefits, and voids certain provisions of a policy or agreement if it provides or funds life insurance or disability insurance coverage.

This bill is unnecessary, as the Insurance Commissioner already has the authority to prohibit the use of discretionary clauses."

AB 1871 (Jones) Private passenger motor vehicle insurance coverage: personal vehicle sharing.

Prohibits a private passenger motor vehicle from being classified for insurance purposes as a commercial, for-hire, or permissive use vehicle, solely on the basis of it being used for personal vehicle sharing if the annual revenue received by the vehicle's owner that is generated by personal vehicle sharing does not exceed the annual expenses of owning and operating the vehicle, including, but not limited to, depreciation, interest, lease payments, automobile loan payments, insurance, maintenance, parking, and fuel, and the personal vehicle sharing is conducted pursuant to a personal vehicle sharing Program, as defined.

Status: Chapter 581, Statutes of 2010.

AB 1897 (Jones) State Compensation Insurance Fund.

Would have required that each employee of the fund, at no cost to the employee, obtain an appropriate certificate for transacting workers' compensation insurance as a condition of employment. Would have required the fund, in cooperation with the Insurance Commissioner, to adopt minimum standards of training, experience, and skills that employees are required to possess to perform their duties, and would have required the fund to become an approved education provider for those purposes.

Status: Held in the Assembly Appropriations Committee.

AB 1994 (Skinner) Hospital employees: presumption.

Would have provided, with respect to hospital employees who provide direct patient care in an acute care hospital, that the term "injury" includes a blood-borne infectious disease, neck or back impairment, methicillin-resistant *Staphylococcus aureus* (MRSA), or H1N1 influenza virus that develops or manifests itself during the period of the person's employment with the hospital.

Status: Held in the Assembly Appropriations Committee.

AB 2002 (Huffman) Reserve requirements.

Removes the 60% reserve requirement for liability insurers and allow the Insurance Commissioner to prescribe the minimum reserve requirement by regulation.

Status: Chapter 61, Statutes of 2010.

AB 2022 (Gaines) Homeowners insurance.

Revises the disclosure notice and the listing of rights that residential property insurers must provide to policyholders.

Status: Chapter 589, Statutes of 2010.

AB 2030 (Yamada) Unemployment: Self-Employment Assistance Program.

Would have reestablished the Self-Employment Assistance Program, to be administered by the Director of the Employment Development Department. Would have provided for a weekly allowance for participants equal to regular unemployment benefits.

Status: Held in the Assembly Appropriations Committee.

AB 2055 (De La Torre) Unemployment insurance: benefits: eligibility: reserve accounts: domestic partners.

Specifies that for purposes of eligibility for benefits and employer's reserve accounts, "domestic partner" also includes a person to whom domestic partnership, as described, is imminent.

Status: Chapter 590, Statutes of 2010.

AB 2058 (Block) Unemployment insurance: retraining benefits.

Establishes the California Training Benefits Program to allow unemployed individuals who qualify for unemployment compensation benefits, extended duration benefits, or federal-state extended benefits under certain conditions to be deemed automatically eligible for the program during a period of training or retraining.

Status: Chapter 591, Statutes of 2010.

AB 2066 (Jones) Annuity sales: seniors.

Would have required insurers and agents to disclose certain information to seniors in connection with annuities, specifies four circumstances that would be presumptively improper to sell an annuity to seniors, and payments to be made in a certain manner to brokers and agents.

Status: Held in the Assembly Insurance Committee without recommendation.

AB 2110 (De La Torre) Health care coverage premium payments: grace periods.

Would have required individual health care service plan contracts and individual health insurance policies issued, amended, or renewed on or after January 1, 2011, to provide a grace period of 50 days for the payment of premiums and would make an enrollee or insured who fails to pay the premium during that period liable for any medical costs incurred during the period, except as specified. The bill would have required plans and insurers to provide specified notice of this grace period upon issuance, amendment, or renewal of an individual contract or policy.

Status: Died on the inactive file.

AB 2111 (Smyth) Service contracts.

Changes the definition of service contract by expanding the items a contract may cover to include accessories of electronic sets or appliances and by excluding a contract to maintain structural wiring associated with communications services. Deletes the \$250 per year limit

on incidental payment of indemnity. Changes the definition of service contract administrator to no longer exclude service contract sellers and insurers admitted to do business in the state and to no longer include an affiliate who performs or arranges specified activities. Authorizes a service contract administrator to be an obligor on a service contract where all service contracts under which the service contract administrator is obligated are insured under a service contract reimbursement insurance policy.

Status: Chapter 543, Statutes of 2010.

AB 2151 (Torres) Insurance: public safety employees: accidents.

Would have provided that no insurer shall, in issuing or renewing a private automobile insurance policy to a peace officer, member of the California Highway Patrol, or firefighter, with respect to his or her operation of a private passenger motor vehicle, increase the premium on that policy for the reason that the insured or applicant for insurance has been involved in an accident while operating his or her private passenger motor vehicle in the performance of his or her duty at the request or direction of the employer.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill would provide that peace officers, members of the California Highway Patrol, and firefighters would not be required to report any accidents to their private automobile insurer while operating their personal vehicles at the request and direction of their employer. This bill would further require all state and local agencies employing peace officers or firefighters to pay the costs of any accident and all damages regardless of whether the driver of the vehicle was acting recklessly or with gross negligence.

While there may be reasons for state and local entities to pay the costs of automobile accidents while employees are responding to emergency situations in their private vehicles, this measure would require indemnification in all situations regardless of the driver's fault, which is unwarranted. Moreover, the Internal Revenue Service-established mileage reimbursement rate already covers costs for insurance for employees that use their private vehicles for work purposes. Since this measure will unreasonably shift costs to public employers in a time of fiscal crisis, I am unable to sign this bill."

AB 2188 (Bradford) Unemployment compensation: disability benefits.

Removes the requirement to pay unemployment insurance benefits by check and allows the director of the Employment Development Department to make the payments using electronic technology.

Status: Chapter 378, Statutes of 2010.

AB 2247 (Niello) Workers' compensation: local inmates.

Would have provided that each inmate of a county, city, or city and county jail, industrial farm, or road camp shall be entitled to workers' compensation benefits for injury arising out of, and in the course of, assigned employment and for the death of the inmate if the injury proximately causes the death, subject to limitations.

Status: Held in the Assembly Insurance Committee.

AB 2253 (Coto) Workers' compensation: cancer presumption.

Provides that an existing presumption for a work-related injury shall be extended to specified firefighters and police officers following termination of service for a period of 3 calendar months for each year of service, but not to exceed 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Status: Chapter 672, Statutes of 2010.

AB 2269 (Adams) Workers' compensation: injury presumption: heart trouble.

Would have expanded a workers' compensation presumption for peace officers working at Department of Developmental Services Centers and Department of Mental Health psychiatric hospitals.

Status: Held in the Assembly Appropriations Committee.

AB 2327 (Harkey) Affordable housing: risk retention pool.

Authorizes an affordable housing entity, defined to include affordable housing entities that are created under the laws of another jurisdiction or organized under the laws of another state, to join with one or more affordable housing entities in an arrangement providing for the pooling of self-insured claims or losses. The pool would be authorized to be organized as a nonprofit corporation, limited liability company, partnership, or trust, whether organized under the laws of this state or another state or operating in another state.

Status: Chapter 384, Statutes of 2010.

AB 2364 (Nava) Unemployment insurance: benefits: good cause to leave work.

Revises various provisions governing eligibility for unemployment compensation benefits to specify that a claimant is eligible for benefits where he or she left an employer's employ to protect his or her family from domestic violence abuse. This change conforms California law to federal law and makes California eligible for \$559 million federal stimulus funds.

Status: Chapter 678, Statutes of 2010.

AB 2367 (Charles Calderon) Insurance: insurers: financial statements.

Would have required that the notification to each insurer of any changes from the NAIC's statement blanks that the commissioner has determined to be appropriate be made electronically.

Status: Died on the Senate inactive file.

AB 2395 (Anderson) Insurance commissioner: powers and duties: complaints.

Would have required the Commissioner, when investigating complaints, to limit the investigation to those allegations specified in the complaint.

Status: Held in the Assembly Insurance Committee.

AB 2396 (Solorio) Workers' compensation insurance: rating organizations: statistical agents.

Would have required a designated statistical agent to conduct public meetings. Would have specified records of the designated statistical agent that would be public, and would have specified information that the designated statistical agent is not required to make available to the public.

Status: Held in the Assembly Appropriations Committee.

AB 2397 (Solorio) Workers' compensation: public employees: leave of absence.

Would have provided that the employees and the employer through the collective bargaining process may mutually agree to extend the leave of absence known as "4850 time" beyond the one year period of disability, but that the extension may only be for a maximum of one additional year.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill would amend Labor Code section 4850 to provide that an injured employee and his or her employer may mutually agree to extend the employee's leave of absence without loss of salary in lieu of temporary disability payments or maintenance allowance payments beyond the one year period of disability.

I appreciate and value the duties of public servants who perform difficult and dangerous tasks that risk their lives. However, as we have seen with the current pension crisis, there is often an inclination to add special benefits and compensation to unsustainable levels. I am unwilling to facilitate this lack of fiscal responsibility by creating potentially new costs for public entities administering the public's money."

AB 2404 (Hill) Insurance.

Requires that any insurance policy that includes a provision to refund a premium other than on a pro rata basis, including the assessment of cancellation fees, disclose that fact in writing, including the actual or maximum fees or penalties applied, which will be permitted to be stated in the form of percentages of the premium. The disclosure will be required to be made prior to, or concurrent with, the application and prior to each renewal, as provided. The disclosure would not be required if the policy provision permits, but does not require, the insurer to refund a premium other than on a pro rata basis, and the insurer refunds the premium on a pro rata basis.

Status: Chapter 387, Statutes of 2010.

AB 2411 (Jones) Pet insurance.

Would have provided for the regulation of pet insurance. Would have, in connection with the sale of a new, amended, or renewed pet insurance policy on or after July 1, 2011, required pet insurers to reasonably disclose to the consumer, if the policy excludes

coverage on the basis of a preexisting condition or other disorder, any policy provision that limits coverage in this manner, and whether the insurer reduces coverage or increases premiums based on claims experience in any subsequent policy period.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill would provide for the regulation of pet insurance by the Department of Insurance and require various disclosures from pet insurers.

Existing law provides for the regulation of various types of insurance by the Department of Insurance, including pet insurance. As such, this bill is not necessary."

AB 2423 (Niello) Department of Industrial Relations: funds: employer surcharges and assessments.

Would have stated the intent of the Legislature to enact legislation that would have require the Department of Industrial Relations to convene an advisory committee consisting of employers, injured workers, doctors, and other stakeholders when setting the assessments and surcharges in compliance with Sections of the Labor Code.

Status: Held in the Assembly Insurance Committee.

AB 2433 (Ruskin) Unemployment insurance: use of information for tax purposes.

Authorizes the Director of the Employment Development Department to release to the State Board of Equalization, specified employment tax information in his or her possession that will assist in the administration of tax programs.

Status: Chapter 129, Statutes of 2010.

AB 2490 (Jones) Workers' compensation insurance: dispute resolution: arbitration clauses.

Would have required that any agreement, other than a settlement agreement resolving a particular dispute, between an employer, whose principal place of business is in California, and a workers' compensation insurer concerning resolution of disputes, including, but not limited to, an arbitration clause arising out of a workers' compensation policy or endorsement, shall be part of the form or endorsement filed with the rating organization, should be provided to the employer contemporaneously with any written quote that offers to provide insurance coverage, and shall contain provisions to resolve disputes that arise in this state in a California forum and under California law.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill is unnecessary because there is no evidence to demonstrate that a problem exists. In my view, the bill risks reducing the competitive market for workers' compensation California now enjoys

due to our reforms. The broad language in the bill leaves open the potential for costly regulatory interpretation that will impact the cost of workers' compensation insurance. The high deductible contract negotiations the bill seeks to impact are conducted by sophisticated participants on both sides of the table that are well versed in all aspects of workers' compensation and other insurance products. Therefore, I am not convinced the issue addressed by the bill will result in keeping workers' compensation costs down which is the most significant concern to California employers."

AB 2535 (Blakeslee) Insurance: California Earthquake Authority.

Would have required the California Earthquake Authority (CEA), upon request, to make available in electronic form nonproprietary materials and documents its Governing Board uses in the determination of whether to open CEA participation to additional insurers who are not currently participating insurers.

Status: Died on the Senate inactive file..

AB 2538 (Niello) Unemployment insurance: eligibility for benefits: notification.

Authorizes the director to serve a tax lien levy by first-class mail instead of certified mail. Requires that, if the levy is made on a deposit or credits or personal property in the possession or under the control of a bank or savings and loan association, the notice of levy shall be delivered or mailed to the centralized processing unit or location designated by that bank or savings and loan association where the credits or other property is held. Authorizes the department to serve notice to an address for a bank or savings and loan association by magnetic media, electronic transmission, or other electronic technology.

Status: Chapter 392, Statutes of 2010.

AB 2577 (Knight) Employment: taxes and contributions: aerospace industry.

Would have exempted employers from withholding taxes for remuneration paid to nonresidents of California who are employed in the aerospace industry on a temporary basis.

Status: Held in the Assembly Insurance Committee.

AB 2593 (Bradford) Workers' compensation: official medical fee schedule.

Would have provided that for pharmacy services and drugs that are not otherwise covered by a MediCal fee schedule payment for facility services, the maximum reasonable fees shall be the lowest of the average wholesale price minus 17%, the federal upper limit, or the maximum allowable ingredient costs, plus a professional fee for dispensing that is no less than \$7.25 per prescription.

Status: Held in the Assembly Insurance Committee.

AB 2625 (Villines) Workers' compensation.

Would have expanded the scope of the workers' compensation "carve-out" law to include the State of California.

Status: Held in the Assembly Insurance Committee.

AB 2717 (Skinner) Insurance: agents and brokers: senior designation use.

Requires that the Insurance Commissioner approve a senior designation only if the organization that issues the designation satisfies specified requirements, including, but not limited to, accreditation standards, education and examination requirements, and having minimum standards and procedures regarding disciplining the organization's designees for improper or unethical conduct.

Status: Chapter 606, Statutes of 2010.

AB 2745 (Ammiano) Motor vehicle insurance: discrimination: geographic area.

Would have redefined geographic area as a portion of this state of not less than 15 square miles defined by description in the rating manual of an insurer or in the rating manual of a rating bureau of which the insurer is a member or subscriber.

Status: Held in the Assembly Insurance Committee.

AB 2746 (Blakeslee) California Earthquake Authority: mitigation officer.

Authorizes the CEA to contract for the services of a chief mitigation officer, and requires the chief mitigation officer to file financial disclosure statements with the Fair Political Practices Commission. Requires the board to establish the duties of, and give direction to, the chief mitigation officer to support and enhance the CEA's efforts to create and maintain specified mitigation activities. Authorizes the CEA to accept grants and gifts of property and services for the Earthquake Loss Mitigation Fund or the related residential retrofit program from federal, state, and local government sources and private sources.

Status: Chapter 609, Statutes of 2010.

AB 2749 (Logue) Workers' compensation: lien claims.

Would have prohibited lien claims for expenses incurred by or on behalf of the injured employee and to the extent that the employee is entitled to reimbursement for medical-legal expenses, from being filed after 6 months from the date on which the Workers' Compensation Appeals Board or workers' compensation administrative law judge issued a final decision, finding, order, or award on the merits of the claim, after 5 years from the date of the injury for which the services were provided, or after one year from the date the services were provided, whichever is later.

Status: Held in the Assembly Insurance Committee.

AB 2778 (Committee on Insurance) Unemployment insurance: voluntary plans.

Allows the Director of the Employment Development Department to approve a voluntary plan that is administered by a small-business-3rd-party administrator, that administers voluntary disability plans on behalf of its clients through December 31, 2014.

Status: Chapter 399, Statutes of 2010.

AB 2779 (Committee on Insurance) Workers' compensation: lien claims.

Would have provided that under workers' compensation law, a compounded drug dispensed on or after November 1, 2010, shall be reimbursable only if certain conditions, including the condition that all active ingredients in the compounded drug are ingredients in drug products that have been approved by the federal Food and Drug Administration and all other ingredients are listed by the United States Pharmacopeia are satisfied.

Status: Died on the Senate inactive file.

AB 2780 (Solorio) Workers' compensation: individually identifiable information.

Authorizes the State Department of Health Care Services to obtain and use individually identifiable information for the purposes of seeking recovery of Medi-Cal costs incurred by the state for treatment provided to injured workers that should have been incurred by employers and insurance carriers pursuant to existing authority of the Director of Health Care Services to recover the value of the benefits for which another person or carrier is liable.

Status: Chapter 611, Statutes of 2010.

AB 2781 (Committee on Insurance) Insurance: Guarantee Association.

Permits the California Insurance Guarantee Association to issue bonds for an additional two years beyond the current sunset date to January 1, 2013, but would not change the total amount of bonds that CIGA could issue.

Status: Chapter 140, Statutes of 2010.

AB 2782 (Committee on Insurance) Insurance omnibus.

Makes various changes to California laws including licensing-related changes to align California law with the National Association of Insurance Commissioners (NAIC) Producer Licensing Model Act (PLMA).

Status: Chapter 140, Statutes of 2010.

AB X3 23 (Coto) – Unemployment insurance: extended benefits.

Establishes eligibility for unemployed people for an additional 20 weeks of federally-funded extended unemployment insurance benefits.

Status: Chapter 22, Statutes of 2009.

AB X3 29 (Coto) – Unemployment insurance.

Establishes an "alternative base period" that allows recent earnings to count in determining eligibility for unemployment insurance benefits, requires the Employment Development Department to send employers prompt information on the maximum Unemployment Insurance payable to each claimant, and allows employers and Unemployment Insurance claimants to participate in Unemployment Insurance Appeals Board hearings by telephone.

Status: Chapter 23, Status of 2009.

AJR 1 (Blakeslee) – Earthquake damage: mitigation planning.

States the Legislature's support for the development of mitigation efforts across the state by federal, state, and local governmental entities, in cooperation with private enterprises and individuals, to protect against earthquake damage.

Status: Chapter 64, Statutes of 2009.

AJR 42 (Solorio) – Medicare Secondary Payer Enhancement Act of 2010.

Requests the Congress and the President of the United States to enact the Medicare Secondary Payer Enhancement Act of 2010.

Status: Chapter 92, Statutes of 2009.

SENATE BILLS

SB 98 (Calderon) -- Life insurance: life settlement contracts and viatical settlements.

Establishes a comprehensive licensing program for persons who transact life settlement contracts, makes it unlawful to issue or market the purchase of a new life insurance policy for the purpose of settling the policy, generally prohibits individuals from entering into a life settlement during the initial two years of a policy, authorizes the Insurance Commissioner to disapprove life settlement forms, requires specified disclosures to consumers, including a notice of possible alternatives to life settlements, and prohibits predatory practices such as false and misleading statements.

Status: Chapter 343, Statutes of 2009.

SB 119 (Wyland) --Professional liability insurance: insurers: bad faith.

Extends the sunset date on a law that provides immunity from liability for insurers that issue professional liability insurance to health care providers for statements made in the notice of nonrenewal.

Status: Chapter 30, Statutes of 2009.

SB 145 (DeSaulnier) --Workers' compensation.

Would have prohibited discrimination on the basis of specified protected classes for purposes of apportioning permanent disability, and would have clarified the law governing compensability where criminal violence is committed against an employee in the workplace.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill would prevent a workers' compensation claim from being denied or impacted by an apportionment determination because the employee's injury or death was related to the employee's race, religious creed, color, national origin, age, gender, marital status, sex, or genetic characteristics. This measure, like Senate Bill 1115 (2008), which I previously vetoed, would significantly undermined the state's workers' compensation apportionment reforms of 2004. In addition, although this measure purports to address instances where a workers' compensation claim was improperly denied when a hate crime was committed against an employee, this issue has been addressed by Assembly Bill 1093, which I signed last year."

SB 156 (Wright) -- Insurance: fraud prevention and detection.

Authorizes the Insurance Commissioner to convene meetings with representatives of insurers to discuss suspected or completed acts of insurance fraud.

Status: Chapter 305, Statutes of 2010.

SB 186 (DeSaulnier) –Workers' compensation: medical treatment: predesignation of physician.

Removes the sunset date on the law that authorizes a worker to predesignate his or her personal treating physician as the treating physician in the event of a workplace injury.

Status: Chapter 565, Statutes of 2009.

SB 291 (Calderon) – Insurance reserves.

Authorizes a mortgage guaranty insurer to request a waiver of a statutory formula that requires the insurer to cease writing new business if a bright-line statutory ratio is crossed.

Status: Chapter 574, Statutes of 2009.

SB 313 (DeSaulnier) –Workers' compensation: penalty assessments.

Increases the per-employee penalty for the lack of workers' compensation coverage from \$1,000 to \$1,500. Requires the Director of the Department of Industrial Relations to issue a penalty assessment order, as specified. Restructures the laws governing penalties to be assessed on employers that do not comply with the law mandating that every employer provide, either through insurance or an approved self-insurance program, workers' compensation benefits for its employees.

Status: Chapter 640, Statutes of 2009.

SB 396 (Calderon) –Insurance Commissioner: reports.

Would have required an existing report on agent licensure activity (within the Department of Insurance's Annual Report) to include information on the number of first-time examinees who passed the exam and their overall pass rate by category of license and also the total number of examinations and mean examination score for all examinees by license category, and if the overall pass rate is less than 65 percent for a specific license category then the Insurance Commissioner shall calculate the pass rate of examinees by demographic information including ethnicity/race, gender, and level of education.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill is unnecessary. The Insurance Commissioner has the ability to report the information required in this bill under current law."

SB 397 (Calderon) –Life insurance.

Would have exempted the sale of certain life insurance policies for funeral and burial expenses from the requirement that the agent provide the senior with 24 hour advance notice prior to their initial meeting when certain disclosures are made.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"During the previous two legislative sessions, I have vetoed similar legislation that would have granted an exemption from the current requirement that seniors be given 24-hour notice in advance of any

attempt to meet in a senior's home to discuss the sale of a burial or funeral policy. I stated my belief that this notice requirement creates an important "bright line" test that insurance agents know not to cross and is a sound consumer protection practice.

Although this measure provides additional notice requirements to attempt to protect against fraud, I remain unconvinced of the need to deviate from the current 24-hour notice requirement. Asking an agent to wait one day before meeting in someone's home is a minor request in order to protect seniors against fraud."

SB 683 (Calderon) – Workers' compensation: group self-insurers: audits.

Would have required each self insured group to annually file with the director of the Office of Self Insured Plans an annual audit of the financial accounts and records of the group by an independent, certified public accountant. The annual audit would have been made available to the Director. No individual self insured member's audited financial or claim information would have been included in this disclosure to the guarantee fund or been made available to the public.

Status: Died in the Assembly Insurance Committee.

SB 968 (Negrete McLeod) – Unemployment insurance: training and retraining benefits.

Would have restructured the California Training Benefits Program to allow an unemployed individual to automatically become eligible for training and retraining benefits if specified criteria apply, or if the Director of Employment Development makes a determination of eligibility.

Status: Died in the Assembly Appropriations Committee.

SB 1211 (Romero) – Unemployment insurance: benefits: eligibility: overpayments: elected officials.

Requires the Director of Employment Development to find an overpayment of unemployment benefits if the individual is an elected official whose claim was based solely on income received as an elected official. Permits the Director of the Employment Development Department, in addition to filing a civil action against the liable person for the overpayment amount, to initiate summary judgment proceedings against such a person to recover these overpayment amounts.

Status: Chapter 222, Statutes of 2010.

SB 1242 (Calderon) – Insurance: life settlements.

Would have provided several clean-up provisions to the recently enacted life settlement regulatory law.

Status: Held in the Assembly Appropriations Committee.

SB 1244 (Walters) – Employment: taxes and contributions: limited liability company.

Conforms state unemployment insurance law to federal regulations related to Limited Liability Companies (LLC). Specifies that the definition of "employee" does not include

any member of a limited liability company that is treated as a partnership for federal income tax purposes.

Status: Chapter 522, Statutes of 2010.

SB 1405 (Committee on Banking Finance and Insurance) – Life insurance: premium refunds.

Requires insurers to refund premiums and fees within 30 days of the cancellation of a life insurance policy of less than \$10,000.

Status: Chapter 184, Statutes of 2010.

SB 1406 (Committee on Banking Finance and Insurance) – Earthquake insurance: coverage offer.

Would have stated that existing law shall be construed as authorizing an insurer for up to 60 days after issuing or renewing a policy of residential property insurance, to focus on claims and its resources on services to existing policyholders in the event of an earthquake and to temporarily defer the mandatory offer.

Status: Vetoed by the Governor.

GOVERNOR'S VETO MESSAGE:

"This bill states that existing law shall be construed as authorizing an insurer for up to 60 days after issuing or renewing a policy of residential property insurance, to focus on claims and its resources on services to existing policyholders in the event of an earthquake and to temporarily defer the mandatory offer.

This bill does not change the responsibility or timeframes for insurers that offer property insurance and it does not make any substantive change to existing law."

SB 1407 (Committee on Banking Finance and Insurance) – Insurance: State Compensation Insurance Fund: investments.

Expands SCIF's choices for the investment of excess moneys by allowing the board to invest or reinvest in additional investments in the same manner as provided for private insurance carriers, including, interest bearing obligations issued by a nonaffiliate institution, all deposits and debt obligations of banks or savings and loan associations whose accounts are insured by an agency or instrumentality of the federal government, and bonds issued by any county, municipality, or school district in this state.

Status: Chapter 651, Statutes of 2010.

SB 1408 (Committee on Banking Finance and Insurance) – Insurance: California Life and Health Insurance Guarantee Association Act

Revises and recasts provisions of the act, including, the powers and duties of the association, coverage eligibility, the conditions and procedures for payment of a claim, association reporting requirements, and other related changes. Makes various technical and conforming changes.

Status: Chapter 334, Statutes of 2010.

SB 1472 (Leno) – Unemployment insurance: shared work.

Would have required the Employment Development Department to develop and implement an outreach plan designed to provide information and inform employers in this state of the shared work program.

Status: Died on the Senate floor.

APPENDIX 1

Background Paper for Assembly Insurance Committee

Informational Hearing: February 3, 2010

California's Unemployment Insurance Program:

Is the State's Administration of the Program Serving the Needs of California's Unemployed?

Introduction

California is presently experiencing the worst economic downturn since the Great Depression. An estimated 2.3 million Californians, or 12.4 percent of the labor force, are unemployed, and 1.1 million jobs have been lost since the recession commenced two years ago.¹ In some communities, particularly those in the agricultural areas of the Central Valley and Imperial County, local unemployment rates are as high as 35 percent.

Since the 1930s, the federal – state partnership known as the Unemployment Insurance (UI) Program has provided a lifeline to workers who are laid off due to no fault of their own. In California, the UI Program is administered by the Employment Development Department (EDD), which is responsible for distributing UI benefits that equal 50 percent of an unemployed worker's previous weekly wage, up to a maximum of \$450, for a period not to exceed 26 weeks.

The current recession has been severe, and many Californians are experiencing long-term unemployment that lasts a year or longer. In response, the federal government has approved a series of unemployment relief measures extending the number of weeks that some long-term unemployed workers may receive, and temporarily adding \$25 to the weekly unemployment benefit.

As the nation's and California's unemployment rates have grown, and more laid-off workers have filed for UI benefits, the federal Department of Labor (DOL), which is EDD's UI Program partner, has been urging state UI administering agencies to staff-up, streamline, and modernize their programs for carrying out essential UI Program functions.² See Attachment 1. Unfortunately, notwithstanding DOL's urgings, EDD has been unable to adequately rise to the occasion and satisfactorily meet the needs of California's growing number of unemployed. The problems in the state UI Program are major, and include, for example, EDD's late distribution of UI benefit extension checks, a tardy start and cost overruns in modernizing its UI program technology, delays in approval of certified training benefits for unemployed workers, massive amounts of EDD staff overtime and questionable priorities for the expenditure of federal UI administration grant funding.

This background paper is intended to provide details of EDD's problems in administering the UI Program and to suggest areas of inquiry the Committee may wish to make as it considers the problems besetting the Department's administration of the state UI Program.

UI Program Performance

The Regional Administrator of the Employment and Training Administration of the U.S. Department of Labor has reported on California's recent and historical performance in administering the state's UI program.³ Attachment 2 contains details.

The DOL provided information on four key performance measurements: 1) Timeliness of UI payments, measured in the number of days between the first compensable week and the issuance of the first payment; 2) Timeliness in processing UI appeals by the California Unemployment Insurance Appeals Board (CUIAB), measured in the number of days between the request for an appeal hearing and the date of decision; 3) Case aging of appeals, measured for both lower level appeals and higher level appeals as the number of days all cases have been unaddressed; and 4) Timeliness of nonmonetary determinations, which includes items like the review and approval of California Training Benefits (CTB), measured in terms of the number of days between a request and a determination. The following chart summarizes the information provided by the DOL on California's performance when measured against DOL standards:

<u>California's Performance in the UI Program</u>			
Performance Criteria	Performance Standard	California	Rank
Timeliness of UI payments	87% of 1st payments made in 14 days	70.6%	49 of 53
Timeliness of UI Appeals	60% of decisions in 30 days/80% in 45 days	3.2%/7.4%	52 of 53/53 of 53
Case Aging in UI Appeals	30 days for lower authority/40 days for higher authority	55 days/39 days	42 of 53/25 of 48
Nonmonetary Determinations	80% of determinations completed in 21 days	53.3%	31 out of 53

These measurements reveal California is not meeting federal performance standards, and in some instances, California ranks as the worst or nearly the worst in the nation and three U.S. territories. Additionally, California has ranked poorly in these performance measures for the last 10 years.

While DOL has the authority to withhold UI administrative grants, it prefers not to do so, because defunding the state UI Program would primarily punish unemployed workers. Rather, the DOL requires underperforming state agencies like EDD and the CUIAB to develop Corrective Action Plans (CAPs) that detail the steps the state is taking to improve its UI Program performance.

Notwithstanding the fact that EDD and the CUIAB have produced annual CAPs for the last several years, the state's performance has continued to deteriorate. For example, between 2005 and 2009, EDD's performance in timeliness of UI payments decreased from 81.9 percent to 70.6 percent and CUIAB's performance in timeliness of UI appeals decreased from 25.7 percent in the first 45 days, to 7.4 percent. Similar historical trends exist for the other performance measurements as well.

The data provided by DOL raises the question of how well EDD and the Administration have chosen to respond to the overwhelming problem of growing unemployment in California. For example, EDD was unable to quickly utilize federal funding to begin modernizing its UI technology, and made numerous missteps along the way that led to more than five years of delay and more than \$80 million in modernization project cost overruns. And despite the urging of DOL to upgrade and improve the Department's approval process for training benefits, EDD apparently did not respond until the end of last year, when workforce training agencies began to complain about EDD delays.

As the Committee considers the problems and issues set forth below, it may wish to examine:

- The pace, progress and costs of UI modernization, EDD's ability to assist workers to obtain training and acquire skills to be re-employed,
- EDD's policy to continue furloughing UI Branch employees and then require employees to work large amounts of overtime, and
- EDD's priorities for use of federal UI administration funding, and its decisions on how to best deploy its limited resources to administer the UI program.

UI Modernization

EDD's Corrective Action Plans have emphasized massive technology system upgrades to improve its UI Program performance. Indeed, the problems over the last year underscore the inability of EDD systems to handle the demands of growing unemployment. For example, as the state's unemployment rate increased dramatically, EDD reported that as many as three million attempts were made per month to reach EDD telephonically. UI claimants found that human contact was nearly impossible as EDD chose not to staff One Stop Employment Centers with anyone who could personally assist people with their UI questions. Instead, UI claimants were directed to a wholly inadequate phone system and on-line programs. This led to an unprecedented telecommunications deluge.

As a growing number of unemployed workers kept redialing EDD to no avail,⁴ EDD's telephone system eventually collapsed. Further, EDD's on-line systems were slow to keep up with the filing of initial claims. To further complicate matters, EDD currently has no on-line system for UI beneficiaries to re-certify their claims, forcing claimants to do so via U.S. mail. It is fair to say that unemployed Californians were confounded, frustrated and terribly disheartened with the service they received from EDD, at one of their greatest times of need.

Another example of EDD's technological deficiencies became apparent when the federal government enacted the most recent of several 100 percent federally-funded extensions of unemployment insurance benefits for long-term unemployed workers in high unemployment states. Those new benefits, enacted on November 6, 2009, were crucial to the hundreds of thousands of long-term unemployed people, but most importantly, to the approximately 120,000 Californians whose benefits were set to expire in December, 2009. Unfortunately for these 120,000 Californians, EDD's computers proved incapable of delivering these new benefits to them in a timely manner.⁵ It was only after EDD and the Labor Agency decided to "automatically qualify" these existing benefit recipients – a procedure that EDD and the Administration had steadfastly refused to do for each of the previous federal benefit extensions – that these 120,000 Californians were eventually able to obtain the benefits that were due. The failure to send out UI checks in a timely manner caused severe problems to many low-income people which, among other things, included evictions due to UI benefit recipients' inability to pay rent.

EDD has argued, with some validity, that the newest federal law was not written in the manner that would have been easiest to implement, and that its computer systems are so old that they could not handle immediate implementation of the new law. There is no doubt that EDD's existing technology is not up to the task of effectively meeting the growing demands on the UI Program. But it is important that the Committee take a step back and ask why this situation exists, what is being done about it, and whether the improvement efforts are adequate to meet the challenges ahead.

EDD's technology systems are more than 25-years old and not equipped to handle heavy UI claims volume, facilitate communication with claimants, nor quickly to respond to complex changes in unemployment insurance law, such as implementation of the Alternative Base Period (ABP) enacted by the Legislature last year, or an extension of UI benefits as enacted by Congress.

EDD's computers are known in IT lexicon as a Legacy System. They are written in computer language (COBOL) which has not been taught nor used for at least two decades. Also, there are precious few experts who can work in a COBOL programming environment, and due to the ancient architecture of the system, making changes becomes very labor intensive and slow.

EDD's reliance upon these non-responsive, antiquated IT systems has led to undesirable consequences. Tens of thousands of unemployed workers waited an inordinate amount of time to receive federal extension benefits last December while EDD struggled to write 500,000 lines of new computer code, and 62,000 unemployed workers suffered a second delay in receiving UI extension checks due to problems EDD experienced in programming changes to filing deadlines. Thousands more low-wage, seasonal workers are not qualifying for benefits as EDD defers implementing ABP until it upgrades its data base system, and as reported above, tales of UI beneficiaries not being able to communicate with EDD representatives have become legend.

EDD has known its IT systems were inadequate for some time. In 2002 the Department made a strategic decision to carve \$66 million from a \$937 million federal Reed Act grant (funds intended to pay UI benefits) to begin modernization of its computer system. However, due to errors in judgment about the complexity of IT problems, bad planning, multiple changes in procurement processes and contradictory decisions on how to proceed in pursuing IT modernization, projects funded by the Reed Act money are now more than five years behind schedule. Projects originally scheduled for completion in 2008 will not be completed until 2014.

While Reed Act funded projects are now underway, EDD has notified the Legislature that their cost is rapidly escalating. EDD reports that vendor contracts need to be increased by more than \$37 million due to hardware and software needs unanticipated by the Department when it designed the projects. EDD has stated that all cost increases will be federally funded or reimbursed. However, staff notes that some of those cost overruns will be paid from EDD's federal UI administration base grant.

As will be pointed out later in this paper, federal UI administration funds fail to fully reimburse the state for all UI administrative workload. In conjunction with the fact that EDD is not meeting federal UI program performance standards, the use of UI administration base grant money to pay for project cost overruns may be necessary, but at the same time, unfortunate. Utilizing limited UI administration funding to cover UI modernization cost overruns may mean that EDD is unable to hire more staff for the purpose of improving current performance in monetary and nonmonetary determinations, handling UI appeals, answering phones, and helping unemployed workers file UI claims at One Stop Employment Centers around the state. The Committee may wish to inquire why UI modernization projects are running so substantially over original cost estimates and what trade-offs EDD has to make in order to use UI administration funding to cover project cost overruns.

EDD has also received an additional \$60 million in 2009 for more computer modernization as part of the American Recovery and Reinvestment Act (ARRA). EDD has identified an additional six technology upgrades (plus implementation of ABP) to address myriad problems that beset the administration of the UI Program.

Similar to UI modernization projects funded with Reed Act money, ARRA funded projects are also experiencing cost overruns. In this case, the costs will exceed initial specifications by almost \$53 million – nearly double the estimates barely a year old -- due to yet even further unanticipated hardware and software requirements. EDD reports that it will dip into the State Disability Insurance Fund to pay a portion of these cost overruns.

The Disability Insurance Fund is currently solvent, and some of the ARRA funded technology projects will benefit the Disability Insurance Program. However, it is worth noting that the Governor has also proposed borrowing money from this Fund to implement a major new worker training program, creating multiple pressures on the Fund. The Disability Insurance Fund is funded by employee contributions, and using

these monies to pay for IT project cost overruns and training programs may be cause for further scrutiny, particularly in light of EDD's seeming inability to accurately estimate technology project costs.

Information regarding Reed Act and ARRA funded UI Modernization technology projects are provided in attachments 5 and 6.

California Training Benefits

The California Training Benefits (CTB) Program is authorized by state and federal laws to allow eligible UI claimants who lack competitive job skills to receive their UI benefits while attending a training or retraining program approved by EDD.⁶ The CTB Program was established to assist those individuals in need of training or retraining in skills required in demand occupations. Under the CTB program, the traditional role of UI changes from one of partial wage replacement while the employee looks for work to one of assisting the individual in training or retraining in an effort to return to full employment.⁷

If a person is approved for CTB, he or she does not need to meet the following regular UI eligibility requirements: looking for work, being available for work, and accepting suitable work. Also, an extension of CTB training benefits may be available beyond the regular UI claim period (26 weeks) if additional time is needed to complete the period of approved training.⁸

The California Workforce Association (CWA), representing the local workforce agencies that administer the Workforce Investment Act (WIA) and other job training and job placement funding, have been reporting for months that eligible applicants were having existing benefits cut off for up to four to eight weeks while EDD verified whether the training program that an eligible beneficiary was enrolled in was in fact qualified. In other instances, UI beneficiaries were choosing not to enroll in training so that their UI benefits would not be interrupted, resulting in state and federal training funds going unused during a period of unprecedented unemployment.

While the US DOL urged states to revise their training certification laws as early as May of last year, EDD has been slow to institute new and efficient ways for approving CTB. According to workforce development professionals, much of the delay is a result of unnecessary impediments that EDD has erected for the CTB approval process. Staff notes that EDD claims it is required by law to take a number of the actions which cause delay.

The Federal Unemployment Tax Act (26 U.S.C Section 3304(a)(8) also known as FUTA) states that "Compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, or refusal to accept work)." A federal regulation, 20 CFR 604.5, reiterates this statutory requirement. In short, federal law does not specify what the states' training approval

criteria must be. Instead, states are free to define what constitutes approved training, how it is approved, and to waive the otherwise applicable eligibility requirements.

EDD's proposed CTB approval streamlining does not promise to be quick and easy. In discussions and communications with staff, EDD has represented that it will roll out the improved process out in stages. Time will be taken to train staff, then apply the new approval process in three phases. EDD cannot tell us when the new CTB approval process will be fully implemented, but on its face, early arrival does not appear to be a reasonable expectation. Further, CWA members believe that EDD's streamlining proposal does not fully address the problems that workers are experiencing in obtaining CTB approval. Therefore, CWA may sponsor legislation this year to solve the problem.

The Committee may wish to inquire why EDD was late in responding to DOL's urging that CTB approval be streamlined and broadened, and what EDD anticipates will be the schedule for implementation of these changes.

UI Administration Funding and Staffing

EDD's administration of the UI Program is federally reimbursed. Federal funding is provided in a baseline grant that considers the Department's previous year's workload. Baseline operations workload levels are determined by the DOL. Although each state's base grant is based on data reported by the state administering agency, applied to specific federal funding factors, DOL may alter those funding factors if states' funding needs exceed the national UI appropriation level. Agencies like EDD may also seek additional above base funding when current workload grows. However, EDD reports that, historically, even above base funding levels are less than 100 percent of a state agency's requested reimbursement level. In short DOL does not reimburse EDD for all of its workload.

The method of calculating federal UI administration grant funding has led to serious consequences in EDD's UI Program staffing. Last December, EDD reported to the Legislature that due to a flattening in new UI claims, the data it submits to DOL justifying its level of reimbursement would not result in enough federal funding to support the full amount of personnel years (PYs) the Legislature had authorized for EDD's UI Program in the 2009-10 budget. As a result, EDD advised the Legislature it was unilaterally reducing its UI Program staffing authorization for the rest of the fiscal year.

Having to reduce authorized PYs for a troubled program is an unfortunate circumstance. As reported in an EDD letter to DOL sent October 20, 2009, in order to meet growing demands on the state UI Program EDD ordered employees to work more than 677,000 hours of overtime between January and September of last year in its UI Branch, and another 23,600 hours of overtime at the CUIAB. Further, the Administration has prohibited EDD employees from taking normal furlough Fridays and has instituted, instead, a "directed furlough" program. EDD employees must work on the furlough days, and "bank" the time to be used later. Commencing July 1, 2010, EDD employees will

face a "use it or lose it" period of two years within which to use the banked furlough time. The potential negative impact of substantial staff time off in an environment where EDD is already underperforming is a serious problem that the Committee may wish to explore.

In addition to the impact on the adequacy of staffing, there is a financial element to this directed furlough policy. EDD has accumulated more than \$16.5 million in UI Program salary costs that will not be reimbursed by DOL. At this time, EDD does not know how these latent costs will be covered.

Considering EDD's failure to meet federal performance standards for administering the UI Program, the difficulties unemployed workers are having in communicating with EDD, the delays in paying UI extension checks, the cost overruns of the UI technology project, the delays in EDD's approval of California Training Benefits, and the costs and amount of staff overtime and the repercussions of banked furloughs, it may be appropriate for the Legislature to carefully scrutinize how EDD and the Administration chooses to spend UI administration funds and to inquire how the State Administration sets UI Program priorities.

For example, the Governor has proposed a new initiative to assist 30,000 veterans returning to California annually from the wars in Iraq and Afghanistan. This initiative is called Operation Welcome Home. It is intended to assist veterans navigating the state UI Program, including providing fact sheets, help with filing for initial and continuing benefits, assistance with specified UI forms for recently discharged veterans, and for veterans who have been out of the service longer, help with Internet claim filing through e-Apply. The initiative will also assist veterans who need to contact EDD claims representatives to obtain answers to questions, handle claims problems, and to train veterans to use various UI automated systems.

In light of Operation Welcome Home's UI related components, the Governor proposes to cover 50 percent of the initiative's costs with federal UI administration funds. Further, the Governor believes that the UI related activities of Operation Welcome Home are consistent with the intent of the federal UI administration grant California receives each year to administer its UI compensation and laws, and therefore, no state or federal approvals are necessary. In fact, EDD has unilaterally begun implementing the program. For the time being, the initiative is expected to operate between January and December of 2010.

Assisting veterans to connect with government services for the purpose of helping them reintegrate back into civilian society is unquestionably a high priority. It may be prudent, however, for the Legislature to ask whether this is the most efficient use of federal UI administration grant funding to best serve returning veterans and the estimated 1.2 million other unemployed California workers who qualify for UI benefits.

The Administration's decision to use UI administration grant funding for Operation Welcome Home without oversight and input from the Legislature fails to allow the

Legislature to work with EDD to determine UI Program priorities and assess the impacts of this policy choice in contrast to other policy approaches. The Committee may wish to inquire why EDD has acted unilaterally and whether its actions place a worthwhile effort to assist veterans in direct competition for UI Program resources without any evaluation of overall UI Program priorities. The Committee may wish to examine this issue and make some recommendations to the Assembly Budget Committee for its hearings this Spring.

Conclusion

EDD and the state's administration of the UI Program continue to fail to meet the federal performance standards for administering the UI Program, fail to resolve major communications difficulties between EDD and unemployed workers, do not address the delays in determining and paying regular UI claims and UI extensions, suffer from UI technology project cost overruns, and have been too slow in approving California Training Benefits. In light of these serious problems, the answer to this hearing's central question of whether the state's administration of the UI Program is serving the needs of California's unemployed might be, "Not very well." Thus, it can be asked, in what ways can the Legislature and the Administration partner to develop a more effective UI Program?

¹ California Crisis: A Portrait of Unemployed Workers, by Lauren D. Appelbaum, Ph.D., Research & Policy Brief, No. 4, December 2009, by UCLA Institute for Research on Labor and Employment, pps. 1-2.

² Communication from the federal government to the states titled "Training and Employment Guidance Letter No. 21-08" sent by Douglas F. Small, Deputy Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, to State Workforce Agencies and State Labor Commissioners, dated May 8, 2009.

³ Letter to Assembly Member Jose Solorio, Chair of the Assembly Insurance Committee, and Assembly Member Juan Arambula, Chair of Budget Subcommittee No. 4, by Richard C. Trigg, Regional Administrator, U.S. Department of Labor, dated January 21, 2010.

⁴ Attachment 3 is a Contra Costa Times newspaper article that reflects "improved performance" based on data that suggests people must re-dial EDD's telephone number an average of 17 times before reaching an EDD employee.

⁵ Attachment 4 to this background paper are typical newspaper reports from the San Mateo Daily Journal and the San Francisco Chronicle on the delays in delivering UI benefits in December, 2009.

⁶ The state laws are codified in Sections 1266 – 1274.10 of the California Unemployment Insurance Code.

⁷ Fact Sheet: California Training Benefits Program, Employment Development Department, State of California, DE 8714U Rev.8 (6-08) (INTERNET).

⁸ Ibid.

APPENDIX 2

JOINT OVERSIGHT HEARING
Senate Committee on Business, Finance, and Insurance
Assembly Committee on Insurance
March 24, 2010

Background Paper on Proposition 17 – Automobile Insurance Rating Factors

INTRODUCTION

Proposition 17 has been qualified to appear on the June, 2010, Statewide Ballot as a proposed initiative statute. Proposition 17 allows auto insurance companies to base their premiums, in part, on a driver's history of insurance coverage.

OFFICIAL BALLOT TITLE AND SUMMARY OF PROPOSITION 17

According to the Attorney General, as recently approved by the courts, Proposition 17:

ALLOWS AUTO INSURANCE COMPANIES TO BASE THEIR PRICES IN PART ON A DRIVER'S HISTORY OF INSURANCE COVERAGE. INITIATIVE STATUTE.

- Changes current law to permit insurance companies to offer a discount to drivers who have continuously maintained their auto insurance coverage, even if they change their insurance company, and notwithstanding the ban on using the absence of prior insurance for purposes of pricing.
- Will allow insurance companies to increase cost of insurance to drivers who do not have a history of continuous insurance coverage.
- Establishes that lapses in coverage due to nonpayment of premium may prevent a driver from qualifying for the discount.

BACKGROUND

Proposition 103 of 1988

In 1988, California voters approved Proposition 103 following a decade of steadily increasing costs for auto insurance in California. Proposition 103 was the only one of four insurance reform initiatives to pass. In a November 18, 1988 editorial commenting on the passage of Proposition 103 ten days earlier, the New York Times noted that for Californians, "the typical auto insurance premium" had doubled since 1982.¹

This doubling of the cost for auto insurance during the decade of the 1980's did not operate in a vacuum. By 1988, California's level of uninsured drivers was very high, estimated variously as either 28.4% (California DMV) or 25.6% (California DOI).²

In this historical context, Proposition 103 was qualified and placed on the November 1988 statewide General Election ballot with a stated goal of improving the affordability of auto insurance. It included various Findings and Declarations, among them a statement that "Enormous increases in the cost of insurance have made it both unaffordable and unavailable to millions of Californians."

Proposition 103 imposed new rules for how auto insurance rates were to be calculated as well as a system of prior approval of rates, to be administered by an elected Insurance Commissioner. As to rate-setting, Proposition 103 provides that automobile insurance rates are to be determined *"by application of the following factors in decreasing order of importance:*

- (1) *The insured's driving safety record.*
- (2) *The number of miles he or she drives annually.*
- (3) *The number of years of driving experience the insured has had.*
- (4) *Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss.*

Pursuant to this 4th statutory category, the Insurance Commissioner has adopted regulations that include 16 optional rating factors that insurers may lawfully use when setting auto insurance rates and premiums. Among these optional factors is "persistency."

The regulations provide that, at policy renewal, a persistency discount can be applied by an insurer for the current named insured if *"the individual is currently insured by that company or an affiliate"*. The regulations prohibit giving a persistency discount for a policy, at any time, if it is based in whole or in part on auto insurance coverage provided by a non-affiliated insurer.

The prohibition in the Insurance Commissioner's "optional rating factors" regulation against an insurance company offering a persistency-type discount to a new customer based on being insured by an unaffiliated insurance company is due to an express prohibition in Proposition 103. Specifically, Proposition 103 provides that *"The absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability."*³

Even before enactment of Proposition 103, the issue of surcharges on drivers who lacked prior insurance was controversial. In 1985 the Department of Insurance issued Bulletin No. 85-11 specifically addressing the practice of insurers surcharging, or even refusing to cover drivers who were not currently insured.⁴ The Bulletin provided, in part:

"The intent of this bulletin is to inform recipients that [surcharging drivers who have not previously carried insurance] could result in a charge of unfair discrimination. It has been the position of this Department that lack of evidence of prior insurance in itself is not a proper rating standard. There are many reasons why an applicant may not have had prior

insurance, many of which have no bearing on the applicant's future loss potential."

In the context of November 1988, when Proposition 103 was passed, with insurance rates soaring and an estimated 1 of every 4 drivers uninsured, this rule can be understood as an attempt to help persons who were then uninsured, for whatever reason, to be able to get auto insurance coverage at the best rate possible, subject to the new mandatory and optional rating factors, without being penalized by their prior lack of insurance.

Proposition 103 also includes a provision that its new rules governing the business of insurance in California *"shall not be amended by the Legislature except to further its own purposes by means of a statute passed by a 2/3rds roll call vote or by a statute approved by the electorate."*⁵

Related Legislation – SB 689 of 2002 and SB 841 of 2003

In 2002, the Legislature passed SB 689 (Perata), which contained substantially the same proposal as Proposition 17. However, the Governor vetoed the bill, asking the Insurance Commissioner to prepare a report evaluating driver discounts that are consistent with the will of the electorate in passing Proposition 103.⁶ The ensuing report by the Insurance Commissioner indicated that SB 689 conflicted with the provision of Proposition 103 that bars consideration of prior insured status. It further noted that, while the overall impact across all drivers is neutral, it would cause an increase in premiums for some drivers. (This principle is discussed in more detail, below.)

In 2003, the Legislature passed SB 841 (Perata), which contained substantially the same provisions as SB 689. This time, the Governor signed the bill. The courts, however, subsequently ruled that the bill failed to satisfy the "further its own purposes" requirement for Legislative amendments to Proposition 103.

DESCRIPTION OF PROPOSITION 17⁷

According to the Legislative Analyst, "This measure amends Proposition 103 to allow an insurance company to offer a "continuous coverage" discount on automobile insurance policies to new customers who switch their coverage from another insurer. If an insurance company chooses to provide such a discount, it must be based on the length of time the customer continuously had bodily injury liability coverage. Customers would generally be eligible for this discount so long as their coverage had not lapsed for more than 90 days in the past five years, except if any lapse was the result of a failure to pay the premium. Also, customers would be eligible for this kind of discount under the measure if a lapse in coverage was due to military service in another country. Children residing with a parent could qualify for the discount based on their parent's eligibility.

ARGUMENTS PRO AND CON

Proposition 17 is a proposed Initiative statute that asks California's voters to rewrite the rule of Proposition 103 prohibiting an auto insurer from offering new customers a persistency-type discount based upon their record of being insured by an unaffiliated insurance company. If approved by the electorate, it will allow any California auto insurer to offer new customers a discount if the customer has been continuously insured by another insurer. It is being put forward by its sponsors for voter consideration because the courts have ruled that this is the only means by which the statute can be amended. In the view of proponents, the non-portability of the "continuous coverage" discount is an inconsistency in the law, and they argue that it will enhance competition by allowing other insurers to more effectively price compete for the customers of other insurers.

Not surprisingly, opponents dispute these assertions. To fully understand the reasons for the opponents' position, it is unfortunately necessary to delve into some of the details of automobile insurance rating. The Department of Insurance explains it this way:

"California automobile rating is unique in many ways. However, the nature of applying discounts and surcharges is not unique and reflects a basic principle of insurance ratemaking. This basic principle is "zero-sum" in the following sense: Every automobile insurer must have an approved "rate plan" that establishes its average premium. Within that rate plan, every "discount" requires a corresponding "surcharge" so that every factor will balance evenly over an insurer's book of business."

The Department's explanation continues:

"That is, if an insurer offers a continuous coverage discount for some drivers it will result in a surcharge for other drivers."

Essentially, the "rate" is the average premium, and the price that any particular person pays is determined by what the Department refers to as the "class plan" – the matrix of discounts and surcharges that take into account all of the 19 considerations, or rating factors, that are used to determine what a driver will be billed for his or her auto insurance.

It is impossible to predict the specific impact on a specific customer of a specific insurance company until that company submits its proposed rating plan and supporting data to the Department of Insurance. If an insurer were to propose an overall rate reduction, coupled with adoption of the Proposition 17 continuous coverage discount, it is theoretically possible that customers who did, and those who did not, have prior insurance could experience a lower premium than under that insurer's previous rating structure. Similarly, if an insurer were to propose an overall rate increase, coupled with adoption of the Proposition 17 continuous coverage discount, it is theoretically possible that customers who did, and those who did not, have prior insurance could experience a higher premium than under

that insurer's previous rating structure. What is clear, however, is that the customer without prior insurance will pay relatively more if a Proposition 17 continuous coverage discount is included as part of the insurer's rate application.

Proponents of Proposition 17 make a number of policy arguments,⁸ primarily focusing on the increased competition for other insurers' customers, and the positive effects that this competition would potentially create for those customers. Proponents maintain that the proposal does not require premiums to go up for those who do not qualify for the discount, and that the discount is beneficial for senior citizens, among others.

Opponents, on the other hand, focus on the customers who will be surcharged under a new Proposition 17 rating plan, and argue that many of these customers will be unfairly charged higher premiums, forcing some into uninsured status. To borrow the terms of the 1985 Department of Insurance Bulletin, "There are many reasons why an applicant may not have had prior insurance, many of which have no bearing on the applicant's future loss potential." Some examples that opponents have suggested include:

- Military personnel deployed within the United States;
- Students who are away at school without a car;
- People who previously did not own a car, but have a good driving record;
- People who previously commuted to work by public transportation; and
- People who were previously unemployed and did not need to drive, but must now commute to work.

While proponents and opponents do not entirely agree on each others' "facts," it appears that the primary policy question posed by Proposition 17 is whether the potential benefits from increased competition for current customers of other insurers is outweighed by the burdens placed on certain other drivers, and the impact on the public generally should the initiative lead to an increase in uninsured drivers.

¹The New York Times, November 18, 1988, Editorial, "The Only Real Fix for Auto Insurance"

²"What We Know About Uninsured Motorists and How Well We Know What We Know", J. Daniel Khazzoom, December 1997 Discussion Paper, Revised April 2000, published by Resources for the Future, p. 21, footnote 23.

³See California Insurance Code Section 1861.02, subdivision (c).

⁴Prior to Proposition 103, there was not requirement that auto insurers issue policies to drivers with clean driving safety records, and there was minimal regulation of the factors that could be used to rate drivers.

⁵See uncodified Section 8 of Proposition 103 as approved by voters November 8, 1988. The state constitution provides that initiatives placed on the ballot by the voters are not amendable at all by the Legislature, except to the extent that the initiative itself confers that authority. The courts have ruled that the authority can be conditioned, such as a "further the purposes" clause, and that it is the courts' role, not the Legislature's role, to ascertain whether a particular amendment in fact "further the purposes."

⁶A copy of the report is attached.

⁷A copy of the Proposition is attached.

⁸A copy of the Yes on 17 Fact Sheet is attached.

September 2, 2009

09 - 0028

VIA PERSONAL DELIVERY

The Honorable Edmund G. Brown, Jr.
Attorney General
1300 I Street
Sacramento, CA 95814

RECEIVED

SEP 02 2009

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Krystal Paris, Initiative Coordinator

Re: Request for Title and Summary- Initiative Statutory Amendment

Dear Mr. Brown:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared for the attached initiative entitled "The Continuous Coverage Auto Insurance Discount Act" as provided by law. Included with this submission is the required proponent affidavit signed by myself as proponent of this measure pursuant to section 9608 of the California Elections Code. My address as a registered voter is provided and attached to this letter, along with a check for \$200.00.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention: Chip Nielsen (telephone: 415/389-6800).

Thank you for your assistance.

Sincerely,


Christina L. Wilson, Proponent

Enclosure: Proposed Initiative

SECTION 1. Title

This measure shall be known as the Continuous Coverage Auto Insurance Discount Act.

SECTION 2. The People of the State of California find and declare that:

- (a) Under California law, the state Department of Insurance regulates insurance rates and determines what discounts auto insurance companies can give drivers.
- (b) However, an inconsistency in California's insurance laws allows insurers to provide a discount for drivers who continue with the same insurer, but prohibits them from offering this discount to new customers. Drivers who maintain insurance coverage are not able to keep a continuous coverage discount if they change insurers.
- (c) This measure corrects that inconsistency and ensures that all drivers who continually maintain their automobile insurance are eligible for this discount even if they change their insurance company.
- (d) This measure does not change the provisions in current law, which require insurers to base their rates primarily on driving safety record, miles driven annually, and driving experience. This measure simply allows all companies to offer the expanded continuous coverage discount to new applicants who have maintained their auto insurance.
- (e) Extending the continuous coverage discount to people who change insurance companies will provide drivers with more options and choices, increase competition and drive down rates for all responsibly insured drivers.
- (f) The vast majority of states allow insurers to offer a discount to ALL drivers who maintain on-going auto insurance. This measure will simply bring California into line with other states like Texas, New York, Oregon, Washington and Florida.

SECTION 3. Purpose

The purpose of this measure is to provide an additional discount for drivers who are continuously insured for automobile liability coverage.

SECTION 4. Section 1861.024 is added to the Insurance Code to read:

Sec. 1861.024. (a) Notwithstanding section 1861.02(c), and in addition to discounts permitted or required by law or regulation, an insurer may offer applicants or insureds an additional discount, for a policy to which Insurance Code Section 1861.02(a) applies, applicable to each coverage provided by the policy, based on the length of time the applicant or insured has been continuously insured for bodily injury liability coverage, with one or more insurers, affiliated or

not. The insurer may consider the years of continuous coverage preceding the policy effective or renewal date. This discount is called a continuity discount. Children residing with a parent may be provided the same discount based on their parents' eligibility for a continuity discount.

(b). The applicant or insured may demonstrate continuity of coverage, for a policy to which Insurance Code Section 1861.02(a) applies, by providing proof of coverage under the low-cost automobile insurance program pursuant to Article 5.5 (commencing with Section 11629.7) of Chapter 1 of Part 3 of Division 2, or by proof of coverage under the assigned risk plans pursuant to Article 4 (commencing with section 11620) of Chapter 1, Part 3 of Division 2, or by proof of coverage from the prior insurer or insurers or other objective evidence. Proof of coverage shall be copies of policies, billings or other documents evidencing coverage, issued by the prior insurer or insurers or other objective evidence. Continuity of coverage shall be deemed to exist even if there is a lapse of coverage due to an applicant's or insured's absence from the United States while in military service, or if an applicant's or insured's coverage has lapsed for up to 90 days in the last five years for any reason other than nonpayment of premium. This provision does not limit an insurer's ability to offer additional grace periods for lapses.

SECTION 5. Section 1861.02 of the Insurance Code is amended to read:

(a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

(1) The insured's driving safety record.

(2) The number of miles he or she drives annually.

(3) The number of years of driving experience the insured has had.

(4) Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. Notwithstanding any other provision of law, the use of any criterion without approval shall constitute unfair discrimination.

(b)(1) Every person who meets the criteria of Section 1861.025 shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice. An insurer shall not refuse to offer and sell a Good Driver Discount policy to any person who meets the standards of this subdivision.

(2) The rate charged for a Good Driver Discount policy shall comply with subdivision (a) and shall be at least 20% below the rate the insured would otherwise have been charged for the same coverage. Rates for Good Driver Discount policies shall be approved pursuant to this article.

(3)(A) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance from requiring membership in the motor club as a condition precedent to obtaining insurance described in this subdivision.

(B) This subdivision shall not prevent an insurer which requires membership in a specified voluntary, nonprofit organization, which was in existence prior to November 8, 1988, as a condition precedent to applying for insurance issued to or through those membership groups, including franchise groups, from requiring such membership as a condition to applying for the coverage offered to members of the group, provided that it or an affiliate also offers and sells coverage to those who are not members of those membership groups.

(C) However, all of the following conditions shall be applicable to the insurance authorized by subparagraphs (A) and (B):

(i) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.

(ii) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.

(iii) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.

Any insurer that violates clause (i), (ii), or (iii) shall be subject to the penalties set forth in Section 1861.14.

(c) The absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability. ~~However, notwithstanding subdivision (a), an insurer may use persistency of automobile insurance coverage with the insurer, an affiliate, or another insurer as an optional rating factor. The Legislature hereby finds and declares that it furthers the purpose of Proposition 103 to encourage competition among carriers so that coverage overall will be priced competitively. The Legislature further finds and declares that competition is furthered when insureds are able to claim a discount for regular purchases of insurance from any carrier offering~~

~~this discount irrespective of whether or not the insured has previously purchased from a given carrier offering the discount. Persistency of coverage may be demonstrated by coverage under the low cost automobile insurance program pursuant to Article 5.5 (commencing with Section 11629.7) and Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2, or by coverage under the assigned risk plans pursuant to Article 4 (commencing with Section 11620) of Chapter 1 of Part 3 of Division 2. Persistency shall be deemed to exist even if there is a lapse of coverage of up to two years due to an insured's absence from the state while in military service, and up to 90 days in the last five years for any other reason.~~

(d) An insurer may refuse to sell a Good Driver Discount policy insuring a motorcycle unless all named insureds have been licensed to drive a motorcycle for the previous three years.

(e) This section shall become operative on November 8, 1989. The commissioner shall adopt regulations implementing this section and insurers may submit applications pursuant to this article which comply with those regulations prior to that date, provided that no such application shall be approved prior to that date.

SECTION 6. Conflicting Ballot Measures

In the event that this measure and another measure or measures relating to continuity of coverage shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SECTION 7. Amendment

The provisions of this act shall not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring.

SECTION 8. Severability

It is the intent of the People that the provisions of this Act are severable and that if any provision of this Act, or the application thereof to any person or circumstance, is held invalid such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.

Proposition 17

Allows Auto Insurance Companies to Base Their Prices in Part on a Driver's History of Insurance Coverage. Initiative Statute.

Background

Automobile insurance is one of the major types of insurance purchased by Californian residents. It accounted for about \$19.7 billion (36 percent) of all premiums collected by California insurers in 2008. Among the types of automobile insurance coverage available is bodily injury liability, which provides protection in the event a motorist physically injures someone else.

State Regulation of Automobile Insurance. In 1988, California voters passed Proposition 103, which requires the Insurance Commissioner to review and approve rate changes for certain types of insurance, including automobile insurance, before changes to the rates can take effect. Proposition 103 also requires that rates and premiums for automobile insurance policies be set by applying the following rating factors in decreasing order of importance: (1) the insured's driving safety record, (2) the number of miles they drive each year, and (3) the number of years they have been driving.

The Insurance Commissioner may adopt additional rating factors to determine automobile rates and premiums. Currently, 16 optional rating factors may be used for these purposes. For example, insurance companies may provide discounts to individuals for being long-term customers of theirs. Insurance companies are

prohibited, however, from offering this kind of discount to new customers who switch to them from other insurers.

In addition, Proposition 103 contains a provision related to individuals who were previously uninsured. Specifically, Proposition 103 prohibits insurance companies from using the information that an individual did not previously have automobile insurance to: (1) determine whether the individual is eligible for coverage or (2) decide the premiums charged for coverage.

Insurance Premium Tax. Insurance companies doing business in California currently pay an insurance premium tax instead of the state corporate income tax. The tax is based on the amount of insurance premiums earned in the state each year for automobile insurance as well as for other types of insurance coverage. In 2008, insurance companies paid about \$247 million in premium tax revenues on automobile policies in California. These revenues are deposited into the state General Fund.

Proposal

This measure amends Proposition 103 to allow an insurance company to offer a "continuous coverage" discount on automobile insurance policies to new customers who switch their coverage from another insurer. If an insurance company chooses to provide such a discount, it must be based on the length of time the customer continuously had bodily injury liability coverage. Customers would generally be eligible for this discount so long as their coverage had not lapsed for more than 90 days in the past five years, except if any lapse was the result of a failure to pay the premium.

Also, customers would still be eligible for this kind of discount under the measure if a lapse in coverage was due to military service in another country. Children residing with a parent could qualify for the discount based on their parent's eligibility.


Fiscal Effects






This measure could result in a change in the total amount of automobile insurance premiums earned by insurance companies in California and, therefore, the amount of premium tax revenues received by the state for the reasons discussed below.

On the one hand, the provision of continuous coverage discounts could reduce premium tax revenues received by the state. This would depend, however, on the extent to which insurers choose to offer such discounts to their customers, and the size of the discounts provided. On the other hand, insurers offering such discounts could make up for some or all of these discounts by charging higher premiums to some of its other customers.


The net impact on state premium tax revenues from this measure would probably not be significant. This is because overall premiums are predominately determined by other factors—such as driver safety, the number of miles driven, and years of driving experience—which are unaffected by the measure.



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CONTINUOUS COVERAGE DISCOUNT INITIATIVE IMPACT ON RATES

OVERVIEW

An initiative measure has qualified for the ballot that may change how premiums are calculated for a large number of California automobile owners. It does so by proposing to allow automobile insurance companies to do something that under current law they cannot do, which is, offer a discount to new policyholders who were previously insured by another insurance company if they have maintained their automobile insurance coverage without a break in coverage of more than 90 days within the last five years before switching to the new company. Current law permits automobile insurance companies to offer a discount to existing policyholders who maintain their automobile insurance coverage; if a person switches or was not insured previously they cannot receive the discount. The Legislative Analyst, in preparing the ballot analysis of the measure, asked the Department of Insurance, "Does anything in the insurance regulation or state law require insurance to be a zero-sum gain?"

IMPACT ON INSURANCE RATES

California automobile rating is unique in many ways. However, the nature of applying discounts and surcharges is not unique and reflects a basic principle of insurance ratemaking. This basic ratemaking principle is "zero-sum" in the following sense: Every automobile insurer must have an approved "rate plan" that establishes its average premium. Within that rate plan, every "discount" requires a corresponding "surcharge" so that every factor influencing a rate will balance evenly over an Insurer's book of business. In California, this principle is codified in Title 10 of the California Code of Regulations, Section 2632.7(c). The California Court of Appeal also recognized this principle in *Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, 1367-69.

The Continuous Coverage Auto Insurance Discount Act, as revised and submitted on September 2, 2009, is subject to this principle. That is, if an insurer offers a continuous coverage discount for some drivers it will result in a surcharge for other drivers. This is because automobile insurance discounts and surcharges must offset one another so that each rating factor applied by an insurer is evenly balanced within the insurer's rating plan. This assumes that the insurer chooses to offer a continuous coverage discount and does not submit a new rate plan that would change its average premium.

Automobile rating is extremely complicated, and there is no way of predicting the precise impact a specific factor (in this case, continuous prior insurance) will have on each of the insurer's customers until the insurer submits specific data to the Department of Insurance. Insurers periodically file new rate plans which may reduce or increase the average premium for their customers and/or new class plans which apply specific rating factors to their customers and may reduce or increase individual premiums.

Quick Links

[-For Consumers-](#)

BILL NUMBER: SB 689
VETOED DATE: 09/30/2002

SEP 30 2002

To Members of the California State Senate:

I am returning Senate Bill 689 without my signature.

California State Insurance Commissioner Harry Low has asked me to veto this measure because he believes it violates the intent of Proposition 103 and undermines the Department of Insurance's (DOI) pending regulations which cover the issue of persistency

I am asking Commissioner Low to undertake a study to enumerate any and all driver discounts that are consistent with the expressed will of the electorate with their passage of Proposition 103, including a continued examination of the issue of portable persistency.

Sincerely,

GRAY DAVIS

Persistency Study

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Exhibits

Exhibit A - Listing of Mandatory and Allowable Optional Rating Factor under CCR 2632.5

Exhibit B - Additional Possible Rating Factors

Exhibit C - Loyalty and Portable Persistency among Top 50 Auto Insurers

Exhibit D - Justification of Loyalty Persistency Discount

Exhibit E - Impact of Removal of Portable Persistency

Persistency Study

Executive Summary

This study reviews the justification for use of loyalty and portable persistency in rating personal automobile insurance policies. Our review of the data shows that loyalty persistency is a justified rating factor as it has a substantial relationship to the risk of loss. In addition our review shows, as years of loyalty persistency increase, the indicated discounts also increase.

Portable persistency however, is in direct conflict with the intent of Proposition 103 and CIC 1861.02 (c) that states "the absence of prior insurance coverage in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability." Its use also creates other complications. Removing portable persistency will have an impact on an individual insured's premium, but the overall net impact on all insureds will be zero.

The study also reviews allowable rating factors under California Code of Regulations and any additional rating factors that might be permissible under Proposition 103. Our research indicates that California's allowable rating factors cover most of the characteristics that have a relationship to the risk of loss, while other additional rating factors not currently allowed might be problematic.

Introduction

Governor Gray Davis vetoed Senate Bill 689 based on the belief that it violates the intent of Proposition 103 and undermines the Department of Insurance's pending persistency regulations. However, the Governor asked the California Department of Insurance (CDI) to undertake a study to enumerate any and all driver discounts that are consistent with the expressed will of the electorate with their passage of Proposition 103, including a continued examination of the issue of portable persistency.

Proposition 103 states that rates and premiums for an automobile insurance policy should be determined by the following rating factors in decreasing order of importance:

- (1) The insured's driving safety record.
- (2) The number of miles he or she drives annually.
- (3) The number of years of driving experience the insured has.
- (4) Such other factors that the commissioner may adopt by regulation that have a substantial relationship to the risk of loss.

The commissioner adopted 16 optional rating factors, which are listed under California Code of Regulations Title 10 Chapter 5 section 2632.5 (Exhibit A). One of these factors is persistency. Persistency was not originally defined. However, California Insurance Code Section 1861.02 (c), which was enacted by Proposition 103, states "the absence of prior automobile insurance coverage, in and of itself, should not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums or insurability." On September 26, 2002 the commissioner adopted RH 402, which defines persistency to only include insurance coverage with the insured's current carrier or affiliates of the current carrier.

Senate Bill 689 would have defined persistency to include insurance coverage with the current carrier, an affiliate or another carrier. Persistency with another carrier is equivalent to prior insurance, which would violate the intent of Proposition 103.

Enumeration of Driver Discounts

Discounts, when used in rating an automobile insurance policy, are usually given to insureds who meet certain criteria, such as, completion of driving training courses. For those insureds who do not meet these criteria, the discounts will not apply. Since insurance is a mechanism, which provides for the sharing of total losses among all insureds within an insurance company, the discounts given to one group of insureds are not simply money saved. The total losses of the insurance company will not change. The sharing mechanism works by making the remaining group who do not qualify for the discounts pay more. Therefore, there are no pure discounts, only different means of distributing losses among all insureds. In this sense, discounts and rating factors are interchangeable. In fact, the California Code of Regulations (CCR) 2632.2. gives this definition for rating factors "The term "rating factor" is defined as any factor, including discounts, used by an insurer which establishes or affects the rates, premiums, or charges assessed for a policy of automobile insurance."

The CCR 2632.5 stipulates three mandatory factors and sixteen allowable optional factors (Exhibit A). The CDI team sent out a nationwide survey to other State Departments, and our research indicates that California's allowable rating factors cover most of the rating factors used in other states. Exhibit B lists additional rating factors being used in other states. However, some of these factors can be categorized as surrogates for rating factors that are already allowed in California, others are problematic on many fronts as much as they tend to verge on giving credence to potentially unfairly discriminatory or illegal practices. These factors are generally also considered difficult to monitor though a correlation to the risk of loss can potentially be demonstrated, such as the use of cellular telephones.

Persistency Rating Factor

Loyalty persistency has been defined as insurance coverage with the insured's current carrier or affiliates of the current carrier. Portable persistency has been defined as insurance coverage with another carrier or prior insurance. Many insurers have used persistency as a rating factor for automobile insurance coverage. Exhibit C lists the top 50 auto insurers in California and whether or not they use persistency in their rating plan and whether they have loyalty or portable persistency. In terms of written

premium, the top 50 auto insurers have a combined market share of 90.4% in California. Within the top 50 companies, 46 companies use persistency in their rating plan, only 4 companies do not use persistency at all. All 46 companies that have persistency use loyalty persistency. 24 companies among the 46 companies also extend their persistency to portable persistency.

Loyalty Persistency Justification

The CDI team studied the class plan filings and the rate filings for the top 20 auto insurers. Class plan filings provide justification of the company's selection of the rating factors it will use based on the methodology specified under CCR 2632.7. Among the top 20 companies, 9 companies use loyalty persistency only. For these 9 companies, Exhibit D pages 2 to 12 lists by company the indicated discounts or surcharges for loyalty persistency by coverage. The Adjusted Indicated Relativity, Column 3 of these pages, gives the indicated variation of charges among various loyalty persistency categories derived from the company's historical loss costs. By applying the adjusted indicated relativity to the company's average annual premium per vehicle, the indicated annual discounts or surcharges are derived for the various loyalty persistency categories.

Since each company uses different ways to categorize the loyalty persistency, a summary page, Exhibit D page 1 is presented to show the by company all coverage combined indicated discounts or surcharges for 3 distinct loyalty persistency categories, 0 years, 3 years, or 6+ years.

Exhibit D demonstrates that loyalty persistency is justifiable as one of the optional rating factors for automobile insurance coverage. Furthermore, almost all companies show that as years of persistency increase, the indicated surcharges gradually reduce and become indicated discounts.

Problems with Portable Persistency

As previously stated from CIC 1861.02 (c), "the absence of prior insurance coverage in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability." Proof of prior insurance is required for portable

persistence and those applicants that lack prior insurance will be charged a higher rate. Therefore, portable persistence can arguably be said to be equivalent to prior insurance. This is in direct conflict with the aforementioned statute.

Besides the legal conflict there are other problems with portable persistence. These problems include:

- 1) People who do not have prior insurance are surcharged under portable persistence. Many of these people are those that can least afford to pay for insurance or who already have high premiums caused by other rating factors. This discourages them from buying insurance, which may add to the number of uninsured motorists and ultimately drives up the cost of the uninsured motorist coverage for every insured.
- 2) Portable persistence discriminates against those insureds, who did not own a car or were in the military. They were not irresponsible but had no reason to have prior insurance.
- 3) Portable persistence can be difficult to verify, especially for those insurers that require proof of portable persistence for more than a year.

Impact of Removal of Portable Persistence

The adoption of RH-402 defines persistence to only include loyalty persistence. Insurance companies that have been using portable persistence need to make class plan revisions to remove persistence references to non-affiliated companies. Among the top 20 auto insurers, 11 companies extended their persistence definition to also include portable persistence. These 11 companies are shown in Exhibit E page 2 to 11. The last column of these pages lists by company the average annual portable discounts per vehicle that would be removed by the adoption of RH-402.

Exhibit E page 1 is a summary page for the above 11 companies which shows the average annual portable discounts and percentages of these portable discounts to average premiums for a specific category of insureds, 0 years loyalty persistence and 3 years portable persistence. For this category of insured, the impact of removal of the portable discount is between 0% and 16%.



FACT SHEET

THE PROBLEM: Drivers Are Not Eligible for Their “Continuous Coverage” Discount If They Change Insurers

- Under current California insurance laws, drivers who have been insured with the same insurance company are eligible for a “continuous coverage” discount. But, an inconsistency in the law prohibits drivers from taking this continuous coverage discount with them if they switch insurance companies.
- The regulation was intended to reward ALL California drivers for maintaining their coverage, but the inconsistency in the law punishes good drivers who want to change insurers, restricts drivers from shopping around for auto insurance and limits competition in the auto insurance market.

THE SOLUTION: Proposition 17 - The Continuous Coverage Auto Insurance Discount Act

- Proposition 17 – the Continuous Coverage Auto Insurance Discount Act - on the June 2010 statewide ballot corrects that inconsistency and ensures that all drivers who continually maintain their automobile insurance are eligible for this discount even if they change their insurance company.
- This common-sense measure allows all insurance companies to offer the expanded continuous coverage discount to drivers, including new customers, for obeying the law and having maintained their auto insurance.
- Drivers who continually maintain their auto insurance coverage deserve this discount and the savings it provides.
- Prop. 17 will increase competition, which will lower rates and result in reduced premiums, while providing California drivers with more options and choices in their insurance coverage.
- This is an additional discount. Insurance companies still will be required to base your auto insurance rates on Proposition 103's top three mandatory rating factors: driving safety record, miles driven annually and driving experience. Other discounts, like the good driver or student discount, will not be taken away.
- Similar to when some stores honor their competitors' coupons or the law allowing cell phone customers to keep their phone numbers when changing companies, Prop. 17 will allow drivers to shop around and take their continuous coverage discount with them to any insurance company.
- Extending this discount will bring California in line with the vast majority of other states allowing insurers to offer this discount to all drivers who maintain ongoing auto insurance coverage. Other states like Texas, New York, Oregon, Washington and Florida offer this discount to their drivers – California should too.
- This will not affect California's extensive low cost and assigned risk auto insurance program, which ensures drivers have access to affordable auto insurance.