In the Supreme Court of the State of California

ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES and PERSONAL INSURANCE FEDERATION OF CALIFORNIA,

Plaintiffs and Respondents,

v.

DAVE JONES, in his capacity as the Commissioner of the California Department of Insurance,

Defendant and Appellant.

Case No. S226529

Court of Appeal, Second Appellate District, Case No. B248622
Los Angeles County Superior Court, Case No. BC463124
The Honorable Gregory W. Alarcon, Judge

REPLY BRIEF ON THE MERITS

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INTRODUCTION AND SUMMARY OF ARGUMENT

Over the course of more than two decades, under the authority of the Unfair Insurance Practices Act (UIPA), Insurance Code sections 790-790.15, the Legislature and the Insurance Commissioner have worked together to solve the longstanding problem of unintended underinsurance—where homeowners learn too late that their "replacement cost" policies are insufficient to cover the actual costs of replacing their homes lost to natural disaster.[1] The Legislature has, for example, mandated standard disclosures that, among other things, warn consumers of the risk of underinsurance and encourage them to obtain current replacement cost estimates from their insurers. (§§ 10101, 10102.) And the Commissioner, exercising his rulemaking authority to clarify what constitutes an untrue, deceptive, or misleading statement in this context, has required that insurers' estimates include all costs commonly incurred in rebuilding, and reflect the actual and current costs to rebuild a substantially similar home on the same parcel. (§§ 790.03, subd. (b); 790.10; Cal. Code Regs., tit. 10, § 2695.183 [replacement cost regulation].)

The replacement cost rulemaking process worked exactly as the Legislature intended. As the court of appeal itself acknowledged, the Legislature contemplated that the Commissioner would fill in the details of the UIPA "'for the benefit of the public without having to wait for the Legislature to act at a later date.'" (Opn. 28-29, quoting Assem. Com. on Finance and Insurance, summary of Assem. Bill No. 1353 (1971 Reg. Sess.) p. 1; Opening Brief on the Merits (OBM) 6-7.) That is what the Commissioner did, filling in the details of what constitutes a misleading

[1] All statutory references are to the Insurance Code unless otherwise indicated. As used in this brief, "insurer" has the same meaning as "licensee" in section 2695.180, subdivision (d) of title 10 of the California Code of Regulations.

statement in the specific context of replacement cost estimates and ensuring that such estimates match consumers' expectations and assumptions. The court of appeal's contrary judgment, voiding the Commissioner's replacement cost regulation, thus should be reversed.

In the main, respondents the Association of California Insurance Companies and the Personal Insurance Federation of California simply repeat the court of appeal's analysis. In so doing, they fail squarely to address the text of the relevant statutes, case law interpreting similar grants of rulemaking authority, the authoritative legislative history, and the purposes of the UIPA. Together these sources and authorities establish not only that the Commissioner in general has broad authority to fill out the Legislature's framework definitions, but that his exercise of authority in this specific instance—clarifying the Legislature's general definition of prohibited public statements as applied to replacement cost estimates—was well within his rulemaking power.

ARGUMENT

I. SECTION 790.10 GRANTS THE COMMISSIONER BROAD AUTHORITY TO CLARIFY AND FILL IN THE DETAILS OF PROHIBITED ACTS DEFINED BY THE LEGISLATURE IN SECTION 790.03

The Legislature established a statutory framework–the Unfair Insurance Practices Act–under which the Legislature and the Commissioner together regulate the insurance industry to prevent "unfair methods of competition or unfair or deceptive acts or practices."[2] (See §§ 790, 790.2.) In section 790.03, the Legislature has defined certain prohibited acts and practices. Some such acts and practices are more specifically defined, for example, holding oneself out as representing the California Health Benefit

[2] (Ins. Code, div. 1, pt. 2, ch. 1, article 6.5, §§ 790-790.15.)

Exchange without a valid agreement with that entity. (§ 790.03, subd. (j).) Other prohibited acts and practices are more broadly drawn. (See, e.g., § 790.03, subds. (h)(3) ["Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims"], and (h)(5) ["Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear"].) Relevant here is the making of a public "statement" with respect to insurance "which is untrue, deceptive, or misleading ...." (§ 790.03, subd. (b).)

Such a general prohibition may provide little guidance to the industry, and generally will not serve to change entrenched industry practices that prove to be misleading or confusing to consumers. Accordingly, the Legislature empowered the State's insurance expert, the Insurance Commissioner, to fill in the details: "The commissioner shall, from time to time as conditions warrant, after notice and public hearing, promulgate reasonable rules and regulations, and amendments and additions thereto, as are necessary to administer this article [the UIPA]." (§ 790.10.)

As the Commissioner discussed at length, a plain reading of this language, guided by case precedent and by reference to the terms used in the California Administrative Procedure Act (APA), confers broad authority to adopt regulations. (OBM 20-27; see, e.g., Gov. Code, § 11342.600 [APA, defining "regulation" as a rule of "general application" adopted to "implement, interpret, or make certain or specific the law enforced or administered by it"]; see also *Western States Petroleum Assn. v. Bd. of Equalization* (2013) 57 Cal.4th 401, 414; *Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347.)

The Commissioner's broad authority to fill in the details of section 790.03, and in particular subdivision (b), prohibiting "untrue, deceptive, or misleading" public statements, is confirmed by the legislative history.

(OBM 28-30.) In enacting section 790.10, the Legislature expressly noted that its purpose was to allow the Commissioner to act promptly through rulemaking to protect the public, and, in addition, that the Commissioner's authority in this regard was limited only by the requirements of the APA. (*Ibid.*; see also Appellant's Motion for Judicial Notice (MJN), Ex. H, p. 33 [Assem. Com. on Finance and Insurance, summary of Assem. Bill No. 1353 (1971 Reg. Sess.); Ex. I, pp. 34-37 [Legis. Counsel Opinion of Assem. Bill No. 1353 (Jul. 14, 1971)].)

Further, the Legislature's subsequent actions do not call the Commissioner's rulemaking authority into question, but rather confirm that the Legislature relies on the Commissioner and his expertise to fill in the details necessary to regulate a complex and constantly evolving industry. (OBM 30-32.) And the fact that the Legislature conferred other enforcement tools on the Commissioner, such as the ability to engage in case-by-case enforcement, cannot be read as a constraint on his rulemaking authority to fill in the details of legislatively defined prohibited acts. (OBM 32-36.) The Legislature has entrusted the Commissioner to determine in his discretion whether general rules or case-by-case enforcement, or some combination, will best protect the public and advance the purposes of the UIPA. (OBM 35-37.)

When an insurer provides a consumer with a replacement cost estimate that it knows or should know is incomplete, out of date, or otherwise fails to meet consumers' reasonable expectations about "replacement cost" coverage, the insurer has made a "representation ... with respect to [a] person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading." (§ 790.03, subd. (b).) Section 790.05 squarely authorizes the Commissioner to issue an order to show cause why penalties should not be imposed based upon such conduct. Respondents have presented no legal authority or policy-based justification to limit the

Commissioner's authority to retrospectively punishing, rather than prospectively preventing these types of misrepresentations through a regulation under section 790.10.

Respondents' arguments favoring a severely constrained view of the Commissioner's rulemaking authority fail to address these points and, ultimately, are at odds with the language, intent, and purpose of the UIPA.

A. Under this Court's Precedents, Including *Ford Dealers*, the Commissioner's Reasonable View of His Rulemaking Authority Is Entitled to Respect

Section 790.10 gives the Commissioner the authority to "promulgate reasonable rules and regulations ... as are necessary to administer [the UIPA]." This Court has interpreted analogous grants of authority as conferring the power to "fill up the details" of a statutory scheme. (See, e.g., *Ford Dealers*, *supra*, 32 Cal.3d at p. 362; see also *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1013-1014.)[3]

As set out in the Commissioner's brief, the circumstances, reasoning, and holding of *Ford Dealers* strongly support the conclusion that the Commissioner acted within his authority when he promulgated the replacement cost regulation. (See OBM 22-27.) The statutory scheme generally prohibited misleading statements in the context of vehicle sales and gave the Department of Motor Vehicles authority to issue regulations to carry out those provisions. (OBM 22-24, discussing *Ford Dealers*, *supra*, 32 Cal.3d at pp. 362-373.) Acting on that authority, the DMV issued regulations barring specific types of misleading statements. (*Ford Dealers*,

[3] The court of appeal and respondents assert that section 790.10 does not confer authority on the Commissioner to define new prohibited acts. (See Opn. 25; Answer Brief on the Merits 33-35.) The Commissioner in this case has not asserted authority to define a new prohibited act, but instead relies on his authority to fill in the details of prohibited acts defined by the Legislature in section 790.03, subdivision (b).

supra, 32 Cal.3d at pp. 354, 356.) Among other things, the DMV's regulations prohibited dealers from providing consumers with statements containing itemized service charges for which the dealer had already been paid or would be reimbursed. (*Id.* at p. 362.) This Court upheld the regulations, concluding that "consumers confronted with an itemized charge for services performed on their automobile will assume that they are paying extra to purchase those specific services." (*Id.* at p. 363.) "Where that is not in fact the case, because the dealer has already been paid for the services, the DMV could reasonably conclude that such an itemized charge is inherently misleading." (*Ibid.*) Similarly, here, the UIPA broadly prohibits misleading public statements regarding the business of insurance (§ 790.03, subd. (b)), and authorizes the Commissioner to administer the UIPA (§ 790.10). As the Commissioner determined, his rulemaking authority under the UIPA reasonably encompasses the authority to determine that specific types of statements that fail to comport with consumer expectations and assumptions about replacement cost coverage are inherently misleading. (See OMB 24-27.)

Respondents argue that *Ford Dealers* is "not controlling here" because the Court "appeared to assume, without expressly deciding, that the regulations at issued in that case were adopted pursuant to a proper delegation of legislative authority."[4] (Answer Brief on the Merits (ABM) 23.) According to respondents, *Ford Dealers* is no longer good law after this Court's decision in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1. (ABM 23, citing *Yamaha*, at p. 11, fn. 4.) As respondents note, the Court in *Yamaha* clarified that, while courts give "great weight" to the construction of a statute by officials charged with its

[4] The reasonable necessity of the replacement cost regulation is not at issue in this appeal. (OBM 17-18; Opn. 18, fn. 8.)

administration, "[t]he court, not the agency, has 'final responsibility for the interpretation of the law' under which the regulation was issued." (*Yamaha*, at p. 11, fn. 4, quoting *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757.)

Contrary to respondents' argument, the Court in *Ford Dealers* did not abdicate its responsibility to make the final legal determination about the scope of the agency's rulemaking authority. Rather, the Court undertook its own examination of the statutory source of the DMV's rulemaking authority. (See, e.g., *Ford Dealers*, *supra*, 32 Cal.3d at pp. 357-362, 362-363 [interpreting Veh. Code, § 11713].) The approach and outcome in *Ford Dealers* is thus consistent with the "respectful nondeference" standard articulated in *Yamaha*. (See *Yamaha*, *supra*, 19 Cal.4th at p. 11, fn. 4; see also OBM 18 [stating that standard of review concerning scope of rulemaking authority is "respectful nondeference"]; ABM 23-24 [same].)

The Court's more recent precedents confirm that while courts retain the ultimate responsibility to construe statutes granting rulemaking authority, they accord appropriate "respect to the administrative construction." (*American Coatings Assn., Inc. v. South Coast Air Quality Dist.* (2012) 54 Cal.4th 446, 461;[5] see also *Western States*, *supra*, 57 Cal.4th at p. 415 ["[i]n determining whether an agency has incorrectly interpreted the statute it purports to implement, a court gives weight to the agency's construction"]; *Larkin v. W.C.A.B.* (2015) 62 Cal.4th 152, 158 [adjudicatory determinations by expert agency charged with implementing

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[5] *American Coatings* observed that in reviewing quasi-legislative rulemaking, a court must be "satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature[.]" (54 Cal.4th at p. 460.) Similarly, in reviewing an interpretive rule, the court must take "'ultimate responsibility for the construction of the statute....'" (*Id.* at p. 461, quoting *Yamaha*, *supra*, 19 Cal.4th at p. 12.)

statute entitled to "great weight"].)[6] In the particular context of the Insurance Code, this Court has instructed courts to conduct an "independent examination" of the relevant statutes, and also to ask "'whether in enacting the specific rule' the Commissioner 'reasonably interpreted the legislative mandate.'" (*State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, 1040 [rulemaking related to different part of code, concerning insurance rates], quoting *Fox v. San Francisco Residential Rent etc. Bd.* (1985) 169 Cal.App.3d 651, 656.)

Just as the DMV in *Ford Dealers* reasonably determined that a statute authorizing it "to adopt rules and regulations 'as may be necessary to carry out'" the Vehicle Code conferred on it authority to issue regulations identifying specific classes of misleading statements (*Ford Dealers*, *supra*, 32 Cal.3d at pp. 354, 362-363), the Commissioner here reasonably determined that section 790.10, broadly authorizing rulemaking to administer the UIPA, conferred on him the authority to issue regulations making clear that replacement cost estimates that are incomplete or do not reflect the actual and current costs of rebuilding are inherently misleading. This construction is entitled to appropriate respect and, as discussed in the Commissioner's Opening Brief and below, is wholly consistent with the text of section 790.03 and legislative intent.

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[6] Respondents contend that the Commissioner's rulemaking authority should not be deemed "quasi-legislative." (See ABM 25.) The Commissioner acknowledges that regulations do not always fall "neatly" into the category of being either quasi-legislative or interpretive, but may rest on a "continuum." (*Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 799.) However characterized, the relevant question is, always, whether the rulemaking authority asserted is consistent with legislative intent. (*Ibid.*) As established in the Opening Brief and in this Reply, the Commissioner's replacement cost regulation is consistent with the Legislature's intent.

B. *Ford Dealers* and *Moore* Support the View that the Commissioner Has Authority to Fill in the Details of What Constitutes an Untrue, Deceptive, or Misleading Public Statement

Respondents make additional attempts to distinguish *Ford Dealers*—first on the ground that the Vehicle Code did not "provid[e] a procedure for the agency to prosecute conduct not elsewhere defined in the Vehicle Code as false or misleading." (ABM 24, see also *id.* at 28.) They argue that, unlike the statute in *Ford Dealers*, the UIPA contains a provision, section 790.06, that gives gave the Commissioner authority to determine new, undefined, unlawful acts through individual adjudications. Respondents argue that, by giving the Commissioner this authority, the Legislature intended that the Commissioner would be limited to using this adjudicatory procedure to identify new unfair practices. (ABM 24-25.)

The premise of this argument is flawed. The replacement cost regulation does not establish a new, previously undefined unfair practice.[7] The Legislature in section 790.03, subdivision (b) already has defined misleading public statements as an unfair trade practice. The regulation is filling a gap by clarifying that incomplete replacement cost estimates are misleading under that section and subdivision. Therefore, section 790.06's procedures for determining a *new* unfair trade practice are irrelevant to the Commissioner's authority to issue the replacement cost regulation.

Additionally, the Commissioner's authority to identify particular unfair practices through enforcement proceedings does not limit his

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[7] Respondent's "separation of powers" argument (see ABM 30-31) is simply a restatement of the rule that an agency's powers are determined by statute, and a court cannot expand an agency's powers beyond that granted by the Legislature. The Commissioner here asks the Court simply to interpret and apply, not expand, the rulemaking power set forth in section 790.10.

authority to adopt regulations. Indeed, that the Commissioner has enforcement authority supports the inference that the Commissioner also has the complementary authority to clarify general terms that are central to industry compliance. As discussed in the Commissioner's Opening Brief, where an agency is charged with administering a complex statute, the agency reasonably may choose to proceed by promulgating rules of general application, case-by-case adjudication and enforcement, or some combination. (OBM 33-35, citing, among other cases, *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 413 [choice of approach lies in agency's "sound discretion"].) Notably, respondents have not addressed these arguments and precedents or explained why they do not apply in the context of this case.

In a further attempt to distinguish *Ford Dealers*— in a footnote and without citation to authority—respondents argue that the grant of rulemaking authority to the DMV in that case was fundamentally different because the statute conferring rulemaking authority on the DMV used the phrase "carry out" rather than "administer." (ABM 25, fn. 6; see also *id.* 29-30 [reference to dictionary definition of "administer"].) Respondents also argue that this Court should infer a limiting intent from the Legislature's change from "implement" in an early draft of section 790.10 to "administer" in the final law. (ABM 29.)

Respondents fail to address the detailed discussion of the proper interpretation of "administer" set out in the Commissioner's Opening Brief. (ABM 29-30.) As discussed, "administer" is a term of art in the APA, referring to an agency's activities in carrying out a statute, which include implementing, interpreting, and making specific. (OBM 20-21; see Gov. Code, § 11342.600 [defining a regulation as "every rule, regulation, order, or standard of general application ... adopted by any state agency to implement, interpret, or make specific the law enforced or administered by

it, or to govern its procedure"].) The use of the term "administer" in section 790.10 thus is not is a limitation on agency authority; instead, it reflects the agency's broad charge to carry out the legislative scheme and delegates to the Commissioner concomitant rulemaking authority.[8]

And, in addition, this Court has held that "administer" encompasses the very type of detail-filling regulatory authority exercised by the Commissioner in this case. In *Moore*, the Court considered the scope of the State Board of Accountancy's authority to issue regulations concerning misleading titles and designations. (*Moore*, *supra*, 2 Cal.4th 999, 1003.) Under the Accountancy Act, it is unlawful for any unlicensed individual to use the title "certified public accountant," "public accountant," or "any other title or designation likely to be confused" with those terms. (*Id.* at p. 1004; see also Bus. & Prof. Code, §§ 5058, 5120.) The Board is charged with enforcement, and also has the authority to issue regulations "as may be reasonably necessary to *administer* the Accountancy Act." (*Moore*, at p. 1010, italics added; Bus. & Prof. Code, § 5010.) Under its rulemaking authority, the Board adopted a regulation prohibiting "the use of either the title 'accountant' or the description of the services offered as 'accounting' by an unlicensed person." (*Moore*, at p. 1004.) The plaintiffs challenged this regulation, arguing that the statute did not expressly prohibit the use of the terms "accountant" and "accounting," and that the Board had expanded the scope of its statutory authority "by prohibiting *any* use of the terms

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[8] Even the dictionary definitions proffered by respondents indicate that the term "administer" refers to an administrative agency's general authority to carry out a statutory scheme. (See Burton's Legal Thesaurus (4th ed. 2007) pp. 16 ["administer" is synonymous with "carry out," "control," and "direct"], 389 [synonyms for "manage" include "govern" and "regulate"].)

'accounting' or 'accounting' by unlicensed persons." (*Id.* at p. 1009, italics added.)

Rejecting this argument, the Court concluded that the Board's rulemaking authority "includes the power to identify by regulation those terms which it finds are "likely to be confused with 'certified public accountant' or 'public accountant[.]'" (*Moore*, *supra*, 2 Cal.4th at p. 1014, quoting Bus. & Prof. Code, § 5058.) The Board's enforcement authority did not undermine, but rather supported this conclusion. (*Id.* at pp. 1013-1014.) "To conclude otherwise would contravene the intent and purpose behind the statute." (*Id.* at p. 1014; see also *Ramirez*, *supra*, 20 Cal.4th at p. 799 [citing with approval, post-*Yamaha*, both *Moore* and *Ford Dealers*].)

As with the Accountancy Act, the UIPA prohibits specific unfair practices, but also broadly prohibits *any* misleading statement to the public regarding the business of insurance. And, as in *Moore*, the Commissioner is authorized to enforce the statutory scheme through individual adjudications and to issue any regulations necessary for the administration of that scheme. Consistent with both *Ford Dealers* and *Moore*, this grant of regulatory authority necessarily includes the authority to fill in the gaps in the UIPA by identifying categories of statements that are inherently misleading. (*Ford Dealers*, *supra*, 32 Cal.3d at pp. 362-363; *Moore*, *supra*, 2 Cal.4th at pp. 1013-1014.) That is precisely what the Commissioner did in promulgating the replacement cost regulation.[9]

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[9] Respondents compare section 790.10 with grants of regulatory authority in other statutory schemes, claiming that the differences indicate that the grant of authority in section 790.10 is narrow. (ABM 26-27.) Such differences are not surprising given the broad range of administrative agencies and the varying duties assigned to them. *Ford Dealers* and *Moore* are instructive on the particular type of detail-filling rulemaking at issue in this case and support the Commissioner's view of his authority.

C. That the Unfair Insurance Practices Act in Some Respects Might Be "Self-Executing" is Irrelevant to the Question of the Scope of the Commissioner's Rulemaking Authority

Respondents rely on the dissent in *Western States Petroleum Assn.* for the proposition that the UIPA is self-executing, suggesting that this somehow limits the Commissioner's ability to issue regulations. (ABM 27, citing *Western States*, *supra* 57 Cal.4th at p. 436 (conc. & dis. opn. of Kennard, J.).) A self-executing statute is simply a statute that does not require implementing regulations to be effective. (*American Nurses Assn. v. Torlakson* (2013) 57 Cal.4th 570, 580.) The fact that a statute is self-executing, however, does not mean that the administering agency is precluded from issuing regulations. (Cf. *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 28 [discussing self-executing constitutional provisions].) Regardless of whether the UIPA is self-executing in some respects, the Legislature has expressly authorized the Commissioner to issue regulations, and this express grant controls.

D. Respondents' Attempts to Counter the Clear Legislative History Supporting the Commissioner's Rulemaking Authority Are Without Merit

The legislative history also supports a broad interpretation of the Commissioner's rulemaking authority. As discussed in the Commissioner's Opening Brief, the legislative history reflects that, in enacting section 790.10, the Legislature intended to "give[] the Insurance Commissioner the authority to promulgate rules and regulations so that if the need therefor arises, he can, without delay, promulgate necessary rules making such practices definite and specific for the benefit to the public without having to wait for the Legislation to act at a later date." (OBM 29, quoting MJN, Ex. H, p. 33 [Assem. Com. on Finance and Insurance, summary of Assem. Bill No. 1353 (1971) Reg. Sess.), emphasis added].)

As the court of appeal acknowledged, this statement of legislative purpose supports the conclusion that section 790.10 authorizes the Commissioner to issue the replacement cost regulation. (Opn. 29.)

Respondents do not even mention this bill analysis. Instead, they point to an enrolled bill report that states that the fiscal effect of adding section 790.10 to the UIPA is "[o]ne time $1,500 costs." (ABM 28; Respondents' Motion for Judicial Notice, Ex. A, [Cal. Dept. of Finance, Enrolled Bill Rep. on Assem. Bill No. 1353 (1971 Reg. Sess.) prepared for Governor Reagan (Oct. 8, 1971)].) Respondents argue that the Legislature must have anticipated very limited regulatory activity, given the low estimated costs. (ABM 28.)

Because enrolled bill reports are not prepared by or for the Legislature, however, they are not given great weight and cannot be used to contradict the analysis of a legislative committee or the plain language of a statute. (*In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1218, fn. 3.) As noted, the relevant committee report contemplated prompt, proactive rulemaking, not a one-time, $1,500 hearing. And section 790.10 expressly provides that the Commissioner "shall promulgate reasonable rules and regulations" "from time to time as conditions warrant...." (§ 790.10.) An enrolled bill report "cannot be used to alter the substance of legislation[.]" (*Whitley*, *supra*, 50 Cal.4th at p. 1218, fn. 3.)

Even if the enrolled bill report is properly considered, it in fact supports the Commissioner's interpretation. The report contains two findings: 1) "The insurance code sections which define unfair trade practices, which includes misleading advertising, are rather broad and subject to considerable interpretation"; and 2) "This bill authorizes the Insurance Commissioner to promulgate reasonable rules and regulations necessary to administer the provisions of the existing law." (Respondents' Motion for Judicial Notice, Ex. A.) Read together, these findings support