

[California Department of Insurance to Introduce Bill Seeking to Bar Discretionary Clauses in Life, Health and Disability Insurance Policies](#)

Life Health & Disability Alert

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A California Department of Insurance senior staff member stated Tuesday during Sedgwick's annual Sacramento insurance regulatory seminar that the California Department of Insurance's legislative package that will be introduced Friday will include another bill attempting to prohibit discretionary clauses in California insurance policies. This year's bill is to be identical to last year's [Assembly Bill No.1868 \(AB1868\)](#).

Last year, Gov. Arnold Schwarzenegger vetoed AB1868, which would have, among other things, prohibited discretionary clauses in insurance policies funding life or disability insurance coverage for California residents, regardless of whether the discretionary review was to be performed by the insurer or a third-party administrator. "Disability" under the California Insurance Code sections that would be amended includes health insurance. AB1868 did not purport to dictate the terms of ERISA plans themselves. AB1868 overwhelmingly passed the California State Assembly and Senate. When Gov. Schwarzenegger vetoed the bill, he stated that the Department of Insurance already had the authority to prohibit such clauses. Notwithstanding the veto message, the CDI is seeking "express" authority to prohibit such clauses, at least in life and disability policies

AB1868 was sponsored by Assemblyman Dave Jones, who is now California's insurance commissioner. Therefore, the renewed attempt to codify the prohibition is not a surprise. Also, Gov. Schwarzenegger is now out of office, replaced by Gov. Jerry Brown. Gov. Brown has not yet disclosed his views on the subject.

In *Standard Insurance Co. v. Morrison*, 584 App.3d 837 (9th Cir. 2009), cert den'd, ___ U.S. ___, 130 S.Ct. 3275 (2010), the Ninth Circuit Court of Appeals already ruled that ERISA did not preempt the Montana insurance commissioner's practice of disapproving insurance policy forms that included

discretionary clauses. The deadline for filing legislation is February 18.

Sedgwick will track the new bill as it winds its way through the Legislature.

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