SENATE COMMITTEE ON INSURANCE

2017 – 2018 LEGISLATIVE SUMMARY

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LEGISLATIVE MEASURES

AUTOMOTIVE

BILLS NOT SENT TO THE GOVERNOR

AB 1698 (Daly) Died in the Assembly Transportation Committee, Concurrence Pending

As heard by the Insurance Committee, would have made technical changes to the statutes governing the California Low-cost Automobile Insurance Program. The bill was amended and passed to the Assembly where it was referred to the Transportation Committee. As amended, the bill would have eliminated the prohibition on the Department of Motor Vehicles from assessing a point on a driver's license when convicted of a violation of operating a handheld wireless or communication device while driving.

AB 2276 (Burke) Died on Senate Inactive File

Would have created a statutory methodology for insurers to use in surveying auto body repair shops to determine the prevailing auto body repair labor rate in a particular geographic area, as specified.

DEPARTMENT OF INSURANCE

BILLS SIGNED INTO LAW

SB 788 (Lara), Chapter 487, Statutes of 2017

Permits an individual applying for, or a licensee renewing, certain types of insurance licenses to submit an individual taxpayer identification number in lieu of a Social Security number; also restricts the sharing of sensitive information collected during the application process.

AB 1699 (Assembly Insurance Committee) Chapter 534, Statutes of 2017

Updates statutory fee amounts to reflect actual fees charged by the Department of Insurance and makes minor, noncontroversial changes to the Insurance Code.

BILLS NOT SENT TO THE GOVERNOR

SB 488 (Bradford) Held in Assembly Appropriations Committee

Would have required large insurers to submit reports on the diversity of their board of directors, as well as efforts to increase diversity; added lesbian, gay, bisexual, and transgender-owned and veteran-owned businesses to the list of business enterprises for which insurers must report their efforts related to procurement activity; and extended the sunset on existing reporting on supplier diversity from 2019 to 2025.

HOMEOWNERS/PROPERTY/ CALIFORNIA EARTHQUAKE AUTHORITY

BILLS SIGNED INTO LAW

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 569 (Monning) Chapter 361, Statutes of 2017

Provides a mechanism for the Department of Insurance to assist a property owner, or the property owner's legal representative, to identify the insurer of a property located in a declared disaster area when the property owner is unable to identify the policy number or name of the issuing insurer.

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 Department of Insurance specified fire risk information on residential property policies, as specified.

SB 894 (Dodd) Chapter 618, Statutes of 2018

After a total loss of a home in a declared disaster area, (1) requires an insurer to renew a residential insurance policy for at least two annual renewal periods or 24 months, whichever is greater, as specified; (2) 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 and with reasonable due diligence encounters a delay in the reconstruction process, subject to policy limits; (3) 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 (4) 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.

SB 1263 (Portantino) Chapter 609, Statutes of 2018

As introduced, this bill would have required an insurer to increase the policy limits, as specified, of a residential property insurance policy by an amount equal to 50% of the policy limits if an insured has suffered a loss relating to a declared state of emergency; and would have specified that the 50% increase is in addition to applicable guaranteed replacement cost coverage. The bill was amended and re-referred to the Environmental Quality Committee. As enacted, the bill requires, on or before December 31, 2024, the Ocean Protection Council, in collaboration with specified entities, to adopt and implement a Statewide Microplastics Strategy and authorizes those entities to enter into contracts with marine research institutes for the provision of research services that would contribute directly to the development of the Statewide Microplastics Strategy.

AB 407 (Bigelow) Chapter 190, Statutes of 2017

Authorizes a fraternal fire insurer to offer liability coverage in conjunction with a fire insurance policy.

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 2018

Requires the Insurance Commissioner to establish the California Home Insurance Finder (Finder) on the California Department of Insurance (CDI) Web site by July 1, 2020, as specified; requires the CDI to annually survey licensed insurance agents, brokers and admitted insurers regarding inclusion on the Finder, with names, addresses, phone numbers and Internet website links, if any, of the licensed insurance agents and brokers, and admitted insurers that request inclusion on the Finder, aggregated by ZIP Code and by the languages in which the agent, broker or insurer transacts insurance; requires, on or after July 1, 2020, an insurer to provide to an applicant who is denied coverage, or to a policyholder whose policy is canceled or not renewed, information regarding the Finder, and allows the insurer to combine this disclosure with a disclosure regarding information about the Fair Access to Insurance Requirements Plan; requires, on or after July 1, 2020, upon offer of a policy of residential property insurance a disclosure to be provided to the applicant that policies from other insurers offering extended replacement cost coverage of at least 50% may be available for that property, as specified; requires the insurer, agent or broker to include the Website address of the CDI Homeowners Coverage Comparison (HCC) tool in the disclosure; requires insurers to annually notify the CDI the amount of extended replacement cost coverage offered for each policy or product sold in the state if it is different than what was reported the previous year and requires the CDI to annually update the HCC with that information.

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 homeowners' 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; and includes an urgency clause to provide protections for victims of future wildfires as soon as possible.

AB 2927 (Nazarian) Chapter 828, Statutes of 2018

Revises and recasts the California Earthquake Authority's authority to sell revenue bonds or secure other debt financing of no more than $1 billion if claims and claim expenses incurred following an earthquake exhaust its available capital, the maximum amount of any insurer contributions or assessments, all reinsurance actually available and under contract, and any other risk transfer provided through capital market contracts, and specifies that the costs of issuance and sale of those revenue bonds are in addition to the $1 billion, and not deducted from the proceeds, as specified.

BILLS NOT SENT TO THE GOVERNOR

SB 897 (McGuire) Died on Senate Inactive File

Would have required additional living expense coverage (ALE) to include all reasonable expenses incurred by the insured to maintain a comparable standard of living following a covered loss; in the case of a total loss that is a result of a state of emergency, would have required an insurer to provide an advance payment of no less than four months of ALE or fair rental value, to make an initial advance payment of no less than 25% of the policy limit for a claim for contents related to a total loss of a primary residence without completion of an inventory, to offer no less than 80% of the policy limits for contents without requiring the insured to file an itemized claim, and prohibited an insurer in the case of a claim for contents from requiring the use of a company-specific inventory form, as specified; would have required insurers, in the event of a state of emergency, to grant a 30-day grace period for payment of premiums for all homeowners' policies covering properties within the affected area; and would have made specified provisions retroactive for any claim filed after July 1, 2017, but not submitted by January 1, 2019.

SB 1291 (Dodd) Held in Senate Appropriations Committee

Would have made comprehensive revisions to the licensing law applicable to independent insurance adjusters that adjust property and casualty claims.

LIFE AND DISABILITY

BILLS SIGNED INTO LAW

SB 1046 (Roth) Chapter 352, Statutes of 2018

Enhances the consumer protections that apply to long-term care insurance policies when policyholders reduce their coverage.

SB 1248 (Gaines) Chapter 565, Statutes of 2018

Permits the Department of Health Care Services to certify a California Partnership for Long-Term Care policy ("Partnership policy") with a reduced per diem benefit of at least $100 per day for a nursing facility, residential care facility, and home care and community-based services, if the policy provides a lifetime maximum benefit of not less than $73,000; permits an insurer to offer a Partnership policy with these reduced benefits only if the insurer also offers the applicant policy with benefits that comply with existing regulations; and requires insurers and agents to provide an illustration of the differences in benefits between the Partnership policies described in this bill and those offered in existing regulations, as well as the advantages and disadvantages of each option.

AB 1373 (Daly) Chapter 425, Statutes of 2018

Authorizes insurers to allow former employees to remain on an employer's group life insurance policy.

AB 1398 (Kalra) Chapter 228, Statutes of 2017

Requires insurers, upon surrender of an individual annuity contract, to return all moneys owed as expeditiously as possible, but no later than 45 days from the date of surrender, as specified.

AB 2180 (Kalra) Chapter 98, Statutes of 2018

Clarifies statutes governing long-term care insurance policies and life insurance policies that include an accelerated death benefit feature.

AB 2395 (Calderon) Chapter 651, Statutes of 2018

Authorizes the California Life and Health Insurance Guarantee Association to request approval for actuarially justified rate increases for covered policies and increases the financial surveillance of long-term care insurers.

AB 2634 (Chau) Chapter 545, Statutes of 2018

Requires an insurer to provide a 90-day notice to the owner of a flexible premium life insurance policy prior to an increase in the cost of insurance or administrative charge and to provide an illustration or illustrations showing the impact on the policy values and necessary premium payments before and after the increase.

BILLS NOT SENT TO THE GOVERNOR

SB 255 (Mendoza) Held in Assembly Insurance Committee

Would have clarified the type of coverage provided in a new form of long-term care insurance offered through the Partnership for Long-Term Care Program.

SB 425 (Mendoza) Held in Senate Appropriations Committee

Would have authorized the Department of Insurance to develop and publish an expedited life and disability policy form approval process.

WORKERS' COMPENSATION

BILLS SIGNED INTO LAW

SB 272 (Mendoza) Chapter 539, Statutes of 2017

Allows the State Compensation Insurance Fund board of directors (board) to appoint a chief underwriting officer, executive vice president of corporate claims, executive vice president of strategic planning and pricing actuary as positions exempt from civil service requirements, as specified; requires the board to set the salary amounts for these positions in amounts that are reasonably necessary to attract and retain individuals of superior qualifications; requires the board to submit its salary-setting criteria to the Department of Human Resources; and requires the board to submit a biennial report to the legislative committees with jurisdiction over insurance containing salary setting criteria and the salary and total compensation of each position filled.

AB 2046 (Daly) Chapter 709, Statutes of 2018

Requires data sharing between governmental agencies involved in combatting workers' compensation fraud and grants the Fraud Assessment Commission discretion to augment an assessment with unused funds from a prior year's assessment.

MISCELLANEOUS

BILLS SIGNED INTO LAW

SB 261 (Roth) Chapter 836, Statutes of 2018

As heard by the Insurance Committee, would have established standards and procedures applicable to electronic copies of reports or studies required by the Insurance Code that are submitted directly to legislative committees. The bill was subsequently amended in the Assembly to provide that a homeowner association (HOA) in a common interest development may provide a document by electronic means if the recipient has consented by email and reduces the notice requirement of a proposed rule change by the HOA board from 30 days to 28 days.

SB 430 (Senate Committee on Insurance) Chapter 268, Statutes of 2017

Allows the California Insurance Guarantee Association, with the approval of the Insurance Commissioner (IC), to reinsure with, or transfer liabilities to, a California licensed reinsurer or other reinsurer approved by the IC.

AB 938 (Cooley) Chapter 202, Statutes of 2017

Authorizes the Insurance Commissioner to adopt regulations applicable to reinsurance arrangements relating to the valuation of assets or reserve credits, the amount or value of securities, and the extent to which credit will be reduced or eliminated for life insurance policies, long-term care insurance policies, and annuities, as specified.

AB 1641 (Daly) Chapter 477, Statutes of 2017

Authorizes the Insurance Commissioner to add coverage for new, innovative products for which a reasonable or adequate market among admitted insurers has not had time to develop to the export list allowing surplus line brokers to sell policies from a non-admitted insurer without fulfilling a diligent search requirement among admitted insurers; and deems any member of the National Association of Registered Agents and Brokers licensed as a surplus line broker in his or her home state and paying the applicable California license fee to be a member of the California's surplus line advisory organization, the Surplus Line Association.

AB 1696 (Assembly Insurance Committee) Chapter 417, Statutes of 2017

Makes minor or non-controversial changes to the law related to insurance.

AB 2045 (Assembly Insurance Committee) Chapter 231, Statutes of 2018

Makes minor or non-controversial changes to the law related to insurance.

AB 2142 (Bigelow) Chapter 431, Statutes of 2018

Authorizes the Insurance Commissioner to delay a routine financial exam of a home protection company up to two years if conditions warrant the delay.

AB 2802 (Friedman) Chapter 439, Statutes of 2018

Establishes the Insurance Intercept Payment Program and requires insurers to cooperate with the Department of Child Support Services to identify insurance claimants who are also obligors who owe past due child support, as specified.

AB 2844 (Cooley) Chapter 879, Statutes of 2018

Establishes a rebuttable presumption affecting the burden of production that a commission payable to an insurance broker-agent is lawful if the commission complies with three Insurance Code provisions.

BILLS NOT SENT TO THE GOVERNOR

SB 325 (Mendoza) Held in Assembly Banking and Finance Committee

As heard by the Insurance Committee, would have extended the repeal dates of provisions that govern the publication of insurer investments reported to the Community Organized Investment Network and the provisions that govern the Community Development Financial Institution tax credit. The bill was amended in the Assembly Banking and Finance Committee so that it would have made changes to the Pilot Program for Increased Access to Responsible Small Dollar Loans contained within the California Finance Lenders Law.

SB 898 (Hertberg) Held in Assembly Insurance Committee

Would have required bail agents to translate their contracts into five non-English languages and required them to post the English version and translations online; and would have required bail agents and bail companies to submit specified information and documents to the California Department of Insurance, Judicial Council, and Attorney General.

INFORMATIONAL HEARINGS

March 8, 2017: "Autonomous Vehicles and Auto Insurance in California: How Will Consumers Be Protected?"

In 2015, there were 6.3 million automobile crashes on U.S. roads, injuring 2.4 million people, and killing 35,092, a seven percent increase over 2014. Despite design innovations making cars safer than ever, it was the largest jump in 50 years. Driver deaths rose another 6 percent in 2016, topping 40,000 for the first time since 2007. Driver behavior is the primary culprit for the rising fatalities and crashes overall, including texting while driving and drunken driving.

Highly autonomous vehicles (HAV), vehicles with no steering wheel, brakes or driver, are predicted to eventually reduce the number and overall cost of crashes, and the cost of automobile insurance premiums. Some believe that the very need for specialized automobile insurance may disappear entirely, with injuries that result from automobile crashes covered by health insurance or homeowners' liability insurance, in the way that bicycle crashes or other crashes are now covered.[1] Others propose schemes such as no-fault insurance or various forms of manufacturer based liability. Still others believe holding vehicle makers accountable for crashes will be the only way to guarantee that humans and governments do not end up footing the bill for collisions over which they have no control. They argue a strict liability system would ensure manufacturers have an incentive to make their vehicles as safe as possible while giving victims meaningful access to justice.

California's unique automobile insurance statutes[2] currently provide a very detailed and mandatory structure for setting auto insurance rates based primarily on the driver's safety record, years of driving experience and miles driven annually. Although other factors approved by the Insurance Commissioner are allowed to be considered in setting rates, they cannot carry more weight than the primary factors. It is not clear how, or if this structure can be used to set insurance rates for fully automated vehicles where the "driver" is a computer program. Although the design and safety features of HAVs are likely to be determined at the federal level, federal guidance has explicitly stated that insurance will remain the province of states. It will be up to each state to ensure that the process of determining who bears responsibility for damages as a result of a crash remains relatively seamless. Definitive answers about what form of insurance will take for HAVs are unlikely at this point, but questions asked at the hearing included:

- If there is no human driver, who is at fault/liable in the event of a crash or other traffic incident involving the vehicle? If the other car has a driver? If neither has a driver?
- Will new insurance products be required for vehicles not anticipated at the time current statutes were enacted? How will insurance rates be determined?
- How will insurance rates be affected during the transition phase—with some fully autonomous vehicles operating simultaneously with large numbers of driver controlled vehicles? Will the higher cost of repairs offset a decline in crashes and increased in safety? How much will crashes have to decline to actually result in a significant reduction

[1] Autonomous Vehicle Technology: A Guide for Policymakers, The Rand Corporation 2016
[2] Enacted by initiative as Proposition 103 (1988), The Insurance Rate Reduction and Reform Act

in premiums?

- How will widespread adoption of fully autonomous vehicles affect the insurance industry if premiums decline significantly?
- Who will control the vast data collected by HAVs and how will it be used?
- Who bears responsibility if a vehicle's control system is hacked?

In general, findings of the hearing included that any early deployment of autonomous vehicles is likely to be limited to fleet services utilizing commercial insurance products; insurers are generally not prepared for a significant roll-out of autonomous vehicles in the private individual market; and the courts will play a significant role in determining apportionment of liability for many years.

March 20, 2018 Joint hearing with the Joint Legislative Committee on Emergency Management: "Drought, Climate Change and Fire: How is the California Homeowners' Insurance Market Responding?"

The Senate Committee on Insurance held an informational hearing on March 9, 2016 titled "Preparing for Global Warming and Drought: State of the Homeowners' Insurance Market." That hearing generally found that the homeowners' insurance market had not yet suffered significant disruption as a result of the ongoing drought, despite serious fires the preceding year in Lake, Sonoma, Napa and Butte counties. At the time, the Valley fire of 2015, which caused at least $1.5 billion in damage and killed four people, was the third most destructive wildfire in the State's history based on the number of structures lost (2,000 structures and 1,300 homes), and fifth costliest based on insured losses of approximately $1 billion. In 2017, however, California experienced the largest and most destructive wildfire season in its history. Nearly 9,000 wildfires tore through the state, burning 1.2 million acres of land, destroying more than 10,800 structures—more than the previous nine years combined—and killing at least 46 people. In addition, mudslides following and resulting from the Thomas fire in Santa Barbara County destroyed or damaged more than 400 homes and killed at least another 21. Insured fire losses for 2017 exceed $11 billion. The National Interagency Fire Center's Predictive Outlook for 2018 for the first time is forecasting above normal large fire potential due to the persistence of dry fuels, frequent offshore winds and generally unfavorable weather. Assumptions about urban areas previously not thought subject to extreme fire risk such as Santa Rosa are now open to reexamination. As a result, some homeowners are facing rapidly rising premiums, non-renewal or cancellation of their policies, and greater difficulty in obtaining homeowners' insurance coverage.

The intent of this hearing was to examine the current state of the residential insurance market, whether homeowners are adequately insured against the growing threat of major fires, the impact of rising premiums on existing homeowners and the real estate market, and whether the Fair Access to Insurance Requirements Plan (FAIR Plan) and the surplus line market are able to fill gaps in the homeowners' insurance market. Despite the recent fires, the hearing generally found that insurance remains available in much of the state, although risk and prices are rising. More data collection is needed to fully assess the health of the homeowners' insurance market in California's highest wildfire risk areas. Legislation enacted this year (SB 824 Lara, Chapter 616, Statutes of 2018) gives the Insurance Commissioner authority to collect such data.

October 30, 2018, 2018 Joint hearing with the Assembly Insurance Committee: "Wildfires and Insurance: Recovery of Impacted Communities"

The October 2017 fires resulted in 35,466 claims worth over $10.4 billion. The Atlas, Tubbs, and Nuns fire alone destroyed almost 8,000 structures. Affected areas, including unincorporated Napa and Sonoma Counties, as well as neighborhoods in the City of Santa Rosa, have had different levels of success in recovering from these fires. Building costs skyrocketed and compromised infrastructure and a shortage of local builders have delayed progress. All the while, insurers struggled to process an avalanche of claims.

Standard homeowner's insurance coverage is designed to cover rebuilding costs when a single home or a few homes are lost. Many policies include extended replacement cost coverage that provides some flexibility, but the additional coverage may still be inadequate when construction costs increase dramatically.

According to research published as part of California's Fourth Climate Change Assessment, the average numbers of acres burned annually in some parts of California will double by midcentury. However, homeowners in the high-risk areas studied often purchase less coverage, a trend that will likely worsen as insurance rates increase. According to the research, insurance rates in some high-risk areas are anticipated to increase by 18% by 2055 and insurance-to-value ratios are expected to drop by 6.5%.

On October 30, 2018, almost a year after the 2017 wildfires, the committee held an informational hearing to examine the recovery progress of impacted communities and insurance-related issues may have affected those efforts. The intent of this hearing was to consider whether standard replacement cost policies provide consumers with the resources needed to rebuild their lives after a disaster and identify potential roadblocks that limit the responsiveness in the rebuilding process. Since large-scale events are becoming more common, the hearing specifically targeted the issue of whether the coverage provided by a standard replacement cost policy meets the current needs of homeowners facing increasing large-scale wildfire events.

The hearing found that some consumers have had difficulty negotiating with insurers, especially when there was frequent turnover of adjusters assigned to the claim or insurers relied on questionable construction cost information, situations likely to occur after an event resulting in a large number of losses. Additionally, the hearing found that many homeowners have inadequate protection against a catastrophic event, although some testimony suggested that practices such as establishing limits according to a robust replacement cost value and adding higher levels of extended replacement cost coverage to the policy can help avoid underinsurance problems.