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Insurance

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Insurance

Insurance; AIDS testing

Insurance Code § 799.10 (new); §§ 799.01, 799.02, 799.03, 799.06, 799.09 (amended).

AB 27 (Johnston); 1989 STAT. Ch. 824

Existing law allows life and disability insurers to decline to insure an applicant on the basis of a positive HIV test.¹ With the enactment of Chapter 824, a life or disability income insurer may require an applicant to submit to an HIV test², but the HIV test may not be used to determine whether the applicant is eligible for hospital, medical, or surgical insurance coverage.³ Chapter 824 further provides that an insurer may not inquire, either on an application or an enrollment request for life or disability income insurance, about prior HIV tests unless the question relates to prior testing solely for the purpose of obtaining insurance.⁴ Chapter 824 also provides that one who negligently discloses⁵ to a third party the results of another's

1. 1988 Cal. Stat. ch. 1279, sec. 1, at ____ (amending CAL. INS. CODE § 799.01) (amended by 1989 Cal. Stat. ch. 824, sec. 1, at ____). See *American Council Life Ins. v. District Court*, 645 F. Supp. 84, 88 (D.C. 1986) (AIDS testing by insurers may be banned by states).

2. 1989 Cal. Stat. ch. 824, sec. 1.5, at ____ (amending CAL. INS. CODE § 799.02). An insurer must obtain the applicant's informed consent when asking an applicant to take an HIV test. *Id.* sec. 2, at ____ (amending CAL. INS. CODE § 799.03). Written informed consent must include the purpose of the test, the meaning and limitations of the results, description of the test, procedures for telling the applicant of the results, and the right to have the results be confidential. *Id.* (amending CAL. INS. CODE § 799.03(a)). The cost of the HIV test must be borne by the insurer. CAL. INS. CODE § 799.04. See 1989 Cal. Stat. ch. 824, sec. 2, at ____ (amending CAL. INS. CODE § 799.03(a)(1), (2)) (the insurer must: (1) Provide an applicant a list of counseling resources available; (2) provide the applicant with material describing HIV; and (3) describe the testing procedure, its purposes, meaning of the results, uses and limitations, and the right to confidential treatment of the results, before execution of the applicant's consent to an HIV test).

3. 1989 Cal. Stat. ch. 824, sec. 1.5, at ____ (amending CAL. INS. CODE § 799.09). The authorization to require an HIV test only applies to policies whose issuance or granting is contingent upon medical review for other diseases. *Id.* (amending CAL. INS. CODE § 799.02).

4. *Id.* sec. 3, at ____ (amending CAL. INS. CODE § 799.06). This provision applies to application requests on or after January 1, 1990. *Id.*

5. For a disclosure to be negligent, the person must have disclosed the results in a manner which identifies the person who took the test, or which provides identifying characteristics. *Id.* sec. 5, at ____ (enacting CAL. INS. CODE § 799.10). A disclosure made with written authorization, or as provided in Health and Safety Code sections 1603.1 and 1603.3 is not negligent. *Id.* Written authorization applies to test result disclosures by one who is

HIV test is subject to a civil penalty of up to \$1,000.⁶ If the disclosure is done willfully, the maximum penalty is \$5,000.⁷ If the negligent or willful disclosure causes economic, psychological, or bodily harm to the subject of the test, then the person who disclosed the information is guilty of a misdemeanor, and is liable for all actual damages caused by the disclosure.⁸

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responsible for the care and treatment of the test subject. *Id.* (enacting CAL. INS. CODE § 799.10(g)). Authorization must be obtained for each separate disclosure, and must indicate who will receive the information. *Id.*

6. *Id.* (enacting CAL. INS. CODE § 799.10(b)). See Schatz, *supra* note 1, at 1784 (misuse of HIV tests results accounts for much of the discrimination associated with AIDS).

7. 1989 Cal. Stat. ch. 824, sec. 5, at ____ (enacting CAL. INS. CODE § 799.10(c)).

8. *Id.* (enacting CAL. INS. CODE § 799.10(e)). Each disclosure is a separate offense. *Id.* (enacting CAL. INS. CODE § 799.10(f)).

Insurance; cancellation—"free look" requirement

Insurance Code §§ 10127.9, 10164.2 (new); § 10127.7 (amended).

SB 1089 (Hart); 1989 STAT. CH. 713

Support: Association of California Life Insurance Companies

Existing law, with exceptions, requires that individual life insurance policies¹ with a face value of less than \$10,000 contain a notice stating that the insured² may cancel the policy by returning it to the insurer³ within a specified period of time after the insured receives the policy.⁴ Chapter 713 requires, with specified exceptions, that every individual life insurance policy initially issued on or after January 1, 1990, regardless of the value of the policy, contain notice to the owner that delivery of the policy within a specified period of

1. See CAL. INS. CODE § 101 (West 1972) (definition of life insurance policy).

2. See *id.* § 23 (West 1972) (definition of insured).

3. See *id.* (definition of insurer).

4. *Id.* § 10127.7 (West Supp. 1989) (delivery or mailing of the policy within the specified period of time not to exceed thirty days, or less than ten days will void the policy from the beginning, and the parties will be in the same position as if no policy had been issued).

time to either the insurer, or to the agent through whom the policy was purchased, acts as a cancellation of the policy.⁵ Upon cancellation, the insurer must, within thirty days of the date the insurer was notified of the cancellation, return all premiums or policy fees paid in relation to that policy.⁶ Chapter 713 further provides that for any individual life insurance policy which is cancelled by the owner, the insurer must return all unearned premiums within forty-five days of the date the insurer was notified of the cancellation.⁷

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5. 1989 Cal. Stat. ch. 713, sec. 2, at ____ (enacting CAL. INS. CODE § 10127.9(a)). Policies subject to section 10127.7, as well as policies issued as part of a credit transaction, or contractual policy-change or conversion privilege contained in an existing policy, are exempt from the provisions of Chapter 713. *Id.* (enacting CAL. INS. CODE § 10127.9(b), (c)). The insurer shall set forth a time of not less than ten days, nor more than thirty days, within which the insured may return the policy for cancellation. *Id.* (enacting CAL. INS. CODE § 10127.9(a)).

6. *Id.* sec. 2, at ____ (enacting CAL. INS. CODE § 10127.9(a)).

7. *Id.* sec. 3, at ____ (enacting CAL. INS. CODE § 10164.2). Insurers may still defer payment of cash surrender value for up to six months pursuant to California Insurance Code section 10160(f). *Id.*

Insurance; competition requirement for title insurance companies

Insurance Code §§ 12396, 12397, 12397.5, 12398, 12399 (new).

SB 924 (Vuich); 1989 STAT. CH. 344

Sponsor: California Land Title Association

Chapter 344 codifies existing case law¹ and a Department of Insurance bulletin² by requiring applicants for a title insurance license³ to indicate their intention to compete actively in the title insurance market in each county in which they conduct business.⁴ Chapter 344

1. *Coldwell Banker & Co. v. Department of Ins.*, 102 Cal. App. 3d 381, 409-10, 162 Cal. Rptr. 487, 503-04 (1980) (denial of license application based on the applicant's overreliance on affiliated companies for title orders is proper).

2. DEP'T OF INS. BULL. NO. 81-8 (December 30, 1981) (title insurers may not rely on controlled business sources). The bulletin defines a controlled business source as a business in which the applicant is a stockholder or has any ownership interest. *Id.*

3. See 1989 Cal. Stat. ch. 344, sec. 1, at ____ (enacting CAL. INS. CODE § 12396(b)(1)) (definition of title insurance license). See also CAL. INS. CODE § 12340.3 (West 1988) (definition of business of title insurance).

4. 1989 Cal. Stat. ch. 344, sec. 1, at ____ (enacting CAL. INS. CODE § 12397). An applicant's failure to indicate an intention to compete actively is a ground for denial of the application. *Id.*

further requires applicants to demonstrate that no more than fifty percent of their title orders will be derived from controlled business sources.⁵

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5. *Id.* Chapter 344 defines a controlled business source as an affiliate of the applicant. *Id.* (enacting CAL. INS. CODE § 12396(a)). See *supra* note 2 (Department of Insurance Bulletin definition of controlled business source). See also CAL. INS. CODE § 1215 (West 1972) (definition of affiliate). After the license is issued, the licensee must keep records of the source of title orders and file an annual report with the Insurance Commissioner stating what percentage of the licensee's closed title orders were derived from controlled business sources. 1989 Cal. Stat. ch. 344, sec. 1, at ____ (enacting CAL. INS. CODE § 12397.5). If the Department of Insurance verifies a signed report which shows that less than five percent of the licensee's closed title orders were derived from controlled business sources, the licensee is relieved from further reporting, provided the percentage does not subsequently rise above five percent. *Id.* (enacting CAL. INS. CODE § 12397(d)). Failure to comply with the provisions of Chapter 344 may result in disciplinary action, including the revocation or suspension of the license. *Id.* (enacting CAL. INS. CODE § 12398).

Insurance; delay—benefits to AIDS patients

Insurance Code § 790.03 (amended).
SB 1328 (Marks); 1989 STAT. CH. 800

Existing law, in order to discourage unfair settlement practices by insurers,¹ lists a variety of insurance business practices which consti-

1. See *Royal Globe Ins. Co. v. Superior Court*, 23 Cal. 3d 880, 885, 592 P.2d 329, 334, 153 Cal. Rptr. 842, 847 (1979) (discussion of legislative intent of California Insurance Code section 790.03). Under former case law, Insurance Code section 790.03 created a private cause of action for an insured or a third party injured by an insurer's violation of the statute. *Id.* at 884, 592 P.2d at 332, 153 Cal. Rptr. at 845. The *Royal Globe* holding was recently overruled, depriving plaintiffs of a private cause of action under Insurance Code section 790.03. *Moradi-Shalal v. Fireman's Fund Ins. Cos.*, 46 Cal. 3d 287, 304, 758 P.2d 58, 68, 250 Cal. Rptr. 116, 126 (1988). After *Moradi-Shalal*, a plaintiff injured by a violation of Insurance Code section 790.03 must resort to traditional common law causes of action such as fraud, infliction of emotional distress, breach of the implied covenant of good faith and fair dealing, or breach of contract. *Id.* at 304-305, 758 P.2d at 68-69, 250 Cal. Rptr. at 127. See generally Note, *Extending the Liability of Insurers for Bad Faith Acts: Royal Globe Insurance Co. v. Superior Court*, 7 PEPPERDINE L. REV. 777 (1980); Allen, *Insurance Bad Faith Law: Need for Legislative Intervention*, 13 PAC. L.J. 833 (1982); Note, *Bad Faith: Defining Applicable Standards in the Aftermath of Royal Globe v. Superior Court*, 23 SANTA CLARA L. REV. 917 (1983); Note, *Parvaneh Moradi-Shalal v. Fireman's Fund Insurance Companies: The End of Private Party Enforcement of the Unfair Practices Act Against Insurance Companies*, 20 PAC. L.J. 1373

tute unfair competition and deceptive or unfair acts.² Chapter 800 provides that specified insurer delays³ in paying medical benefits more than sixty days after an insured has been diagnosed as having AIDS or AIDS-related complex is an unfair practice.⁴

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(1989); Kornblum, *The Current State of Bad Faith and Punitive Damage Litigation in the U.S.*, 23 TORT & INS. L.J. 812, 829-839 (1988) (discussion of *Moradi-Shalal* and causes of action available after *Moradi-Shalal*); *Crisci v. Security Ins. Co.*, 66 Cal. 2d 425, 426 P.2d 173, 58 Cal. Rptr. 13 (1967) (discussion of the torts of insurer fraud and breach of the implied covenant of good faith and fair dealing).

2. CAL. INS. CODE § 790.03 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 800, sec. 1, at ____). If the Commissioner of Insurance believes that an insurer has violated section 790.03, the Commissioner must issue a cease and desist order. *Id.* § 790.05 (West 1972). If the insurer violates the cease and desist order, the Commissioner may fine the insurer up to \$5000, or, if the violation is willful, up to \$55,000. *Id.* § 790.07 (West Supp. 1989). For subsequent violations of the order, the Commissioner may revoke the insurer's license for up to one year. *Id.* But see *Moradi-Shalal v. Fireman's Fund Ins. Cos.*, 46 Cal. 3d 287, 317, 758 P.2d 58, 77, 259 Cal. Rptr. 116, 135 (1988) (Mosk, J., dissenting) (since section 790.03 was adopted in 1959, the Commissioner has never taken a court action against a carrier under the statute).

3. Chapter 800 applies when the delay is for the purpose of determining whether the disease was a pre-existing condition. 1989 Cal. Stat. ch. 800, sec. 1, at ____ (amending CAL. INS. CODE § 790.03(h)(16)). See generally Schatz, *The AIDS Insurance Crisis: Underwriting or Overreaching?*, 100 HARV. L. REV. 1782, 1786 (1987); Clifford & Inculano, *AIDS and Insurance: The Rationale for AIDS-Related Testing*, 100 HARV. L. REV. 1806, 1819-1821 (1987) (discussions of insurer's attempts to avoid payment of benefits by determining that a patient's AIDS was a pre-existing condition).

4. 1989 Cal. Stat. ch. 800, sec. 1, at ____ (amending CAL. INS. CODE § 790.03(h)(16)). Chapter 800 also applies to disability insurers and nonprofit hospital service plans. *Id.* (amending CAL. INS. CODE § 790.03(i)).

Insurance; disability compensation

Unemployment Insurance Code § 702.6 (new).

AB 1364 (N. Waters); 1989 STAT. CH. 475

Support: California Teacher's Association; Safeway Stores, Inc.;
United Food and Commercial Workers

Existing law allows an employing unit¹ to make an election with the Director of Employment Development (Director) to become an employer for the purposes of unemployment or disability compen-

1. See CAL. UNEMP. INS. CODE § 135 (West 1986) (definition of employing unit).

sation.² Chapter 475 permits an employing unit already subject to unemployment compensation provisions to make an election to cover disability compensation for eligible employees.³ An employing unit may make such an election if the eligible employees are members of a labor organization and the election has been agreed upon between the employer and the organization.⁴ If the eligible employees are not part of a labor organization, a majority of the eligible employees who will be covered by the disability insurance may request that the employing unit make the election.⁵

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2. *Id.* §§ 701-714 (West 1986 & Supp. 1989) (allowing election by employers not already subject to unemployment compensation provisions). *See id.* §§ 675-686 (West 1986 & Supp. 1989) (defining employers subject to unemployment compensation provisions).

3. 1989 Cal. Stat. ch. 475, sec. 1, at ____ (enacting CAL. UNEMP. INS. CODE § 702.6(a)). An eligible employee under Chapter 475 is one who is a resident of California and is covered by unemployment compensation insurance in another state that does not provide disability insurance. *Id.* The employee must also meet the definition of "employee" under California Unemployment Insurance Code section 13004 relating to the withholding of taxes on wages. *Id.* (enacting CAL. UNEMP. INS. CODE § 702.6(b)). *See* CAL. UNEMP. INS. CODE §§ 13000-13101 (providing for withholding taxes on wages).

4. 1989 Cal. Stat. ch. 475, sec. 1, at ____ (enacting CAL. UNEMP. INS. CODE § 702.6(a)(1)).

5. *Id.* (enacting CAL. UNEMP. INS. CODE § 702.6(a)(2)). The employees' request must be made by a written petition signed by a majority of the employees. *Id.* Upon the Director's approval of the election, the employing unit is subject to all provisions of disability insurance. *Id.* *See* CAL. UNEMP. INS. CODE §§ 2601-3272 (governing disability compensation). The employing unit is also subject to provisions regarding the Director's approval of the election, provisions requiring the employing unit to post notice of the election, and provisions governing withholding the employees' disability contribution from wages. 1989 Cal. Stat. ch. 475, sec. 1, at ____ (enacting CAL. UNEMP. INS. CODE § 702.6). *See also* CAL. UNEMP. INS. CODE §§ 704 (West 1986) (approval of election by the Director), 707 (requiring employer to post notice of the election), 986 (governing the withholding of employee contributions from wages).

Insurance; employee health care

Labor Code §§ 2500, 2501, 2502, 2503, 2510, 2512, 2514, 2516, 2518, 2519, 2520, 2522, 2523, 2530, 2532, 2533, 2534, 2536, 2538 2540, 2544, 2548, 2550, 2552, 2553, 2554, 2560, 2564 (new).

Revenue and Taxation Code §§ 17053.20, 23615 (amended).

AB 350 (Brown); 1989 STAT. Ch. 829

SB 1207 (Keene); 1989 STAT. Ch. 797

(Effective January 1, 1992)

Chapter 829 enacts the Tucker Health Care Coverage Act of 1989.¹ Chapter 829 takes note that although California's competitive pricing

1. 1989 Cal. Stat. ch. 829, sec. 1, at ____ (enacting CAL. LAB. CODE § 2500).

system² has produced comparatively lower increases in health care costs, that pricing system has caused difficulties and inequities among employers³ in the funding of health care for uninsured persons.⁴ In enacting Chapter 829, the legislature intends to make certain that nearly all employees⁵ in the state have basic health care insurance and that they have the opportunity to obtain coverage for dependents.⁶

Every employer who elects to provide coverage under Chapter 829 is required to provide at least seventy-five percent of the cost of basic health care coverage⁷ at the earliest time that the coverage is available after an employee has been employed for six months.⁸ New employers who elect to provide coverage under the provisions of Chapter 829 are not required to commence the coverage until two years and three months after the date when the employer first received an employer tax identification number.⁹ Chapter 829 specifies methods by which the employer may satisfy the coverage provisions of the Act.¹⁰ Chapter 829 further requires, under specified circumstances, that the employer who elects to provide coverage under the Act continue to provide health care coverage to any employee who is ill or hospitalized and who has exhausted applicable sick leave pay.¹¹

2. See CAL. INS. CODE § 10133(c) (Deering Supp. 1989) (effective July 1, 1983, California permits private health insurers to contract with an exclusive grouping of hospitals and physicians for services as preferred providers at predetermined rates). See generally Havighurst, *Competition in Health Services: Overview, Issues and Answers*, 34 VAND. L. REV. 1117-1158 (1981) (description and analysis of pro-competitive market reform strategies for health care).

3. See 1989 Cal. Stat. ch. 829, sec. 1, at ____ (enacting CAL. LAB. CODE § 2518) (definition of employer as a business entity which employs at least five people).

4. 1989 Cal. Stat. ch. 829, sec. 1, at ____ (enacting CAL. LAB. CODE § 2501(d), (e)). In excess of 20% of the people in California are uninsured. *Id.* (enacting CAL. LAB. CODE § 2501(f)).

5. See *id.* (enacting CAL. LAB. CODE § 2516(a)) (definition of employee as any person who works a minimum of 125 hours per month for a particular employer).

6. *Id.* (enacting CAL. LAB. CODE § 2502). See *id.* (enacting CAL. LAB. CODE § 2501(f)) (two-thirds of the uninsured in the state are employed or are dependents of the employed). See also *id.* (enacting CAL. LAB. CODE § 2514) (definition of dependent).

7. See *id.* (enacting CAL. LAB. CODE § 2550) (basic coverage includes: Hospital inpatient care with specified services; specified hospital outpatient services; specified surgical benefits; specified medical benefits; diagnostic laboratory services; maternity benefits; and specified mental health benefits).

8. *Id.* (enacting CAL. LAB. CODE §§ 2534, 2536(a)).

9. *Id.* (enacting CAL. LAB. CODE § 2536(b)).

10. *Id.* (enacting CAL. LAB. CODE §§ 2532, 2533) (employer may purchase the coverage from any carrier or self-fund, or may select coverage as authorized by any statute). See also *id.* (enacting CAL. LAB. CODE § 2512) (definition of carrier). Chapter 829 permits employers to form associations for the purpose of providing health care and permits the associations to self-insure. *Id.* (enacting CAL. LAB. CODE § 2544).

11. *Id.* (enacting CAL. LAB. CODE § 2538). The obligation terminates upon the occurrence of either of the following: (1) Three months have elapsed since the hospitalization or disability began, or (2) the employee becomes eligible for other coverage. *Id.*

The requirements of Chapter 829 do not apply when the employer is not the principal employer¹² or when the employee has the required level of coverage as a dependent under another plan.¹³

Chapter 797 enacts employer tax credits in connection with this Act.¹⁴ Neither Chapter 829 nor the tax credits will take effect unless a report containing specified information is submitted to the governor and the legislature by a state agency, department or nonstatutory advisory body designated by the Governor before March 1, 1990.¹⁵

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12. See *id.* (enacting CAL. LAB. CODE § 2520) (definition of principal employer as the employer for whom the employee works the largest number of hours during a month).

13. *Id.* (enacting CAL. LAB. CODE § 2540).

14. See 1989 Cal. Stat. ch. 797, sec. 1, at ____ (enacting CAL. REV. & TAX. CODE § 17053.20); *id.* sec. 2, at ____ (enacting CAL. REV. & TAX. CODE § 23615).

15. *Id.* sec. 2, at ____ (enacting CAL. REV. & TAX. CODE § 23615). See *id.* (the report shall provide information concerning the absence of health insurance coverage and the impact on employers resulting from the absence, fiscal incentives for businesses to provide coverage to employees, underwriting recommendations, possible cost savings to be derived from combining health care and workers' compensation coverages, and a recommendation for ensuring the fiscal responsibility of employers who do not provide basic health care coverage).

Insurance; group health insurance

Insurance Code § 10128.3 (amended).

SB 1164 (Robbins); 1989 STAT. CH. 346

Support: Independent Administrators Association; California Medical Association

Under existing law, any carrier¹ providing replacement coverage² for hospital, medical, or surgical benefits within sixty days of the discontinuance³ of a prior group policy which gave those benefits must immediately cover all employees⁴ and dependents⁵ validly cov-

1. See CAL. INS. CODE § 10128.1(a) (Deering Supp. 1989) (definition of carrier).

2. See *id.* § 10128(i) (definition of replacement coverage).

3. See *id.* § 10128.1(c) (definition of discontinuance).

4. See *id.* § 10128(d) (definition of employee).

5. See *id.* § 10128(b) (definition of dependent).

ered under the previous policy.⁶ Chapter 346 prohibits a succeeding carrier from canceling an entire group's health coverage when one employee or dependent fraudulently fails or refuses to disclose a preexisting health condition.⁷ Under Chapter 346, the carrier only may deny benefits to the employee or dependent committing the fraud.³

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6. *Id.* § 10128.3 (amended by 1989 Cal. Stat. ch. 346, sec. 1, at ____). Benefits cannot be reduced or eliminated. *Id.* § 10128.3(b)-(c). *See id.* § 10128.2 (requiring extension of benefits for disabled persons upon discontinuance of the policy). *See also* *Stratton v. First Nat. Life Ins. Co.*, 210 Cal. App. 3d 1071, 1089, 258 Cal. Rptr. 721, 731 (1989) (California Insurance Code sections 10128.1 to 10128.3, requiring a discontinuance of a prior policy, have no application when a carrier transfers its policies to another carrier at mid-risk); *Pacific Mut. Life Ins. Co. v. American Guar. Life Ins.*, 722 F.2d 1498, 1499 (9th Cir. 1984) (California Insurance Code sections 10128.1 to 10128.4 allow a prior carrier to terminate an extension of benefits when replacement coverage becomes effective, shifting the responsibility for future payments to the succeeding carrier). California Insurance Code sections 10128.1 to 10128.4 attempted to close the "gap" that may exist when one group policy ends and another replaces it. *Stratton*, 210 Cal. App. 3d at 1088-89, 258 Cal. Rptr. at 731.

7. 1989 Cal. Stat. ch. 346, sec. 1, at ____ (amending CAL. INS. CODE § 10128.3). The legislature's declared intent in enacting Chapter 346 is to prevent successor carriers' abuse in discontinuing group health coverage for an entire group due to the failure of an individual to report a preexisting health condition. *Id.* sec. 2, at _____. *See Senate Insurance, Claims, and Corporations Committee Hearing Report*, May, 17, 1989, at 2; *Assembly Finance and Insurance Subcommittee on Health and Workers' Insurance Hearing Report*, July 17, 1989, at 1 (replacement carriers in the past have cancelled some employer clients' policies of health and life coverage because one employee failed to disclose a preexisting condition).

8. 1989 Cal. Stat. ch. 346, sec. 1, at ____ (amending CAL. INS. CODE § 10128.3(f)).

Insurance; health insurance—chemical dependency and nicotine use

Health and Safety Code § 1367.2 (amended); Insurance Code § 10123.14 (new); §§ 10123.6, 11512.14 (amended).

SB 439 (Robbins); 1989 STAT. CH. 688

Under existing law, subscribers to coverage for alcoholism or chemical dependency treatment under group health care service plans,¹

1. *See* CAL. HEALTH & SAFETY CODE § 1345(f) (Deering 1989) (definition of health care service plan).

group disability insurance policies,² and group non-profit hospital service plans³ are authorized to receive treatment for alcoholism or chemical dependency in inpatient facilities licensed to provide these services.⁴ Under Chapter 688, subscribers covered for nicotine use under such plans or policies may also receive treatment for nicotine use in these facilities.⁵ In addition, Chapter 688 authorizes self-insured employee welfare benefit plans⁶ covering hospital, medical, or surgical costs to provide coverage for treatment of alcoholism, chemical dependency, or nicotine use, so long as the plans authorize those covered to receive treatment in the above described facilities.⁷ Finally, Chapter 688 provides that group disability insurance policies, group non-profit hospital service plans, and self-insured employee welfare benefit plans may subject treatment for nicotine use to separate deductibles, co-payments, and overall cost limitations.⁸

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2. See CAL. INS. CODE §§ 106, 10270.5 (Deering 1989) (definition of group disability insurance).

3. See *id.* §§ 11491-11517 (Deering 1989) (provisions relating to non-profit hospital service plans).

4. CAL. HEALTH & SAFETY CODE § 1367.2(b) (amended by 1989 Cal. Stat. ch. 688, sec. 1, at ____); CAL. INS. CODE §§ 10123.6, 11512.14 (amended by 1989 Cal. Stat. ch. 688, sec. 2, at ____, sec. 4, at ____). See CAL. HEALTH & SAFETY CODE §§ 1250, 1250.3, 1251 (inpatient facilities licensed to treat alcoholism or chemical dependency).

5. 1989 Cal. Stat. ch. 688, sec. 1, at ____ (amending CAL. HEALTH & SAFETY CODE § 1367.2(b), sec. 2, at ____ (amending CAL. INS. CODE § 10123.6), sec. 4, at ____ (amending CAL. INS. CODE § 11512.14).

6. See CAL. INS. CODE § 10121(f) (Deering 1989) (definition of self-insured employee welfare benefit plan).

7. 1989 Cal. Stat. ch. 688, sec. 3, at ____ (enacting CAL. INS. CODE § 10123.14).

8. *Id.* sec. 2, at ____ (amending CAL. INS. CODE § 10123.6), sec. 3, at ____ (enacting CAL. INS. CODE § 10123.14), sec. 4, at ____ (amending CAL. INS. CODE § 11512.14).

Insurance; major medical coverage

Insurance Code §§ 12700, 12705, 12710, 12711, 12711.5, 12712, 12713, 12714, 12715, 12716, 12717, 12718, 12720, 12721, 12722, 12723, 12725, 12726, 12727, 12728, 12729, 12730, 12731, 12732, 12735, 12736, 12737, 12738, 12739, 12739.1, 12739.2, 12739.3, 12739.4 (new).

AB 60 (Isenberg); 1989 STAT. CH. 1168

Support: Alzheimer's Aid Society of Northern California; American Lupus Society; Association of California Life Insurance Companies; California Association of Hospitals and Health Systems; California Council on Mental Health; California Nurses' Association; California School Employees' Association; County Supervisors' Association of California; Kaiser Foundation Health Plan; Mack Investments; Maxicare; National Multiple Sclerosis Society; Pacificare; Partners Health Care; Seniors Council; Seniors Council of Santa Cruz and San Benito Counties; State Council on Developmental Disabilities; Treatment Centers of America; United Way; Blue Shield; California Association of Catholic Hospitals; California Association of the Physically Handicapped, Inc.; California Association of Public Hospitals; California Council on Mental Health; California Manufacturers Association; Cigna Health Plan; County of Sacramento; Foundation Health Corporation; Independent Administration Association

Opposition: Department of Corporations; Department of Health Services; Department of Finance

Existing law makes no provision for persons who are not eligible for publicly funded health care programs, yet cannot obtain adequate private health insurance because of a pre-existing medical condition.¹ Chapter 1168 establishes the California Major Medical Insurance t t Program (Program) to subsidize the cost of health insurance for people in this category.² These subsidies are to come from the Major

1. See CAL. WELF. & INST. CODE § 14000 (West Supp. 1989) (describing the persons who qualify for state-provided health care as the aged and persons who lack sufficient income to meet the costs of health care without seriously endangering minimum self-maintenance). Approximately 1% of the people under 65 years of age (244,000 persons) in California are said to be medically uninsurable. Phillips, *Health Insurance Pool for High Risk Californians*, California Assembly Office of Research (1989). Fifteen states have risk pool legislation. *Id.* The high cost of insurance from a risk pool limits the number of subscribers because many medically uninsurable individuals are unemployed or employed in low-paying jobs. *Id.*

2. 1989 Cal. Stat. ch. 1168, sec. 1, at ____ (enacting CAL. INS. CODE § 12710). Subscribers

Medical Insurance Fund (Fund) into which \$30,000,000 are to be deposited annually from the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund.³ The Program is managed by the Major Medical Insurance Board (Board), which determines subscriber contributions, establishes rates, and determines the eligibility of applicants.⁴ The Program is authorized to provide coverage, or to contract with private health plans⁵ of various types to provide coverage, to every resident of the state who has been rejected for health care coverage by at least one private health plan.⁶ Because of the subsidies provided by the Fund, subscribers will pay no more than 125% of the standard rate for comparable coverage, with a cap

to the Major Medical Insurance Program cannot enroll or continue their enrollment if they are eligible for Part A and Part B of Medicare. *Id.* (enacting CAL. INS. CODE § 12733).

3. *Id.* (enacting CAL. INS. CODE § 12739).

4. *Id.* (enacting CAL. INS. CODE § 12710). The Board is made up of five members: three appointed by the governor subject to confirmation by the Senate, of which one serves as the chair; one appointed by the Senate Committee on Rules; and one appointed by the Speaker of the Assembly. *Id.* The members serve four-year terms. *Id.* The Board must also establish the scope and content of adequate major medical coverage, determine the minimum standards for the participating health plans and the manner of withdrawing approval of a plan, administer the Program so that the subsidy amount does not exceed amounts transferred to the fund from the Cigarette and Tobacco Products Surtax Fund, and be guided by the needs of the subscribers and prevailing practices among private health plans. *Id.* (enacting CAL. INS. CODE § 12712). The administrative costs of the Program include a sum for promotion and advertising in order to make the public aware of the Program. *Id.* (enacting CAL. INS. CODE § 12711.5). A three-member physician advisory panel appointed by the Board for three years aids the Board in reviewing the participating health plans. *Id.* (enacting CAL. INS. CODE § 12714).

5. The Board may contract with one or more of the following types of health care plans: (1) Service benefit plans; (2) indemnity benefit plans; (3) group-practice prepayment plans; (4) individual practice prepayment plans; and (5) cost containment and cost reduction incentive programs. *Id.* (enacting CAL. INS. CODE § 12723(a)-(e)). The Program must provide applicants with sufficient information to allow them to make an informed choice among the types of participating health plans. *Id.* (enacting CAL. INS. CODE § 12727). A subscriber may transfer from one participating health plan to another. *Id.* (enacting CAL. INS. CODE § 12731). Subscribers have a right to appeal to the Board and obtain a hearing if dissatisfied with a participating plan's coverage. *Id.* (enacting CAL. INS. CODE § 12732). There is no requirement for competitive bidding in contracting with private health plans. *Id.* (enacting CAL. INS. CODE § 12720). The Board may provide stop-loss coverage under which the Program and participating health plans share the risks for expenses that exceed plan rates. *Id.* (enacting CAL. INS. CODE § 12721). The Board may withdraw its approval of any participating plan for good cause after reasonable notice to the plan, the subscribers enrolled in the plan, physicians offering services through the plan, and other interested parties. *Id.* (enacting CAL. INS. CODE § 12722). It constitutes unfair competition for insurers and employers to refer an employee to the Program in order to separate that employee from group health coverage provided by the employment. *Id.* (enacting CAL. INS. CODE § 12725.5(a), (b)).

6. *Id.* (enacting CAL. INS. CODE §§ 12715, 12720). A person who is only able to obtain coverage that requires substantial waivers or provides limited coverage or coverage at an excessive price is considered to have been rejected for health coverage. *Id.* (enacting CAL. INS. CODE § 12725).

of \$2000 for individuals and \$3000 for families on the annual aggregate amount of deductibles and copayments.⁷

KAO

7. *Id.* (enacting CAL. INS. CODE §§ 12715, 12718). The Program requires a subscriber copayment of 20% and an annual household deductible of \$500. *Id.* (enacting CAL. INS. CODE § 12718). The plan rates must be adequate to pay anticipated costs of claims and administration when combined with the subsidy, but must not be excessive or unfairly discriminatory. *Id.* (enacting CAL. INS. CODE § 12713). The Program may place a lien on benefits recovered by a subscriber from any other party. *Id.* (enacting CAL. INS. CODE § 12716). The benefits received under the Program are secondary to benefits received under any other form of coverage. *Id.* (enacting CAL. INS. CODE § 12717). During the first six months of enrollment, the Program does not provide coverage for expenses incurred by a subscriber for a condition that manifested itself in the six months prior to enrollment. *Id.* (enacting CAL. INS. CODE § 12726). The exclusion from coverage during the first six months can be waived if the subscriber satisfied the waiting period under another health plan that was involuntarily terminated as long as the subscriber applied for enrollment in the Program within 32 days of the involuntary termination. *Id.* The six month exclusion can also be waived for persons who were covered under a similar plan in another state. *Id.* The participating plans must annually submit their rates to the Program on the basis of categories of risk established by the Program in a manner consistent with industry practice. *Id.* (enacting CAL. INS. CODE § 12736).

Insurance; non-appointed life agents—authority to transact business

Insurance Code § 1704.5 (new); § 1707 (amended).

AB 1214 (Katz); 1989 STAT. CH. 646

Sponsor: Association of California Life Insurance Companies

Support: Independent Administrators Association

Opposition: Department of Insurance

Prior law required an insurer to file with the Department of Insurance a notice of appointment of a life agent¹ before that agent could lawfully transact insurance business on behalf of the insurer.² Under Chapter 646, life agents may convey life insurance proposals to potential policyholders on behalf of any insurer, even those for

1. See CAL. INS. CODE § 1622 (West 1972) (definition of life agent).

2. 1980 Cal. Stat. ch. 360, sec. 2, at 713 (amending CAL. INS. CODE § 1704) (amended by 1989 Cal. Stat. ch. 646, sec. 1, at ____). The notice of appointment gave the agent authority to act on behalf of the insurer, and the appointment was effective as of the date the notice was signed. *Id.*

which the agents have not been appointed.³ Additionally, agents may transmit completed life insurance applications to any insurer.⁴ Insurers that issue policies based on applications delivered to them by non-appointed life agents are deemed to have ratified all of the agents' acts relating to those applications and policies.⁵

MMR

3. 1989 Cal. Stat. ch. 646, sec. 1, at ____ (enacting CAL. INS. CODE § 1704.5(a)). However, non-appointed life agents have no authority under Chapter 646 to act on behalf of any insurer who: (1) requires all its appointed life agents to solely represent that insurer or a group of affiliated insurers of which that insurer is a member; or (2) requires agents to submit risks to that insurer or group of insurers before submitting them to other insurers. *Id.* (enacting CAL. INS. CODE § 1705(b)).

4. *Id.* (enacting CAL. INS. CODE § 1704.5(a)). Insurers do not have any obligation to accept the applications. *Id.*

5. *Id.* (insurers assume responsibility for all of non-appointed agents' acts relating to those applications and policies). When an insurer issues a policy pursuant to an accepted application, the insurer must submit to the California Insurance Commissioner, within 14 days from the date the application was received, a notice of appointment of the life agent as the insurer's agent. *Id.* Any payments an agent receives before policies have been issued must be in the form of negotiable instruments made payable to insurers. *Id.*

Insurance; notification of withdrawal

Insurance Code § 674.6 (amended).

SB 1365 (Robbins); 1989 STAT. CH. 727

Support: Consumers Union, Congress of California Seniors, Fair Automobile Insurance Rates, California Commission on Aging, Sacramento Urban League

Existing law requires an insurer to notify the Department of Insurance (Department) of the insurer's intent to wholly or substantially withdraw¹ from the market their its line of commercial liability

1. See CAL. INS. CODE § 674.6(c) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 727, sec. 1, at ____) (defines "intent to substantially withdraw" as the intent to nonrenew more than 50% of policyholders in a particular line of coverage). See also *id.* § 660(h) (defines nonrenewal).

insurance.² Insurers must also notify the Department of intent to withdraw their lines of automobile insurance³ and property insurance⁴ if coverage is provided by a separate rider for an activity generating compensation for the insured.⁵ To ensure the availability of personal lines of property and casualty insurance,⁶ Chapter 727 adds to this group any automobile liability, physical damage, or collision policy and any other insurance covering risks from activities that are not commercial or business related.⁷

LRM

2. *Id.* § 674.6(b)(1) (amended by 1989 Cal. Stat. ch. 727, sec. 1, at ____). *See id.* § 674.5 (requirements for commercial liability insurance).

3. *See id.* § 660 (West Supp. 1989) (types of automobile insurance include automobile liability coverage, automobile physical damage coverage, and automobile collision coverage).

4. *See id.* § 675 (West 1972) (types of property insurance include coverage for loss or damage to real or personal property).

5. *Id.* § 674.6(b)(2) (amended by 1989 Cal. Stat. ch. 727, sec. 1, at ____). The Insurance Commissioner may request additional information from the insurer to determine whether the line of insurance may become unavailable to consumers. *Id.*

6. *See* 1989 Cal. Stat. ch. 727, sec. 2, at ____ (declaring legislative intent).

7. *Id.* sec. 1, at ____ (amending CAL. INS. CODE § 674.6(b)(3),(4)).

Insurance; penalties

Insurance Code §§ 790.035, 1858.07 (new); §§ 790.05, 790.07, 1858.1, 1858.3, 1859.1 (amended).

SB 1363 (Robbins); 1989 STAT. CH. 725

SB 1364 (Robbins); 1989 STAT. CH. 726

Support: Consumers Union, California Commission on Aging, Congress of California Seniors, Fair Automobile Insurance Rates, Sacramento Urban League

Existing law provides for penalties against persons who violate the Insurance Commissioner's orders to cease and desist engaging in unfair and deceptive practices.¹ The Commissioner may also assess a penalty against a person² who fails to comply with a final order

1. CAL. INS. CODE § 790.07 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 725, sec. 1, at ____). The Commissioner may assess the penalty after a hearing to determine that the violation exists. *Id.* The penalty may not exceed \$5000 unless the violation is willful, in which case the penalty may be no more than \$55,000. *Id.*

2. *See id.* § 1859.1(a) (amended by 1989 Cal. Stat. ch. 726, sec. 4, at ____) (insurers, organizations, groups, or associations may also be penalized).

directing compliance with rating regulations.³ Chapter 725 imposes civil penalties against any person engaging in unfair or deceptive practices.⁴ The penalty is in addition to that imposed for violation of cease and desist orders, and failure to pay the penalty constitutes a violation of cease and desist orders.⁵ Chapter 726 imposes civil penalties against a person who uses a rate, rating plan, or rating system that violates rating regulations.⁶ Failure to pay a penalty under Chapter 726 constitutes a violation of an order to comply with rating regulations⁷ and is in addition to penalties imposed for violation of the order.⁸

LRM

3. *Id.* The penalty may not exceed \$50,000, unless the failure to comply is willful, in which case the penalty may be no more than \$250,000. *Id.* The Commissioner may also assess a penalty of no more than \$10,000 for each day the violation of rate regulation continues after the period of time in which the Commissioner orders correction, not to exceed an aggregate of \$100,000. *Id.*

4. 1989 Cal. Stat. ch. 725, sec. 1, at ____ (enacting CAL. INS. CODE § 790.035(a)). The Commissioner must fix the penalty which may be no more than \$5000 for each act, but if the act is willful, the penalty may be no more than \$10,000 for each act. *Id.* The Commissioner determines what constitutes an act, but when the issuance, amendment, or servicing of a policy is inadvertent all such acts are a single act under this section. *Id.* If the Commissioner has reason to believe that a person has engaged in unfair or deceptive acts, the Commissioner must serve that person with notice of a hearing to determine whether the Commissioner should make a cease and desist order and whether the Commissioner should impose penalties under Chapter 725. *Id.* sec. 2, at ____ (amending CAL. INS. CODE § 790.05). The penalty is subject to judicial review. *Id.* sec. 1, at ____ (enacting CAL. INS. CODE § 790.035(b)). See CAL. INS. CODE § 790.03 (defines unfair and deceptive practices). See also *id.* § 12940 (West 1988) (provides for judicial review of acts and orders by the Insurance Commissioner).

5. 1989 Cal. Stat. ch. 725, sec. 3, at ____ (amending CAL. INS. CODE § 790.07). Existing law permits the Commissioner to suspend or revoke the person's license to transact insurance for subsequent violations of the cease and desist order. CAL. INS. CODE § 790.07 (West Supp. 1989). Chapter 725 also allows for license suspension or revocation upon subsequent violations of the order to pay the penalty for engaging in unfair and deceptive practices. 1989 Cal. Stat. ch. 725, sec. 3, at ____ (amending CAL. INS. CODE § 790.07).

6. 1989 Cal. Stat. ch. 726, sec. 1, at ____ (enacting CAL. INS. CODE § 1858.07(a)). The penalty must be fixed by the Commissioner at a hearing and may not exceed \$5000 for each act, but if the act was willful, the penalty may be no more than \$10,000 for each act. *Id.* The Commissioner determines what constitutes an act, but when the issuance, amendment, or servicing of a policy is inadvertent all such acts are a single act under this section. *Id.* The penalty is subject to judicial review. *Id.* (enacting CAL. INS. CODE § 1858.07(b)). The Commissioner must notify the insurer of any potential penalty under Chapter 725 when giving notice of noncompliance as required under existing law. *Id.* sec. 2, at ____ (amending CAL. INS. CODE § 1858.1). See CAL. INS. CODE § 1858.1 (amended by 1989 Cal. Stat. ch. 726, sec. 2, at ____) (requiring notification of manner and extent of alleged noncompliance).

7. CAL. INS. CODE § 1858.1 (amended by 1989 Cal. Stat. ch. 726, sec. 2, at ____). Failure to pay the penalty also constitutes a violation of an order of consent to correct the noncompliance. *Id.*

8. 1989 Cal. Stat. ch. 726, secs. 2, 3, at ____ (amending CAL. INS. CODE §§ 1858.1, 1858.3(c)). The penalty is also in addition to any penalty imposed for violation of a final order of the Commissioner. *Id.* sec. 4, at ____ (amending CAL. INS. CODE § 1859.1(a)).

Insurance; rates

Public Utilities Code §§ 5191, 5192 (repealed); § 5191 (new); § 5102, 5161, 5195, 5257 (amended).

SB 210 (Russell); 1989 STAT. Ch. 259

Under existing law, household good carriers¹ are required to possess adequate protection against liability for personal and property damage.² Chapter 259 increases the amount of the liability protection required.³ Further, Chapter 259 requires the Public Utilities Commission to establish a minimum rate which is sufficient to provide for safe operation on the highways.⁴ Chapter 259 repeals the provision requiring that any minimum rates established not exceed current rates for common land carriers.⁵

KMS

1. See CAL. PUB. UTIL. CODE § 5109 (West Supp. 1989).

2. CAL. PUB. UTIL. CODE § 5161 (West 1975).

3. 1989 Cal. Stat. ch. 259, sec. 2, at ____ (amending CAL. PUB. UTIL. CODE § 5161). The limits are increased to at least: (1) \$250,000 for bodily injuries or death to another; (2) \$500,000 for bodily injuries or death to two or more people as a result of one accident; (3) \$100,000 for property damage as a result of one accident; and (4) \$600,000 for bodily injury or death and property damage as a result of one accident. *Id.* Cargo insurance of not less than \$20,000 is required as well, but the Public Utilities Commission may approve a lesser amount *Id.*

4. *Id.* sec. 4, at ____ (enacting CAL. PUB. UTIL. CODE § 5191). The purpose of Chapter 259 is to provide nondiscriminatory rates for transportation by carriers on public highways. *Id.* A lesser minimum rate may be imposed for any household goods carrier desiring it if the proposed rate is reasonable and conforms with California Public Utilities Code section 5191. *Id.* sec. 6, at ____ (amending CAL. PUB. UTIL. CODE § 5195).

5. *Id.* sec. 5, at ____ (repealing CAL. PUB. UTIL. CODE § 5192).

Insurance; risk reduction program

Insurance Code §§ 679.80, 679.81, 679.82, 679.83 (new).

SB 1361 (Robbins), 1989 STAT. Ch. 1465

Sponsor: Author

Support: The Insurance Agents and Brokers, Farmers Insurance Company, Alliance of American Insurers

Opposition: California Teamsters Public Affairs Council

Existing law does not require insurers to include risk reduction

programs in property and casualty insurance.¹ Chapter 1465 is intended to ensure the availability of insurance, reduce premiums, and encourage the use of cost control methods by requiring insurers in California to offer risk reduction programs to their customers.² Insurers must submit their programs to the Insurance Commissioner along with the required filings of their proposed rates.³ The Commissioner is required to take into account the insurer's degree of compliance with the requirements of Chapter 1465 when reviewing the proposed rates.⁴

KAO

1. See CAL. INS. CODE §§ 1850-1878.5 (West 1972 & Supp. 1989) (governing insurance rates and rating). Property and casualty insurance include all types of insurance except those listed in sections 1851 through 1851.1 of the Insurance Code (reinsurance, life insurance, insurance of marine vessels, title insurance, disability insurance, workers' compensation, mortgage insurance, and insurance transacted by county mutual fire insurers or county mutual fire reinsurers). 1989 Cal. Stat. ch. 1465, sec. 1, at ____ (enacting CAL. INS. CODE § 679.81).

2. *Id.* (enacting CAL. INS. CODE § 679.80).

3. *Id.* (enacting CAL. INS. CODE § 679.82). Every policy newly issued, renewed, or amended must include a program that assists the insureds in risk reduction. *Id.* The programs offered by the insurers must include loss control features, safety procedures, and methods of reducing fraudulent claims. *Id.* Insurance companies can promote safety by: (1) Sharing information outside the industry and educating the public about risks; (2) using their rates to penalize insureds who do not promote safety; (3) being advocates for safety regulation improvements before regulatory agencies; (4) seeking enforcement of health and safety standards through judicial proceedings; (5) devoting more resources to research and development; and (6) setting safety examples in their own organizations, *e.g.*, using air bags in company cars. Nader, *Loss Prevention and the Insurance Function*, 21 SUFFOLK U.L. REV. 679, 680-683 (1987). Critics have argued that insurance companies are not interested in loss prevention because they have become primarily cash flow financial institutions and have moved away from risk management. *Id.* at 685.

4. 1989 Cal. Stat. ch. 1465, sec. 1, at ____ (enacting CAL. INS. CODE 678.83).

Insurance; unlawful advertising

Insurance Code § 790.036 (new).

SB 1092 (Robbins); 1989 STAT. Ch. 992.

Support: Attorney General; Independent Administrators Association

Existing law prohibits anyone in the insurance business from making any assertion or statement which is untrue, deceptive, or misleading.¹ Under Chapter 992, advertising an insurance product that the insurer will not sell is a deceptive practice for an insurer.² Chapter 992 does not prohibit an insurer from advertising insurance products which the insurer is licensed to sell in this state but which are unavailable, provided the unavailability is disclosed in the advertisement.³ The intentional violation of Chapter 992 is a misdemeanor, punishable by a fine not to exceed \$10,000.⁴

AWF

1. CAL. INS. CODE § 790.03(b) (West Supp. 1989). Prohibited activity includes disseminating or causing to be disseminated before the public through any advertising device, or in any manner or means whatsoever, any assertion or statement which is known, or which reasonably should be known to be untrue, deceptive, or misleading. *Id.*

2. 1989 Cal. Stat. ch. 992, sec. 1, at ____ (enacting CAL. INS. CODE § 790.036(a)). The provisions of Chapter 992 do not apply to advertisements which originate from outside this state, including those broadcast via cable transmittal by stations located outside California. *Id.* (enacting CAL. INS. CODE § 790.036(f)). See CAL. INS. CODE § 23 (West 1972) (definition of insurer).

3. *Id.* (enacting CAL. INS. CODE § 790.036(b)).

4. *Id.* (enacting CAL. INS. CODE § 790.036(d)).

