

[2009 California Legislative Update](#)

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The California legislature passed a number of new insurance-related bills that Governor Schwarzenegger signed into law. These include new laws regulating the rescission of health insurance coverage ([AB 108](#)), life settlement transactions ([SB 98](#)) and electronic transactions ([AB 328](#)).

Several of the laws are summarized briefly below. Our summary is intended to give you a broad overview only and does not include all new provisions enacted by the legislation. These summaries should not be relied upon as a substitute for legal advice.

If you would like additional information on any of the laws discussed herein, please contact [Stuart Soldate](#) at (213) 614-7306 or ssoldate@bargerwolen.com, [Michael Rosenfield](#) at (213) 614-7321 or mrosenfield@bargerwolen.com, [Chris Burusco](#) at (213) 614-7332 or cburusco@bargerwolen.com, or your regular [Barger & Wolen attorney](#).

LIFE, HEALTH AND DISABILITY INSURANCE

1. [AB 23: Cal-COBRA Premium Assistance](#)

- Establishes notice requirements that must be provided to eligible qualified beneficiaries regarding the availability of premium assistance under the American Recovery and Reinvestment Act of 2009 (ARRA).
- Qualified beneficiaries eligible for federal assistance may elect coverage under Cal-COBRA, and those enrolled in Cal-COBRA as of February 17, 2009 may request the federal premium assistance.

2. [AB 76: Life and Annuity Consumer Protection Fund](#)

- Extends the provision creating the Life and Annuity Consumer Protection Fund to January 1, 2015.
- Requires the California Insurance Commissioner (“Commissioner”) to publish an annual report on its Web site detailing certain protections for consumers of insurance products.

3. [AB 108: Individual Health Care Coverage](#)

- Prohibits, except as specified, rescission, canceling, limiting the provisions, or raising premiums of a contract or policy due to omission, misrepresentation, or inaccuracy in the application after 24 months following issuance of the same.

4. [AB 119: Pricing of Health Care Coverage](#)

- Prohibits premium, price or charge differentials based on the gender of specified individuals, commencing January 1, 2011.

5. [AB 381: Unemployment Compensation Disability Benefits](#)

- Permits a community college district to elect to become an employer, subject to specified requirements pertaining to disability compensation.

6. [AB 389: Long-Term Care Insurance](#)

- For long-term care insurance policies issued before new premium rate schedules are approved and for which rate revisions are filed on or after January 1, 2010, changes the calculation for determining what benefits are deemed “reasonable” in relation to premiums.
- Permits the Commissioner to approve a rate revision based on less than a certain loss ratio in order to protect the financial condition of the insurer.
- Revises the required qualifications of actuaries used by the Commissioner to review rate applications relative to long-term care insurance.

7. [AB 1541: Health Care Coverage \(Late Enrollment\)](#)

- An individual, or dependent, who has lost or will lose Healthy Families Program coverage, Access for Infants and Mothers Program coverage, or Medi-Cal program coverage can request enrollment within 60 days (changed from 30 days) after termination of that coverage without being considered a “late enrollee.”

8. [AB 1543: Medicare Supplement Coverage\[1\]](#)

- Adopts changes and provisions as required by the federal Medicare Improvements for Patients and Providers Act and Genetic Information Nondiscrimination Act.
- Adopts other amendments relating to open enrollment and guaranteed-issue.

LIFE SETTLEMENTS

- [SB 98](#) defines when certain trusts and special interest entities do *not* have an insurance interest in a life insurance policy. It also establishes a number of new provisions to regulate viatical and life settlements. It adds two new license classifications for “Life Settlement Provider” and “Life Settlement Broker.”

PROPERTY AND CASUALTY INSURANCE

1. [AB 63: Service Contract, Retailers](#)

- Requires retailers of service contracts to maintain certain information about a contract that is in effect and provide such information or a copy of the contract to the contract purchaser or beneficiary upon request.
- Does not apply to vehicle service contracts.

2. [AB 601: Motor Vehicle Insurance, Special Assessments](#)

- Extends until January 1, 2015, the special assessment imposed on insurers, which is charged per motor vehicle insured.

3. [AB 1179: Motor Vehicle Insurance, Damage Assessments](#)

- Requires that additional information regarding right to independent estimate be included in the Auto Body Repair Consumer Bill of Rights.

4. [AB 1200: Motor Vehicle Insurance, Direct Repair Programs](#)

- Provides that insurers may (notwithstanding prohibition against requiring use of specific auto repair shop) provide truthful and nondeceptive information regarding the services and benefits available to the claimant.

5. [SB 291: Mortgage Guaranty Insurance Reserves](#)

- Amends definition of “face amount of an insured mortgage” for purposes of determining surplus requirements.
- Requires notice to Commissioner before insurer falls below surplus threshold and creates ability to seek waiver of requirement.

MISCELLANEOUS

1. [AB 299: Insurance Omnibus](#)

Among other things, the bill:

- Requires the California Department of Insurance to remove from, or clarify on, its Web site any pleading, order or document relating to an enforcement action that has been withdrawn.
- Requires the Commissioner to consider additional criteria when examining the business and affairs of the insurer.
- Allows the Commissioner to disclose market analysis data to any state or country insurance department, law enforcement officials, federal agency or NAIC.
- All analyses pursuant to authorized examinations are at the expense of the insurer.
- Requires insurer annual audits to be conducted in conformity with “standards adopted by the [NAIC],” and allows the Commissioner to grant *multiple* 30-day extensions to the audit due date.
- Permits domestic insurers to invest in credit unions.

- Prohibits excess fund investments in a loan or any other obligation to any one borrower or obligor as specified.
- Requires insurers to provide to the Commissioner advance notice of the intent to enter into a tax sharing agreement.
- Requires auto liability policy to provide for replacement of a child seat, as defined, that was damaged in a covered accident.

2. [AB 328: Electronic Transactions](#)

- Deletes the exclusion of certain insurance statutes from applicability of Civil Code provisions permitting parties to conduct transactions by electronic means.
- With respect to certain automobile insurance transactions, prohibits electronic delivery of certain documents unless the transaction commenced electronically.
- Permits required notices related to certain types of insurance to be made electronically with consent of the parties, and imposes certain system and records requirements on the insurer related to the same.
- Permits an insurer to pay claims with electronic fund transfer, with the consent of the insured.

3. [AB 409: California Insurance Guarantee Association](#)

- Provides that the initial premium charge shall be adjusted by applying the same rate of premium charge as initially used to each insurer's written premium as shown on the annual statement for the 2nd year following the year on which the initial premium charge "was based" (change from "is made").

4. [AB 470: Insurance Information Confidentiality](#)

- Authorizes the disclosure of information from an accident report, supplemental report, or investigative report to an insured's lawyer if the insured is otherwise entitled to obtain the report.

5. [AB 800: Insurance Producer Omnibus](#)

Makes a number of changes with respect to producer licensing, including that it:

- Deletes pre-licensing education requirement for resident applicants with current nonresident licenses.
- For persons licensed in 2010 or after, eliminates certain exemptions from education requirement.

- Permits licensed California *nonresident* business entity producers to use licensed California *resident* individual producers to transact insurance.

[\[1\]](#) AB 1543 was enacted as an urgency statute. As such, it became effective when it was chaptered on July 2, 2009.