

## Assembly Bill No. 1760

### CHAPTER 415

An act to amend Sections 1874.1, 10234.6, 11691, 11692, 11692.5, 11693, and 11694 of, to add Sections 1872.84, 1877.2, and 11694.5 to, and to repeal Section 1660 of, the Insurance Code, relating to insurance.

[Approved by Governor September 29, 2005. Filed with  
Secretary of State September 29, 2005.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1760, Committee on Insurance. Insurance.

(1) Existing law requires the Insurance Commissioner to ensure that the Bureau of Fraudulent Claims aggressively pursues all reported incidents of probable workers' compensation fraud and forwards to the appropriate disciplinary body the names of individuals, licensed as specified, who are suspected of engaging in fraudulent activity.

This bill would include persons who are licensed under the Chiropractic Initiative Act in these provisions.

Existing law requires an insurer or other specified person, upon written request of an authorized governmental agency, to release to the agency certain information in connection with motor vehicle theft, motor vehicle insurance fraud, or workers' compensation insurance fraud. Existing law defines "authorized governmental agency" for these purposes.

This bill would include any licensing agency governed by the Chiropractic Initiative Act in the definition of authorized governmental agency.

(2) Existing law requires the Insurance Commissioner to, by June 1 of each year, design the format and content of a consumer rate guide for long-term care insurance. Existing law requires the consumer rate guide to include a history of the rates for all policies issued in the United States on or after January 1, 1990.

This bill would instead require the consumer rate guide to include a history of the rates for all policies issued in California for the current year and the 4 preceding years. The bill would require the Department of Insurance to publish, on its Internet Web site, a premium history of each insurer that writes long-term care policies for all the types of long-term care insurance and coverages issued by the insurer in each state.

(3) Existing law provides for the regulation, by the commissioner, of insurers desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance. Existing law requires these insurers to deposit cash instruments or certain interest-bearing securities or stocks with specified financial institutions. Existing law requires these deposits to be made or adjusted by April 1 of each year.

This bill would instead require the deposits to be adjusted by March 31 of each year. The bill would require the approval of the commissioner to withdraw any amount of these deposits. The bill would revise the fees that are required to be paid to the commissioner for certain filings. The bill would require these insurers and reinsurers to file a report with the commissioner each year that valuates and details the deposits.

(4) Existing law requires the commissioner to conduct a study of the market for property and liability insurance for corporations that provide subsidized low- and moderate-income rental housing, as specified.

This bill would provide that information disclosed by insurers pursuant to that study shall be confidential and shall not be made public by the department, except as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1660 of the Insurance Code is repealed.

SEC. 2. Section 1872.84 is added to the Insurance Code, to read:

1872.84. The commissioner shall ensure that the Fraud Division forwards to the appropriate disciplinary body, in addition to the names and supporting evidence of individuals described in subdivision (a) of Section 1872.83, the names, along with all supporting evidence, of any individuals licensed under the Chiropractic Initiative Act who are suspected of actively engaging in fraudulent activity.

SEC. 3. Section 1874.1 of the Insurance Code is amended to read:

1874.1. The following definitions govern the construction of this article, unless the context requires otherwise:

(a) “Authorized governmental agency” means the Department of the California Highway Patrol, the Department of Insurance, the Department of Justice, the Department of Motor Vehicles, the police department of a city, or a city and county, the sheriff’s office or department of a county, a law enforcement agency of the federal government, the district attorney of any county, or city and county, and any licensing agency governed by the Business and Professions Code or the Chiropractic Initiative Act.

(b) “Relevant” means having a tendency to make the existence of any fact that is of consequence to the investigation or determination of an issue more probable or less probable than it would be without the information.

(c) Information shall be deemed important if, within the sole discretion of the authorized governmental agency, that information is requested by that authorized governmental agency.

(d) “Insurer” means the automobile assigned risk plan established pursuant to Section 11620 of the Insurance Code, as well as any insurer writing insurance for motor vehicles or otherwise liable for any loss due to motor vehicle theft or motor vehicle insurance fraud.

(e) “Motor vehicle” means motor vehicle as defined in Section 415 of the Vehicle Code.

SEC. 4. Section 1877.2 is added to the Insurance Code, to read:

1877.2. For the purposes of this article, “authorized governmental agency” includes, in addition to the entities listed in subdivision (a) of Section 1877.1, any licensing agency governed by the Chiropractic Initiative Act.

SEC. 5. Section 10234.6 of the Insurance Code is amended to read:

10234.6. (a) The commissioner shall, by June 1 of each year, jointly design the format and content of a consumer rate guide for long-term care insurance with a working group that includes representatives of the Health Insurance Counseling and Advocacy Program, the insurance industry, and insurance agents. The commissioner shall annually prepare the consumer rate guide for long-term care insurance that shall include, but not be limited to, the following information:

(1) A comparison of the different types of long-term care insurance and coverages available to California consumers.

(2) A premium history of each insurer that writes long-term care policies for all the types of long-term care insurance and coverages issued by the insurer in California.

(b) The consumer rate guide to be prepared by the commissioner shall consist of two parts: a history of the rates for all policies issued in California for the current year and for four preceding years, and a comparison of the policies, benefits, and sample premiums for all policies currently being issued for delivery in California.

(1) For the rate history portion of the rate guide required by this section, the department shall collect, and each insurer shall provide to the department, all of the following information for each long-term care policy, including all policies, whether issued by the insurer or purchased or acquired from another insurer, issued in California for the current year and for four preceding years:

(A) Company name.

(B) Policy type.

(C) Policy form identification.

(D) Dates sold.

(E) Date acquired (if applicable).

(F) Premium rate increases requested.

(G) Premium rate increases approved.

(H) Dates of premium rate increase approvals.

(I) Any other information requested by the department.

(2) For the policy comparison portion of the rate guide required by this section, the department shall collect, and each insurer shall provide to the department, the information needed to complete the following form, along with any other information requested by the department, for each long-term care policy currently issued for delivery in California, including all policies, whether issued by the insurer or purchased or acquired from another insurer:

NOTE TO PRINTING OFFICE: Insert Camera-Ready Copy Here  
for Insurance Company Policy Benefit information form  
as published on page 3 of Ch. 560, Stats. 2000.

If an insurer does not offer a policy for sale that fits the criteria set forth in the sample premium portion of the policy comparison section of the rate guide, the department shall include in that section of the form for that policy a statement explaining that a policy fitting that criteria is not offered by the insurer and that the consumer may seek, from an agent, sample premium information for the insurer's policy that most closely resembles the policy in the sample.

The department shall use the format set forth in this section for the policy comparison portion of the rate guide, unless the working group convened pursuant to subdivision (a) designs an alternative format and agrees that it should be used instead.

In compiling the policy comparison portion of the rate guide, the department shall separate the group policies from the individual policies available for sale so that group policies for all insurers appear together in the guide and individual policies for all insurers appear together in the guide.

The policy comparison portion of the rate guide shall contain a cross-reference for each policy form listed indicating the page in the rate guide where rate information on the policy form can be found.

(c) The department shall publish, on the department's Internet Web site, a premium history of each insurer that writes long-term care policies for all the types of long-term care insurance and coverages issued by the insurer in each state. Each insurer shall provide to the department all of the information listed in paragraph (1) of subdivision (b) for each long-term care policy, including all policies, whether issued by the insurer or purchased or acquired from another insurer, issued in the United States for the current year and for nine preceding years.

(d) Insurers shall provide the information required pursuant to subdivisions (b) and (c) no later than July 31 of each year, commencing in 2000.

(e) The consumer rate guide shall be published no later than December 1st of each year commencing in 2000, and shall be distributed using all of the following methods:

(1) Through Health Insurance Counseling and Advocacy Program (HICAP) offices.

(2) By telephone using the department's consumer toll-free telephone number.

(3) On the department's Internet Web site.

(4) A notice in the Long-Term Care Insurance Personal Worksheet required by Section 10234.95.

(f) Notwithstanding any other provision of law, the data submitted by insurers to the department pursuant to this section are public records, and shall be open to inspection by members of the public pursuant to the procedures of the California Public Records Act. However, a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, is not subject to this subdivision.

SEC. 6. Section 11691 of the Insurance Code is amended to read:

11691. (a) In order to provide protection to the workers of this state in the event that the insurers issuing workers' compensation insurance to employers fail to pay compensable workers' compensation claims, when due, except in the case of the State Compensation Insurance Fund, every insurer desiring admission to transact workers' compensation insurance, or workers' compensation reinsurance business, or desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance shall, as a prerequisite to admission, or ability to reinsure the injury, disablement, or death portion of policies of workers' compensation insurance under the class of disability insurance, deposit cash instruments or approved interest-bearing securities or approved stocks readily convertible into cash, investment certificates, or share accounts issued by a savings and loan association doing business in this state and insured by the Federal Deposit Insurance Corporation, certificates of deposit or savings deposits in a bank licensed to do business in this state, or approved letters of credit that perform in material respects as any other security allowable as a form of deposit for purposes of a workers' compensation deposit and that meet the standard set forth in Section 922.5, or approved securities registered with a qualified depository located in a reciprocal state as defined in Section 1104.9, with that deposit to be in an amount and subject to any exceptions as set forth in this article. The deposit shall be made from time to time as demanded by the commissioner and may be made with the Treasurer, or a bank or savings and loan association authorized to engage in the trust business pursuant to Division 1 (commencing with Section 99) or Division 2 (commencing with Section 5000) of the Financial Code, or a trust company. A deposit of securities registered with a qualified depository located in a reciprocal state as defined in Section 1104.9 may only be made in a bank or savings and loan association authorized to engage in the trust business pursuant to Division 1 (commencing with Section 99) or Division 2 (commencing with Section 5000) of the Financial Code, or a trust company, licensed to do business and located in this state that is a qualified custodian as defined in paragraph (1) of subdivision (a) of Section 1104.9 and that maintains deposits of at least seven hundred fifty million dollars (\$750,000,000). The deposit shall be made subject to the approval of the commissioner under those rules and regulations that he or she shall promulgate. The deposit shall be maintained at a deposit value specified by the commissioner, but in any event no less than one hundred thousand dollars (\$100,000), nor less than the reserves required of the insurer to be maintained under any of the provisions of Article 1 (commencing with Section 11550) of Chapter 1 of Part 3 of Division 2, relating to loss reserves on workers' compensation business of the insurer in this state, nor less than the sum of the amounts specified in subdivision (a) of Section 11693, whichever is greater. The deposit shall be for the purpose of paying compensable workers' compensation claims under policies issued by the insurer or reinsured by the admitted reinsurer and

expenses as provided in Section 11698.02, in the event the insurer or reinsurer fails to pay those claims when they come due.

(b) Each insurer or reinsurer desiring to have the ability to reinsure the injury, disablement, or death portions of policies of workers' compensation under the class of disability insurance shall provide prior notice to the commissioner, in the manner and form prescribed by the commissioner of its intent to reinsure that insurance. In the event of late notice, a late filing fee shall be imposed on the reinsurer pursuant to Section 924 for failure to notify the commissioner of its intent to reinsure workers' compensation insurance.

(c) If the deposit required by this section is not made with the Treasurer, then the depositor shall execute a trust agreement in a form approved by the commissioner between the insurer, the institution in which the deposit is made or, where applicable, the qualified custodian of the deposit, and the commissioner, that grants to the commissioner the authority to withdraw the deposit as set forth in Sections 11691.2, 11696, 11698, and 11698.3. The insurer shall also execute and deliver in duplicate to the commissioner a power of attorney in favor of the commissioner for the purposes specified herein, supported by a resolution of the depositor's board of directors. The power of attorney and director's resolution shall be on forms approved by the commissioner, shall provide that the power of attorney cannot be revoked or withdrawn without the consent of the commissioner, and shall be acknowledged as required by law.

(d) (1) The commissioner shall require payment in advance of fees for the initial filing of a trust agreement with a bank, savings and loan association, or trust company on deposits made pursuant to subdivision (a); for each amendment, supplement, or other change to the deposit agreement; for receiving and processing deposit schedules pursuant to this section; and for each withdrawal, substitution, or any other change in the deposit. The fees shall be set forth in the department's Schedule of Fees and Charges.

(2) The commissioner shall require payment in advance of a fee for the initial filing of each letter of credit utilized pursuant to subdivision (a). In addition, the commissioner shall require payment in advance of a fee for each amendment of a letter of credit. The fees shall be set forth in the department's Schedule of Fees and Charges.

(e) Any workers' compensation insurer that deposits cash or cash equivalents pursuant to this section shall be entitled to a prompt refund of those deposits in excess of the amount determined by the commissioner pursuant to subdivision (a). The commissioner shall cause to be refunded any deposits determined by the commissioner to be in excess of the amount required by subdivision (a) within 30 days of that determination. In the alternative, an insurer may use any excess deposit funds to offset a demand by the commissioner to increase its deposit due to the failure of a reinsurer to make a deposit pursuant to this section.

(f) (1) As of January 1, 2003, an admitted insurer reinsuring business covered in this article (hereafter referred to as reinsurer) shall identify to

the commissioner, in a form prescribed by the commissioner, amounts deposited for credit in the name of each ceding insurer.

(2) Beginning January 1, 2005, all reinsurance agreements covering claims and obligations under business covered by this article, and allowable for purposes of granting a ceding carrier a deposit credit, shall include a provision granting the commissioner, in the event of a delinquency proceeding, receivership, or insolvency of a ceding insurer, any sums from a reinsurer's deposit that are necessary for the commissioner to pay those reinsured claims and obligations, or to ensure their payment by the California Insurance Guarantee Association, deemed by the commissioner due under the reinsurance agreement, upon failure of the reinsurer for any reason to make payments under the policy of reinsurance. The commissioner shall give 30 days' notice prior to drawing upon these funds of an intent to do so. Notwithstanding the commissioner's right to draw on these funds, the reinsurer shall otherwise retain its right to determine the validity of those claims and obligations and to contest their payment under the reinsurance agreement. Prior to a reinsurer's deposit being drawn upon, in whole or in part, by the department, the department shall provide a reinsurer with an explanation of procedures that a reinsurer may use to explain to the department why the use of the reinsurer's deposit may not be appropriate under the reinsurance agreement.

(3) No reinsurer entering into a contract identified in paragraph (2), beginning on or after January 1, 2005, may cede claims or obligations assumed from a ceding insurer unless the deposit securing the ceded claims or obligations is governed by paragraph (2) or, upon approval of the commissioner, would secure the ceded claims or obligations in all material respects and in the same manner as a deposit identified in paragraph (2) above.

(4) All sums received from the reinsurer by the commissioner for those claims paid by the California Insurance Guarantee Association shall be held separate and apart from and not included in the general assets of the insolvent insurer, and shall be transferred to the California Insurance Guarantee Association upon receipt by the commissioner. In the event of a final judgment or settlement adverse to the drawing of funds by the commissioner pursuant to paragraph (2) or (3), the California Insurance Guarantee Association shall repay funds it obtained to pay covered claims and shall, if necessary, either levy a surcharge as needed or seek legislative approval to levy the surcharge if the California Insurance Guarantee Association is already levying the maximum surcharge permissible under law.

(g) If a reinsurer has not maintained deposits as required by subdivision (a) in amounts equal to the amounts of deposit credits claimed by its ceding insurers, the commissioner, after notifying the reinsurer and its ceding insurers of the deposit shortfall and allowing 15 days from the date of the notice for the deposit shortfall to be corrected, may disallow all or a portion of the reserve credits claimed by the ceding insurers. A ceding

insurer disallowed a reserve credit pursuant to this provision shall immediately make the deposit required by this section.

(h) For interest-bearing securities that are debt securities and include principal payment features prior to maturity that are utilized pursuant to subdivision (a), all principal payments received must be retained as part of the deposit.

(i) Withdrawal of any amount of the deposit required under subdivision (a) that results in a reduction of the required amount of the deposit may only occur with the prior written consent of the commissioner.

SEC. 7. Section 11692 of the Insurance Code is amended to read:

11692. A certificate of authority to transact workers' compensation insurance in this state shall not be issued nor renewed to any insurer until the deposit required pursuant to Section 11691 is approved by the commissioner.

SEC. 8. Section 11692.5 of the Insurance Code is amended to read:

11692.5. On and after the effective date of this article, the commissioner shall collect a late filing fee from any admitted insurer or reinsurer that fails to deposit the securities when required by this code in the following amount:

(a) If the deposit shortfall is outstanding for less than 31 days, 0.5 percent of the deposit shortfall, but in no event not less than six hundred dollars (\$600).

(b) If the deposit shortfall is outstanding for more than 30 days but less than 61 days, an additional late filing fee in the amount of 1 percent of the deposit shortfall, but in no event not less than one thousand two hundred dollars (\$1,200) shall be due.

(c) If the deposit shortfall is outstanding for 61 days or greater, an additional late filing fee of 1.5 percent of the deposit shortfall for every 30-day period thereafter, or fraction thereof, but in no event shall this portion of the late filing fee for each additional 30-day period or fraction thereof be less than three thousand dollars (\$3,000). The late filing fees provided herein are in addition to all other rights and remedies granted the commissioner by this article.

SEC. 9. Section 11693 of the Insurance Code is amended to read:

11693. The deposit required pursuant to Section 11691 shall be adjusted on or prior to March 31 of each year in an amount as follows:

(a) Not less than the sum of the following amounts computed, less credits and deductions allowable with respect to reinsurance in admitted insurers, as provided under Section 11691, as of the close of the last preceding December 31 or as of any calendar quarter end as directed by the commissioner pursuant to Section 11694 in respect to workers' compensation insurance written subject to the workers' compensation laws of this state:

(1) The aggregate of the present values at 6 percent interest, or at the rate of the company's investment yield as determined by the NAIC Insurance Regulatory Information System Ratio Number 5 for Property and Casualty Companies, whichever is lower, of the determined and

estimated future payments upon compensation claims not included in paragraph (2), including in those claims both benefits and loss expenses.

(2) The aggregate of the amounts computed as follows:

For each of the preceding three years, 65 percent of the earned compensation premiums for that year less all loss and loss expense payments made upon claims incurred in the corresponding year from that 65 percent; except that the amount for each year shall not be less than the present value at 6 percent interest of the determined and the estimated unpaid claims incurred in that year, including both benefits and loss expenses.

(b) Not less than one hundred thousand dollars (\$100,000).

(c) If the aggregate amount computed under subdivision (a) exceeds fifty thousand dollars (\$50,000), not more than double the aggregate amount.

(d) The commissioner may utilize securities valuation software programs or services to validate the value of securities held in workers' compensation deposits of insurers authorized to transact workers' compensation insurance in California as direct writers or reinsurers, or reinsurers of workers' compensation under the class of disability.

SEC. 10. Section 11694 of the Insurance Code is amended to read:

11694. After the first annual statement to the commissioner covering business of the insurer for a full year in this state, the deposit required pursuant to Section 11691 shall be computed from the figures shown in the last preceding report of business as of December 31, filed with the commissioner, and shall be reported to the commissioner on or before March 1 of each year in a form and manner prescribed by the commissioner. Notwithstanding anything to the contrary in this article, should the commissioner determine that there has been a material change in the insurer's ultimate liability for future payments upon compensable workers' compensation claims in this state, at the commissioner's discretion, the amount of the deposit shall then be fixed by the commissioner at the amount that he or she deems sufficient to secure the payment of the insurer's ultimate obligations on its workers' compensation insurance transacted in this state, and upon notification from the commissioner the insurer shall immediately, but in no event less than 30 days after notification, increase the deposit as directed.

SEC. 11. Section 11694.5 is added to the Insurance Code, to read:

11694.5. On or before March 1 and May 15 of each year, the insurers or reinsurers subject to Section 11694 shall file a report in the form and manner prescribed by the commissioner that values and details the deposit as of December 31 of the preceding year and March 31 of the current year. The commissioner may require additional reporting by any insurer or reinsurer when it is deemed necessary.

SEC. 12. Notwithstanding any other provision of law, information disclosed by insurers pursuant to the study conducted by the Insurance Commissioner required by Chapter 771 of the Statutes of 2004 shall be confidential and shall not be made public by the Department of Insurance,

except that the commissioner may publish an analysis of the data in aggregate form or in a manner that does not disclose confidential information about identified insurers or insureds.

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