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## Insurance

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# Insurance

## Insurance; age of automobile

Insurance Code § 671 (new).  
SB 2184 (Robbins); 1988 STAT. Ch. 1290

Existing law prohibits various discriminatory practices by automobile insurers.<sup>1</sup> With the enactment of Chapter 1290, insurers cannot refuse to issue automobile collision<sup>2</sup> and comprehensive coverage<sup>3</sup> policies solely on the basis of an automobile's age if the value of the automobile exceeds twenty-five hundred dollars.<sup>4</sup> Chapter 1290 does not apply to a policy that includes coverage for losses resulting from wear and tear or from normal deterioration,<sup>5</sup> nor to a policy that provides coverage for an antique or classic automobile.<sup>6</sup>

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1. CAL. INS. CODE § 11628 (Rosenthal-Robbins Auto Insurance Nondiscrimination Law prohibits discrimination on the basis of race, language, color, religion, national origin, ancestry, or geographic area). See *id.* §§ 11628.5 (discrimination against handicapped); 11628.7 (discrimination against the blind).

2. CAL. INS. CODE § 660(d) (definition of automobile collision coverage).

3. *Id.* § 11580.07 (definition of comprehensive coverage).

4. *Id.* § 671.

5. *Id.* (deterioration means normal deterioration of the automobile or its component parts).

6. *Id.*

## Insurance; automobile insurer's excess profit

Insurance Code §§ 1861, 1861.02, 1861.04, 1861.06, 1861.08 (new).  
AB 4325 (Bane); 1988 STAT. Ch. 1639  
Opposition: Consumer's Union

Under existing law, the Commissioner of Insurance (Commissioner) can suspend or revoke, in whole or in part, the license of any rating organization<sup>1</sup> or the certificate of authority for any insurer that does

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1. See CAL. INS. CODE §§ 1852 (standards in making and using rates), 1854 (licensing requirements for rating organizations).

not comply with the rating requirements promulgated by the Department of Insurance.<sup>2</sup> Chapter 1639 requires each insurer licensed to write auto insurance in California to file annually profitability data with the Department of Insurance by the first of July.<sup>3</sup> Chapter 1639 provides that, commencing July 1, 1991, if the after-tax underwriting profit for a private passenger automobile insurer is greater than five percent of the earned premium for a six-year period,<sup>4</sup> the Commissioner must issue an order to the insurer to show cause why the excess profits should not be returned to California policyholders.<sup>5</sup> The insurer may request a hearing in order to respond to the show cause order for the purpose of establishing that it earned no excess profits.<sup>6</sup> After the hearing, the Commissioner must issue an order with specific findings based upon evidence from the hearing.<sup>7</sup> However, the Commissioner can not order a return of excess profits that would reduce the insurer's earnings below the prima facie reasonable rate of return.<sup>8</sup>

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2. *Id.* § 1858.4 (after a hearing and noncompliance with a corrective order). *See id.* §§ 1858.3 (defining the Commissioner's powers to order corrective measures and fine for failure to comply), 1859.1 (providing additional civil and criminal penalties for failure to comply with the Commissioner's orders). *See also id.* §§ 12924 (defining the inquisitional powers of the Commissioner), 12928.5 (providing for suspension, revocation, or denial of any application, license, or certificate of authority for violation of a Commissioner's order), 12928.6 (defining the Commissioner's power for a suit for injunction).

3. CAL. INS. CODE § 1861. The insurer must file the profitability data separately for the four preceding calendar years within 180 days of the effective date of Chapter 1639. *Id.* All data required to be reported and all data used for average profit calculations under Chapter 1639, must be identical to data in the National Association of Insurance Commissioners Report on Profitability by Line by State. *Id.* §§ 1861, 1861.04.

4. The legislature has determined that under the current economic conditions the prima facie reasonable rate of return is an after-tax profit of five percent of the earned premium. *Id.* § 1861.02. The average profit is calculated by the same methods used by the National Association of Insurance Commissioners Report on Profitability by Line by State. *Id.*

5. *Id.* § 1861.04. After the July 1, 1991 filing of profitability data, the Commissioner must determine annually the average after-tax income for each insurer for the preceding six calendar years and if the average after-tax profit exceeds five percent, the show cause order must be issued. *Id.* If an insurer is affiliated with another insurer as defined in Insurance Code section 1215, all calculations must be made using the combined data from all affiliated insurers. *Id.* In making the determination on excess profits the Commissioner must consider competitive conditions, the rate of inflation, the effects of the residual market, the amount of California business written by the insurer, the market share and rate of growth of the insurer group, leverage and capitalization, risk exposure and investment policy, the insurer's actual expenses and other relevant factors. *Id.* § 1861.06.

6. *Id.* § 1861.06. The hearing must be conducted according to the requirements of the Government Code relating to contested cases. *Id.* *See* CAL. GOV'T CODE §§ 11512 (defining the presiding officer requirements for administrative hearing), 11517 (stating the decision-making requirements for contested cases), 11518 (defining the form and contents requirements of the decision), 11521 (providing for reconsideration of the decision), 11522 (providing for reinstatement of license or a reduction in penalty), 11523 (stating judicial review requirements).

7. CAL. INS. CODE § 1861.06.

8. *Id.*

The Commissioner will order excess profits returned to the insurer's current California private automobile insurance policyholders in proportion to the number of cars designated as insured under the policies.<sup>9</sup> The Commissioner has the discretion of choosing one of the following methods in returning the excess profits to the insured: (1) A credit applicable to premiums for any renewal extension or continuation of the policy; (2) a direct refund within ninety days after the order is final; or (3) a credit applied to unpaid premiums for policies previously issued to that policyholder within ninety days after the order becomes final.<sup>10</sup>

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9. *Id.* § 1861.08. The number used will be determined when the order to return becomes final and not subject to further judicial review. *Id.* The Commissioner will use the number of cars specifically designated as insured under the policies, as determined by the usual business records, or if that number is not readily determinable from the usual business records of the insurer, the most recent determinable number from those records. *Id.*

10. *Id.* § 1861.08.

## Insurance; earthquake and fire coverage

Insurance Code § 10088.5 (new).

AB 3918 (Johnston); 1988 STAT. Ch. 570

Existing law specifies that, absent express terms providing earthquake insurance coverage,<sup>1</sup> the insurer is exempt from providing coverage for any damage directly, indirectly, or concurrently caused by an earthquake.<sup>2</sup> Chapter 570 limits the scope of the earthquake

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1. *See* CAL. INS. CODE § 10083 (requirement for agent to offer earthquake insurance). *See also* § 10086.1 (insurer has a duty to notify the insured that the policy does not include earthquake insurance). *See generally* § 10082 (scope of coverage generally).

2. *Id.* § 10088. *See* 1984 Cal. Stats. Ch. 916, Sec. 2 at \_\_\_\_\_ (amending Cal. Ins. Code § 10081) (the legislature, in enacting earthquake insurance provisions, intended that the earthquake coverage should apply only when an insured bought earthquake insurance, not when there is a specific earthquake exclusion and an earthquake together with a covered risk combine to produce the loss). *See also id.* § 532 (if peril is specially exempted in an insurance contract and there is a loss caused by the peril, such loss is exempted from insurance coverage). *But see* *Garvy v. State Farm Fire & Cas. Co.*, 190 Cal. App. 3d 1246, 227 Cal. Rptr. 209, 215 (1988) *review granted* 723 P.2d 1248, 229 Cal. Rptr. 663 (1986) (insurance coverage exists where there are concurrent causes to the damaged area despite the fact that one risk is covered and the other risk is excluded); *State Farm Mut. Auto. Ins. Co. v. Partridge*, 10 Cal. 3d 94, 104-105, 514 P. 2d 123, 125, 109 Cal. Rptr. 811 (an insured is covered where a covered risk and a non-covered risk concurrently caused the damage). *See generally* CAL. INS. CODE § 10081-10088 (pertaining to earthquake insurance).

exemption by specifying that an insurer is not exempt from providing coverage under a fire insurance policy for fire damage caused by or followed by an earthquake.<sup>3</sup>

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3. *Id.* § 10088.5. See 1988 Cal. Stat. Ch. 570, sec. 2, at \_\_\_\_ (Chapter 570 is intended to declare and not change existing law). Compare *Garvy* at 1180, 201 Cal. App. 3d at 1174 (insurance coverage exists where there is an insured risk and an excluded risk which concurrently caused the damage) with CAL. INS. CODE § 10088 (insurer is exempt from providing coverage if the damage is directly, indirectly, or concurrently caused by an earthquake). See *Keeler v. Superior Court of Amador County*, 2 Cal. 3d 610, 470 P.2d 617, 87 Cal. Rptr. 481, (1970) (the common law is the most reliable background of analysis in determining a statute). But see *Moris v. Oney*, 217 Cal. App. 2d 864, 866, 32 Cal. Rptr. 83 (1963) (in cases of conflict between legislation and the common law, legislation will govern because legislation is the latest expression of the law). See generally *Pacific Legal Foundation v. Brown* 29 Cal. 3d 168, 180, 624 P.2d 1215, 172 Cal. Rptr. 487 (1981); *Dittis v. Cranston* 186 Cal. App. 2d 837, 9 Cal. Rptr. 314, 315 (1960) (the state legislature has plenary power to enact statutes unless limited by the U. S. Constitution, therefore the judiciary must yield to state statutes).

## Insurance; earthquakes

Insurance Code § 10086.5 (new).  
SB 1976 (Robbins); 1988 STAT. Ch. 279

Existing law requires residential property insurance policies<sup>1</sup> issued, delivered, or initially renewed to include an offer<sup>2</sup> by the insurer for coverage of loss or damage<sup>3</sup> caused by earthquakes.<sup>4</sup> Chapter 279 prohibits an insurer from canceling or rejecting an insurance policy solely because the insured has accepted an offer for earthquake coverage.<sup>5</sup>

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1. CAL. INS. CODE § 10087 (definition of residential property insurance policy).
  2. *Id.* §§ 10082 (scope of coverage which must be offered), 10083 (language required in offer).
  3. *Id.* § 10088 (definition of loss or damage caused by earthquake).
  4. *Id.* §§ 10081-10088 (earthquake insurance provisions).
  5. *Id.* § 10086.5(b). Chapter 279 was enacted to prevent insurers from unlawfully rejecting or cancelling residential property insurance when the insured accepted earthquake coverage. *Id.* § 10086.5(a). Although earthquake coverage must be continued so long as the policy is in effect, either the insured or the insurer may cancel the policy. *Id.* § 10086. However, Chapter 279 closes this potential loophole by proscribing the insurer's right to cancel the policy if the cancellation is based solely on the insured's acceptance of an offer for earthquake coverage. *Id.* § 10086.5(b).

**Insurance; exclusions—fines, penalty, and restitution**

Insurance Code §§ 533.5, 533.7 (new).  
 AB 3920 (Johnston); 1988 STAT. Ch. 489

Existing law prohibits an insurer from indemnifying an insured for losses caused by the insured's willful misconduct.<sup>1</sup> Under Chapter 489<sup>2</sup> an insurance contract must not provide, or be interpreted to provide, for coverage or a duty to defend<sup>3</sup> an insured for fines, penalties, or restitution assessed in any civil or criminal action brought by the Attorney General, any district attorney, or any city prosecutor.<sup>4</sup> Under Chapter 489, any provision providing coverage or a duty to defend an insured in these actions is void as against public policy.<sup>5</sup> However, an insured may defend a licensed physician or surgeon in actions arising from the performance of an act that requires a physician's or surgeon's certificate.<sup>6</sup>

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1. CAL. INS. CODE § 533 (an insured is not liable for the willful acts of the insured). Willful misconduct means intentional, wrongful conduct done either when the actor knows or should know that serious injury will probably result or when the actor manifests a conscious disregard for the likelihood of serious injury. *New v. Consolidated Rock Products*, 171 Cal. App. 3d 681, 689, 217 Cal. Rptr. 522, 525 (1985). See CAL. CIV. CODE §§ 1668 (contracts which exempt a person from liability for fraud, willful injury to another, or violation of the law are against public policy); 1667(2) (a contract which is against public policy is unlawful).

2. 1988 Cal. Stat. ch. 489, sec. 3, at (Chapter 489 is intended to be a codification of and not a change in existing law).

3. Regardless of whether the insured expects insurer liability for any payment, the insurer has no right or obligation to investigate, contest, defend, compromise, settle, control the defense of, negotiate the compromise or settlement of, or indemnify for the cost of defending a claim. CAL. INS. CODE § 533.5(c).

4. *Id.* § 533.5(a) (an insurer may not indemnify and an insured may not demand indemnification regardless of the express terms of the policy).

5. *Id.* § 533.5(d). The insurer may not defend, and the insured may not demand defense, regardless of the express terms of the policy. *Id.*

6. *Id.* § 533.7

**Insurance; modification of commercial liability coverage in health care**

Insurance Code §§ 676.3, 676.4, 676.6 (new); § 678.1 (amended).  
 AB 3519 (Johnson); 1988 STAT. Ch. 1619

Existing law provides that in order for a notice of cancellation,<sup>1</sup> a

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1. Notice of cancellation must be in writing and delivered or mailed to the named insured at the address shown on the policy and must give the effective date of the cancellation and

reduction in limits, a change in conditions of coverage, or an increase in the rate upon which a commercial insurance policy premium is based to be effective, certain conditions must be met.<sup>2</sup> Chapter 1619 permits the insurer to change limitations or exclusions in a medical malpractice policy insuring dentists,<sup>3</sup> or physicians and surgeons,<sup>4</sup> after the policy is in effect if the change is recommended by an underwriting advisory committee.<sup>5</sup> In enacting Chapter 1619, the legislature intends to remedy the unsafe practices of an individual insured.<sup>6</sup> Chapter 1619 also encourages peer review by insurers providing medical malpractice coverage by allowing conditions of coverage intended to protect the public to be adopted during the policy period.<sup>7</sup> Chapter 1619 also allows changes in the premium rate or conditions in coverage for policies insuring health care facilities<sup>8</sup> if the change is recommended by a professional health advisory committee while the policy is in force.<sup>9</sup>

Under Chapter 1619, a notice of cancellation of an umbrella liability insurance policy,<sup>10</sup> excess liability insurance policy,<sup>11</sup> or excess

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the reasons for the cancellation. CAL. INS. CODE § 677.2(b). Notice must be given at least 30 days prior to the effective date of cancellation except 10 days notice is required in the case of fraud or nonpayment of premiums. *Id.* § 677.2(c). Written notice of a modification must be mailed or delivered to the named insured at least 30 days prior to the effective change. *Id.* § 676.2(c).

2. *Id.* § 676.2. Immediately upon renewal or after the policy has been in force for more than 60 days the reasons for an increase, reduction, or change in coverage must be based on: (1) Discovery of grossly negligent acts or omissions which materially increase the hazards insured against; (2) failure to implement reasonable loss control conditions which materially increase the hazards insured against; (3) a determination by the commissioner of insurance that continuation of the policy would threaten the solvency of the company unless a change is allowed; or (4) a change in activities by the insured that materially increases the hazards insured against. *Id.* § 676.2(c).

3. Chapter 1619 applies to those dentists licensed by Business and Professions Code sections 1600-1808. *Id.* § 676.3.

4. Chapter 1619 applies to those physicians and surgeons licensed under Business and Professions Code sections 2000-2529.5. *Id.* § 676.3.

5. *Id.* § 676.3. The change must be made in accordance with the terms of the policy; the insured must be given written notice of the exclusion or limitation and at least 30 days to contest the change prior to implementation. *Id.* A majority of the underwriting committee recommending the change must be persons licensed as dentists or physicians and surgeons under the same portion of the Business and Professions Code as the insured. *Id.*

6. 1988 Cal. Stat. ch. 1619, sec. 5, at

7. CAL. INS. CODE § 676.3. The limitations and exclusions are not intended to prohibit or restrict the use of a nurse anesthetist within the scope of licensure solely by reason of the category of license held by the provider. 1988 Cal. Stat. ch. 1619, sec. 5, at

8. Chapter 1619 applies to health care facilities licensed by Health and Safety Code sections 1250-1399.63. CAL. INS. CODE § 676.4.

9. *Id.* § 676.4 (a majority of the committee members must be duly authorized representatives of health care facilities licensed under Chapter 2 of the Health and Safety Code sections 1250-1339.61, and 30 days written notice must be given before implementation of the change).

10. Umbrella policy means a policy providing liability coverage per person, occurrence, or claim when written over the amount of one or more underlying liability policies, or over a specified amount of self-insurance. *Id.* § 676.6(b)(1).

11. Excess liability insurance policy means a policy providing coverage per person,

property insurance policy<sup>12</sup> that has been in effect for more than sixty days, or if the policy is a renewal effective immediately, may be based on: (1) A material change in exclusions, limits, or type or scope of coverage in an underlying policy; (2) cancellation or non-renewal in an underlying policy due to lapse in replacement; or (3) a reduction in an insured's financial rating or grade based on an evaluation obtained from a recognized financial rating organization.<sup>13</sup> Chapter 1619 also allows for conditional renewal relating to the underlying policy.<sup>14</sup>

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occurrence, or claim when written over the amount of one or more underlying liability policies including umbrella liability policies. *Id.* § 676.6(b)(2).

12. Excess property insurance policy means a policy providing property coverage per occurrence or per location written over the amount of one or more underlying property insurance policy or over a specified amount of self-retention. *Id.* § 676.6(b)(3).

13. *Id.* § 676.6(c)(1)-(3). The notice of cancellation must comply with Insurance Code section 677.2 and may also be based on grounds in Insurance Code section 676.2 subsection (b). *Id.* § 676.6(c). Chapter 1619 does not require a notice of nonrenewal when: (1) Transfer or renewal occurs between insurers of the same insurance group concerning a policy with the same terms, conditions, or premium rate; (2) notice has been given prior to a 90-day extension; (3) the named insured has agreed in writing to obtain replacement coverage within 60 days of the termination date or has already obtained coverage; (4) the policy is for a period 60 days or less and the insured has notice at the time of issuance that the policy may not be renewed; (5) the named insured requests a change in terms, conditions, or risks covered by the policy within a 60-day period prior to the end of the policy; or (6) the insurer makes a written offer to the insured within 60 days to renew the policy under the proposed change in terms, conditions, or premium rate. *Id.* § 676.6(d).

14. *Id.* § 678.1(e). If the requirements conditional to renewal are not met by the expiration date of the policy or thirty days after mailing or delivering the notice, whichever is later, the conditional renewal notice is an effective notice of nonrenewal provided written confirmation has been given. *Id.*

## Insurance; publication of rate comparisons

Insurance Code § 12959 (new).

AB 3798 (Floyd); 1988 STAT. Ch. 1503

Existing law requires the commissioner of insurance to accumulate statistics on certain types of insurance<sup>1</sup> and report annually to the

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1. See CAL. INS. CODE §§ 674.5 (commercial liability), 1857.7 (products liability), 1857.9 (report of insurance unavailable, large premium increases, and excluded commercial liability), 1864 (child care liability), 11555.2 (malpractice coverage), 12958 (local government and statistical analysis).

legislature.<sup>2</sup> Chapter 1503 requires the commissioner to compile, publish, and distribute annually information comparing coverages and rates of insurance for those personal lines of insurance that are of most interest to consumers.<sup>3</sup>

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2. CAL. INS. CODE §§ 12922.1 (requires an annual report on tort cases), 12922.5 (requires a comprehensive annual report on liability insurance, unavailable insurance, and insurance with large premium increases). The Insurance Commissioner must also report annually to the governor. *Id.* § 12922.

3. CAL. INS. CODE § 12959(a). Chapter 1503 imposes a civil penalty on an insurer supplying false rate information by a fine of not more than \$100,000. *Id.* § 12959(b). The Commissioner must consider the insurer's good faith and any prior violations in setting the amount of the fine. *Id.*

## Insurance; shared work

Unemployment Insurance Code § 978.5 (repealed); § 1279.5 (amended).

SB 1818 (B. Greene); 1988 STAT. Ch. 520

Existing law permits payment of prorated unemployment insurance benefits to employees<sup>1</sup> participating in a shared work<sup>2</sup> unemployment insurance benefit program.<sup>3</sup> Claimants<sup>4</sup> under a shared work program, however, do not receive benefits under provisions affecting partially employed individuals<sup>5</sup> and are not entitled to benefits otherwise

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1. CAL. UNEMP. INS. CODE §§ 621, 621.5 (definition of employee).

2. Refers to a program designed to preserve existing employment opportunities to the extent possible through work time reductions in the face of diminished production requirements. See 1979 Cal. Stat. ch. 751, sec. 1, at 2602 (enacting CAL. UNEMP. INS. CODE § 12102) (this section was never operative due to lack of funding). Shared work programs are designed to encourage sharing of partial unemployment in lieu of layoffs, and to provide prorated unemployment insurance benefits to employees faced with a reduction in hours due to the work sharing program. CAL. UNEMP. INS. CODE § 1279.5(a), (b). See generally *Review of Selected 1979 California Legislation*, 11 PAC. L.J. 259, 507 (1980) (employment practices; increasing employment opportunities through the redistribution of existing work).

3. CAL. UNEMP. CODE § 1279.5. See generally *Review of Selected 1979 California Legislation*, 11 PAC. L.J. at 503-09. An employee is entitled to payments under a shared work unemployment compensation program if in any week the employee works less than his or her normal weekly hours of work, and the employer has, as the result of a plan to reduce employment in lieu of layoffs, shared the remaining work by reducing work time and wages by at least ten percent. CAL. UNEMP. INS. CODE § 1279.5(a) (includes application requirements for approval of a plan). See *id.* §§ 675-686 (definition of employer).

4. CAL. CODE REGS. tit. 22, § 1251-1(d) (definition of claimant).

5. CAL. UNEMP. INS. CODE § 1279 (benefits during partial employment); CAL. CODE REGS. tit. 22, § 1252-1(b)(1) (definition of partially unemployed individual).

allowed for any day that the claimant is unable to work due to a physical or mental illness or injury.<sup>6</sup> Chapter 520 exempts recipients of shared work unemployment insurance from the provisions requiring a reduction of benefits due to physical or mental illness or injury.<sup>7</sup>

Prior law required employers who participated in a shared work unemployment insurance benefit program, who had negative reserve accounts<sup>8</sup> as of June 30 for two consecutive years, and whose accounts had been charged for benefits under a shared work program during the preceding twelve month period, to pay an additional amount into the Unemployment Fund.<sup>9</sup> The additional amount was equal to the prior year's payments under the shared work benefit program.<sup>10</sup> Chapter 520 eliminates this requirement for additional contributions for shared work benefit costs.<sup>11</sup>

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6. CAL. UNEMP. INS. CODE §§ 1253.5, 1279.5(f).

7. *Id.* § 1279.5(f). *See id.* § 1253.5 (requiring the reduction of benefits due to physical or mental illness or injury).

8. *See id.* §§ 1025-1032 (regarding maintenance of reserve accounts).

9. 1986 Cal. Stat. ch. 1202, sec. 1, at (amending CAL. UNEMP. INS. CODE § 978.5). CAL. UNEMP. INS. CODE § 1521 (definition of Unemployment Fund).

10. 1986 Cal. Stat. ch. 1202, sec. 1, at (amending CAL. UNEMP. INS. CODE § 978.5).

11. 1988 Cal. Stat. ch. 520, sec. 1, at (repealing CAL. UNEMP. INS. CODE § 978.5).

## Insurance; transportation of hazardous wastes—insurance

Health and Safety Code § 25169 (amended).

AB 2869 (Eastin); 1988 STAT. Ch. 771

Sponsor: Evergreen Oil Company

Support: League of California Cities; California Oil Recyclers, Inc.; Disposal Control Service, Inc.; California Cattleman's Association

Opposition: American Insurance Association

Under existing law, any business that transports hazardous wastes must have liability insurance to cover damages caused by the operation of that business.<sup>1</sup> Under Chapter 771, the coverage<sup>2</sup> must include

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1. CAL. HEALTH & SAFETY CODE § 25169(a).

2. Coverage requirements may be satisfied by an insurance policy or a surety bond. *Id.* § 25169(c).

public liability.<sup>3</sup> Additionally, Chapter 771 requires the business to maintain public liability limits at the federally mandated levels.<sup>4</sup> The insurer must notify the Department of Health Services at least thirty days before cancelling or terminating a policy.<sup>5</sup>

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3. *Id.* § 25169(a),(c). Public liability means liability for bodily injury, including injury to the body, sickness, or disease to any person, and death resulting from any such injury, sickness, or disease; for property damage, including damage to, or loss of use of, tangible property; and for environmental restoration, including restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. *Id.* § 25169(a). This liability includes the cost of removal, and the costs of necessary measures to minimize or mitigate damage or potential damage to human health, the natural environment, fish, shellfish, and wildlife. *Id.*

4. *Id.* § 25169(c)(1). Unless a business qualifies for self-insurance under the federal regulations, the business must maintain public liability at the federally mandated levels, and the terms of the policy must conform with the federal regulations. *See* 49 C.F.R. §§ 387.9, 387.15 (providing policy limits and policy terms). CAL. HEALTH & SAFETY CODE § 25169(b) (bulk shipments of waste petroleum must have a \$1.2 million policy limit, and transport vehicles under 10,000 pounds gross vehicle weight rating must have a \$600,000 policy limit).

5. CAL. HEALTH & SAFETY CODE § 25169(d).

## Insurance; underwriting AIDS risks

Insurance Code §§ 799, 799.01, 799.02, 799.03, 799.04, 799.05, 799.06, 799.07, 799.08, 799.09 (new).

AB 3305 (Johnston); 1988 STAT. Ch. 1279

Existing law prohibits the use of an acquired immune deficiency syndrome (AIDS) blood test result in determining a person's eligibility for insurance.<sup>1</sup> In enacting Chapter 1279, the Legislature intends to accomplish the following: (1) Set a standard for life and disability income insurers (insurers)<sup>2</sup> to evaluate their duty not to make unfair distinctions between individuals of the same class for the risks of AIDS and AIDS related conditions (ARC) when underwriting life and disability income insurance;<sup>3</sup> (2) establish mandatory uniform standards that are sufficiently reliable for judging the insurance risks

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1. CAL. HEALTH & SAFETY CODE § 199.21(f) (prohibits blood tests for detecting antibodies from the probable causative agent of AIDS if the test subject could be identified). The insurance industry argues that underwriting for AIDS should be permitted like underwriting for other factors such as smoking, obesity, and hypertension; the opposition, however, points out that some states outlaw underwriting for factors which may be used to discriminate against unpopular groups (e.g. sickle cell, DES exposure, and Tay Sachs). Schatz, *The Aids Insurance Crisis: Underwriting or Overreaching?*, 100 HARV. L. REV. 1782, 1797 (1987) [hereinafter *Crisis*]. *See generally* Review of Selected 1981 California Legislation, 13 PAC. L.J. 727 (discussing the policy and the application of the Insurance Information and Privacy Protection Act).

2. CAL. INS. CODE § 799.01(f) (definition of life or disability income insurer).

3. *See id.* § 799.01(i) (definition of disability income insurance).

posed by AIDS and ARC; (3) protect strictly confidential personal information; and (4) require informed consent before any insurer tests for human immunodeficiency virus (HIV).<sup>4</sup>

Under Chapter 1279, a life or disability income insurer who tests for HIV or the presence of antibodies to HIV must follow Chapter 1279's guidelines for informed consent, counseling, and privacy protection.<sup>5</sup> An insurer that requests an insurance applicant to take an HIV-related test must obtain the applicant's written informed consent.<sup>6</sup> Chapter 1279 forbids the insurer to consider the insured's marital status or known or suspected homosexual or bisexual proclivities in deciding who must take the HIV test.<sup>7</sup> If the applicant tests positive, the insurer must either notify the applicant's designated physician or urge the applicant to get counseling.<sup>8</sup> The insurer may reject an application or enrollment request for life or disability insurance if tests on the same blood sample of the applicant's blood have resulted in a positive ELISA test<sup>9</sup> followed by a reactive Western Blot Assay.<sup>10</sup> An insurer cannot report the positive test results to an insurance support organization<sup>11</sup> or other insurer unless the blood test result code is nonspecific and anonymous to prevent the report from identifying the individual as a subject of HIV related testing.<sup>12</sup>

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4. *Id.* § 799. The definition of HIV antibody test includes an ELISA test, a Western Blot Assay test, or both. *Id.* § 799.01(e). *See id.* §§ 799.01(a) (definition of an ELISA test); 799.01(c) (definition of a Western Blot Assay). There are four separate stages of AIDS: (1) infection with HIV; (2) presence of antibodies to HIV in the blood; (3) AIDS related complex; and (4) final manifestation of the various diseases caused by AIDS. *See Sullivan and Field, AIDS and the Coercive Power of the State*, 23 HARV. C.R.-C.L. L. REV. 139 (1988).

5. CAL. INS. CODE § 799.03.

6. *Id.* § 799.03(a). A written informed consent must describe: (1) The HIV tests' purpose, potential uses, and limitations; (2) the meaning of the test results; (3) procedures for notifying the applicant of the test results; and (4) the applicant's right to have the results kept confidential. *Id.* The insurer must provide the applicant printed material explaining HIV and the tests as well as a list of counseling resources. *Id.* § 799.03(a)(1), (2).

7. *Id.* § 799.05.

8. *Id.* § 799.03(b). Notification of the positive test results must be to the applicant's physician unless the applicant has not authorized the release. *Id.* If the applicant has not provided the insurer with a written release, then the insurer must urge the applicant to get counseling. *Id.* The insurer must pay for the test. *Id.* § 799.04.

9. *Id.* § 799.01(b) (a positive ELISA test means an ELISA test that is reactive on the initial test and on at least one of two additional tests of the same serum or plasma specimen).

10. *Id.* § 799.02. Chapter 1279 applies to policies and certificates issued or delivered after January 1, 1989. *Id.* These policies or certificates must be of a type generally reviewed for other medical diseases or conditions. *Id.* The insurer may nonetheless, base a rejection on a medical professional's diagnosis of the applicant having AIDS or ARC. *Id.* *See id.* §§ 799.01(d) (definition of reactive Western Blot Assay), 799.01(g) (definition of certificate), 799.01(h) (definition of policy).

11. *See id.* § 791.02(l) (definition of insurance support organization).

12. *Id.* § 799.07. Since an individual may unwittingly disclose being subjected to an AIDS test, the mere testing of an individual raises cause for concern. *See Crisis, supra* note 1, at 1801. Since the medical information bureau records are subject to subpoena, some risk of disclosure exists. *Id.*

## Insurance; withdrawal from the market

Insurance Code § 674.6 (amended).  
SB 467 (Petris); 1988 STAT. Ch. 668

Under existing law, insurers offering designated lines of commercial liability insurance coverage or residential property coverage must notify the Insurance Commissioner (Commissioner) before ceasing to offer those lines of coverage.<sup>1</sup> With the enactment of Chapter 668, an insurer must notify<sup>2</sup> the Department of Insurance<sup>3</sup> if the insurer intends to withdraw completely or substantially<sup>4</sup> a line of insurance coverage for: (1) Commercial liability insurance; (2) automobile insurance coverage;<sup>5</sup> or (3) specified property insurance.<sup>6</sup> After receiving the notice, the Commissioner may request additional information to determine whether that line of insurance coverage will not be readily available in the voluntary market due to the withdrawal.<sup>7</sup>

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1. CAL. INS. CODE § 674.6. *See generally* § 12922.5 (the Commissioner must make an annual report concerning areas of commercial liability for which insurers have ceased to provide coverage).

2. *Id.* § 674.6(e) (Chapter 668 requires the insurer to notify the Commissioner within 10 days after the effective date of the withdrawal, if the insurer has not actually withdrawn from the market, or within 10 days if the insurer reenters a particular line of coverage).

3. *Id.* § 674.6(b) (the notification must be made no later than 60 days prior to the date the insurer intends to withdraw from the market).

4. *See id.* § 674.6(c). Intent to substantially withdraw means an insurer's intent to not renew at least 50% of policyholders in a particular line of coverage.

5. *See id.* § 660 (types of automobile insurance include but are not limited to automobile damage, damaged motorcycles, and damage to any other four-wheeled motor vehicle).

6. *See generally id.* 674.6(b) (property insurance includes but is not limited to insurance coverage of a separate rider or for an activity in which the insured receives an endorsement, receives compensation, or remuneration for the activity). *See id.* § 675 (types of risk include residential property damage).

7. *Id.* § 674.6(b) (the Commissioner may require additional information to investigate the market conditions to assist in the determination).