California State Legislature

Assembly Committee on Insurance

2019 – 2020 LEGISLATIVE SUMMARY

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Assembly
California Legislature

ASSEMBLY COMMITTEE ON INSURANCE

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October 1, 2020

To Assembly Members and All Interested Parties:

The following is a summary of all the bills that were referred to the Assembly Insurance Committee in 2019-2020. The bills that made it through the legislative process and were subsequently signed or vetoed by the Governor are included.

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

In addition on August 21, 2019, the Assembly Insurance Committee held a hearing regarding the "California's Homeowners' Insurance Market: A report by the FAIR Plan." California has experienced a massive increase in the loss of life and property caused by wildfires. Among the many consequences of the losses caused by these fires are significant changes in the homeowner's insurance market in high fire risk areas.

On March 11, 2020, the Assembly Insurance Committee conducted an informational hearing entitled "The uncertain future of auto and home insurance discounts: oversight of Department of Insurance Proposed Regulations." This hearing addressed Affinity Groups, and the insurance discounts these groups obtained based on rights granted by Proposition 103, adopted by the voters in 1988.

Due to COVID-19 and the Governor's stay-at-home orders, the assembly practiced physical distancing throughout the Capitol building, and made other operational changes to responsibly respond to the pandemic. Bill hearings in 2020 were necessarily limited, and the number of bills that could be responsibly heard was fewer than in any past session. As a consequence, this summary reflects an unusually high number of bills "held in committee." In many cases, that result for the bill is not a reflection on the merits of the bill in the same way it may have in the past.

I hope you find this publication informative and useful as a reference. For additional information regarding this summary or other activities of the committee, please contact the committee staff at (916) 319-2086 or please visit our website assembly.ca.gov and click on "Committees".

Respectfully,

Tom Daly, Chair

Chad Mayes, Vice Chair

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CALIFORNIA LEGISLATURE

Assembly Insurance Committee

2019 - 2020 Legislative Bill Summary

ASSEMBLY BILLS

AB-188 (Daly) - Fire insurance: valuation of loss.
This bill applies the same rule to determine the value of property damage to a total loss as already applies to a partial loss under an "actual cash value" property insurance policy.

Status: Chapter 59, Statutes of 2019

AB-196 (Gonzalez) - Workers' compensation: COVID-19: essential occupations and industries.
This bill would have extended a rebuttable conclusive presumption to all essential employees, as defined, that COVID-19 is an industrial injury

Status: Held on Senate Floor

AB-207 (Daly) - Insurance licensing.
This bill would have raised the maximum penalty for transacting insurance without a license from up to $50,000 per violation to up to $70,000 per violation.

Status: Held in Senate Insurance Committee

AB-233 (Cooley) - Insurance: licensees.
This bill would have required any licensed insurance agent to post the agent's license in each of the agent's places of business, including each office if an agent has multiple offices, as well as required a link to the license to be displayed prominently online if an agent maintains a website.

Status: Held in Senate Insurance Committee

AB-295 (Daly) - Insurance: underwritten title companies.
This bill would have increased minimum statutory capital requirements for underwritten title companies, and provided that "working capital" does not include lease obligations.

Status: Vetoed

Governor's Veto Message:

"AB 295
AB 412

These bills would allow for the exclusion of operating lease obligations from the balance sheets of escrow companies, including independent escrow companies and underwritten title companies, when calculating financial liquidity requirements.

These exemptions deviate from the new standards adopted by the Financial Accounting Standards Board. These standards were created to measure a company's ability to meet its short-term financial obligations, which in turn helps protect consumer funds.

For standards to be standard, they need to apply equally to everyone.
When a customer works with an escrow or title company, it is often when they are making one of the biggest financial transactions of their lives. The consequences of insolvency could jeopardize a home or business purchase and cost consumers thousands of dollars.

For the health of the industry and protection of consumers' hard earned savings, these companies should adhere to the new national standards published in 2016, which provided years to plan for compliance.

AB-346 (Cooper) - Workers' compensation: leaves of absence.

This bill would have granted "4850 time" temporary disability benefits to police officers employed by a school district, county office of education, or community college district.

Status: Vetoed

Governor's Veto Message:

The bill would add police officers employed by a local school district, county office of education, or community college district to the list of public employees entitled to Labor Code section 4850 temporary disability benefits.

While I appreciate the Legislature's intent, and do not take lightly the important public service provided by police officers in education settings, this bill would significantly expand 4850 benefits that can be negotiated locally through the collective bargaining process. Many local school districts face financial stress, and the addition of a well-intentioned but costly benefit should be left to local entities that are struggling to balance their priorities.

AB-406 (Limón) - Disability compensation: paid family leave: application in non-English languages.
This bill requires, effective January 1, 2025, the Employment Development Department to make the application for paid family leave available in all languages spoken by a substantial number of applicants.

Status: Chapter 386, Statutes of 2019

AB-548 (Rodriguez) - Earthquake Brace and Bolt program.
This bill requires the California Residential Mitigation Program to promote its Earthquake Brace and Bolt mitigation program to low-income homeowners and establish supplemental grants to low-income homeowners for earthquake retrofits.

Status: Chapter 219, Statutes of 2019

AB-567 (Calderon) - Long-term care insurance.
This bill establishes a task force to examine the feasibility of establishing a public long-term care insurance program.

Status: Chapter 746, Statutes of 2019

AB-740 (Burke) - Wildfires: Climate Change Catastrophe Compensation Fund.
This bill would have established the California Climate Change Catastrophe Fund Commission within the Department of Insurance.

Status: Held in Senate Energy, Utilities and Communications Committee

AB-932 (Low) - Workers' compensation: off-duty firefighters.
This bill would have provided that firefighters injured in the October 2017 mass shooting in Las Vegas are to be provided workers' compensation benefits.

Status: Held in Senate Labor, Public Employment and Retirement Committee

AB-981 (Daly) - Insurance Information and Privacy Protection Act.
This bill would have placed a number of concepts contained within the California Consumer Privacy Act (CCPA) of 2018 into the Insurance Information and Privacy Protection Act. It also would have eliminated a consumer's right to request a business to delete or not sell the consumer's personal information under the CCPA if it is necessary to retain or share the consumer's personal information to complete an insurance transaction requested by the consumer.

Status: Held in Senate Insurance Committee

AB-1065 (Berman) - Insurance transactions: notice: electronic transmission.
This bill repeals the sunset provision in the statute authorizing insurers to transact insurance online.

Status: Chapter 235, Statutes of 2019

AB-1066 (Gonzalez) - Unemployment compensation: benefits payable: collection.
This bill provides that if an employer fails to provide employment records requested to resolve a claim for unemployment insurance (UI) benefits by the Employment Development Department (EDD) within 10 days, the employee will be awarded the maximum UI benefit. The bill also permits EDD to delegate its authority to collect unpaid UI taxes to the Attorney General.

Status: Vetoed

Governor's Veto Message:

This bill would conclusively presume that a claimant is entitled to the maximum benefit amount for the purposes of unemployment insurance if an employer does not furnish requested wage information for the Employment Development Department (EDD) within 10 days after receiving notice.

Current law already entitles a claimant to the maximum benefit amount if the employer does not provide documents responding to a claim within a reasonable time frame.

By conclusively presuming an individual is entitled to the maximum benefit amount after 10 days, this bill will result in significant new borrowing of federal funds to the Unemployment Insurance fund, increasing interest costs borne by the state General

Fund. These costs are not included in the 2020 Budget Act and will add cost pressures on state funds that are already strained because of the pandemic.

AB-1099 (Calderon) - California Organized Investment Network
This bill extends the sunset date on the California Organized Investment Network (COIN) program within the Department of Insurance and expands the categories of qualified investments in the COIN program.

Status: Chapter 186, Statutes of 2019

AB-1104 (Calderon) - California Life and Health Insurance Guarantee Association.
This bill adds two public members to the board of the California Life and Health Insurance Guarantee Association and creates an assessment to fund financial surveillance of long-term care insurance carriers.

Status: Chapter 236, Statutes of 2019

AB-1107 (Chu) - Workers' compensation.
This bill would have required proclamations, materials, and announcements made by the Governor or issued by a state agency related to a duly proclaimed state of emergency to be made available statewide in all threshold languages spoken by limited-English-proficient speakers.

Status: Held in Senate Appropriations Committee

AB-1209 (Nazarian) - Long-term care benefits.

This bill requires a life insurance policy issued on or after January 1, 2021, that contains long-term care (LTC) benefits ("hybrid policies") and that also permits policy loans or cash withdrawals to not prohibit or limit a loan or withdrawal while the insured receives payment of LTC benefits, except as specified. Authorizes the payment of an accelerated death benefit for LTC to be applied toward repayment of a pro rata portion of an outstanding policy loan if the payment results in a pro rata reduction in the cash value of the life insurance policy. Requires an insurer to provide a statement to a policyholder or certificate holder at least 30 days before the first payment and no later than 30 days after every payment of an accelerated death benefit for LTC that includes specified information, including an explanation of policy changes that would or did occur due to the payment. Requires an applicant and agent for a universal life insurance policy that includes coverage for LTC, as specified, to complete a disclosure relating to the risk of lapse and an offer of protection against lapse. Prohibits the Insurance Commissioner from approving an initial premium rate schedule for individual or group LTC insurance that includes scheduled rate increases based on the attained age of the insured or the policy duration.

Status: Chapter 625, Statutes of 2019

AB-1223 (Aguiar-Curry) - Living organ donation.

This bill requires a private or public employer to grant an employee an additional unpaid leave of absence, not exceeding 30 business days in a one-year period, for the purpose of organ donation, provided that in the case of a public employee, they have exhausted all sick leave, and prohibits life, long-term care or disability insurance policies from discriminating against an organ donor.

Status: Chapter 316, Statutes of 2019

AB-1224 (Gray) - Disability insurance: paid family leave program.

This bill would have expanded paid family leave benefits by allowing two six-week PFL claims per year.

Status: Assembly-Died - Appropriations

AB-1400 (Kamlager-Dove) - Workers' compensation: fire service personnel.
This bill requires the Commission on Healthy and Safety and Workers' Compensation, in partnership with others, to submit a study to, among others, the Legislature regarding the risk of exposure to carcinogenic materials and incidence of occupational cancer in fire equipment mechanics.

Status: Chapter 717, Statutes of 2019

AB-1535 (Carrillo) - Pet insurance: disclosures.
This bill requires an insurer to provide a disclosure when issuing a pet insurance policy.

Status: Chapter 166, Statutes of 2019

AB-1538 (Weber) - Automobile collision coverage: payment for repairs.
This bill provides that a first-party automobile physical damage claimant may opt to receive a monetary payment based on the value of the damage to the vehicle in lieu of having the vehicle repaired.

Status: Chapter 132, Statutes of 2019

AB-1591 (Cooley) - Insurance Commissioner: legislative reporting.
This bill would have required the Insurance Commissioner to periodically inform the Legislature regarding the National Association of Insurance Commissioners and its role in insurance regulation.

Status: Vetoed

Governor's Veto Message:

This bill would require the Insurance Commissioner (Commissioner) to appear before the Senate and Assembly Insurance Committees on a biennial basis to provide a presentation on the National Association of Insurance Commissioners' (NAIC) accreditation process. The bill also authorizes the Commissioner to provide the presentation to the legislative budget committees.

While I support the purpose of AB 1591, I do not believe that a statutory mandate is necessary for the Commissioner to appear before the Legislature to share information related to the NAIC's accreditation process.

AB-1602 (Low) - Use of firearm insurance.
This bill would have prohibited issuance of an insurance policy covering loss related to firearm use, subject to several exceptions.

Status: Held in Senate Insurance Committee

AB-1679 (Daly) - Motor vehicle insurance: fraud.
This bill would have increased the per-insured vehicle fees that insurers collect from their policyholders to fund the anti-fraud efforts of the California Department of Insurance, local district attorneys and the California Highway Patrol.

Status: Assembly-Died – Appropriations

AB-1731 (Boerner Horvath) - Unemployment insurance: work sharing plans.
This bill reforms the application process for work sharing programs which allow employers to apply to obtain unemployment insurance benefits when work hours are reduced for a class of employees.

Status: Chapter 209, Statutes of 2020

AB-1812 (Committee on Insurance) - Unemployment insurance: penalties.
This bill would have increased the penalty for failing to report or reporting fraudulent information to the Employment Development Department, from $1,000 to $1,100.

Status: Held in Senate Insurance Committee

AB-1813 (Committee on Insurance) - Insurance.
This Department of Insurance omnibus bill makes a number of technical or non controversial amendments to various provisions of the Insurance Code.

Status: Chapter 201, Statutes of 2019

AB-1814 (Committee on Insurance) - Long-term care insurance.
This bill would have repealed obsolete provisions in California law regarding long-term care insurance.

Status: Held on Senate Floor

AB-1815 (Committee on Insurance) - Workers' compensation.
This bill would have deleted obsolete provisions of the Labor Code relating to workers' compensation and makes a twice-a-year reporting requirement annual.

Status: Held in Senate Labor, Public Employment and Retirement Committee

AB-1816 (Committee on Insurance) – Homeowners' insurance.
This bill enacts several reforms to address issues related to homeowner's insurance, in particular relating to wildfire losses.

Status: Chapter 833, Statutes of 2019

AB-1852 (Daly) - Property insurance.
This bill would have required a notice of nonrenewal for a residential property insurance policy expiring on or after January 1, 2021, to be accompanied by a document that includes specified information, including an explanation of how the California Home Insurance Finder can help a person find a homeowners' insurance policy and information about FAIR Plan policies. The bill would have required the California FAIR Plan Association, on or before July 1, 2021, to develop and implement a clearinghouse program to help reduce the number of existing FAIR Plan policies and provide the opportunity for admitted insurers to offer homeowners' insurance policies to FAIR Plan policyholders.

Status: Held in Assembly Insurance Committee (but see AB 3012 (Wood and Daly), below.)

AB-1931 (Voepel) - Department of Insurance: licensee privacy.
This bill would have prohibited the Department of Insurance from including a licensee's contact information on the California Home Insurance Finder, the low-cost automobile insurance list, the department's internet website, or any other publicly available list if the licensee provides proof to the department that the licensee has been granted a protective or restraining order issued by a civil or criminal court. The bill would have also required the department to delete a licensee's contact information from those resources upon receiving proof that the licensee has been granted a protective or restraining order issued by a civil or criminal court.

Status: Held in Assembly Insurance Committee

AB-1993 (Kamlager) – Unemployment and disability insurance: benefits: elective coverage.
This bill would have provided unemployment insurance benefits to family members who are paid by the In-Home Supportive Services and the Waiver Personal Care Services program.

Status: Vetoed

Governor's Veto Message:
AB 1993 would amend the definition of "employment" for the purposes of unemployment insurance coverage to include services performed by an individual in the employ of their parent, child, or spouse if that individual is a provider of In-Home Supportive Services (IHSS) or Waiver Personal Care Services (WPCS). As a result, it will result in significant new borrowing of federal funds to the Unemployment Insurance fund, increasing interest costs borne by the state General Fund that were not included in the 2020 Budget and cannot be considered in conjunction with the full home health care budget.

Expanding benefits and protections for home health care workers is critical, especially in light of the COVID-19 pandemic but these expansions must be developed through the budget process when new investments can be viewed through the lens of the state's full home health care budget.

AB-2049 (Cooley) – Reinsurance credit Insurance market action plan.
This bill updates California insurance law to conform to recent changes to the Credit for Reinsurance Model Act adopted by the National Association of Insurance Commissioners (NAIC).

Status: Chapter 71, Statutes of 2020

AB-2167 (Daly) - Insurance market action plan.
This bill would have authorized the California Insurance Commissioner to approve an Insurance Market Action Plan (IMAP) in order to encourage insurers to issue and renew more policies in the Wildfire Urban Interface (WUI). Passed by the Senate Appropriations Committee as a “study bill.”

Status: Held on Senate Inactive File

AB-2169 (Maienschein) - Workers' compensation.
This bill would have made these provisions gender neutral, correct or delete erroneous cross-references, update obsolete terms, delete obsolete and invalid provisions, correct technical errors, and make clarifying and conforming changes.

Status: Held in Assembly Insurance Committee

AB-2367 (Gonzalez) - Residential property insurance: wildfire resilience.
This bill would have mandated that any insurer be required to issue a homeowners' insurance policy to any applicant, regardless of the insurer's risk analysis, if the applicant met certain not-yet-established standards and the insurer's solvency was not threatened.

Status: Held in Assembly Insurance Committee

AB-2397 (Committee on Insurance) - Workers' compensation insurance, unemployment, and disability compensation.
This bill would have clarified several laws associated with providing benefits to employees.

Status: Held in Senate Labor, Public Employment and Retirement Committee

AB-2398 (Committee on Insurance) - California Insurance Guarantee Association.
This bill would have modernized and clarified various provisions of the statutes governing the California Insurance Guarantee Association.

Status: Held in Senate Insurance Committee (but see AB 3012 (Wood and Daly), below.)

AB-2399 (Committee on Insurance) - Paid family leave: qualifying exigency.
This bill makes clarifications to definitions in existing law necessary for the proper implementation of the expansion in use of the Paid Family Leave for a qualifying exigency related to the covered active duty or call to covered active duty of an individual's specified family members in the Armed Forces of the United States, which is set to begin January 1, 2021.

Status: Chapter 348, Statutes of 2020.

AB-2401 (Committee on Insurance) - Life insurance: nonpayment premium notice: lapse.
This bill would have stated that these requirements apply to a life insurance policy, as specified, that is issued or delivered in this state on or after January 1, 2013.

Status: Held in Assembly Insurance Committee

AB-2402 (Committee on Insurance) - Residential property insurance.
This bill would have updated the property insurance disclosure forms to reflect recent changes in law.

Status: Held in Senate Insurance Committee (but see AB 2756 (Limon), which adopted the content of this bill.)

AB-2436 (Bloom) - Residential property insurance.
This bill would have mandated the inclusion of building code upgrade coverage in every policy of homeowners' insurance.

Status: Held in Senate Insurance Committee (but see AB 2756 (Limon), which adopted the content of this bill.)

AB-2447 (Rodriguez) - Workers' compensation: emergency medical services.
This bill would have provided, for injuries occurring after January 1, 2021, that in the case of private sector emergency medical services personnel contracted with a state, local, tribal, or special district to provide emergency medical services, the term "injury" also includes post-traumatic stress that develops or manifests itself during a period in which the injured person is providing emergency medical services pursuant to a contract with the state agency, local agency, tribe, or special district. The bill would have prohibited compensation from being paid for a claim of injury unless the person has been contracted with for at least 6 months, unless the injury is caused by a sudden and extraordinary employment condition.

Status: Held in Assembly Insurance Committee

AB-2453 (Nazarian) - Long-term care insurance and accelerated death benefits.
This bill would have removed an exclusion for life insurance policies that accelerate benefits for long-term care, and would, with respect to those policies, require the procedures to also take into consideration the applicant's goals or needs with respect to life insurance, and to take into consideration the advantages and disadvantages of the proposed insurance coverage compared to the advantages and disadvantages of a

stand-alone long-term care insurance policy. The bill would have required a written summary of the comparison to be presented to the applicant at the time of application and to be made part of the applicant's file.

Status: Held in Assembly Insurance Committee

AB-2474 (Chen) - Department of Insurance: contact information.
This bill would have deleted the specified internet website, telephone number, and mailing address to be included in the statement and would instead require the department, at least annually, to provide property insurers with its most current contact information.

Status: Held in Assembly Insurance Committee

AB-2665 (Mullin) - Workers' compensation: skin cancer.
This bill would have expanded the scope of the workers' compensation "presumptive injury" categories to certain peace officers of the Department of Fish and Wildlife and the Department of Parks and Recreation.

Status: Held in Assembly Insurance Committee

AB-2703 (Gallagher) - Fire insurance.
This bill would have prohibited an insurer from deducting the value of land at the new location from its payment to the insured.

Status: Held in Assembly Insurance Committee (but see AB 3012 (Wood and Daly), below.)

AB-2756 (Limón) - Residential property insurance.
This bill improves the notice provided to policyholders when an insurer's offer to renew the policy involves a reduction in coverage; updates the laws governing the California Insurance Guarantee Association, and enhances the benefits for additional living expenses under policies of homeowners' insurance.

Status: Chapter 263, Statutes of 2020

AB-2797 (Wood) - Leave of absence: firefighters.
This bill would have made "4850 time" benefits available to all rank-and-file and supervisory firefighters employed by the Department of Forestry and Fire Protection whose principal duties include active fire suppression or prevention services.

Status: Held in Assembly Insurance Committee

AB-2818 (Grayson) - Unemployment insurance: Employee status: definition.
This bill would have exempted from the definition of employment, a seller that sells or demonstrates products in the buyer's business. The bill would also specify that certain types of vehicles used to sell specified tools do not qualify as a retail or wholesale establishment for purposes of these provisions.

Status: Held in Assembly Insurance Committee

AB-3012 (Wood) - Residential property insurance.
This bill makes a number of changes to the insurance claims-payment laws to enhance policyholder rights with respect to wildfire insurance claims, addresses other wildfire related issues, and includes language from other bills, noted above, in order for the Senate to limit the number of bills to be heard due to COVID-19 complications.

Status: Chapter 258, Statutes of 2020

AB-3311 (Grayson) - Vehicles: insurance.
This bill would have increased the amount of liability insurance coverage an owner or operator of a motor vehicle is required to maintain to $30,000 for bodily injury or death of one person, $60,000 for bodily injury or death of all persons, and $25,000 for damage to the property of others as a result of any one accident. This bill would have made conforming changes to the definition of "proof of financial responsibility" for purposes of the provisions described above. This bill would have, beginning on January 1, 2026, and every 5 years thereafter, adjust the amount of required liability insurance coverage by any increase in the California Consumer Price Index, as specified.

Status: Held in Assembly Insurance Committee

AB-3329 (Daly) - Unemployment insurance compensation: COVID-19 pandemic: temporary benefits.

This bill would have provided, until July 1, 2022, following the termination of the Federal Pandemic Unemployment Compensation $600/week supplement provided pursuant to the CARES Act or any other federal supplemental unemployment compensation payments for unemployment due to the COVID-19 pandemic, that an individual's weekly benefit amount as otherwise provided for by existing unemployment compensation law be increased by $100 for the remainder of the duration of time the individual is entitled to receive benefits with respect to a valid claim for a benefit year. The bill would have prohibited any unemployment compensation benefits authorized by the bill to be charged against the reserve account of any employer.

Status: Held in Assembly Insurance Committee

SENATE BILLS

SB-240 (Dodd) - Insurance Adjuster Act.

This bill exempts licensed independent adjusters from the licensing renewal requirements during active military service; requires the California Department of Insurance to publish a bulletin regarding significant California laws pertaining to property insurance policies and an insurance adjuster handbook; requires specified unlicensed independent insurance adjusters to read and understand those materials; and requires insurers to provide a claimant with contact information of an individual or team who will be familiar with the claim if the insurer assigns a third or subsequent adjuster to the claim within a six-month period.

Status: Chapter 502, Statutes of 2019

SB-271 (Wiener) - Employment: motion picture production workers.

This bill clarifies that motion picture production workers working in other states may still access California Unemployment Insurance and State Disability Insurance benefits if they reside in California.

Status: Chapter 246, Statutes of 2019

SB-290 (Dodd) - Natural disasters: insurance and related alternative risk-transfer products: Special Fund for Economic Uncertainties.
This bill would have authorized the Governor to purchase insurance, reinsurance, insurance linked securities or other related alternative risk-transfer products for the State of California to help mitigate against costs incurred by the state and local governments in response to a mudslide, wildfire or flood.

Status: Held in Assembly Appropriations Committee

SB-292 (Rubio) - Wildfire risk modeling and mitigation.
This bill would have authorized, in conjunction with AB 2167, the Insurance Commissioner to approve an Insurance Market Action Plan to encourage insurers to issue and renew more homeowners' insurance policies in the Wildfire Urban Interface (WUI). The Assembly Appropriations Committee amended the bill to study the issue.

Status: Held on the Assembly Inactive File

SB-318 (Hertzberg) - Consumer protections: contracts and agreements to finance or secure a bail bond or immigration bond.
This bill would have applied a number of existing consumer protection laws to bail and immigration bond transactions on a retroactive basis.

Status: Failed Passage in Assembly Insurance Committee

SB-416 (Hueso) - Employment: workers' compensation.
This bill would have expanded the classifications of peace officers that enjoy the benefit of presumptions that certain defined injuries and illnesses are automatically deemed work-related without need for the employee to prove the condition was caused by employment.

Status: Held at Assembly Desk Pending Referral

SB-508 (Leyva) - Residential property insurance.
This bill requires insurers to provide mobilehome-appropriate disclosures to mobilehome owners in the standard residential property insurance disclosure form.

Status: Chapter 151, Statutes of 2019

SB-534 (Bradford) - Insurers: minority, women, LGBT, veteran, and disabled veteran business enterprises.

This bill reenacts and expands the insurer Supplier Diversity Survey, codifies the insurer Governing Board Diversity Survey, and establishes procedures for the California Department of Insurance to administer both and publish the results.

Status: Chapter 249, Statutes of 2019

SB-537 (Hill) - Workers' compensation: treatment and disability.

This bill requires medical provider networks to list all medical providers on a public roster, prohibits MPNs from altering medical treatment plans and medical billing codes, and requires disclosure to payors of any contract between a medical provider and a contracting agent, employer or insurance carrier that is 20% or more below of the Official Medical Fee Schedule.

Status: Chapter 647, Statutes of 2019

SB-540 (Jones) - Nonprofit public benefit corporations.

This bill allows nonprofit corporations to offer split-dollar life insurance policies as compensation when secured by the cash value or death benefit, instead of both the cash value and death benefit.

Status: Chapter 250, Statutes of 2019

SB-542 (Stern) - Workers' compensation.

This bill creates a rebuttable presumption for specified peace officers that a diagnosis of post-traumatic stress disorder is occupational, and therefore covered by the workers' compensation system.

Status: Chapter 390, Statutes of 2019

SB-570 (Rubio) - Insurance: low-cost automobile insurance program.

This bill makes several programmatic changes to the California Low Cost Automobile Insurance Program that eliminate a gender surcharge, expand access to students, ease income eligibility reporting requirements, simplify the consumer notice, and eliminate outdated code sections.

Status: Chapter 274, Statutes of 2019

SB-731 (Bradford) - Peace Officers: certification: civil rights.
Originally a bill subject to the jurisdiction of the Insurance Committee, this bill was a "gut and amend" to address an issue outside the Insurance Committee jurisdiction.

Status: Held on the Assembly Floor

SB-740 (Mitchell) - Insurance: unclaimed life insurance.
This bill, the Unclaimed Life Insurance and Annuities Act, requires life insurers to use the U.S. Social Security Administration's Death Master File to match deceased Social Security recipients with insureds on life insurance policies, and requires insurers to attempt to locate and notify the beneficiary about the policy.

Status: Chapter 286, Statutes of 2019

SB-872 (Dodd) - Residential property insurance: state of emergency.
This bill expands several consumer protections related to additional living expenses, time to collect replacement value, contents coverage, and relocation after a loss, in cases involving wildfire disasters.

Status: Chapter 261, Statutes of 2020

SB-1159 (Hill) - Workers' compensation: COVID-19: critical workers.
This bill creates rebuttable presumption that illness or death related to COVID-19 (novel coronavirus) is an occupational injury and therefore eligible for workers' compensation benefits with respect to specified employees under defined circumstances.

Status: Chapter 85, Statutes of 2020

SB-1192 (Bradford) - Firefighters', police officers', or peace officers' benefit and relief associations.
This bill establishes oversight requirements on firefighters' and police officers' benefit and relief associations.

Status: Chapter 365, Statues of 2020

SB-1255 (Committee on Insurance) - Insurance.

This bill provides procedural flexibility to the California Department of Insurance (CDI) when holding a hearing to suspend or revoke a license for alleged misconduct against seniors; clarifies when a life insurer can restrict access to policy withdrawals; cleans up ambiguity in CDI's licensing statutes; prohibits discrimination in life insurance against HIV positive applicants; and makes other technical, non-substantive changes.

Status: Chapter 184, Statutes of 2020

APPENDIX 1

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ASSEMBLY COMMITTEE ON INSURANCE
TOM DALY, CHAIR
ASSEMBLYMEMBER, SIXTY-NINTH DISTRICT

Informational Hearing

California's Homeowners' Insurance Market:

A Report by the FAIR Plan

Wednesday August 21, 2019
10:00 a.m.
State Capitol, Room 437

Introduction

In recent years, California has experienced a massive increase in the loss of life and property caused by wildfires. Beginning in 2015 with a spate of fires in Lake County, wildfires have devastated communities around the state including enormous fires in Butte, Shasta, Sonoma, Napa, Ventura, Santa Barbara and Los Angeles Counties. Among the many consequences of the losses caused by these fires are significant changes in the homeowner's insurance market in high fire risk areas.

A study of the homeowner's insurance market released in 2018 as part of the Governor's Fourth Climate Assessment found that insured losses through 2017 wiped out the entire underwriting profit insurers earned since 2000. The 2018 fires continued with another round of enormous losses. These losses have triggered rate filings by many property insurers, which have generally been approved by the Department of Insurance (DOI). The DOI's approval of these rate applications has increased rates (and therefore premiums for most policyholders – see discussion of "rate" vs "premium" below). These rates also generally reflect the widely recognized "new normal" of increased wildfire risks in many areas of the state by focusing the price increases in high risk areas.

In addition to increasing rates, insurers are re-evaluating whether they have an overconcentration of policies in high risk areas. This has resulted in many homeowners in these communities receiving a notice of non-renewal from their insurance company. Homeowners searching for new coverage invariably find it significantly more expensive than their prior policy. In some high risk counties, significant numbers of homeowners do not find a new policy from an admitted insurer, and therefore turn to either the FAIR Plan (California's "insurer of last resort") or a policy in the surplus lines market.

The combination of this process of *selective* non-renewal (see data from the FAIR Plan, below, that shows that California is not witnessing a wholesale withdrawal from the market) and premium increases has created significant stress among homeowners in high-risk areas. Some of this stress is likely temporary as some insurers reduce their exposure while other insurers take up policies in these high risk areas, with the FAIR Plan and surplus lines providing coverage for the remainder. Absent another event that significantly increases the projected risks in these high risk areas, the results of this market adjustment, once complete, are likely to remain stable for some time. However, it is reasonable to expect continued increases in premiums in high-risk areas so long as we continue to see major loss wildfire events associated with the "new normal."

Homeowners Insurance Basics

A typical homeowner's policy will protect against a variety of property and casualty losses, with each type of loss typically having a separate coverage limit. Dwelling coverage (referred to as "Coverage A") pays for damage to or destruction of the dwelling itself. Damage to or destruction of other structures on the property, such as fences and freestanding garages (referred to as "Coverage B"), is considered separately from the dwelling loss. Damage or destruction to personal property such as furniture, clothes, appliances, and electronics (referred to as "Coverage C") is also separated out from dwelling coverage. Standard policies also cover additional living expenses (referred to as "ALE"), such as temporary housing, while a home is replaced or repaired. A homeowners' insurance policy also typically covers losses due to theft or vandalism, as well as providing liability protection in the event the homeowner is sued as a result of an event associated with the property. Some risks, such as earthquake and flood, are not covered by a standard homeowner's policy (separate coverages are available for those risks). To the extent that a policyholder has not selected coverage limits sufficient to rebuild or repair the home, the homeowner is responsible for the remaining expense.

There are a few basic types of homeowner's insurance policies available in the market:

- **Actual Cash Value** – This type of policy provides for the cost to repair or replace the home (less depreciation) and caps the coverage based on the estimated normal cost of rebuilding.
- **Replacement Cost** – This type of policy provides for the cost to repair or replace the home (without depreciation) and caps the coverage provided based on the estimated normal cost of replacement.
- **Extended Replacement Cost** – Like the replacement cost policy, this type of policy provides for the cost to repair or replace the home (without depreciation) up to the estimated replacement cost, but provides additional coverage should the cost of replacement exceed the dwelling limit. This additional coverage typically increases the dwelling coverage limit by 25% - 50%.
- **Guaranteed Replacement Cost** – This type of policy does not have a limit on the dwelling coverage (although premium is charged based on the estimated normal replacement cost). Very few insurers sell this type of policy, as the open-ended expense due to "demand surge"[1] in the aftermath of a major catastrophe is highly volatile and unpredictable.
- **Stated Value** – This type of policy provides coverage for a predetermined amount in the event of a loss. Stated value policies are commonly used to cover mobilehomes.

[1] "Demand surge" is the polite term that many observers would replace with "price gouging."

Most policies require a deductible, which is an amount the insured is responsible for before coverage applies. Limits, deductibles, and exclusions are ways to define both the scope of coverage provided by the policy and the risk borne by the homeowner (sometimes referred to as "risk retention" or "self-insurance"). Risk retention provisions are included to eliminate/reduce small value claims for losses easily borne by the homeowner, and to provide a financial incentive to the homeowner to take responsibility for protecting the property. The less risk transferred to the insurer (higher deductibles and lower limits), the lower the premium charged for the policy. However, lower premium (and the associated reduced coverage) increases what the homeowner may have to pay out-of-pocket.

Usually, Coverage A establishes the baseline for calculating other limits. The chart below describes the various coverages and common limits for those coverages.

Coverage	Description	Common Limit
A. Dwelling	Pays for damages to the house and attached structures.	Consumer selects
B. Other Structures	Pays for damages to fences, tool sheds, freestanding garages, etc.	10% of Coverage A
C. Personal Property	Reimbursement for the value of lost possessions such as furniture, clothing, appliances, and other personal property items.	50% of Coverage A
D. Additional Living Expense (ALE)	Reimbursement for living expenses while the home is repaired or rebuilt, and therefore uninhabitable.	20% of Coverage A
E. Personal Liability	Pays for financial losses arising from some forms of legal liability.	Consumer selects
F. Medical Payments	Pays for medical expenses for people injured on the property.	Consumer Selects

Policies may also provide code upgrade coverage (typically with an additional premium charged) to pay for costs of rebuilding based on updated building codes that have been adopted since the home was originally built. One expert notes that code upgrades for a home built before the early 2000s can drive up construction costs by as much as 20%.

Some insurers offer to increase the limit annually based on inflation and/or the increased cost of rebuilding. The premium charged will reflect the increased coverage. These mechanisms are designed to prevent the value of the Coverage A limit from eroding over time, but these increases may not suffice when the cost of rebuilding increases dramatically after a catastrophe.

The FAIR Plan Structure and Purpose

The California FAIR Plan – "Fair Access to Insurance Requirements" – is an "association" of all admitted (licensed) insurance companies that sell property insurance in California. It was created by statute[2] in the 1960's, following urban disturbances, notably the Watts Riots in Los Angeles. Similar associations were created in other states for the same reasons. The purpose of the FAIR Plan was to ensure that urban property owners, mostly businesses, would have "access" ("fair access") to the property insurance necessary to continue to operate in a market that insurers viewed as too risky to cover. That risk evaluation resulted in a substantial market withdrawal by insurers from the urban property market. Despite its initial creation as an urban/business "insurer of last resort," the FAIR Plan expanded to provide coverage in "designated" brush fire regions of the state. It operated fairly well in this manner until the mid-1990's, when, as a consequence of the genuine homeowners' insurance crisis that followed the Northridge earthquake in 1994, the entire state was designated as the appropriate FAIR Plan coverage region.

The enabling statute provides, in part, that the purpose of the FAIR Plan is to "provide for the equitable distribution among admitted insurers of the responsibility for insuring qualified property for which <u>*basic*</u> property insurance <u>*cannot be obtained*</u> through the normal insurance market." (Emphasis added.)

In a broad sense, the purpose of the FAIR Plan is to be the insurer of last resort for "basic" property insurance in the event of a market failure. At inception, that was essentially urban commercial property. Ultimately, it has expanded to include homeowners' insurance anywhere in the state, provided that the insurance "cannot be obtained" in the normal manner in the market.

There appears to be some sentiment in the market that a FAIR Plan policy is not "real" insurance or is, in some way, inferior to private market insurance. While it is true that, by statute, the FAIR Plan policy is not as broad as traditional homeowners' policies, it is nonetheless a fully sound and guaranteed policy that satisfies lenders' security requirements and protects the property against the primary risk factor faced by homeowners in the Wildland Urban Interface (WUI) – fire. Other coverages are readily available in the market (typically through the purchase of a "difference-in-conditions" or "DIC" policy), which provides wraparound coverage that, coupled with a FAIR Plan policy, results in the same protection provided by a standard homeowner's policy. Because the FAIR plan's role is to provide coverage when the regular market won't, it is not the role of the FAIR Plan to provide DIC policies when there is a healthy market for those policies.

<u>Market Withdrawal – Insurance After the Northridge Earthquake</u>

The current role of the FAIR Plan is largely a result of the aftermath to the 1994 Northridge earthquake. A brief review of California's experience in the mid-1990's in comparison with today's current market conditions is helpful in evaluating the extent of the current problems and the efficacy of <u>*existing*</u> solutions.

Just as the past 3 or 4 years of wildfire losses has shaken the insurance industry's confidence in its prior assessment of the scale of wildfire risk, the Northridge earthquake generated a comparable re-evaluation with respect to earthquake risk in California. The market response was

[2] Technically, the statute does not "create" the FAIR Plan. Rather, it directs the insurers to establish, subject to approval by the Insurance Commissioner of a plan of operations, the Plan which is governed by a "governing committee" comprised of representatives of members insurers.

predictable. As long as state law mandated insurers to write earthquake insurance for any homeowners' insurance policyholder who chose to buy it, insurers would simply not write new homeowners' policies.

In the absence of a statewide coverage area for the FAIR Plan, the homeowners' insurance market for new policies virtually collapsed, and there was a serious and immediate risk of widespread non-renewals of existing policies. Escrows on home sales were failing for lack of available insurance (not merely insurance that prospective buyers found to be more expensive than had historically been the case). There was a complete lack of availability of homeowners' insurance to be purchased at any price.

The administrative/legislative response was essentially two-fold. Administratively, the FAIR Plan was expanded to statewide, thereby ensuring access to essential coverage so that the state's real estate market would not collapse. Legislatively, the California Earthquake Authority (CEA) was established to address earthquake insurance in a manner that would enable a recovery of the basic homeowners' insurance market. Both of these efforts succeeded. [3]

There are several lessons to be drawn from the 1990's crisis:

1) The extent of the crisis was widespread, affecting all regions of the state, and severe in the sense of direct threats to an otherwise healthy statewide real estate market. We have not seen the current wildfire-driven market dislocations expand to the magnitude of the 1990's crisis.

2) It is very difficult to mandate that insurers write policies that their risk analysis shows to be unmanageable. This remains true either because the aggregate risk posed is too great or because existing rate structures do not permit insurers to charge adequate premium based on the risk created by issuing the policies.

3) There was credible evidence that insurers were delaying a more drastic market withdrawal across the state, absent administrative/legislative action to address the crisis.

4) The primary administrative tool (expansion of the FAIR Plan statewide) both served its immediate purpose, and in the years since, has not been tested in any sort of market crisis.

The challenges in the current insurance market caused by wildfire, and the FAIR Plan's effectiveness in answering these challenges, is discussed in more detail below.

Insurance pricing in the WUI (and elsewhere)

Recent media reports have described homeowners in the WUI facing insurance rate increases of double and triple what they have historically been paying. There have also been reports of homeowners being "unable" to obtain insurance, and of home sales that have failed because the prospective buyer could not afford the quoted premium to insure the home. Each of these

[3] It bears mentioning that for the portion of the market that did not join the CEA, earthquake insurance rates increased shortly after the Northridge quake in excess of 50% across the state – and higher in high risk regions. Part of the 1990's "new normal" with respect to earthquake insurance was significantly higher costs for consumers.

"reports" deserves thoughtful consideration in light of market reality which is substantially driven California's rate regulation system and the premium structures it creates.

There is a difference between insurance "rates" and the "premium" a particular homeowner pays to their insurer. In insurance regulatory parlance, "rate" means the average price to be paid by customers that will generate an adequate amount of money required to cover the insurer's anticipated expenses and make a reasonable rate of return.[4] The "premium" that any particular homeowner pays is the result of the approved "rating plan" or "class plan" that uses a series of positive and negative factors to determine that actual price paid. This class plan spreads the cost required to cover insurer's losses, expenses, and return (all defined by DOI regulations) among the insurer's policyholders based on a set of factors also approved by DOI. Allocating premium within these rules is essentially a zero-sum game where a factor that reduces the premium charged in one area must be offset by a factor that increases the premium charged in another area. When those factors result in an insurer charging premium inadequate to pay the losses associated with a category of homes, that gap must be filled by higher premiums charged for categories of homes with lower losses.

As an example, the FAIR Plan recently was granted (after filing a lawsuit against the DOI) a 20% rate increase and a new rating plan to reflect changes in the risk exposure presented by homes in the WUI. That 20% increase translates into premium reductions of as much as 20% for policyholders in low risk areas and premium increases of 50-60% for policyholders in high risk areas. This new rating plan authorized for the FAIR Plan is in recognition of the fact that homeowners in the WUI have historically been significantly *subsidized* by homeowners in low-risk regions of the state, who have paid higher premiums so that WUI premiums could be lower.

Pooling risks through insurance mechanisms creates the possibility, in fact a likelihood of, creating subsidies. In its most basic operation, insurance literally "subsidizes" those with losses with the premiums paid by those without losses. That is not the sense in which the term is used here. Rather, it is used in a broader sense. Determining how risk will be priced and how groups of insureds will be assembled to share that risk will create some financial incentives and disincentives. Financial incentives and disincentives are not determinative of individual behavior, but they do influence behavior that is not limited only to the insurance market. Thoughtful consideration of how the incentives/disincentives are created by the rules imposed for pricing risk (rating) and for assembling insureds (underwriting) create subsidies and those subsidies can either support or undermine the insurance market, as well as broad public policy goals. To the extent that subsidies are created on purpose, to serve identified public policy goals, those decisions ought to be made by policymakers with eyes wide open to the facts and consequences of the decision to create the subsidy.

In the private admitted market, this subsidy factor is even more pronounced than it has been with respect to the FAIR Plan, and as a result, homeowners in the WUI are not merely experiencing a "new normal" but also losing a long-term discounted price that was far below the actual cost of providing insurance in the WUI. This point needs to be clearly understood, *the premiums*

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[4] Pursuant to Proposition 103, and the current regulations adopted by the Department of Insurance, an admitted insurer cannot charge a rate before it has been approved by the Insurance Commissioner, and that rate is set at the constitutionally minimum that can be imposed without resulting in a "taking" that would violate the United States constitution's "Takings Clause".

historically paid by homeowners in the WUI have already been substantially subsidized by low-risk policyholders. Actions to reduce this subsidy will cause WUI premiums to rise independent of any consideration of the "new normal" and the billions of dollars in recent losses. Each of these factors will inflate property insurance cost in the coming years for all homeowners, but the increases born by homeowners in lower risk areas would be reduced to the degree that the current subsidy to the WUI is reduced.

Insurers point to two current regulations adopted by the Department of Insurance, that Commissioner Lara has the authority to change, as contributing to the underpricing of policies in WUI.[5] First, and most surprising, the rate regulation system *precludes* counting actual and proven reinsurance expenses as legitimate costs that can be built into the rate base.[6] It is widely accepted that insurers need to buy reinsurance to guard against catastrophic losses that may exceed expected losses. This is, now, especially true with respect to policies that cover homes in the WUI, and reinsurance prices have been rising in the face of substantial losses reinsurers have experienced in recent years. Thus insurers are bearing increasing reinsurance costs without being able to recover those costs through premium. Insurers argue that the current rate regulation system inherently underprices premiums in high risk areas. Second, the rate regulation rules *prohibit* the use of even the most sophisticated forward-looking risk modelling tools.[7] Rather, the rules require a retrospective look at historical losses. Insurers argue that if, in fact, we are facing a "new normal" with wildfires, limiting rate regulation analysis to historical losses inherently underestimates the risk, and results in underpricing. It is an unpopular and uncomfortable truth that price and availability go hand in hand. If insurers are facing underpriced premiums in high risk areas, their willingness to issue or renew policies in these areas will be low or non-existent.

In addition to potential pricing concerns, large market share companies are also reconsidering the mix of risks presented by their current policyholders. The losses in recent years and the reality that this likely represents a "new normal" does require most insurers (particularly those with a large piece of the market) to reconsider if their policyholders are over-concentrated in high risk areas. Concentration of risk is an essential consideration when selling homeowner's insurance. The insurance community was reminded of this last year when a small insurer (Merced Casualty Insurance Company) became insolvent following the Camp fire. While large California insurers are backed by immense financial resources, it would be foolish for any company not to re-evaluate its current risks through the lens of the "new normal."

While the homeowner's insurance market is generally quite competitive (dozens of insurers offer homeowner's policies in California), there is commonly a wide variation in the premium charged by different insurers for the same home. That variation has a number of causes. As noted above, rates are primarily based on the losses that the insurer is likely to bear among the homes it insures. If the insurer has a riskier group of homes, its rates will be higher. Each insurer also develops its own class plan based in part on the mix of homes it insures. Lastly, while homeowner's insurance is a fairly standard product, policy design choices made by individual

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[5] The Legislature does not have the authority to direct the Insurance Commissioner to make these two changes, as the rate regulation system adopted by initiative statute specifically delegates that role to the commissioner.
[6] See California Code of Regulations, Title 10, Section 2644.25.
[7] See California Code of Regulations, Title 10, Section 2644.4, subdivision (e).

insurers do have a cost impact. Some insurers offer more generous coverage for contents or ALE than others and that generosity comes at a cost.

One consequence of California's rate regulation system is that many of the large market share insurers tend to have lower prices than small market share companies simply because few small market share companies' rate applications are challenged by interveners. Interveners exert pressure to reduce requested increases (or even turn requested increases into rate reduction orders) from large market share companies. Since many of the non-renewals in the WUI are from larger market-share insurers, when homeowners in the WUI find coverage from another admitted company they are likely get that coverage from a smaller market share company with higher rates.[8]

California Insurance Cost

As a general matter, Californians have had very low premiums for homeowner's insurance. A recent comparison of costs conducted by Insurance.com found that the average premium in California for a $200,000 replacement cost policy was 37th among the 50 states. The national average premium for that policy was $1288 and the average cost in California was $793 (35% lower than the national average.) For comparison purposes, the highest cost state was Florida with the same coverage costing $3575. West Virginia was the mid-point with $1288 and Hawaii was the lowest at $337.

While the sample limits used to generate those figures are certainly well below typical values in California, the study does highlight that California has been a low cost state for homeowner's insurance. We should expect that premium cost will increase across the state in response to the massive losses experienced in recent years, and the recognition of the "new normal" associated with Climate Change. However, California homeowners will continue to enjoy lower rates than many states despite these expected rate increases.

FAIR Plan Market Activity

The FAIR Plan recently provided the Committee with data regarding its issuance of new policies throughout the state in the past 12 months (June 2018 – June 2019). The Committee sought this data as an indicator of conditions in the homeowner's insurance market. We would expect to see increases in new FAIR Plan policies in areas where insurers are issuing non-renewal notices in substantial numbers.

There is not a one-to-one correspondence between newly issued FAIR Plan policies and non-renewals because homeowners[9] are required to conduct a diligent search of the private market for new coverage before resorting to the FAIR Plan. After receiving a non-renewal notice, some homeowners will find coverage from the private market in the course of that diligent search -- information provided by the FAIR Plan supports the inference that coverage from the regular

[8] It may also be possible that homeowners are experiencing the effect of getting new rebuild estimates. There has been heightened scrutiny on the rebuilding estimates that are used to establish the Coverage A limit in a homeowner's policy. As most homeowners do not shop for insurance very often, many may not have adjusted their Coverage A limits for years or decades and their new policy may reflect a higher Coverage A limit and the price that comes with it.

[9] Or, more specifically, the homeowner's insurance agent or broker.

market is available in many areas. However, where there are significant increases in FAIR Plan policy counts, it is a sound assumption that there has been an increase in the number of non-renewal notices sent to homeowners.

The data show that there has been significant increases in the number of new policies issued by the FAIR Plan in a number of counties in the Sierra foothills, indicating a substantial increase in non-renewal activity in those communities. New policy issuance in the most affected counties accelerated strongly beginning in December 2018, and that pattern continued in the ensuing months. Counties that have seen the greatest increases include Amador, Calaveras, El Dorado, Mariposa, Nevada, Trinity and Tuolumne, while counties such as Butte, Lake, Lassen, Mendocino, Mono, Placer, Plumas, San Bernardino, Shasta, and Sierra have seen smaller, but still significant, increases. In the most affected counties, there has been as much as a ten-fold increase in the number of policies issued on a monthly basis. Individual communities within these counties have seen even more dramatic increases in the proportion of homeowners obtaining coverage from the FAIR Plan.

It is also notable that counties substantially (or entirely) outside of high-risk fire areas did not see meaningful increases in new FAIR plan policies. This data indicates that insurers are largely limiting non-renewal activity to high-risk fire areas, and insurers are not broadly withdrawing from the homeowner's insurance market. The FAIR Plan reports issuing over 43,000 new policies in the past 12 months. To put that number in perspective, the Department of Finance estimates that there are over 8 million single-family/detached homes in California which means that the overwhelming majority of homeowners in California have access to insurance in the regular market.

Clearly some communities (primarily in the Sierra foothills) are experiencing a major market adjustment. However, that adjustment is likely a one-time phenomenon as homeowner's policies are generally renewed on an annual basis, and insurers are likely to reduce their risk exposure over one or two renewal cycles. The FAIR Plan has also experienced a notable volume of new policyholders cancelling their policies within months of issuance (17% of policies issued in October 2018 have been cancelled by the policyholder). Because insurance is not optional for a homeowner with a mortgage, these policyholders have found other coverage that is most likely in the regular insurance market. Some of this activity likely reflects that these homeowners are becoming more sophisticated consumers. The majority of homeowner's policies in California are issued by a relatively small number of insurers that work through "captive" agents (who are essentially limited to selling coverage from a single company) which means that most homeowners have not experienced interacting with an independent insurance agent. When these large market share companies issue a non-renewal notice, homeowners are most likely to find coverage with a smaller market share company, and those companies generally work through independent agents who sell policies from many insurers.

Increasing Fire Risk and the Insurance Market

A recent study sponsored by the California Natural Resources Agency and published by the RAND Corporation compared the insurance market in certain areas of the Sierra Foothills and San Bernardino County. The study also looked at the potential impact of climate change on that market based on recent trends. Although the study only looked at two areas in California, the findings are useful for all Californians who live in or near similar forested areas. That study made several findings pertinent to any conversation on high-risk areas and the insurance market.[10] The study found that:

- The average acres burned annually in the Sierra Foothills will double by midcentury and likely double again by the end of the 21st century.
- Homeowners in high-risk areas purchase less coverage relative to structure value, meaning that these homeowners, facing increased expenses, appear to have chosen to be underinsured.
- Climate change could substantially affect the insurance market in some parts of the Sierra Foothills. In some of the highest fire risk, by 2055 the rate per $1,000 of coverage in the admitted market is projected to rise by 18%, the insurance-to-value ratio is expected to drop by 6.5% (homeowners will be even more underinsured), and deductibles will increase by $121.

The study also discusses the recent catastrophic loss on insurers underwriting profits. Underwriting profit represents that portion of the premium that is set aside to pay claims but is not used for that purpose. What is not used one year, may be reserved and used in future years. The authors examined the underwriting profits in the homeowners multiple peril line (policies that cover a variety of damage types) and noted that they were highly negative in 2017. Many insurers lost money, and a good portion of those losses were due to wildfire. Those losses were paid for by profits from prior years. The study notes:

> The underwriting experience between 2001 and 2017 illustrates that an extended period of underwriting profits can be wiped out by a very large wildfire or other catastrophic event (a fire following an earthquake, for example). Underwriting profits in the Homeowners Multiple Peril and Fire lines totaled $12.1 billion from 2001 through 2016 combined, and were almost completely wiped out by the results for 2017. Insurers may not believe that the return is adequate to justify the risk, even once investment returns are included. [11]

Recent Legislative Actions

There appears to be some sentiment that the Legislature must "do something" despite the fact that existing law mechanisms are in fact performing as planned in the face of the current market response to wildfires. It bears recalling that last Session, the Legislature passed and the Governor signed a broad scope of insurance market reforms specifically targeted at addressing a number of problems that the recent wildfires highlighted. Many of these 2018 bills included a delayed effective date to allow either the Department of Insurance or the insurers' time to implement the changes in law. Thus, a number of the 2018 reforms are just now, or in the

[10] Lloyd Dixon, Flavia Tsang, and Gary Fitts, *The Impact of Changing Wildfire Risk on California's Residential Insurance Market*, RAND Corporation and GreenwareTech (Aug. 2018), p. 47, available at https://www.rand.org/content/dam/rand/pubs/external_publications/EP60000/EP67670/RAND_EP67670.pdf.
[11] *Id.* at 55.

immediate future, being implemented. Further Legislative action prior to an evaluation of the efficacy of the 2018 reforms may be premature. These insurance bills include:

SB 30 (Lara), Chapter 614, Statutes of 2018, requires the Insurance Commissioner to convene a working group to assess new and innovative investments in natural infrastructure and insurance products in light of California's worsening fire vulnerability due to climate change.

SB 824 (Lara), Chapter 616, Statutes of 2018, prohibits an insurer from canceling or refusing to renew a homeowners' insurance policy for one year from the date of a declaration of a state of emergency, as specified; and requires admitted insurers with at least $10 million in written premiums in California to biennially report to the California Department of Insurance specified fire risk information on residential property policies.

SB 894 (Dodd), Chapter 618, Statutes of 2018, requires insurers to renew a residential insurance policy for at least two renewal periods (24 months); requires an insurer to grant an additional 12-month extension for a total of 36 months for additional living expense if an insured acting in good faith encounters a delay in the reconstruction process, subject to policy limits; allows an insured to combine payments for actual losses up to the policy limits for the primary dwelling and other structures, limited to the amount necessary to rebuild or replace the home if the policy limits for the dwelling are insufficient; and specifies that the payments for losses under this provision shall be full replacement value without requiring the replacement of the other structures.

SB 917 (Jackson), Chapter 620, Statutes of 2018, provides that if loss or damage results from a combination of perils, one of which is a landslide, mudslide, mudflow, or debris flow, an insurer shall provide coverage if an insured peril is the efficient proximate cause of the loss or damage and coverage would otherwise be provided for the insured peril; provides that this is declaratory of existing law.

AB 1772 (Aguiar-Curry), Chapter 627, Statutes of 2018, extends the minimum time limit for an insured to collect the full replacement cost of a loss related to a state of emergency to 36 months; requires an insurer to provide additional extensions of 6 months if the insured, acting in good faith and with due diligence, encounters a delay or delays in approvals or reconstruction of the home; and requires all policy forms issued or renewed by an insurer to be in compliance with these changes on or after July 1, 2019.

AB 1797 (Levine), Chapter 205, Statutes of 2018, requires an insurer that provides replacement cost residential property insurance to provide to the policyholder, every other year at the time of the offer to renew the policy, an estimate of the cost necessary to rebuild or replace the insured structure, with certain exceptions as specified; and takes effect on July 1, 2019.

AB 1799 (Levine), Chapter 69, Statutes of 2018, requires the complete copy of a residential insurance policy provided to an insured after a loss to include the full insurance policy, any endorsements to the policy, and the policy declarations page; and provides that if the request for a copy of the policy is a result of a loss in a state of emergency, the insurer may, upon the request of the insured, provide an electronic copy of the entire policy, as specified.

AB 1800 (Levine), Chapter 628, Statutes of 2018, prohibits, in the event of a total loss, a residential property insurance policy from containing a provision that limits or denies payment of building code upgrade cost or replacement cost, including extended replacement cost, to the extent those costs are otherwise covered under the policy, based on the fact the insured has chosen to rebuild or purchase a home at a new location.

AB 1875 (Wood), Chapter 629, Statutes of 2019, establishes the California Home Insurance Finder that will connect consumers who need residential property insurance with agents and brokers to help ensure they obtain plans and coverage that suit their specific needs and requires insurers to annually report the amount of extended replacement cost coverage to the Department of Insurance as specified.

AB 2229 (Wood), Chapter 75, Statutes of 2018, requires a residential property insurer to disclose any fire safety discounts it offers upon offer or renewal of a homeowner's insurance policy on or after January 1, 2020.

AB 2594 (Friedman), Chapter 639, Statutes of 2018, revises the standard form fire insurance policy to extend the statute of limitations to bring suit to 24 months after the inception of the loss if the loss is related to a state of emergency, as defined.

Concluding Thoughts

There is no "right" answer to the problem of how to provide homeowners with financial protection from catastrophic wildfire losses. Wildfires wreak tremendous personal and financial havoc on many Californians. The grim truth is that these losses will occur and the losses will be spread in varying amounts to insurers, government, homeowners generally, or individual homeowners who suffered losses. Much of that spreading will be driven by decisions we collectively arrive at regarding how insurance is priced (rate regulation) and what rules insurers must follow when deciding to offer coverage (underwriting). There is a virtually infinite number of combinations of rate making and underwriting rules, and each combination will spread these costs (both previous and future costs) differently.

To the degree we adopt policies to subsidize homeowners in high risk areas through insurance, that subsidy will be paid for by homeowners outside the high risk areas. This subsidy for homeowners in the WUI will act as any other subsidy will by tilting (ever so slightly) the economics in favor of those living in the WUI. The question of whether that subsidy is desirable and, if so, whether providing that subsidy through the mechanism of insurance is most likely to be effective, are both questions that should considered when making policy in this area.

Finding the balance between individual responsibility (i.e., paying higher premiums and buying more insurance in high risk areas) and collective protection (i.e., spreading costs and raising premiums in low fire risk areas) is an inherently subjective endeavor. Any balance found is likely to clash with other difficult and important public policy issues, such as the availability and affordability of housing, planning and land use policy, protection of property rights, environmental protection, and climate change. Legislating in an area so interconnected greatly increases the likelihood of any policy change to generate unintended consequences – for example, retaining or increasing subsidies for homeowners in high risk areas of the state will encourage continued development in places many environmentalists argue are not appropriate for this sort of development.

Policies that shift these losses, and the cost of bearing the risk of future losses, would create incentives that sometimes support and sometimes impinge on policies being pursued to address these other issues. For example, spreading the losses widely across homeowner's insurance policies and suppressing the cost of insurance in high fire-risk areas will reduce the cost of homeownership in those high risk areas, but increase it in low risk areas. While insurance is a relatively small portion of the total cost of owning a home, for those on the margins[12] an added insurance cost may be the difference between affording a home or not. Assessing how strong an incentive this might present and how it interacts with other policies being pursued regarding further development in the WUI, and the absolute need to build more housing units is a complex and nuanced task. By the same token, pursuing a policy that focuses insurance costs more strongly in high fire risk areas creates the opposite incentives with no less complex and nuanced implications. Any significant policy proposal in this area is based (implicitly or explicitly) on a series of value judgments regarding the relative priority of competing policy priorities and conceptions of fairness. It must also contend with the structural limitations imposed on the Legislature by Proposition 103, which effectively precludes passing bills governing rate setting for property/casualty insurance. There is great risk that legislating extensive new rules for underwriting alone (without compensating changes in rate making) would significantly disrupt a homeowners' insurance market that is effectively serving the great majority of California homeowners.

As noted above, it is an unpopular and uncomfortable truth that property insurance costs in California are going to rise, and this is especially true in the WUI. It follows that as the impact of this reality moves through the market, there will be disruptions and discomfort. However, until the volatility of the current market has had an opportunity to settle, it would be perilous to propose major "reforms" to a market where it is yet unclear where and to what extent it may be failing.

[12] Recent media reports have identified anecdotally home purchase transactions that have "failed" due to unexpected insurance costs. For those prospective purchasers who have "maxed out" their borrowing ratios on the premise of historical insurance costs, some may discover that they no longer qualify for a loan at the desired purchase price. However, most buyers will face a personal choice – do I "want" to buy in the WUI in light of the reality of current cost structures.

APPENDIX 2

The Uncertain Future of Auto and Home Group Insurance:

Oversight of Department of Insurance Proposed Regulations

March 11, 2020

Background

Introduction

"Any insurer may issue any insurance coverage on a group plan, ***without restriction as to the purpose of the group, occupation or type of group***. Group insurance rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan." (Insurance Code Section 1861.12, adopted by the voters via Proposition 103 in 1988, emphasis added) The two key provisions of this statute are separately highlighted because the meaning of each underlies the controversial draft regulation developed by the Department of Insurance (DOI) that is the subject of this hearing.

The first provision, ***"without restriction as to the purpose of the group, occupation or type of group"*** plainly states that the DOI may not discriminate against groups based on three criteria:

- The group's purpose
- The occupation of group members
- The type of group.

The second provision, "shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan" states in unequivocal terms that rates charged to group members are by definition NOT ***unfairly discriminatory*** as long as the rate is averaged broadly among members of the group. The phrase "unfairly discriminatory" is a somewhat arcane, and often misunderstood, insurance term of art. At its heart it does not address invidious discrimination in the sense of racial or religious discrimination, although race or religion or other protected classes do constitute unfair discrimination if used to classify insurance risks. Instead, the phrase more specifically refers to the process of risk classification, whereby insurance companies figure out who to charge more to, and who to charge less based on actuarial evidence. Among the purposes of the law requiring prior approval of insurance rates is to regulate this process to ensure fairness.

Group insurance rates proposed under this rating rule are subject to the normal "prior approval" procedure implemented by the DOI under the authority established by Proposition 103. For 30 years, the DOI has approved rates for numerous group plans on this basis. Typical plans include the AARP discount program for AARP members written by The Hartford, and the group discount program available to teachers written by California Casualty.[1] Insurers have

[1] California Casualty has a broad range of group plans that provide discounts to a variety of groups, including firefighters and EMS workers, Higher education employees (colleges), educator (K-12), peace officers, and nurses, among others. The company's business model is predicated on writing group business, and it considers its group arrangements/contracts highly proprietary.

used the plain language of the initiative statute for decades to offer discounted insurance policies (typically auto insurance and homeowners' insurance) to over 6 million Californians[2].

Notwithstanding the language in the initiative statute, the regulations that DOI is in the process of developing would likely curtail the number of group discounts currently offered by excluding insurer created groups entirely and imposing requirements on other groups that will likely reduce both the willingness to offer group policies and the size of the discounts that could be offered. These regulations could have a substantial negative impact on the ability of current group policyholders to keep the discounts that they currently enjoy. The March 11 hearing of the Assembly Insurance Committee is intended to review the basis for, and impact of, those proposed regulations.

History and rationale

In 2015, former Insurance Commissioner Dave Jones, in response to a petition filed by Consumer Watchdog, initiated a rulemaking proceeding similar to the current DOI proposal. However, in response to consumer and Legislative concerns about policyholders losing valuable discounts (see attached letter from the Assembly Insurance Committee to Commissioner Jones in appendix I), that effort was withdrawn.

Undaunted, Consumer Watchdog again filed a Petition for Rulemaking[3] shortly after Commissioner Lara took office (see attached petition in appendix 2). That petition characterized Proposition 103-authorized and Insurance Commissioner-approved group insurance plans as implementing illegal automobile insurance rating factors such as occupation and education. The implication of the petition was that group auto insurance rates as approved by the Insurance Commissioner were legally "unfairly discriminatory" (and hence illegal) by virtue of the alleged improper use of occupation or education. This argument appears to assume that the specific rating factors detailed in Section 1861.02 apply to group insurance, and that the language in the statute that states that rates "shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan" does not apply.

In accordance with the Administrative Procedures Act, Commissioner Lara declined the petition, and instead initiated a fact-finding process that included a voluntary insurer data call to gather information about group insurance plans.

Based on the information gathered, the DOI appears to have drawn several conclusions using the geographic data of policyholders who participate in group plans and those who do not.[4] In broad terms, the DOI appears to interpret that data as indicating that policyholders who reside in lower income or minority population zip codes tend to have lower participation in group plans than policyholders in higher income or higher educational correlation zip codes.

[2] Precise numbers are difficult to obtain, but reasonable interpretations of the data gathered by the DOI suggest that 6 million is a conservative number.

[3] The Administrative Procedures Act provides for a mechanism for the public to petition any state agency to adopt regulations within that agency's scope of authority. See the petition attached in appendix II.

[4] Documents that summarize the data gathered and relied upon by DOI can be found at http://www.insurance.ca.gov/0400-news/0200-studies-reports/.

According to the DOI, it attempted to survey 95 insurers comprising 95% of the private passenger automobile insurance market, but succeeded in obtaining data from only 33 insurers comprising 62% of the market. Nonetheless, the data collected is probably statistically adequate to draw generalized conclusions.

Insurers have raised concerns with some of the conclusions reached by DOI based on the data call, but their primary objection is that the regulation, even assuming the validity of DOI's conclusions, does nothing to address expanding access to group programs for the drivers who DOI has identified as being underrepresented in group plans.

The proposed DOI regulation

The regulation being proposed by DOI (see appendix 3) has several components.[5] The key proposal of the regulation is a definition of "group" for purposes of approving group insurance rating plans. The proposed regulation *restricts* what groups are acceptable. Specifically, to qualify as a group *under the proposed regulation* the group would have to charge dues or require its members to periodically renew their membership, and exist before any interaction with an insurer or broker/agent licensed by the DOI. Thus a group created or proposed by an insurer, or any individuals who approach an insurer to ascertain if the creation of a group might be beneficial, would appear to be prohibited by the proposed regulation. Many group plans currently approved by the Insurance Commissioner and providing benefits to Californians are of this "insurer created" type and would become unlawful if the regulation is ultimately adopted.

The proposed regulation includes a number of provisions that mandate that certain documents must be public records. The proposed regulation prohibits unwritten agreements between groups and insurers, and then provides that all of these documents must be public records.

With respect to private passenger automobile insurance[6], Proposition 103 establishes 3 mandatory rating factors (driving safety record, miles driven, and driving experience) and authorizes the DOI to adopt additional rating factors that are determined to have actuarial relevance. The proposed regulation adds group membership as one of these optional rating factors. This raises the potential that the value of group discounts may be reduced even for groups that qualify under the proposed regulation, and poses a potential legal issue.

The proposed regulation also restates without additional clarification the statutory rule that the Unruh Civil Rights Act applies to group insurance.

Finally, the regulation imposes substantial data reporting and related requirements. While the DOI has authority to require data to be provided by its licensees – particularly if it adopts a valid regulation based on express or implied statutory authority – concerns have been raised by some group policyholders that the proposed regulation's requirements are so burdensome and impractical to comply with that insurers will determine that the additional costs exceed the benefits, and conclude that maintaining the group discount program no longer makes sense.

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[5] The full text of the proposed regulation is attached to this Background paper.

[6] According to a DOI press release, the proposed regulations apply to automobile insurance. In fact, there is no "auto insurance-only" limitation, and many group programs also include homeowners' insurance.

Policy considerations

1. *Does the proposed regulation address the problem identified by DOI?*

   The problem identified by the DOI appears to be the concern that low-income and minority drivers are underrepresented in group plans. To the extent that the data supports this conclusion, the proposed regulation does nothing to address the issue. Instead of identifying ways to achieve greater participation by those drivers not already in group plans, the proposed regulation operates to overtly deprive a broad range of drivers of their existing group discount plans (so-called insurer-created groups), and creates burdens and obstacles that may indirectly deprive others of their discount. The ban on insurer-created groups would have the effect of depriving millions of drivers of their discount plans.

   But groups that would satisfy the proposed regulation's definition have also objected that it threatens their members' access to the group discount. They raise several points:

   First, many group policyholders object to the proposed requirement that their agreement with the insurer be made public. This is a separate objection from the insurers' concerns that these agreements are proprietary and would place them at a competitive disadvantage if their competitors could copy their business strategies. The groups believe that their arrangements on behalf of their members are not a public concern. And in light of the insurers' proprietary concerns, they fear a withdrawal by insurers from group discount business as a result of this public disclosure mandate.

   Second, groups fear that cost/benefit factors will also cause insurers to withdraw from the group discount business. There are a couple of reasons. The data collection, record keeping and related administrative costs will cause insurers to re-evaluate their willingness to stay in the group market. In addition, groups are concerned that the provision that makes group status one of the numerous optional rating factors (discussed in more detail, below) will diminish the value of the discount so much that insurers would conclude the group market is not worth it.

   In a broad sense, insurers and groups wonder why a DOI concern that not enough people get group discounts is being addressed by a proposal that reduces the number and size of group discounts.

2. *Is the proposed definition of "group" lawful?*

   The Administrative Procedures Act allows state agencies to adopt regulations that clarify or implement statutes. However, a regulation cannot conflict with a statute, because statutory law adopted either by the Legislature or the voters is superior to a regulation. The issue presented by the proposed regulation is whether the DOI's definition of "group" conflicts with the initiative statute.

   The primary argument that the definition violates the statute involves insurer-created groups. It is difficult to understand how a ban on these groups can be reconciled with the statute that provides "without restriction as to the purpose . . . or type of group." Insurer-created groups can be viewed as a "type" of group. They can be viewed as a group created for the “purpose” of obtaining a discount. On its face, the proposed definition expressly restricts what type or purpose groups can be by detailing which groups may obtain benefits and which may not. While there may be policy arguments about what the statute *should* include, in fact it is drafted extremely broadly as to preclude the very limitations the DOI is proposing. In addition, the definition would also prevent groups that are not insurer-created, such as lifetime membership groups or other associational arrangements that do not meet the criteria of the proposed regulation’s definition. Again, these banned groups would argue that the definition violates the “without restriction” language of the statute.

Insurers have argued that the prohibited insurer-created groups in fact serve to include many of the drivers the DOI is concerned about. As an example, one insurer provides a group discount program based on the occupation of “secretary.” This program is not a secretary union plan, as any person who qualifies in the occupation, and meets the other underwriting criteria, is eligible. This insurer and its policyholders argue strenuously that their “type of group” is lawful under the “without restriction” language in the statute, and that secretaries generally are lower income employees who are not organized in unions or associations and may not have any other access to a discount group program. Secretaries are but one example of lower wage service workers who are not likely to be in unions or associations. By eliminating insurer-created occupational groups, the proposed regulation may be harming the very population it is theoretically intended to assist.

There is also a concern about application of the group definition in the context of homeowners’ insurance. It is difficult to understand why it is a sound policy to curb group discounts in a homeowners’ insurance market that is already challenging for many homeowners. It does not appear that either the industry or the DOI has examined the implications in the homeowners’ insurance market, and perhaps a more careful review of this issue should be undertaken before taking actions with uncertain consequences.

3. *Does reducing group status to a mere optional rating factor comport with the language of the initiative statute?*

   As noted above, private passenger automobile insurance policies generally must be rated based on 3 specific statutory factors, plus additional “optional” factors that the Insurance Commissioner is empowered to establish (Section 1861.02). The proposed regulation changes the way current group rates are calculated by making group status one of the optional rating factors. Group rates as currently approved by the Commissioner apply the 1861.02 factors within the group to determine which group members pay how much (i.e., the riskier group members pay more than the less risky). By changing the current approach and making group status merely one of the optional rating factors, it is highly probable that the amount of discount available to group members will be reduced.

   A short note on private passenger automobile insurance rating factors is in order. Under Proposition 103, all property/casualty insurance rates are subject to a “prior approval” requirement. That is, an insurance company cannot sell property/casualty insurance unless and until its “rates” have been formally approved by the Insurance Commissioner (“rate” is commonly understood to be “premium” although technically rate and premium are different things – think of “rate” as the average cost, with “premium” being the particular price for a given policy determined by plusses and minuses by applying rating factors). However, with respect to personal automobile insurance, there are a number of rules, both in statute and DOI regulations, that apply in addition to the basic "prior approval" rule.

Proposition 103 includes 3 "mandatory" rating factors for personal automobile insurance. These are the primary means by which insurers determine who pays how much. The mandatory factors are found in Insurance Code Section 1861.02, and they are 1) the insured's driving safety record, 2) the number of miles he or she drives annually, and 3) the number of years of driving experience the insured driver has had.

Proposition 103 also authorizes the Insurance Commissioner to adopt other so-called "optional" rating factors that have proven relevance to the risk of loss. Currently there are 15 optional factors. With respect to these optional factors, the initiative statute requires the Commissioner to determine the "weight" to be assigned to these factors.

The weight of a rating factor is essentially a measure of how much influence a particular factor can have on the overall premium paid by a particular driver. Based on regulations adopted several years ago, the sum total of all of the optional rating factors cannot have more "weight" than the third mandatory rating factor. This makes any individual optional factor a relatively minor contributor to the overall premium that any driver pays.

As relevant here, the proposed regulation would change the way group rates are calculated. Ignoring the specific "broadly averaged" rating rule in the Insurance Code Section that specifically addresses group insurance, the proposed regulation would make group membership merely one of these optional rating factors. While it would take a sophisticated actuarial analysis to pinpoint the precise extent of this change, this proposed regulation would make group discounts smaller.

According to Consumer Watchdog, which initially raised this issue in its petition for rulemaking, group insurance plans as currently approved by the Commissioner in effect use education and occupation as illegal (optional) rating factors. This argument contains an underlying assumption that the law requires these factors to be the sole basis of group rating.

It is not clear that the initiative statute requires use of these rating factors in the group context, despite the fact that DOI has in the past required that they be used within a group. However, by placing a "group" factor within these optional factors, the proposed regulation may improperly suppress the intended value to consumers attempting to obtain group discounts.

A short note on statutory construction is in order. There are rules that are commonly applied by courts for interpreting the choice of words used in statutes, whether they are legislative statutes or initiative statutes. One of these rules is that where different words are used with respect to a particular issue, a different meaning is intended. Of primary concern here is that the proposed regulation attempts to mandate one set of rating rules (the Section 1861.02 factors) when the initiative statute expressly provides for a different standard for group insurance (the Section 1861.12 "averaged broadly" standard). Specifically, if the initiative drafters had wanted the 1861.02 factors to apply to group insurance, it would have been a simple matter when drafting Section 1861.12 to cross reference Section 1861.02. But that is not how the initiative was drafted. An entirely different rating method was prescribed for group insurance, requiring that "rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan." Whatever this phrase precisely means, it is difficult to argue that it must mean "the 1861.02 factors" because that could have been easily drafted. If the effect of the proposed regulation's requirement that "group" is a mere Section 1861.02 factor is to diminish the amount of group discounts, it can be argued that the regulation violates the "broadly averaged" standard that the statute establishes. Insurers and policyholders have expressed concerns that this part of the regulation will limit the scope of discounts, even for those drivers who continue to qualify under the proposed regulation.

4. *Can rates be "unfairly discriminatory" when they are expressly defined as not unfairly discriminatory?*

   As noted above, the phrase "unfairly discriminatory" is a somewhat arcane, and often misunderstood, insurance term of art that does not address invidious discrimination in the sense of racial or religious discrimination, although race or religion or other protected classes do constitute unfair discrimination if used to classify insurance risks. The phrase more specifically refers to the process of risk classification, whereby insurance companies figure out who to charge more to, and who to charge less to. The law regulates this process to ensure fairness. While the phrase can be generally applied to all insurance rates, it has a special application to personal automobile insurance. In that narrow application, the mandatory and optional rating factors of Section 1861.02 define "unfair discrimination." The problem in the group insurance context is that the same initiative that applied the Section 1861.02 factors to personal auto insurance adopted a *different* rule for the group context. Thus, so long as the rates are broadly averaged within the group, they cannot be deemed unfairly discriminatory, and therefore illegal. Both the Consumer Watchdog petition and the proposed regulations fail to address this statutory distinction, and appear to presume that it does not exist.

5. *What is the effect of the proposed regulation's references to the Unruh Civil Rights Act?*

   The proposed regulation appears to attempt to overcome these apparent conflicts with the existing initiative statute by referencing the Unruh Civil Rights Act. A separate provision of Proposition 103 expressly applies the Unruh Act to the business of insurance (Section 1861.03). In a preamble to the proposed regulation titled "Overview" – a provision that looks similar to an uncodified set of legislative findings or declarations – the proposed regulation restates the statutory language discussed above, and then states the obvious fact that the Unruh Act applies to group insurance. What is not obvious is how that statement is intended to apply in the group context. For example, there are numerous black fraternities and sororities with both active and alumni membership that participate in group plans. There are numerous ethnic chambers of commerce and other ethnic business and professional associations that participate in group plans. Would the Unruh Act language mean that providing a group plan to these groups would be a violation of the law? Would the non-discrimination language impact the associational rights of these groups? Would these groups be required to become part of a larger educational or business group? Does it mean that the "rates shall not be considered unfairly discriminatory if broadly averaged" statutory language adopted by the same initiative doesn't actually mean what it says? The language of the proposed regulation is entirely unclear on this issue.

It is also unclear how the Unruh Act is implicated, based on the DOI data. Read in a manner most favorable to the DOI's conclusions, there is a disparate impact on certain communities with respect to participation is group insurance plans. There has been no evidence presented that there is any discriminatory intent to exclude any group from participation in group plans. But the Unruh Act is not a disparate impact law; rather, it prohibits use of the suspect classifications to discriminate.