

STATE OF CALIFORNIA  
**Budget Change Proposal - Cover Sheet**  
 DF-46 (REV 08/15)

Fiscal Year * 2016-17	Business Unit 0845	Department California Department of Insurance	Priority No. LEG - 2
Budget Request Name 0845-012-BCP-BR-2016-GB		Program 0520 – Regulations of Insurance Companies and Insurance Producers	Subprogram 0520028 – Licensing

Budget Request Description  
 Life and Disability Policies

Budget Request Summary

The California Department of Insurance (CDI) requests an increase in special fund expenditure authority of \$430,000 in FY 2016-17 and \$270,000 ongoing to fund 2.0 Attorney I permanent positions and Limited-Term funding to comply with Assembly Bill (AB) 387 (Chapter 691, Statutes of 2015).

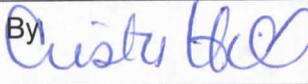
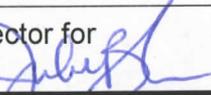
Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed
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Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
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For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR     SPR    Project No.    Date:

If proposal affects another department, does other department concur with proposal?  Yes  No  
*Attach comments of affected department, signed and dated by the department director or designee.*

Prepared By Michelle Chou	Date 12/14/2015	Reviewed By Crista Hill 	Date 12/14/2015
Department Director for Erika Sperbeck 	Date 12/14/2015	Agency Secretary N/A	Date

**Department of Finance Use Only**

Additional Review:  Capital Outlay  ITCU  FSCU  OSAE  CALSTARS  Dept. of Technology

BCP Type:  Policy  Workload Budget per Government Code 13308.05

PPBA	Original signed by Jeff Carosone	Date submitted to the Legislature 1-7-16
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DEPARTMENT OF FINANCE  
COR/JUD

# BCP Fiscal Detail Sheet

BCP Title: Life and Disability Policies (AB 387)

DP Name: 0845-101-BCP-DP-2016-GB

## Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	2.0	2.0	2.0	2.0	2.0
<b>Total Positions</b>	<b>0.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>
Salaries and Wages						
Earnings - Permanent	0	241	161	161	161	161
<b>Total Salaries and Wages</b>	<b>\$0</b>	<b>\$241</b>	<b>\$161</b>	<b>\$161</b>	<b>\$161</b>	<b>\$161</b>
Total Staff Benefits	0	111	74	74	74	74
<b>Total Personal Services</b>	<b>\$0</b>	<b>\$352</b>	<b>\$235</b>	<b>\$235</b>	<b>\$235</b>	<b>\$235</b>
Operating Expenses and Equipment						
5301 - General Expense	0	25	3	3	3	3
5304 - Communications	0	2	1	1	1	1
5320 - Travel: Out-of-State	0	3	2	2	2	2
5320 - Travel: In-State	0	3	2	2	2	2
5322 - Training	0	1	1	1	1	1
5324 - Facilities Operation	0	27	18	18	18	18
5344 - Consolidated Data Centers	0	1	1	1	1	1
5346 - Information Technology	0	16	7	7	7	7
<b>Total Operating Expenses and Equipment</b>	<b>\$0</b>	<b>\$78</b>	<b>\$35</b>	<b>\$35</b>	<b>\$35</b>	<b>\$35</b>
<b>Total Budget Request</b>	<b>\$0</b>	<b>\$430</b>	<b>\$270</b>	<b>\$270</b>	<b>\$270</b>	<b>\$270</b>

## Fund Summary

Fund Source - State Operations						
0217 - Insurance Fund	0	430	270	270	270	270
<b>Total State Operations Expenditures</b>	<b>\$0</b>	<b>\$430</b>	<b>\$270</b>	<b>\$270</b>	<b>\$270</b>	<b>\$270</b>
<b>Total All Funds</b>	<b>\$0</b>	<b>\$430</b>	<b>\$270</b>	<b>\$270</b>	<b>\$270</b>	<b>\$270</b>

## Program Summary

Program Funding						
0520028 - Licensing	0	430	270	270	270	270
<b>Total All Programs</b>	<b>\$0</b>	<b>\$430</b>	<b>\$270</b>	<b>\$270</b>	<b>\$270</b>	<b>\$270</b>



### A. Budget Request Summary

The California Department of Insurance (CDI) requests an increase in special fund expenditure authority of \$430,000 in FY 2016-17 and \$270,000 ongoing to fund 2.0 Attorney I permanent positions and Limited-Term funding to comply with Assembly Bill (AB) 387 (Chapter 691, Statutes of 2015).

### B. Background/History

The Department's policy review function for life and disability policy forms provides important consumer protection. Insurers file proposed policy forms and the Department reviews those forms for compliance with current law. The Legal Branch - Policy Approval Bureau (PAB) reviews such forms and then engages in a process of disapproval letters and resubmissions until the form complies with law. As insurance policy forms are very complex documents, and not immediately understood by the average consumer, the Department serves a vital consumer protection role in making sure, as much as is possible, that life and disability policy forms comply with California law before they are sold to consumers.

AB 387 enacted on October 9, 2015 impacts the Department's review and approval of life and disability insurance policy forms. The bill has three sections:

#### Section 1 adds Section 10191.1 to the California Insurance Code (CIC)

This section allows the Insurance Commissioner to publish checklists and guidelines for policy form requirements for different kinds of insurance. If insurers chose to follow published guidelines/checklists, the Department will be able to more quickly review the forms because the filed policy forms will conform to legal requirements.

#### Section 2 adds Section 10191.5 to the CIC

This section requires the Insurance Commissioner to commission an independent study and report to explain the similarities and differences between California insurance law and the standards in the Interstate Insurance Product Regulation Compact (IIPRC). The Insurance Commissioner is to submit the report to the California Legislature by January 1, 2017.

#### Section 3 amends CIC Section 10290(b)(1) to change "30 days" to "120 days"

With regard to policies to which CIC Section 10290 applies (generally health and non-health disability), a filed policy form will be considered approved 120 days after it has been filed, unless the Insurance Commissioner has disapproved the form during the 120-day period.

Under existing law, when CIC sections 10290(b) and 10291 were initially enacted, the statute was interpreted to mean if the Department had not objected to the filing within 30 days, the insurer could start to sell the policy form, but the form would still be an unapproved form, subject to disapproval by CDI at any time thereafter. If the Department objected to the filing, the insurer would have to stop selling the policies using that form until it was approved.

Since the enactment of the existing statutes, both the insurance industry as well as California insurance regulation has changed substantially. The CIC has grown in size and complexity, and the number of insurance policy filings has risen substantially. Over the years, as the number of filings increased, the law became more complex, and as a result the Department was required to do more complex work. It came to be that policy forms were rarely disapproved within the CIC Section 10290 30-day timeframe, and that policy forms were routinely reviewed and disapproved for the first time anywhere from 30 days to 600 days or more from the date of filing submission, thus making the interplay of CIC Sections 10290 and 10291 vital to the Department's consumer protection function.

In December 2014, a court decision (*Ellena v. Department of Insurance*) changed this practice by dramatically reinterpreting the CIC to determine that at 30-days from filing submission, if the Department had not disapproved a filing, the forms in that filing were deemed approved. This created more uncertainty in the market and has made it virtually impossible for the Department to fulfill its consumer protection function by disapproving and requiring amendment to life and disability policy forms that do not comply with California law. AB 387, co-sponsored by CDI in collaboration with the insurance industry, increases the review time period

## Analysis of Problem

from 30 to 120 days to facilitate CDI's compliance with the new interpretation per the Ellena court decision and ensuing statutory change.

### Legal Branch - Policy Approval Bureau Resource History (Dollars in thousands)

Program Budget	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16 (Projected)
Authorized Expenditures <sup>1/</sup>	\$3,139	\$1,699	\$1,736	\$1,505	\$1,583
Actual Expenditures <sup>2/</sup>	\$1,935	\$1,679	\$1,412	\$1,436	\$1,583
Authorized Positions <sup>3/</sup>	30.0	16.0	13.0	13.0	13.0
Filled Positions <sup>3/</sup>	17.5	16.4	12.2	12.5	13.0
Vacancies	12.5	0.0	0.8	0.5	0.0

<sup>1/</sup> Based on allotment.

<sup>2/</sup> Based on FM 13 year-end budget reports.

<sup>3/</sup> Based on Salaries & Wages (7A).

### C. State Level Considerations

This proposal is consistent with the Commissioner's mission to protect consumers and ensure vibrant markets and the mandates set forth in the CIC, as noted herein. This bill does not impact other State agencies. This proposal will provide CDI with the resources needed to carry out the mandates of AB 387.

### D. Justification

#### Section 1

This section permits the Department to publish guidelines and checklists to assist insurers with their filings. The CIC is voluminous and complex, and the California insurance law is, in many regards, significantly different from insurance law in other states. The Department prides itself in striving to provide the best consumer protection while maintaining a clear and predictable path for insurers to get their products to market. In publishing these checklists and guidelines, insurers who are not aware of the complexities of California law will have a roadmap to a more clear and predictable path to policy form approval. It is apparent that a policy form written with no regard for California law will take longer to review than one that follows the California requirements. Also, due to almost constant innovation, the insurance industry regularly presents new, never before seen policy forms and combinations of coverage. These involve significant research as to whether and how such new insurance products fit into the requirements of the CIC. This constant flow of new products means that the outlines, once they are drafted and published, will need to be administered, edited and revised on a continuous basis. CDI is requesting one-time, limited-term funding of \$101,000 to support the equivalent of a 0.7 Attorney I for FY 2016-17 to create and publish checklists and guidelines. (See Attachment A – Workload Analysis).

#### Section 2

This section directs the Insurance Commissioner to engage a study of the differences between California insurance law and the standards contained in the IIPRC. Although no General Fund or Insurance Fund will be used to conduct this study, the elected Insurance Commissioner is directed to comment on the study and present both the comments and the study to the California Legislature. Throughout the study, there will be questions and consultation with Department staff with regard to disability law, as well as life and annuity law. Once the study is completed, the Department will need to thoroughly review the study's conclusions in order to assist the Commissioner in drafting any comments. In order to comply with the Legislature's directives with regard to this law comparison study, CDI is requesting one time limited-term funding of \$46,000 to support the equivalent of a 0.3 Attorney I for FY 2016-17 to complete these activities. (See Attachment A – Workload Analysis).

## Analysis of Problem

### Section 3

This section amends the number of days after filing, without affirmative disapproval from the Department, when a policy form will be deemed approved, from 30 days to 120 days. While this increases the number of days, CDI needs additional resources to comply because the Department had previously not interpreted the 30 days as a "real" deemer date. The Department has no control over how many filings come in each month and has no control over the size and complexity of those filings, and accordingly, does not have sufficient resources to comply with the new 120 days.

During the period of April 1, 2014 to April 1, 2015, the Department received an average of 115 new filings each month. Some filings consist of one, three-page document, while others consist of 15, 30-page documents. Some filings comply with California law and some are copies of policy forms submitted and approved in other states with no regard to California law. Neither the Department nor insurers want Department reviewers to disapprove forms within 120 days based on one or two objections just to stop the clock on the automatic deemer. This would be bad practice and bad government, as it would significantly delay the review and approval thereafter. With existing staff resources, approximately 18 percent of filings are not being completely reviewed and approved or disapproved as appropriate within 120 days of filing.

The form review process is inefficient with 18 percent of filings left un-reviewed, and therefore deemed approved at 120 days. This could hinder the commerce of insurance and could cost the Department even more time and resources of having to engage in an extensive litigation process in order to withdraw the approval of those 18 percent of filings deemed approved. Consumers, however, would be the most aggrieved with such a high percentage of filings not properly reviewed before they were sold.

In addition, as new products are introduced within the insurance industry, CDI often receives a flood of filings of that type as many insurers seek to compete with each other in offering the new type of product. CDI lacks the staffing capacity to absorb events like this, which happen repeatedly, and still meet its statutory deadlines for reviewing files.

Without the additional resources requested, if the Department has not completed its review and sent out a complete disapproval letter within 120 days of the filing, the forms in that filing will be deemed approved and the Department's only recourse will be to institute an action pursuant to CIC Section 10291.5 (f) and move to withdraw approval of a previously approved form. Such action gives the insurer the right to a hearing, and takes at least one year per action, impacting staff time and the Department's resources, resulting in slowing down review of newly received filings and creating backlogs. This will lead to policy forms on the market with illegal provisions, and un-reviewed forms deemed approved being sold in the California market.

In order for the Department to be able to review all filings within 120 days of filing, CDI requests 2.0 permanent Attorney I positions and \$283,000 in expenditure authority in FY 2016-17 and \$270,000 ongoing. (See Attachment A - Workload Analysis).

It is imperative that this proposal be approved so that CDI can meet the mandates and intent of AB 387 which is to improve the Department's ability to review and approve disability policy filings more effectively and completely in the specified time frame. This in turn allows for timely marketplace availability of products and provides effective consumer protection.

### **E. Outcomes and Accountability**

To ensure that CDI has the proper resources to approve or disapprove 100% of forms within 120 days as mandated, address mandated policy review functions and respond to the new requirements. CDI has a time/activity reporting system to track staff time, and will therefore monitor the amount of time spent on the associated activities to ensure resources are used appropriately.

## Analysis of Problem

### F. Analysis of All Feasible Alternatives

#### **Alternative 1** - Approve as requested.

##### Pros:

- Provides the necessary resources to comply with the mandates of AB 387.
- There would be no cost to the General Fund.
- There is a revenue source to mostly offset expenditures related to policy form filings.

##### Cons:

- Additional costs to the Insurance Fund.
- Increases position growth in State government.

#### **Alternative 2** – Provide funding for only 2.0 Attorney I positions for Section 3 and redirect remaining resources.

##### Pros:

- Enables CDI to comply with the mandates of AB 387.
- There would be no cost to the General Fund.
- There is a revenue source to offset expenditures related to policy form filings.

##### Cons:

- CDI does not have available resources to redirect to absorb workload for Sections 1 and 2 without negatively impacting other workload putting CDI at risk of not fully complying with AB 387..
- Additional costs to the Insurance Fund.

#### **Alternative 3** - Provide Limited-Term funding in FY 2016-17 for Section 1 and 2.

##### Pros:

- Enables CDI to partially comply with the mandates of AB 387.
- There would be no cost to the General Fund.

##### Cons:

- A significant number of filings would not be completely reviewed within 120 days potentially harming consumers.
- CDI would not be able to fully comply with the mandates of AB 387.

#### **Alternative 4** - Deny this proposal.

##### Pros:

- Does not increase CDI's spending authority.
- No growth to State government.

##### Cons:

- CDI will not be able to perform the required workload to comply with AB 387.
- This will have a negative effect on CDI's ability to protect California consumers.

## Analysis of Problem

### G. Implementation Plan

PAB will start the hiring process in April 2016 to ensure the positions are filled effective July 1, 2016. The hiring would be contingent upon approval of the positions included in the FY 2016-17 Budget Act.

### Supplemental Information

None.

### H. Recommendation

**Alternative 1** - This is the only alternative that provides CDI with resources necessary to perform the tasks and functions associated with AB 387. If this request is not approved, the Department will not be able to provide effective consumer protection.

**Insurance Life and Disability Policies (AB 387)  
 Workload Analysis  
 (in hours)**

TASK	HOURS PER TASK	
	FY 2016-17	FY 2017-18 & Ongoing
<b>Section 1</b>		
Plan and analyze the types of insurance for which to publish guidelines	260	
Develop and publish procedural requirements, guidelines, and standard insurance contract language	1,100	
Respond to industry comments	300	
Review, research, and edit changes to published outlines/checklists		416
<b>TOTAL</b>	<b>1,660</b>	<b>416</b>
<b>Section 2</b>		
Respond to questions/consult with entity that is conducting the study	400	
Review the study at its conclusion	100	
Consult with staff and the Commissioner regarding comments to the study	100	
Draft and edit comments from the Commissioner to the Legislature regarding the study	100	
<b>TOTAL</b>	<b>700</b>	
<b>Section 3</b>		
Review policy forms	1,560	1,560
Draft and edit objections	832	832
Negotiate with insurers regarding form language	624	624
Administrative work necessary to close filings	416	416
<b>TOTAL</b>	<b>3,432</b>	<b>3,432</b>
<b>Total Hours</b>	<b>5,792</b>	<b>3,848</b>
<b>Position Equivalent (Hours / 1,778) <sup>1/</sup></b>	<b>3.3</b>	<b>2.2</b>

<sup>1/</sup> CDI is requesting one time Limited-Term funding to support the equivalent of 1.0 Attorney I for workload associated with Section 1 and 2 in FY 2016-17. Additionally, CDI is requesting 2.0 Attorney I permanent positions for FY 2016-17 and ongoing to support the workload associated with Section 3.