



1-1-1984

Insurance

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Insurance*, 15 PAC. L. J. 645 (1984).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol15/iss2/25>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Insurance

Insurance; uninsured motorist suspension, insurance

Insurance Code §11580.26 (new and repealed); Vehicle Code §§17200, 17201, 17202, 17203 (new and repealed); §§16022, 16023 (new and repealed); §§16070, 16072 (new, repealed, and amended).

SB 808 (Mello); 1983 STAT. Ch 1252

Support: Department of Finance; Department of Insurance; Department of Motor Vehicles; Firemen's Fund Insurance Company; Insurance Agents and Brokers Legislative Counsel

With the enactment of Chapter 1252, a motor vehicle¹ liability insurance policy may not be issued in this state unless the insured² has been offered additional coverage for collisions involving uninsured motorists.³ If the policy includes collision coverage, additional coverage must be offered providing that the deductible amount which would have been paid by the named insured under the collision coverage will instead be paid by the insurer when the insured is involved in a collision with an uninsured motor vehicle.⁴ If the policy extends only to property damage liability without collision coverage, however, additional coverage must be offered for property damage to the insured motor vehicle⁵ caused by the owner or operator of an uninsured motor vehicle.⁶ Property damage is limited to payment for loss or damage up to \$3,500.⁷

Chapter 1252 provides that payment by an insurer under either coverage must be made only when (1) the collision involves actual, direct physical contact between the insured and the uninsured motor vehicle,⁸ (2) the owner or operator of the uninsured motor vehicle is identified or the uninsured motor vehicle is identified by its license number,⁹ (3) the accident is

1. CAL. VEH. CODE §415; CAL. INS. CODE §11580.06(a) (definition of motor vehicle).

2. CAL. INS. CODE §11580.06(b) (definition of insured).

3. *Id.* §11580.26. *But see id.* These provisions do not apply to policies providing insurance in the Republic of Mexico issued or delivered in this state by nonadmitted Mexican insurers, or policies insuring a commercial vehicle as defined in section 260 of the Vehicle Code. *Id.* The named insured may elect not to accept these coverages relating to uninsured motorists. That election, however, is binding upon every insured to whom the policy or endorsement provisions apply while the policy is in force. *Id.* §11580.26(c).

4. *Id.* §11580.26(a)(1); *see id.* §11580.26(c) (definition of uninsured motor vehicle).

5. *See id.* §11580.26(a)(2) (definition of insured motor vehicle).

6. *Id.*

7. *Id.* This does not include compensation for loss of use of the motor vehicle. *Id.*

8. *Id.* §11580.26(b).

9. *Id.*

reported to the insurer or agent of the insurer within three business days,¹⁰ and (4) a determination is made that the insured is legally entitled to recover the amount of these payments for property damage caused by the owner or operator of the uninsured motor vehicle.¹¹

The provisions of Chapter 1252 relating to uninsured motorists' coverage do not apply to policies that are limited to (1) contingent liability arising out of the use of nonowned motor vehicles,¹² or (2) liability coverage provided only on an excess or umbrella basis.¹³ Moreover, this additional coverage pursuant to the provisions of Chapter 1252 must be offered by policies issued or renewed on or after July 1, 1984.¹⁴

Existing law requires every owner or operator of a motor vehicle to report an accident in which they are involved if the accident results in property damage in excess of \$500 to any one person, bodily injury, or death.¹⁵ In addition, the owner or operator must prove the existence of financial responsibility at the time of the accident.¹⁶ Upon a failure to financial responsibility at that time, prior law required the owner or operator to file proof of financial responsibility with the Department of Motor Vehicles (hereinafter referred to as the DMV) within sixty days of the accident, and maintain that proof for a period of three years.¹⁷ If proof of financial responsibility was not maintained, a person was guilty of an infraction for driving a vehicle or permitting another person to drive a vehicle for which proof of financial responsibility was filed.¹⁸

With the enactment of Chapter 1252, the DMV is authorized to suspend the driving privileges¹⁹ of any owner or operator of a motor vehicle, including the driving privileges of a nonresident in this state, upon failure to prove financial responsibility at the time of an accident.²⁰ Moreover,

10. *Id.*

11. *Id.* An insurer paying claims under the coverage required by the provisions of Chapter 1252 is entitled to be subrogated to the rights of the insured. *Id.* §11580.26(d). This action may be brought within three years from the date that payment was made pursuant to this section. *Id.*

12. *Id.* §11580.26(c).

13. *Id.*

14. *Id.* §11580.26(f).

15. See CAL. VEH. CODE §16000 (the accident must be reported to the DMV within 15 days).

16. *Id.* §16020; see *id.* (proof of financial responsibility requirements).

17. 1975 Cal. Stat. c. 1082, §2, at 2644 (amending CAL. VEH. CODE §16022). Chapter 1252 repeals sections 16022 and 16023 of the Vehicle Code relating to financial responsibility and also adds these same sections to become operative on January 1, 1989. See CAL. VEH. CODE §§16022, 16023. In addition, Chapter 1252 amends and repeals as of January 1, 1989, sections 16070 and 16072 of the Vehicle Code and also adds these sections as they were effective before the enactment of Chapter 1252 to become operative on January 1, 1989. See *id.* §§16070, 16072.

18. See 1975 Cal. Stat. c. 1082, §3, at 2644 (amending CAL. VEH. CODE §16023) (punishment imposed for each offense was a fine not exceeding \$100 or the imposition of a term of probation).

19. CAL. VEH. CODE §13102 (driving privilege suspension defined).

20. *Id.* §16070.

Chapter 1252 specifies that the suspension of driving privileges cannot be lifted until one year has elapsed from the date of the accident²¹ and until the person files proof of financial responsibility.²² Chapter 1252 provides, however, that the suspension will be reinstated if the person fails to maintain proof of financial responsibility for a period of three years.²³ The suspension provisions of Chapter 1252 do not apply if the accident is not reported to the DMV within sixty days.²⁴

Under Chapter 1252, when an uninsured owner or operator has obtained a judgment against, or agreed to a settlement with, the owner or operator of an insured motor vehicle on the basis of the insured's negligence, the amount of the judgment or settlement payable by the insured person must be reduced by the amount paid or payable to the insured as a result of coverage provided by an uninsured motorist endorsement arising out of the same accident.²⁵ The reduction, however, cannot exceed the amount of the settlement or judgment awarded the uninsured owner or operator.²⁶ Moreover, the payment of any settlement or final judgment for damages obtained by an uninsured owner or operator in a civil action against an insured owner or operator, cannot be made until the claims of the insured owner or operator for benefits under the uninsured motorist endorsement are settled by the insurer and the claimants.²⁷ Finally, the provisions of Chapter 1252 will remain in effect only until January 1, 1989.²⁸

21. *Id.* §16072(a).

22. *Id.*

23. *Id.*

24. *Id.* §16070. Chapter 1252 provides that if proof of financial responsibility is established by filing evidence of the procurement of a motor vehicle liability policy or bond, the insurer or surety of the policy or bond is required to notify the DMV in the event that the policy or bond is terminated. *Id.* §16072.

25. *Id.* §17200.

26. *Id.*

27. *Id.* §17201.

28. See CAL. INS. CODE §11580.26, CAL. VEH. CODE §§16070, 16072, 17203.

Insurance; uninsured motorist insurance, arbitration proceedings

Insurance Code §11580.2 (amended).

SB 570 (Foran); 1983 STAT. Ch 768

Support: Department of Insurance; State Bar of California; State

Farm Insurance

Existing law requires a motor vehicle¹ insurance policy covering bodily injury² to contain a provision or endorsement (hereinafter referred to as provision) for uninsured motorist protection.³ This provision may be waived by a written agreement⁴ that is binding upon every person covered by the policy containing the waived provision while the policy is in force.⁵ Prior to the enactment of Chapter 768, the waiver agreement was binding when the policy was renewed or replaced.⁶ Chapter 768 expands the binding effect of the waiver agreement to any other policy issued by the same insurer that extends, changes, or supercedes the policy.⁷

Existing law exempts policies from the uninsured motorist provision requirement if the coverage provided by the policy is limited to situations of contingent liability arising out of the use of nonowned motor vehicles.⁸ Chapter 768 extends this exemption to automobile liability coverage provided on an excess or umbrella basis.⁹

Existing law states that the insurer and the insured must determine by agreement whether the insured is entitled to recover damages under an uninsured motorist provision, as well as the amount of damages the insured will recover.¹⁰ In the event of disagreement, however, the determination is made by arbitration.¹¹ Under prior law, a subpoena in an arbitration proceeding could be issued only by a neutral association, organization, governmental agency, or office.¹² Chapter 768 designates the arbitration as a proceeding, and the hearing before the arbitrator as the trial of an issue. Consequently, an attorney for a party now is allowed to issue a subpoena.¹³

1. CAL. INS. CODE §11580.06(a) (definition of motor vehicle).
2. *Id.* §11580.06(d) (definition of bodily injury).
3. *Id.* §11580.2(a)(l). The provision must cover both the insured and the heirs or legal representative of the insured. *Id.*
4. *Id.* §11580.2(a). The agreement must be between the insurer and any named insured, and may occur prior or subsequent to issuance or renewal of the policy. The waiver may be complete or apply only to designated individuals. *Id.*
5. *Id.* The agreement will be binding with respect to any continuation of a policy, and to the reinstatement of a policy within 30 days of any lapse. *Id.*
6. 1982 Cal. Stat. c. 736, §2, at ____ (amending CAL. INS. CODE §11580.2(a)(2)).
7. CAL. INS. CODE. §11580.2(a)(2).
8. *Id.*
9. *Id.*
10. *Id.* §11590.2(f).
11. *Id.*
12. CAL. CIV. PROC. CODE §1282.6(b).
13. CAL. INS. CODE §11580.2(f) (giving force to CAL. CIV. PROC. CODE §1985 governing the issuance of subpoenas).

Insurance; agreements to limit coverage

Insurance Code §§650, 11580.1, 11620 (amended).

AB 1282 (Young); 1983 STAT. Ch 389

Support: Association of California Insurance Companies; Department of Insurance

Under existing law, an insurance agreement may state that the insurer's obligation to defend the insured will not apply or accrue to the benefit of a third party claimant while a motor vehicle is being used by designated individuals.¹ Chapter 389 applies this limitation to the use or operation of a motor vehicle, including the negligent or alleged negligent entrustment of a motor vehicle to persons designated in the agreement.²

In addition, existing law provides that an insurance agreement may specify that the agreement is inapplicable to, among other situations,³ (1) liability for bodily injury to an insured,⁴ and (2) liability for damage to property owned, rented to, transported by, or in the charge of an insured.⁵ Chapter 389 redefines insured for purposes of an insurance agreement to include persons who would have been included within the policy definition of an insured, but who are excluded by reason of an agreement between the insurer and the insured.⁶

Existing law states that when a right to rescind an insurance contract is given to the insurer, that right may be exercised at any time prior to the commencement of an action on the contract.⁷ Chapter 389 provides that the rescission applies to all persons insured under the contract, including additional insureds, unless the contract provides otherwise.⁸

Finally, under existing law, the Commissioner of Insurance must issue a reasonable plan for the equitable apportionment of applicants for automobile bodily injury and property damage liability insurance who in good faith are entitled to, but who are unable to procure, insurance by ordinary

1. CAL. INS. CODE §11580.1(d)(1).

2. *Id.*

3. *See id.* §11580.1(c)(1), (c)(2), (c)(3), (c)(4), (c)(8) (delineating other situations in which an insurer may, by appropriate policy provision, exclude coverage).

4. *Id.* §11580.1(c)(5). This section applies to situations in which the insured suffers bodily injury, regardless of whether the ultimate benefits of the insurance indemnification accrue directly or indirectly to the insured. *Id.*

5. *Id.* §11580.1(c)(6) (including a motor vehicle operated by an insured as property in the charge of an insured).

6. *Id.* §11580.1(c)(8).

7. *Id.* §650.

8. *Id.*

methods.⁹ This apportionment will be made among insurers admitted to transact liability insurance in California after a public hearing.¹⁰ The Commissioner may approve or issue reasonable amendments to the apportionment plan after holding a public hearing to determine whether the amendments are in keeping with the intent of the law.¹¹ Prior law stated that notice of the public hearing was to be published not less than 10 nor more than 30 days prior to the hearing in two newspapers of general circulation.¹² Chapter 389 provides that notice must be published at least 45 days before the hearing or the close of the public comment period on the adoption, amendment, or repeal of the regulation.¹³

9. *Id.* §11620.

10. *Id.*

11. *Id.*

12. 1968 Cal. Stat. c. 548, §14, at 1211 (amending CAL. INS. CODE §11620) (providing that one of the newspapers must be published in the City and County of San Francisco, and the other published in the City of Los Angeles).

13. CAL. INS. CODE §11620.

Insurance; automobile insurance

Insurance Code §116 (amended).

SB 1025 (Robbins); 1983 STAT. Ch 1075

Support: Department of Insurance; Minnehoma Insurance Company;
Western Vehicle Leasing Association

Under prior law, persons issuing extended automobile service contracts were not considered to be persons conducting an automobile insurance business if extended service contracts were issued *incidentally* to any other legitimate business.¹ Automobile dealers selling extended service contracts, therefore, were not deemed to be conducting an insurance business, and consequently, were not subject to the provisions of the Insurance Code or to regulation by the Department of Insurance.² Chapter 1075 declares that an automobile dealer issuing extended service contracts is an insurer subject to the provisions of the Insurance Code and to regulation by the Department of Insurance,³ *unless* the dealer purchases insurance from an admitted automobile insurer guaranteeing the dealer's performance under the extended service contract.⁴ This policy, if pro-

1. *See* 1961 Cal. Stat. c. 595, §1, at 1744 (amending CAL. INS. CODE §116).

2. 30 Op. Atty. Gen. 253.

3. CAL. INS. CODE §116(b). *See id.* §700. Persons transacting an insurance business must comply with code requirements such as *id.* §700.01 (paid in capital requirements), and *id.* §700.02 (surplus requirements).

4. *Id.* §116(c).

cured for the purpose of securing a statutory exemption from the definition of insurer for the automobile dealer, must give both the automobile purchaser and any lienholder recourse against the insurer in the event the dealer does not perform under the extended service contract.⁵

5. *Id.*

Insurance; creditors' remedies—disability insurance

Civil Code §§1812.400, 1812.401, 1812.402, 1812.403, 1812.404, 1812.405, 1812.406, 1812.407, 1812.408, 1812.409 (new).

Insurance Code §§ 779.30, 779.31, 10127.5 (new).

AB 1536 (Waters); 1983 STAT. Ch 973

Support: Attorney General; Department of Consumer Affairs

Chapter 973 addresses the remedies of creditors against debtors who are covered by credit disability insurance.¹ To ensure the fairness of credit transactions, Chapter 973 prevents a creditor² who directly participates in the sale of credit disability insurance from invoking a creditor's remedy³ on any amount coming due during the period of disability⁴ until a reasonable time has passed.⁵ This waiting period gives the debtor⁶ time to have the disability claim filed, verified, and processed.⁷

Chapter 973 provides that creditors may not invoke a creditor's remedy

1. CAL. CIV. CODE §§1812.400-409. Credit disability insurance is insurance of the debtor that provides indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled, as defined in the policy. *Id.* §1812.401.

2. A creditor is a lender of money, or a vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction. The creditor also directly participates in, arranges, or receives commissions or other compensation for the sale of credit disability insurance to (1) the debtor, or (2) any successor to the right, title, or interest of any lender, vendor, or lessor, and (3) an affiliate, associate, or subsidiary of any of them, or any director, officer, or employee of any of them, or any other person in any way associated with any of them. *Id.* §1812.401(b).

3. A creditor's remedy includes the imposition of a late charge or penalty, the acceleration of the maturity of all or any part of the indebtedness, the collection or assignment for the collection of all or any part of the indebtedness, the commencement of any action or special proceeding, or the enforcement of any security interest in any manner including, but not limited to, repossession, foreclosure, or the exercise of a power of sale contained in a deed of trust mortgage. *Id.* §1812.401(d).

4. A disability claim period is the period beginning on the due date of the first payment not paid by the debtor for which the debtor claims disability and continues until three calendar months thereafter, or until the insurer pays or rejects the claim, whichever occurs earlier. *Id.* §1812.401(e).

5. *Id.* §1812.400(a).

6. A debtor is a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction. *Id.* §1812.401(c).

7. *Id.* §1812.400. Chapter 973 applies only to creditors, predecessors to the right of the creditors, or the representative of either of them who directly arranges or participates in

on the basis of a debtor's nonpayment of sums coming due during the disability claim period covered by credit disability insurance coverage.⁸ Pursuant to Chapter 973, the creditor must, upon receiving notice of the debtor's disability claim, inform the debtor, in writing, of the name, address, and telephone number of the insurer from whom the debtor can obtain claim forms.⁹ The debtor then must submit a claim to the insurer or the representative of the insurer and notify the creditor that a claim has been submitted.¹⁰ If the debtor fails to submit, in a timely manner, the forms required by the insurer for the recertification of a temporary disability claim, the creditor may then invoke a creditor's remedy.¹¹

If the insurer pays the claim, the creditor must treat each payment made by the insurer as a timely payment by the debtor.¹² Furthermore, if the insurer rejects the claim, the debtor must be given an opportunity to pay the entire amount without being subject to the creditor's remedy.¹³ Likewise, if the insurer accepts the claim as a partial disability resulting in payments less than the amount that would have been paid for a total disability, the debtor must be given the opportunity to pay the difference between the amount due and the amount paid by the insurer for the partial disability.¹⁴

The provisions of Chapter 973, however, do not prohibit creditors from invoking remedies for sums accruing before the disability period, including the payment of interest, finance charges, or late charges.¹⁵ Creditors also are not prohibited from foreclosing any liens on property to protect their security interest, if (1) a senior lienholder has initiated foreclosure proceedings,¹⁶ (2) the senior lienholder is not prohibited from continuing the foreclosure,¹⁷ or (3) the senior lienholder will not delay or suspend

the sale or receives a commission or other compensation for the sale of credit disability insurance to the debtor. *Id.* §1812.404.

8. *Id.* §1812.402(a). These provisions apply to the nonpayment of any sum becoming due on or after April 1, 1984, and for which the debtor claims disability coverage. *Id.* §1812.407.

9. *Id.* §1812.402(b). This applies to the original creditor who sold the disability insurance but not to the creditor's successor in interest who (1) is not related by common ownership or control to that creditor, and (2) has no information regarding the name, address and telephone number of the insurer. *Id.* §1812.402(b). The obligation of the creditor and debtor must be in 10-point type at the time the creditor sells the insurance. The form of the agreement is provided by Chapter 973. *Id.* §1812.402(f).

10. *Id.* §1812.402(b).

11. *Id.* §1812.403. The creditor must wait 15 days after receiving notice that the insurer has ceased making payments on the claim before a creditor's remedy may be invoked. *Id.*

12. *Id.* §1812.402(e).

13. *Id.*

14. *Id.* The creditor may not invoke the creditor's remedy, except for the imposition of late charges, for 35 days following the date on which the insurer sends notice of the rejection or acceptance of the claim as a partial disability. If the creditor is not paid within that time, the creditor may invoke a creditor's remedy. *Id.*

15. *Id.* §1812.402(c).

16. *Id.* §1812.402(d).

17. *Id.*

proceedings until after the disability claim period.¹⁸

Once the debtor has given notice of the disability claim, Chapter 973 does not prohibit a creditor from invoking a creditor's remedy for nonpayment on an open-ended credit plan,¹⁹ unless the nonpayment is related to a covered disability other than the disability previously claimed to have affected the debtor.²⁰ Furthermore, termination of the open-ended credit plan because of the debtor's failure to meet the creditor's customary credit standards at the time the debtor notified the creditor, is not considered a creditor's remedy.²¹

Credit disability insurance may exclude from coverage only preexisting illnesses, diseases, or physical conditions for which the debtor *actually* receives medical advice or treatment within six months before and after the effective date of coverage.²² Furthermore, the debtor shall have the right to terminate the credit life insurance or disability insurance²³ at any time, and for any reason, upon notice to the creditor.²⁴ The insurer must then pay or credit a refund to the creditor or debtor.²⁵ If the refund is paid to the creditor, the creditor must credit the account with the refund.²⁶ Finally, Chapter 973 states that any waiver of these provisions is unenforceable.²⁷

18. *Id.*

19. *Id.* §1812.405. An open-ended credit plan is credit extended by the creditor when the creditor reasonably expects repeat transactions. The creditor may impose finance charges on the outstanding balance, and the amount of credit that may be extended to the debtor during the term of the plan is made available to the extent that any outstanding balance is repaid. *Id.*

20. *Id.*

21. *Id.*

22. CAL. INS. CODE §779.30. The application for a policy of credit life or credit disability insurance, must state the pre-existing health conditions that may void the coverage in bold capital letters. *Id.* §10127.5. This provision does not preclude the exclusion of other pre-existing diseases or physical conditions by name. *Id.* §779.30.

23. *Id.* §10127.5. Credit life or credit disability insurance means insurance on the life or health of a borrower sold by a creditor to provide for the repayment of the amount of the loan or on other extension of credit in the event of the debtors death or disability as defined in the policy. *Id.*

24. *Id.* §779.31.

25. *Id.*

26. *Id.*

27. *Id.* §1812.408.

Insurance; outpatient mental health care

Health & Safety Code §1373 (amended); Insurance Code §§10125, 10127, 11512.5 (amended); Welfare & Institutions Code §5600.5 (new). SB 940 (McCorquodale); 1983 STAT. Ch 1259
Support: California Medical Association; Department of Corpora-

tions; Department of Finance; Department of Mental Health

Existing law requires various providers of medical insurance or services to offer coverage for mental health treatment¹ and to notify present and prospective subscribers of the general availability of coverage for this treatment.² This requirement applies to (1) insurers issuing group disability coverage,³ (2) self-insured employee welfare benefit plans covering hospital, medical, and surgical expenses,⁴ and (3) non-profit hospital service plans.⁵

Persons who receive mental health treatment under insurance plans often are treated as inpatients in a hospital, although they could appropriately and effectively be treated as outpatients.⁶ Chapter 1259 is an apparent attempt to encourage the use of outpatient, day treatment, and other innovative programs for treating mental health problems.⁷ Chapter 1259 effects this intent by requiring listed insurance entities to specifically inform prospective and present subscribers of the availability of coverage for outpatient services as an alternative to hospitalization.⁸

Pursuant to existing law, health care service plans may provide mental health coverage.⁹ Under Chapter 1259, health care service plans that offer outpatient mental health services in some of their group contracts must communicate the availability of these services to prospective group contract holders.¹⁰ Furthermore, local mental health directors are required by provisions of Chapter 1259 to make available information about county operated outpatient programs to insurers, hospital service plans, health care service plans, and similar entities.¹¹

1. See CAL. INS. CODE §§10125, 10127, 11512.5.

2. *Id.* See generally, *Review of Selected 1973 Legislation*, 5 PAC. L.J. 442 (1974).

3. CAL. INS. CODE §10125.

4. *Id.* §10127.

5. *Id.* §11512.5.

6. See telephone conversation with Peter Szego, Legislative Coordinator to Senator Dan McCorquodale (Aug. 30, 1983) (notes on file at the *Pacific Law Journal*).

7. *Id.* The increased use of these outpatient programs should result in lower costs and improved care. *Id.*

8. CAL. INS. CODE §§10125, 10127, 11512.5.

9. CAL. HEALTH & SAFETY CODE §1373(h).

10. *Id.*

11. CAL. WELF. & INST. CODE §5600.5.

Insurance; group life and disability insurance

Insurance Code §§10202.8, 10270.5 (amended).

AB 2007 (Papan); 1983 STAT. Ch 869

Support: Department of Insurance; Institute of Governmental Advo-

cates

Under existing law, a group insurance policy¹ that conforms to certain conditions² may be issued to the trustee of a fund established by one, or a combination of (1) one or more labor unions, (2) one or more employers in the same industry, or (3) associations of employers in the same industry.³ Chapter 869 brings formerly excluded licensed professions such as medicine, dentistry, pharmacy, law, and accountancy within the definition of industry.⁴

According to prior law, a group insurance policy providing term insurance for any person could not be issued to an employer, a union group, or the trustee of a fund established by a union group, if together with a previously issued policy, the total coverage exceeded \$100,000.⁵ Chapter 869 removes this prohibition.⁶ Furthermore, although prior law allowed the issuance of insurance with or without a medical examination, Chapter 869 specifies that no medical examination is required.⁷

Existing law states that group disability insurance must be written under a master policy.⁸ Prior to the enactment of Chapter 869, a master policy could be issued to an association⁹ only if the policy offered insurance to all eligible members of the association and covered (1) ten or more persons, *and* (2) at least fifty percent of the eligible members.¹⁰ Chapter 869 relaxes this requirement by making an association eligible for group insurance if only twenty-five percent of the eligible members, or a class thereof, are covered.¹¹

Although existing law provides that the holder of a group disability insurance policy is responsible for collection or transmission of all premium

1. See CAL. INS. CODE §§10200-10214 (provisions concerning group life insurance policies).

2. See *id.* §10202.8(a)-(d) (conditions to which a group life insurance policy must conform).

3. *Id.* §10202.8.

4. Compare *id.* with 1981 Cal. Stat. c. 735, §2, at 2890 (amending CAL. INS. CODE §10202.8).

5. 1981 Cal. Stat. c. 735, §2, at 2890 (amending CAL. INS. CODE §10202.8).

6. Compare CAL. INS. CODE §10202.8 with 1981 Cal. Stat. c. 735, §2, at 2890 (amending CAL. INS. CODE §10202.8).

7. Compare CAL. INS. CODE §10202.8(d) with 1981 Cal. Stat. c. 735, §2, at 2890 (amending CAL. INS. CODE §10202.8).

8. CAL. INS. CODE §10270.5; see also *id.* §10270.6 (required contents of master policies).

9. To be eligible for this policy, the association must have a constitution and by-laws and be continuously maintained in good faith for purposes other than obtaining insurance. *Id.* §10270.5(a)(3).

10. 1961 Cal. Stat. c. 2230, §1, at 4587 (amending CAL. INS. CODE §10270.5). The master policy can be issued alternatively to a governmental unit, an eligible trustee or principal, or to a school district or districts or representative thereof. CAL. INS. CODE §10270.5(a)(1), (a)(2), (a)(4), (a)(5).

11. Compare CAL. INS. CODE §10270.5(a)(3) with 1961 Cal. Stat. c. 2230, §1, at 4587 (amending CAL. INS. CODE §10270.5).

contributions, the policy may allow the insurer to make these collections in limited situations.¹² During a period of temporary absence from work, if payment was made without billing or solicitation by the insurer, prior law permitted the insurer to receive the payment without charging a separately stated collection charge.¹³ Chapter 869 expands the ability of insurers to collect premiums directly by allowing the insurer to receive a payment without charging a separately stated collection charge when the payment is made *with or without* billing or solicitation by the insurer.¹⁴

12. CAL. INS. CODE §10270.5(b); *see id.* (instances in which the insurer may collect premiums directly from individual members). Individual members of the insured group may pay their share of the premium contribution directly to the insurer during a period of temporary absence from work. *Id.* §10270.5(b)(3).

13. 1961 Cal. Stat. c. 2230, §1, at 4587 (amending CAL. INS. CODE §10270.5).

14. *Compare* CAL. INS. CODE §10270.5(b)(3) *with* 1961 Cal. Stat. c. 2230, §1, at 4587 (amending CAL. INS. CODE §10270.5).

Insurance; life and disability insurance analysts

Insurance Code §§1641, 1841 (repealed); §§1841, 1842.1, 1848, 1849 (new); §§32.5, 1634, 1831, 1832, 1836, 1838, 1839, 1840, 1842, 1843, 1844, 1845 (amended).

SB 841 (Robbins); 1983 STAT. Ch 962

Support: California Association of Life Underwriters; Department of Finance; Department of Insurance

Prior to the enactment of Chapter 962, any person who advised another person with an interest in a life insurance policy for compensation derived from a source other than an insurer, was required to be licensed as a *life insurance analyst*.¹ Chapter 962 renames those licensees *life and disability insurance analysts*,² and changes various provisions to include a knowledge of disability insurance³ as part of the licensing requirement.

Although under prior law, a production agency⁴ was not eligible for a life insurance analyst license,⁵ Chapter 962 provides that a production

1. 1941 Cal. Stat. c. 1062, §1, at 2732 (enacting CAL. INS. CODE §32.5) (definition of a life insurance analyst); 1959 Cal. Stat. c. 4, §3, at 1826 (enacting CAL. INS. CODE §1844) (acting as a life insurance analyst without a license is a misdemeanor).

2. *Compare* CAL. INS. CODE §32.5 *with* 1941 Cal. Stat. c. 1062, §1, at 2732 (enacting CAL. INS. CODE §32.5).

3. *Compare* CAL. INS. CODE §1836(b) *with* 1959 Cal. Stat. c. 4, §3, at 1824 (enacting CAL. INS. CODE §1836); CAL. INS. CODE §1839 *with* 1959 Cal. Stat. c. 4, §3, at 1825 (enacting CAL. INS. CODE §1839); CAL. INS. CODE §1840 *with* 1959 Cal. Stat. c. 4, §3, at 1825 (enacting CAL. INS. CODE §1840).

4. CAL. ADMIN. CODE tit. 10, R.2051(a) (definition of producer).

5. 1961 Cal. Stat. c. 280, §3, at 1313 (amending CAL. INS. CODE §1832); *see also* 1959 Cal. Stat. c. 4, §2, at 1798 (enacting CAL. INS. CODE §1641).

agency or other organization may obtain a license as a life and disability insurance analyst.⁶ Moreover, licensed life agents⁷ previously were exempted from the licensing provisions for life insurance analysts.⁸ Chapter 962 removes that exemption.⁹

Under prior law, a surety bond had to be filed before a life insurance analyst license was issued.¹⁰ Chapter 962 deletes the bond provisions,¹¹ but requires licensees or applicants to file their true name and any fictitious business name under which business will be conducted with the Commissioner,¹² for the Commissioner's approval.¹³ Prior law mandated that any hearing on a refusal to issue a license be held within sixty days after the application was filed.¹⁴ Chapter 962 removes this time limitation.¹⁵

In an apparent attempt to protect the consumer and avoid possible conflicts of interest, Chapter 962 prohibits life and disability insurance analysts from charging for services customarily associated with the sale or servicing of insurance policies.¹⁶ Before an analyst receives a fee, an agreement stating that information and services may be obtained from the insurer without cost, and outlining the services to be performed and the fees to be assessed, must be provided to and signed by the person to be charged.¹⁷ Furthermore, Chapter 962 requires persons licensed under a production agency to include in the written agreement a statement that they are licensed under an agency and receive commissions for the sale of insurance.¹⁸

Finally, prior law stated that the qualification examination to become an analyst had to be taken within six months prior to the issuance of a li-

6. Compare CAL. INS. CODE §1832 with 1961 Cal. Stat. c. 280, §3, at 1313 (amending CAL. INS. CODE §1832); see CAL. INS. CODE §1842.1; see also 1983 Cal. Stat. c. 962, §3, at ___ (repealing CAL. INS. CODE §1641).

7. CAL. INS. CODE §32 (definition of life agent).

8. 1971 Cal. Stat. c. 163, §3(b), at 217 (amending CAL. INS. CODE §1831).

9. Compare CAL. INS. CODE §1831 with 1971 Cal. Stat. c. 163, §3(b), at 217 (amending CAL. INS. CODE §1831). Conversely, investment advisors are exempted by Chapter 962 from the licensing provisions for life and disability insurance analysts. Compare CAL. INS. CODE §1831(e) with 1971 Cal. Stat. c. 163, §3, at 217 (amending CAL. INS. CODE §1831); CAL. CORP. CODE §25009 (definition of investment advisor).

10. 1959 Cal. Stat. c. 4, §3, at 1824 (amending CAL. INS. CODE §1836); see also 1982 Cal. Stat. c. 517, §291, at ___ (amending CAL. INS. CODE §1841) (bond requirements).

11. Compare CAL. INS. CODE §1836 with 1959 Cal. Stat. c. 4, §3, at 1824 (enacting CAL. INS. CODE §1836); see also 1983 Cal. Stat. c. 962, §9, at ___ (repealing CAL. INS. CODE §1841).

12. CAL. INS. CODE §20 (definition of Commissioner).

13. *Id.* §1841.

14. 1959 Cal. Stat. c. 4, §3, at 1825 (enacting CAL. INS. CODE §1838).

15. Compare CAL. INS. CODE §1838 with 1959 Cal. Stat. c. 4, §3, at 1825 (enacting CAL. INS. CODE §1838).

16. CAL. INS. CODE §1848.

17. *Id.*

18. *Id.*

cense.¹⁹ Chapter 962 extends this period to twelve months.²⁰ In addition, Chapter 962 specifies that persons are not eligible for a license unless they have worked as a life licensee²¹ for three of the preceding five years,²² and that the Department of Insurance²³ may publish rules, as deemed necessary, regarding the initial and continuing qualification requirements for a life and disability insurance analyst license.²⁴

19. 1959 Cal. Stat. c. 4, §3, at 1824 (enacting CAL. INS. CODE §1836).

20. Compare CAL. INS. CODE §1836(g) with 1959 Cal. Stat. c. 4, §3, at 1824 (enacting CAL. INS. CODE §1836).

21. CAL. INS. CODE §1626 (definition of life licensee).

22. *Id.* §1849.

23. *Id.* §21 (definition of department).

24. *Id.* §1849.

Insurance; disability unemployment insurance—fraud prevention

Unemployment Insurance Code §2116 (new); §2112 (amended); Welfare & Institutions Code §11483 (amended).

AB 771 (McAlister); 1983 STAT. Ch 711

Support: Attorney General; Department of Corrections; Department of Finance; Employment Development Department

Existing law provides unemployment compensation disability¹ benefits to persons unable to work because of mental or physical illness or injury.² Under prior law, persons charged with falsely certifying³ the medical condition of any person for the purpose of obtaining unemployment disability benefits could only be convicted of a misdemeanor.⁴ In an apparent attempt to continue recent efforts to prevent unemployment insurance fraud,⁵ Chapter 711 enhances the penalties imposed on persons

1. An individual is deemed disabled on any day in which, because of a physical or mental condition, the person is unable to perform his or her regular or customary work. CAL. UNEMP. INS. CODE §2626.

2. See *id.* §§2625, 2626; see also 1 B. WITKIN, SUMMARY OF CALIFORNIA LAW, Agency and Employment §63 (8th ed. 1973).

3. See CAL. UNEMP. INS. CODE §2708 (benefit claims for each period of disability must be supported by a physician's certificate).

4. See 1982 Cal. Stat. c. 999, §2, at ___ (amending CAL. UNEMP. INS. CODE §2112). Under prior law, felony prosecution was available only under federal mail fraud statutes. See 18 U.S.C. §1341. This process, however, required a duplicate investigation by federal authorities and delayed prosecution. Although the reported number of cases worth prosecuting under federal law is small, the sum of money involved in an individual case can be quite large. See telephone conversation with Allen Davenport, Legislative Analyst to the Department of Employment Development (August 12, 1983) (notes on file at the *Pacific Law Journal*).

5. See 1983 Cal. Stat. c. 711, §1, at ___; see also *Review of Selected 1982 California Legislation* 14 PAC. L.J. 661 (1983). In 1982, the legislature increased penalties for unemployment insurance fraud to provide penalties when (1) an employer, with intent to de-

who, with an intent to defraud,⁶ falsely certify the medical condition of any person to obtain an employment disability benefits totalling \$400 or more,⁷ whether for themselves or for any other person.⁸ Pursuant to Chapter 711, false medical certifications are punishable (1) as a felony⁹ by imprisonment in the state prison,¹⁰ (2) as a misdemeanor¹¹ by imprisonment in the county jail for up to one year,¹² (3) by a fine of not more than \$5,000, or (4) by both fine and imprisonment.¹³

Under prior law, any person who fraudulently obtained aid of \$200 or less for a child not eligible for state support could be convicted of a misdemeanor,¹⁴ whereas a person who fraudulently obtained benefits of more than \$200 could be convicted of either a felony or a misdemeanor.¹⁵ Chapter 711 provides that fraudulent procurement of state child support benefits of \$400¹⁶ or less¹⁷ will be punished as a misdemeanor.¹⁸ If, however, the fraudulently obtained benefits exceed \$400, either felony or misdemeanor penalties may be imposed.¹⁹

fraud, makes false reports regarding an employee's earnings or work status, and the employee claims benefits as a result of the false reports, or (2) any person with an intent to defraud, registers or reports a fictitious employer or employee, along with fictitious wages, for the purpose of claiming unemployment insurance or unemployment disability benefits over \$400. *Id.*; CAL. UNEMP. INS. CODE §§2114, 2115.

6. Common-law fraud requires the defendant to make a false representation with knowledge of the falsity and with intent to induce reliance. The plaintiff must actually and reasonably rely, and suffer actual damages. *Crocker-Citizens National Bank v. Control Metals Corp.*, 566 F.2d 631, 636 (9th Cir. 1977).

7. CAL. UNEMP. INS. CODE §2116. The \$400 threshold for the imposition of felony penalties corresponds to the current definition of grand theft. *See* CAL. PENAL CODE §487.1.

8. CAL. UNEMP. INS. CODE §2116.

9. *See* CAL. PENAL CODE §17 (definition of a felony).

10. CAL. UNEMP. INS. CODE §2116.

11. *See* CAL. PENAL CODE §17 (definition of a misdemeanor).

12. CAL. UNEMP. INS. CODE §2116.

13. *Id.*

14. *See* 1979 Cal. Stat. c. 1171, §1, at 4568 (amending CAL. WELF. & INST. CODE §11483).

15. *See id.*

16. *See supra* note 6.

17. *See* CAL. WELF. & INST. CODE §11483(1). The defendant may be imprisoned in the county jail for up to six months, pay a fine of not more than \$500, or both. *Id.*

18. *See id.* §11483(2). The defendant may be imprisoned in the county jail for not more than one year. *Id.*

19. *See id.* The defendant may be imprisoned in the state prison. *Id.*

