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9 BEFORE THE INSURANCE COMMISSIONER
10 FOR THE STATE OF CALIFORNIA

11 In the Matter of the Proposed Regulations) Regulation File No. REG-2010-00001
12 on Standards and Training for Estimating)
Replacement Value on Homeowners')
13 Insurance) Date of Hearing: May 17, 2010
14)
15) COMMENTS AND OBJECTIONS
TO PROPOSED REGULATIONS
16)

17 On April 2, 2010, the California Department of Insurance (“Department”) issued a Notice
18 of Proposed Action (the “Notice”) and an Initial Statement of Reasons, pursuant to which the
19 Insurance Commissioner (“Commissioner”) proposed to adopt regulations regarding fire and
20 casualty broker-agents’ duties to ensure the accuracy of homeowners’ insurance replacement value
21 estimates (the “Proposed Regulations”). The Notice permits written comments to be submitted no
22 later than 5:00 p.m. on May 17, 2004, with a public hearing scheduled for 10:00am that same day.
23

24 These written comments set forth legal and policy objections to the Proposed
25 Regulations. During our testimony at the May 17th public hearing, we suggested that the
26 Commissioner reconsider and withdraw the Proposed Regulations.
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A. Background of Interested Persons Opposing the Regulation

Insurance Agents and Brokers Association of California (the “Association”) is a non-profit trade association dedicated to protecting the rights of licensed property and casualty producers, both independent and captive.

B. Summary of the Regulations

The Proposed Regulations affect the duties of California producers in selling and soliciting homeowners’ insurance and would do the following:

- Add new § 2188.65 to the California Code of Regulations (“CCR”);
- Amend existing § 2190.2 of the CCR;
- Amend existing § 2190.3 of the CCR; and
- Add new Article 1.3 to the CCR.

The Proposed Regulations (a) set forth additional education requirements for fire and casualty broker-agents and personal-lines broker-agents (referred to herein simply as “producers” or “licensees”); (b) impose onerous record maintenance requirements on such producers; and (c) make it the legal obligation of the producers to ensure that new standards for providing estimates of replacement or construction costs are met in each insurance transaction. The amendments to §§ 2190.2 and 2190.3 conform existing regulations to the proposed new records maintenance requirements added by Proposed Regulation § 2695.182.

Training. Proposed new § 2188.65 would require resident producers to take one 3-hour training course on homeowners’ insurance valuation. Subsection (d) of that proposed provisions sets forth details of what topics the course must include.

Records Maintenance. Under the Proposed Regulation, any licensee who provides an estimate of replacement cost or construction cost to an applicant or insured would be required to document and maintain in its files specified information including the source from or method by which the value was determined and a copy of any reports or other documents used to estimate the

1 value. *See Proposed § 2695.182.* Licensees are further required to keep records of any information
2 supplied by the applicant/insured that is used to generate the estimate and a copy of the estimate
3 given to the applicant/insured. *See Proposed § 2695.183(i).* All of the listed information must be
4 kept for the later of the term of the policy or the duration of coverage plus 5 years thereafter.
5 Licensees are also required to keep this information *even if the estimate is provided to an applicant*
6 *to whom a policy was never issued* – in such cases, the documents must be maintained for 3 years
7 following the time the estimate is generated.

8
9 *Standards for Replacement or Construction Cost Estimates.* Proposed § 2695.183
10 provides that no insurance licensee can provide an estimate of replacement cost or can rely on an
11 estimate of replacement cost in connection with setting or recommending a homeowners' policy
12 limit unless the requirements of subdivision (a) through (e) of that regulation are met. Briefly, those
13 subdivisions provide:

- 14 (a) The estimate must include all expenses that would reasonably be incurred to rebuild
15 the insured structure in its entirety including the specific information listed at §
16 2695.183(a).
17 (b) The estimate must be based on an estimate of the cost to rebuild or replace the
18 structure taking into account the cost to reconstruct the single property (as opposed
19 to the cost to build multiple or tract properties).
20 (c) The estimate must not be based on the resale value of the land or the amount or
21 outstanding balance of any loan.
22 (d) The estimate must not include deduction for physical depreciation.
23 (e) A licensee that estimates replacement cost (or relies on the estimate of another)
24 “shall take reasonable steps to verify that the sources and methods used to estimate
25 replacement cost are kept current to reflect changes in the cost of reconstruction and
26 rebuilding ...”

27 The regulations prohibit the consideration of “demand surges” that may occur after major events
28 such as an earthquake or wildfire. Demand surge is defined as “a phenomenon characterized by a
substantial increase in the cost of construction due to unusually high demand for contractors,
building supplies and construction labor.” The producer must inform the consumer of the fact that
the estimate does not consider demand surges.

1 The Proposed Regulation specifies that these requirements and standards are “binding”
2 upon the licensee even if the estimate is based on information, data or statistical methods obtained
3 through a third party source. *See Proposed* § 2695.183(g). The licensee must also provide a copy
4 of the estimate to the applicant or insured “at the time the policy limit is set, recommended or is
5 otherwise the subject of communication by the licensee.” *See Proposed* § 2695.183(h).

6 Section 2695.183(j) states that using the word “replace” or “replacement” when setting
7 policy limits when the estimate does *not* comply with the regulation is deemed to be misleading
8 pursuant to Code § 790.03.

9 Section 2695.183(k) addresses when an insurer requires a producer to use a specific
10 source or tool for creating estimates. The insurer must prescribe procedures to be followed by the
11 producer and must provide training. The insurer, and not the producer, “shall be responsible for any
12 noncompliance” with the Proposed Regulations (unless the noncompliance results from the
13 producer’s failure to follow the insurer’s procedures).

14 Subdivision (l) states that section 2695.183 applies “to all communications by a
15 licensee,” with very limited exceptions, that concern the insurer’s underwriting decisions and that
16 never come to the attention of the applicant or insured. Finally, subdivision (m) states that nothing
17 in the Article requires a licensee to estimate replacement costs or advise applicant/insureds as to the
18 sufficiency of such an estimate.

19
20 The Department’s Initial Statement of Reasons indicates that the Proposed Regulations
21 were precipitated by a large number of consumer complaints file with the Department after
22 Southern California wildfires. Many California residents lost their homes in the wildfires and
23 discovered that their homeowners’ insurance was insufficient to cover the costs to rebuild their
24 homes. Thus, the Department claims that the Proposed Regulations are necessary to ensure that
25 replacement cost estimates given to consumers by producers are accurate.

26 C. Summary of the Objections

27 (1) The Proposed Regulations lack authority and reference; Insurance Code § 1749.85
28 does not support their enactment.

1 (2) Similarly, Insurance Code § 790.03 is not proper authority or reference for Proposed
2 Regulation § 2695.183(j).

3 (3) The Commissioner has failed to establish the necessity of the Proposed Regulations.

4 (4) There is no necessity for the requirement that producers retain records on estimates
5 provided when no insurance was ever issued.

6 (5) The Proposed Regulations impose an unnecessary burden on insurance producers
7 and serve no purpose but to open insurance producers to unfair penalties and civil litigation.

8
9 **D. Legal Analysis of the Proposed Regulations**

10 Under California law, regulations must be consistent and not in conflict with the
11 authorizing statute and must be reasonably necessary to effectuate the statute's purpose. *See Cal.*
12 *Gov't Code* § 11342.2. Furthermore, the Office of Administrative Law ("OAL"), which is charged
13 with reviewing state agency regulations, does so in accordance with certain standards prescribed by
14 Government Code § 11349.1, including consistency with existing law, necessity, clarity, and non-
15 duplication. Also, there must be proper statutory authority and reference for the Proposed
16 Regulations, such that the Commissioner is implementing or interpreting an existing law as opposed
17 to creating a new law which invades the province of the Legislature. *See Cal. Gov't Code* §§ 11349
18 and 11349.1. The Proposed Regulations pose a number of problems with respect to these standards.

19
20 (1) Authority and Reference

21 The reference for the Proposed Regulations is Insurance Code § 1749.85(d), which
22 provides that:

23 "[I]f the Department of Insurance establishes standards for the calculation of
24 estimates of replacement value of a structure by appraisers, then on and after
25 the effective date of the regulation a real estate appraiser's estimate of
replacement value shall be calculated in accordance with the regulation."

26 Insurance Code § 1749.7 allows the Commissioner to adopt reasonable rules and regulations to
27 administer Article 13.5 [relating to prelicensing and continuing education requirements for certain
28 licensees], which includes Code § 1749.85.

1 As discussed in further detail below, the Proposed Regulations expand the scope of
2 Insurance Code § 1749.85 are not necessary to administer Article 13.5, and therefore, the
3 Commissioner lacks the authority to promulgate the Proposed Regulations.

4 The Commissioner also relies on Insurance Code § 790.03 as the reference for Proposed
5 Regulation § 2695.183(j). Insurance Code § 790.03 sets forth the list of “unfair methods of
6 competition and unfair and deceptive acts or practices,” which includes making or issuing any
7 misleading statements with respect to the business of insurance. Section 2695.183(j) expands the
8 scope of Insurance Code § 790.03 and is not reasonably necessary to effectuate its purpose, and
9 therefore, the Commissioner lacks the authority to promulgate that provision.

10
11 (2) Consistency with Existing Law .

12 In order to be valid, the Regulations must be “consistent” and not in conflict with the
13 Insurance Code. *Cal. Gov’t Code* §§ 11342.2 and 11349.1. Therefore, regulations that “alter or
14 amend the statute or enlarge or impair its scope are void ... and no protestation that they are merely
15 an exercise of administrative discretion can sanctify them.” *Henning v. Div. of Occupational Saf. &*
16 *Health*, 219 Cal. App. 3d 747, 758-58 (1990). In addition, the Proposed Regulations must be
17 “reasonably necessary” to effectuate the purpose of the statute. *Cal. Gov’t Code* § 11342.2. The
18 Commissioner’s determination that the Regulations are necessary must be supported by “substantial
19 evidence.” *See Cal. Gov’t Code* § 11350(b)(1).

20
21 (a) The Proposed Regulations are Not Consistent with Code § 1749.85

22 As noted, Code section 1749.85(d) provides that “if” the Department promulgates a
23 regulation that “establishes standards for the calculation of estimates of replacement value of a
24 structure *by appraisers, then ... a real estate appraiser’s estimate of replacement value shall be*
25 *calculated in accordance with the regulation.*” (Emphasis added). The Department cites this
26 language at the beginning of Proposed Regulation § 2695.181 and states that “[a] real estate
27 appraiser, *whether or not a licensee*, shall not estimate the replacement cost” without complying
28 with the regulations. (Emphasis added). Thus, it appears that the Department interprets the term

1 “real estate appraiser” to mean any person who produces an estimate of replacement or construction
2 costs, including insurance producers. However, the plain meaning of “real estate appraiser,” as well
3 as the language of Insurance Code § 1749.85, indicates that the term is meant to have a much more
4 specific meaning.

5 Real estate appraisers are not commonly understood to mean any person who provides an
6 estimate of replacement costs. Rather, real estate appraisers are specially licensed professionals. In
7 California, they are governed by the Real Estate Appraisers’ Licensing and Certification law (*See*
8 *Cal. Bus. and Prof. Code* § 11300 *et seq.*) and are supervised by the Office of Real Estate
9 Appraisers. That this is the intended class of persons to whom § 1749.85(d) applies is supported by
10 the statute’s language. Subsection (c), for example, states that the section “shall not be construed to
11 preclude **licensed appraisers** ... from estimating replacement value of a structure.” (Emphasis
12 added).

13 This interpretation is confirmed by the legislative history of the 2006 amendment to
14 Insurance Code § 1749.85. Subdivisions (c) and (d) were added to Code § 1749.85 in 2006 by
15 Senate Bill 1847 when real estate appraisers realized that Insurance Code § 1749.85 prevented them
16 from estimating replacement costs in connection with the issuance of homeowners’ insurance. The
17 Senate Rules Committee analysis of SB 1847 explained:

18 “The provision that enables appraisers to do estimates of replacement cost
19 under a policy of fire insurance was requested by the California State
20 Government Relations Subcommittee of the Appraisal Institute upon realizing
21 that its members were no longer authorized to estimate replacement cost of
22 homes as of January 1, 2006 due to passage of SB 2 (Speier) in the prior year.
23 Appraisers have long performed this function. Committee staff notes that ***the***
24 ***committee received no more complaints about appraisers setting policy limits***
25 ***accurately or inaccurately than it did about insurance agents/brokers or***
26 ***contractors, two professions granted the right to do estimates.*** Committee
27 staff recommended permitting the licensed appraisers of California to once
28 again recommend replacement cost amounts under a fire policy. ...”
(Emphasis added).

Therefore, the term “appraiser” was not intended to refer to agent/brokers who produce estimates of
replacement value. Significantly, there is no reference in the Senate Rules Committee’s discussion
of SB 1847 that § 1749.85(d) applies in any way to agents/brokers. This strongly supports the

1 conclusion that it was not intended to have any affect on producers and it cannot reasonably be
2 concluded that the amendments to § 1749.85 were intended to impose or permit the obligations and
3 duties contained in the Proposed Regulations. Attached as **Exhibit 1** is a copy of the Senate Rules
4 Committee Analysis.

5
6 The language of Code § 1749.85(d) shows that it is not independent authority or
7 reference for regulations. It merely states that *if* the Department promulgates regulations relating to
8 the real estate appraisers' estimates, then real estate appraisers must comply with those regulations
9 notwithstanding that the Department does not otherwise regulate such appraisers. That statute does
10 not set forth any substantive requirements relating to replacement value estimates or the obligations
11 of insurance producers or insurers that the Department could "implement, interpret or make
12 specific." *See* 1 CCR § 14 (setting forth the "reference" requirement for a valid regulation). Code §
13 1749.85 does not, in and of itself, permit the Department to promulgate regulations related to real
14 estate estimates. Thus, there would have to be another statute that creates that authorization and
15 there is no such statute in the Insurance Code.

16
17 (b) The Proposed Regulations are Not Consistent with Code § 790.03

18 As noted, the Department also relies on Insurance Code § 790.03 as authority for
19 Proposed Regulation § 2695.183(j), which states that using the word "replace" or "replacement" in
20 connection with providing an estimate when that estimate does not comply with the regulation is
21 deemed to be misleading within the meaning of § 790.03. The Proposed Regulations go beyond the
22 scope of that statute. There is nothing inherently misleading about relying on third party estimates
23 or utilizing divergent methods of producing such estimates. Proposed § 2695.183(j) imposes an
24 entirely new *substantive* requirement on producers in the guise of interpreting what "misleading"
25 means.

26 Proposed § 2695.183(j) would essentially define a violation of the Proposed Regulations
27 as a "misleading" act under Code § 790.03 and therefore creates a new category of "unfair or
28 deceptive" business practice. The Department has no authority to define a new category of unfair or

1 deceptive act except through the procedures specified under Code § 790.06. That statute states that
2 “[w]henever the commissioner shall have reason to believe that any person engaged in the business
3 of insurance is engaging in this State in any method of competition or in any act or practice in the
4 conduct of the business *that is not defined in Section 790.03,*” which he suspects is unfair or
5 deceptive, he may issue an Order to Show Cause against the licensee and a hearing must be held on
6 the Order to Show Cause. The Commissioner cannot, by regulation, define a new unfair or
7 deceptive act under Code § 790.03.

8
9 (3) Necessity

10 The Proposed Regulations also fail the necessity test under the Government Code for
11 valid regulations. There is insufficient evidence that the Proposed Regulations as a whole are
12 necessary. In addition, the requirement to keep insurance quotes for at least 3 years when no policy
13 is ever issued is specifically an unnecessary burden on insurance producers. Further, there is no
14 support for the necessity of Proposed § 2695.183(j).

15
16 The Commissioner has stated that the Proposed Regulations are necessary to ensure that
17 consumers obtain an accurate quote on their homeowner’s insurance. The only evidence that the
18 Commissioner has presented in this regard is the statement in the Notice of Proposed Action on
19 page 2 in which he states that “The Department and the California Legislature received a significant
20 number of complaints by homeowners who lost their residences in the Southern California
21 Wildfires of 2003.” The Commissioner has not provided any study or data to support this claim.
22 Yet, the Proposed Regulations themselves explain that there is a “demand surge” phenomenon after
23 disasters such as wildfires, which causes a significant increase in the cost to rebuild homes.
24 Moreover, the Proposed Regulations *forbid* the consideration of demand surge in making the
25 estimates of replacement value such that the regulations would do nothing to protect consumers
26 from these increased construction costs. In other words, even if the Proposed Regulations are
27 promulgated, in the next California wildfire, many homeowners’ are still likely to find that the their
28 homeowners’ coverage is insufficient to cover the inflated costs created by the “demand surge.”

1 The Department has presented no other evidence or rationale for the need for the
2 regulations. The Government Code requires “substantial evidence” showing the necessity of the
3 regulations and the Department has failed to meet that standard. Moreover, as discussed further
4 below under Section (E), any potential “need” for the Proposed Regulations is far outweighed by its
5 unfairness to and unmanageability for producers and insurers.

6 In addition, there is absolutely no necessity for the requirement under Proposed §§
7 2695.182(b) and 2695.183(i) that producers maintain records of insurance quotes for three years
8 even when no insurance was ever issued to the consumer. The only justification the Department
9 offers for this onerous requirement is that the records would “assure that documentation is available
10 so that the Department can meet its statutory obligation to regulate producers and perform market
11 conduct exams to ensure compliance.” *See Initial Statement of Reasons*, pg. 11. This is a legally
12 insufficient reason to justify imposing such a burdensome requirement on producers. First, there is
13 no reason why the Department could not conduct a full examination of producers based on the
14 records relating to actual customers who purchased insurance through the producer. Such
15 information is the basis of all of the Department’s market conduct examination on producers and
16 insurers in all other areas of insurance.

17 Second, the burden to producers outweighs any potential benefits to the Department or
18 consumers of having this *extraneous* information. Many producers generate hundreds of quotes per
19 week. Under the regulation, they would be required to retain, for several years, all of those quotes
20 which would amount to tens of thousands of pages of data on consumers that are not their actual
21 customers. This would be unmanageable for most producers. Additionally, requiring the retention
22 of extraneous information opens producers up to unnecessary litigation risk. Producers would be
23 involuntarily retaining personal consumer information; information that is not otherwise relevant to
24 the producer’s day-to-day business. Producers should not be required to retain any unnecessary
25 personal information which, for example, could accidentally be released to an unauthorized party
26 and subject the producer to liability.

27 Finally, the regulation subjects producers to the potential for unfair regulatory penalty.
28 The Department has admitted that the only purpose of this requirement is for market conduct

1 examinations. Yet, the Department will have plenty of information on the producer's quoting
2 process through the customer files. Thus, it is hard not to get the impression that the sole purpose of
3 requiring the retention of quotes is as a means to impose "gotcha" penalties against the producers
4 for the smallest of perceived, technical violations.

5 There is also no support for the necessity of Proposed § 2695.183(j) to interpret Code §
6 790.03. The term "misleading," as used in that statute, is not a specialized term that needs the
7 Department's expert interpretation. This further supports the conclusion that the only purpose of
8 the proposed provision is to announce a new "unfair or deceptive" act which, as noted, the
9 Commissioner cannot do by adopting a regulation.

10
11 (4) Clarity and Duplication

12 Finally, regulations must satisfy the "clarity" and "non-duplication" standards in order to
13 be approved by the OAL. Based on the following, the Regulations, as currently proposed, arguably
14 lack clarity and are duplicative.

15
16 Proposed § 2695.183(l) lacks clarity. It states that § 2698.183 applies "to all
17 communications by a licensee, with the sole exception of internal communications with an insurer
18 or confidential communications between an insurer and its contractor, that concern the insurer's
19 underwriting decisions and that never come to the attention of the applicant or insured." As section
20 2695.183 sets forth standards for preparing estimates, it is unclear how it applies to "licensee
21 communications." To apply the valuation standards to all "communications" does not make sense
22 and is overbroad. The Department states that the purpose of this provision is to allow insurers to
23 discuss values internally without having to follow the standards and record keeping requirement.
24 *See Initial Statement of Reasons*, pg. 17. This is entirely unclear from the language of §
25 2695.183(l).

26
27 Proposed § 2695.183(e) is also vague and lacks clarity. It provides that producers "shall
28 take reasonable steps to verify that the sources and methods used to estimate replacement cost are

1 kept current to reflect changes in the cost of reconstruction and rebuilding ...” It is unclear what
2 would constitute “reasonable” steps. How often are producers required to take such steps?

3
4 The additional education requirements under Proposed § 2188.65 are duplicative and
5 unnecessary. Fire and casualty producers are already subject to education on “the basic concepts of
6 property insurance and estimating replacement value.” *Proposed* § 2188.65(d). The Department
7 has issued a manual entitled “Educational Objective: California Fire and Casualty Broker-Agent
8 Examination,” which sets forth topics that a license applicant is expected to understand in order to
9 pass the licensing examination. Amongst the topics is: “Homeowners Insurance Valuation.” The
10 manual notes that applicants must know how to compute “the amount of coverage required to
11 receive full replacement cost coverage.”

12 13 E. Policy Analysis

14 The Proposed Regulations impose onerous duties on insurance producers and
15 unreasonably place the responsibility for compliance on the party with the least control over the
16 estimation process. The Proposed Regulations permits producers to rely on third party estimates,
17 but places the responsibility on the *producers* to ensure that the third parties are complying with the
18 regulations. It would be all but impossible for the producers to ensure the *ongoing* compliance of
19 an unrelated third party to the detailed requirements set forth in the regulations. Most producers
20 will not be equipped to police third party appraisers or vendors, yet will be subject to disciplinary
21 action for the failures of such third parties to meet the requirements of the regulations. In that vein,
22 the regulations would require producers to, at all times, have open access to the records of and
23 processes used by such third parties – which such parties are unlikely to grant.

24 The regulations essentially make the producers *strictly liable* for third party
25 noncompliance. There is no provision that would excuse a producer if they made every reasonable
26 effort to check for compliance, but simply was unaware, for example, that the third party (i) did not
27 operate the way it claimed; (ii) initially complied with the regulations, but at some point ceased
28

1 without the producer's knowledge; or (iii) made isolated mistakes that are not under the producer's
2 control.

3

4 Producers typically use third party tool at the direction of insurers. The Proposed
5 Regulations would, in such cases, make the *insurers* strictly liable for the noncompliance of third
6 party vendors. However, insurers do not have any more control over these applications than the
7 producers. Thus, the inherent problems with the regulations would still apply.

8

9 The Proposed Regulations also unnecessarily subject insurers and producers to the risk of
10 civil liability whenever a consumer has a loss that is not fully covered by his/her policy. Yet, the
11 consumer is in the better position to judge whether the third party valuation is a fair estimate of
12 his/her home's value than either a producer or insurer. Moreover, the Proposed Regulations do not
13 account for the realities of the homeowners' insurance market where some consumers willfully
14 obtain less coverage in order to pay less premium. The existence of the Proposed Regulations
15 would give these same consumers ammunition in a civil action after-the-fact of a loss, allowing
16 them to avoid the consequences of their own choices.

17

18 **F. Conclusion**

19 The Commissioner is seeking to reform producers' duties to consumers through the
20 regulatory process. Since these duties create new substantive duties not otherwise imposed by the
21 Insurance Code, they are invalid under Government Code Section 11349.1. Further, the Proposed
22 Regulations are patently unreasonable as they hold the parties who have the least control over the
23 valuation process liable for noncompliance. For the above reasons, we respectfully request that the
24 Commissioner reconsider and withdraw the Regulations.

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1 Dated: May 17, 2010

BARGER & WOLEN LLP



By: ROBERT W. HOGEBROOM
Attorney for Insurance Agents and
Brokers Association of California

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EXHIBIT 1

BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478	SB 1847
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UNFINISHED BUSINESS

Bill No: SB 1847
 Author: Senate Banking, Finance & Insurance Committee
 Amended: 8/7/06
 Vote: 27 - Urgency

SENATE BANKING, FINANCE, AND INS. COMM : 11-0, 4/19/06
 AYES: Speier, Cox, Denham, Florez, Hollingsworth,
 Lowenthal, Machado, Maldonado, Murray, Romero, Scott

SENATE FLOOR : 39-0, 5/11/06 (Consent)
 AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn,
 Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheny,
 Dunn, Dutton, Escutia, Figueroa, Florez, Hollingsworth,
 Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett,
 McClintock, Migden, Morrow, Murray, Ortiz, Perata,
 Poochigian, Romero, Runner, Scott, Simitian, Soto,
 Speier, Torlakson, Vincent

ASSEMBLY FLOOR : 78-0, 8/17/06 (Consent) - See last page
 for vote

SUBJECT : Insurance: omnibus bill

SOURCE : Author

DIGEST : This bill: (1) permits auto insurers to give
 copies of police auto accident reports and other
 information found in police files to their insureds, when
 the insureds could obtain this information directly from
 the police; (2) repeals obsolete reporting requirements;
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(3) consolidates remaining required reports into the annual
 report of the Department of Insurance (DOI), including but
 not limited to required reports on workers' compensation
 and auto insurance fraud, a report on insurance mediation
 offered by the DOI, a report about the activities of the
 Conservation and Liquidation Office a report about medical
 malpractice insurance and toxic substance tort actions, a
 report of specified information about all insurers, and the
 report on Holocaust claims collection activities of the
 DOI; and (4) permits real estate appraisers and architects
 to estimate the replacement cost of a structure under a
 fire insurance policy, as specified.



Assembly Amendments add disclosure language regarding the
 Medi-Cal Recovery Program, which may apply to annuities
 purchased after September 1, 2004.

ANALYSIS : According to the Senate Banking, Finance and
 Insurance Committee analysis, the provisions of the bill
 consolidating various reports into the annual report of the
 DOI to the Legislature and this committee were suggested by
 committee staff because of the increasing number of reports
 required in the code, and the uncoordinated submission of
 information to the Legislature. Consolidation should
 enable the Legislature to see the entire operations of the
 department at a single point in time, and to draw
 conclusions from that picture.

The provision that enables appraisers to do estimates of
 replacement cost under a policy of fire insurance was
 requested by the California State Government Relations
 Subcommittee of the Appraisal Institute upon realizing that
 its members were no longer authorized to estimate
 replacement cost of homes as of January 1, 2006 due to
 passage of SB 2 (Speier) in the prior year. Appraisers
 have long performed this function. Committee staff notes
 that the committee received no more complaints about



appraisers setting policy limits accurately or inaccurately than it did about insurance agents/brokers or contractors, two professions granted the right to do estimates. Committee staff recommended permitting the licensed appraisers of California to once again recommend replacement cost amounts under a fire policy. This provision has an urgency statute as appraisers ceased being



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eligible to set these replacement costs as of January 1, 2006.

The provision of the bill that permits an insurer to give a copy of a police auto accident report to the insurer's insured, or to give other information from that report to the insured, was requested by State Farm Insurance Company.

The bill specifically states that the insured is able to get only that information that would otherwise be available to the insured if the insured went directly to the police department to obtain the information. This provision is designed to help consumers after an auto accident by minimizing the need for extra trips to settle a claim.

The provision of the bill that abolishes obsolete requirements in the code were requested by the DOI.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

ASSEMBLY FLOOR :

AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Hancock, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Nava, Negrete McLeod, Niello, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez

NO VOTE RECORDED: Oropeza

DLW:nl 8/18/06 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****