

AMENDED IN ASSEMBLY APRIL 18, 2006

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1883

Introduced by Assembly Member De La Torre

January 23, 2006

An act to amend Sections 11751.1 and 11751.5 of, and to add Section 11752.75 to, the Insurance Code, and to amend Sections 62.5 and 90.3 of the Labor Code, relating to workers' compensation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1883, as amended, De La Torre. Workers' compensation: proof of insurance coverage.

Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires a rating organization, as defined, that rates insurance plans authorized to provide workers' compensation insurance and employers' liability insurance to provide satisfactory evidence to the Insurance Commissioner that it will take certain actions to regulate those plans, including, among other things, maintaining reasonable records of the experience of the plans' members and of the data, statistics, or information collected or used in connection with the pure premium rates, classifications, manual rules, and policy and endorsement forms used by its members so that these records will be available at all reasonable times to enable the commissioner to determine whether the rating organization and its

members comply with specified laws regulating workers' compensation insurers.

This bill would also require a rating organization to maintain reasonable records to identify the name and contact information of the insurer of each insured employer for specified purposes relating to compliance with workers' compensation laws in accordance with regulations adopted by the commissioner after notice and hearing.

Existing law authorizes the commissioner, after notice and hearing, to promulgate reasonable rules and statistical plans, which may be modified from time to time, and requires that these rules and plans be used thereafter in the recording and reporting by insurers of their loss and expense experience in order that the experiences of all insurers may be made available in any form and detail as may be necessary to aid the commissioner in administering provisions governing state workers' compensation rates.

This bill would require that those rules include a provision for the reporting by insurers of timely and accurate identification of employers insured, including specified information. The bill would require a rating organization, pursuant to regulations adopted by the commissioner after notice and hearing, to establish, maintain, and update an Internet Web site for the purposes of assisting any person to ascertain whether an employer is insured for workers' compensation and to identify present or past insurers of an employer, as specified.

Existing law creates the Uninsured Employers Benefits Trust Fund as a special trust fund in the State Treasury, and provides that the fund is continuously appropriated for the payment of nonadministrative expenses of the workers' compensation program for workers injured while employed by uninsured employers.

This bill would require, by no later than July 1, 2008, the establishment of a workers' compensation enforcement-of-coverage program, as specified, designed to detect unlawfully insured employers, and would authorize the continuous appropriation of moneys in the trust fund for purposes of the program. By expanding the purposes for which the trust fund may be used, this bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 11751.1 of the Insurance Code is
2 amended to read:

3 11751.1. To obtain and retain a license, a rating organization
4 shall provide satisfactory evidence to the commissioner that it
5 shall do all of the following:

6 (a) Permit any insurer to become a member at a reasonable
7 cost and without discrimination, or to withdraw therefrom.

8 (b) Neither have nor adopt any rule or exact any agreement,
9 the effect of which would be to require any member as a
10 condition of membership to adhere to any rates.

11 (c) Neither adopt any rule nor exact any agreement, the effect
12 of which would be to prohibit or regulate the payment of
13 dividends, savings, or unabsorbed premium deposits allowed or
14 returned by insurers to their policyholders or members.

15 (d) Neither practice nor sanction any plan or act of boycott,
16 coercion, or intimidation.

17 (e) Neither enter into nor sanction any contract or act by which
18 any person is restrained from lawfully engaging in the insurance
19 business.

20 (f) Notify the commissioner promptly of every change in its
21 constitution or articles of incorporation, agreement of
22 association, or in its bylaws, rules and regulations governing the
23 conduct of its business; its list of members; and the name and
24 address of the resident of this state designated by it upon whom
25 notices or orders of the commissioner or process affecting the
26 organization may be served.

27 (g) Agree that the commissioner or his or her representative
28 may attend all meetings of the organization or any of its
29 committees.

30 (h) Agree to permit four members of the public, two
31 representing organized labor and two representing insured
32 employers, to serve on the managing or governing committee of
33 the organization as specified in Section 11751.35.

34 (i) Maintain reasonable records of the experience of its
35 members and of the data, statistics or information collected or
36 used in connection with the pure premium rates, classifications,
37 manual rules, and policy and endorsement forms used by its
38 members so that these records will be available at all reasonable

1 times to enable the commissioner to determine whether the rating
2 organization and its members comply with this chapter
3 applicable to them, and reasonable records that identify the name
4 and contact information of the insurer of each insured employer
5 for the purposes specified in Section 11752.75, and in Section
6 90.3 of the Labor Code, in a manner in which the commissioner
7 shall prescribe by regulation adopted after notice and hearing.
8 These records shall be maintained in an office within this state.
9 The commissioner may prescribe a uniform system for the
10 keeping of the records that shall be reasonably adapted to the
11 rating organization and its members' method of operation and
12 that shall be applicable to all rating organizations licensed under
13 this article and their members.

14 SEC. 2. Section 11751.5 of the Insurance Code is amended to
15 read:

16 11751.5. The commissioner, after notice and hearing, may
17 promulgate reasonable rules and statistical plans, which may be
18 modified from time to time and which shall be used thereafter in
19 the recording and reporting by insurers of their loss and expense
20 experience in order that the experiences of all insurers may be
21 made available in any form and detail as may be necessary to aid
22 the commissioner in administering Article 2 (commencing with
23 Section 11730). The rules shall include a provision for the
24 reporting by insurers of timely and accurate identification of
25 employers insured, including either the Federal Employer
26 Identification Number or the State Employer Identification
27 Number, or both, of each insured employer, in order that the
28 coverage in effect for an employer may be identified for the
29 purposes specified in Section 11752.75, and Section 90.3 of the
30 Labor Code. The commissioner shall designate a rating
31 organization licensed under this article as his or her statistical
32 agent to gather and compile these experience statistics and all
33 licensed rating organizations shall report the experience of their
34 members to that designated rating organization. Subject to
35 reasonable rules approved by the commissioner, the designated
36 rating organization shall make the experience statistics, when
37 compiled, available to all licensed rating organizations and may
38 make a reasonable charge to other rating organizations for the
39 expense incurred by it in combining, tabulating, and compiling
40 the experience of all workers' compensation insurers.

1 SEC. 3. Section 11752.75 is added to the Insurance Code, to
2 read:

3 11752.75. (a) A rating organization shall, pursuant to
4 regulations adopted by the commissioner after notice and
5 hearing, establish and maintain an Internet Web site for purposes
6 of assisting any person to ascertain whether an employer is
7 insured for workers' compensation and to identify present or past
8 insurers of an employer. The Web site shall permit a person to
9 submit a query for coverage information concerning a specified
10 employer on a specified date. The Web site shall provide
11 information, and a statement regarding whether policy
12 information available from the electronically accessed records of
13 the rating organization identifies workers' compensation
14 insurance for that employer is in effect on the date specified in
15 the query. If proof of insurance is found, the Web site shall
16 provide the name of the insurance carrier and contact information
17 for communicating with the insurer with regard to claims. The
18 Web site shall permit a query using an employer's Federal
19 Employer Identification Number or the name of the employer,
20 and may permit the person submitting the query to additionally
21 submit the address of the employer. The commissioner may
22 prescribe additional information to be accessed by the Web site
23 for the purpose of identifying the appropriate insurer for a claim
24 in the event the employer is insured for workers' compensation
25 by more than one insurer for a given date. A rating organization
26 shall not be required to disclose any confidential information,
27 including policy numbers or inception or expiration dates on the
28 Web site. The Web site shall be accessible without charge.
29 However, the commissioner may at his or her discretion, permit
30 the rating organization to impose access restrictions as necessary
31 to deter the use of the Web site for purposes other than the
32 purposes for which it is intended. *The Web site shall also contain*
33 *a hyperlink to the Department of Industrial Relations' Web site*
34 *for the purpose of locating employers who may be self-insured.*

35 (b) The Web site shall include any disclaimers that the
36 commissioner may prescribe, including any disclaimers
37 indicating that the contents of the Web site shall not constitute
38 evidence of insurance coverage or the absence of insurance
39 coverage.

1 (c) The regulations adopted by the commissioner pursuant to
2 subdivision (a) shall specify how long the rating organization is
3 required to maintain coverage information accessible through the
4 Web site after the expiration of a policy. The regulations shall
5 not require a rating organization to convert policy information in
6 its records to a form that is accessible through the Web site if the
7 information was stored by the rating organization in a different
8 form prior to the effective date of the regulations. The regulations
9 shall be adopted no later than January 1, 2008, and may be
10 amended from time to time. The Web site shall become
11 operational no later than January 1, 2009, unless otherwise
12 provided by regulation. The Web site shall be updated, at least
13 once every 60 days, with all relevant information.

14 (d) No rating organization, member of a rating organization,
15 member of a committee of a rating organization, when acting in
16 its capacity as a member of the committee, or officer or
17 employee of a rating organization, or when acting within the
18 scope of his or her employment, shall be liable to any person for
19 injury, personal or otherwise, or damages caused or alleged to
20 have been caused, either directly or indirectly, by the disclosure
21 of information pursuant to this section, or for the accuracy or
22 completeness of any of the information disclosed.

23 (e) This section shall not be construed as implying the
24 existence of liability in circumstances not defined in this section,
25 nor as implying a legislative recognition that, except for the
26 enactment of this section, a liability has existed or would exist in
27 the circumstances stated in this section.

28 (f) This section shall not be construed as limiting the authority
29 of a rating organization to disclose information contained in its
30 records to others.

31 SEC. 4. Section 62.5 of the Labor Code is amended to read:

32 62.5. (a) The Workers' Compensation Administration
33 Revolving Fund is hereby created as a special account in the
34 State Treasury. ~~Money~~ *Moneys* in the fund may be expended by
35 the department, upon appropriation by the Legislature, for the
36 administration of the workers' compensation program set forth in
37 this division and Division 4 (commencing with Section 3200),
38 other than the activities financed pursuant to Section 3702.5, and
39 the Return-to-Work Program set forth in Section 139.48, and
40 may not be used or borrowed for any other purpose.

1 (b) The fund shall consist of surcharges made pursuant to
2 subdivision (e).

3 (c) (1) The Uninsured Employers Benefits Trust Fund is
4 hereby created as a special trust fund account in the State
5 Treasury, of which the director is trustee, and its sources of funds
6 are as provided in subdivision (e). Notwithstanding Section
7 13340 of the Government Code, the fund is continuously
8 appropriated for the payment of nonadministrative expenses of
9 the workers' compensation program for workers injured while
10 employed by uninsured employers in accordance with Article 2
11 (commencing with Section 3710) of Chapter 4 of Part 1 of
12 Division 4, and for the enforcement-of-coverage program
13 established pursuant to Section 90.3, and shall not be used for
14 any other purpose. All moneys collected shall be retained in the
15 trust fund until paid as benefits to workers injured while
16 employed by uninsured employers or transferred to the
17 department to fund the operation of the enforcement-of-coverage
18 program, as set forth in Sections 11751.1, 11751.5, and 11752.75
19 of the Insurance Code. Nonadministrative expenses include
20 audits and reports of services prepared pursuant to subdivision
21 (b) of Section 3716.1. The surcharge amount for this fund shall
22 be stated separately.

23 (2) Notwithstanding any other provision of law, all references
24 to the Uninsured Employers Fund shall mean the Uninsured
25 Employers Benefits Trust Fund.

26 (3) Notwithstanding paragraph (1), in the event that budgetary
27 restrictions or impasse prevent the timely payment of
28 administrative expenses from the Workers' Compensation
29 Administration Revolving Fund, those expenses shall be
30 advanced from the Uninsured Employers Benefits Trust Fund.
31 Expense advances made pursuant to this paragraph shall be
32 reimbursed in full to the Uninsured Employers Benefits Trust
33 Fund upon enactment of the annual Budget Act.

34 (d) (1) The Subsequent Injuries Benefits Trust Fund is hereby
35 created as a special trust fund account in the State Treasury, of
36 which the director is trustee, and its sources of funds are as
37 provided in subdivision (e). Notwithstanding Section 13340 of
38 the Government Code, the fund is continuously appropriated for
39 the nonadministrative expenses of the workers' compensation
40 program for workers who have suffered serious injury and who

1 are suffering from previous and serious permanent disabilities or
2 physical impairments, in accordance with Article 5 (commencing
3 with Section 4751) of Chapter 2 of Part 2 of Division 4, and
4 Section 4 of Article XIV of the California Constitution, and shall
5 not be used for any other purpose. All moneys collected shall be
6 retained in the trust fund until paid as benefits to workers who
7 have suffered serious injury and who are suffering from previous
8 and serious permanent disabilities or physical impairments.
9 Nonadministrative expenses include audits and reports of
10 services pursuant to subdivision (c) of Section 4755. The
11 surcharge amount for this fund shall be stated separately.

12 (2) Notwithstanding any other provision of law, all references
13 to the Subsequent Injuries Fund shall mean the Subsequent
14 Injuries Benefits Trust Fund.

15 (3) Notwithstanding paragraph (1), in the event that budgetary
16 restrictions or impasse prevent the timely payment of
17 administrative expenses from the Workers' Compensation
18 Administration Revolving Fund, those expenses shall be
19 advanced from the Subsequent Injuries Benefits Trust Fund.
20 Expense advances made pursuant to this paragraph shall be
21 reimbursed in full to the Subsequent Injuries Benefits Trust Fund
22 upon enactment of the annual Budget Act.

23 (e) (1) Separate surcharges shall be levied by the director
24 upon all employers, as defined in Section 3300, for purposes of
25 deposit in the Workers' Compensation Administration Revolving
26 Fund, the Uninsured Employers Benefits Trust Fund, and the
27 Subsequent Injuries Benefits Trust Fund. The total amount of the
28 surcharges shall be allocated between self-insured employers and
29 insured employers in proportion to payroll respectively paid in
30 the most recent year for which payroll information is available.
31 The director shall adopt reasonable regulations governing the
32 manner of collection of the surcharges. The regulations shall
33 require the surcharges to be paid by self-insurers to be expressed
34 as a percentage of indemnity paid during the most recent year for
35 which information is available, and the surcharges to be paid by
36 insured employers to be expressed as a percentage of premium.
37 In no event shall the surcharges paid by insured employers be
38 considered a premium for computation of a gross premium tax or
39 agents' commission. In no event shall the total amount of the
40 surcharges paid by insured and self-insured employers exceed the

1 amounts reasonably necessary to carry out the purposes of this
2 section.

3 (2) The regulations adopted pursuant to paragraph (1) shall be
4 exempt from the rulemaking provisions of the Administrative
5 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
6 Part 1 of Division 3 of Title 2 of the Government Code).

7 SEC. 5. Section 90.3 of the Labor Code is amended to read:

8 90.3. (a) It is the policy of this state to vigorously enforce the
9 laws requiring employers to secure the payment of compensation
10 as required by Section 3700 and to protect employers who
11 comply with the law from those who attempt to gain a
12 competitive advantage at the expense of their workers by failing
13 to secure the payment of compensation.

14 (b) In order to ensure that the laws requiring employers to
15 secure the payment of compensation are adequately enforced, the
16 Labor Commissioner shall establish and maintain an
17 enforcement-of-coverage program designed to detect unlawfully
18 insured employers, as set forth in Sections 11751.1, 11751.5, and
19 11752.75 of the Insurance Code. The industries and employers
20 shall be identified from data from the Uninsured Employers'
21 Fund, the Employment Development Department, the rating
22 organizations licensed by the Insurance Commissioner pursuant
23 to Article 3 (commencing with Section 11750) of Chapter 3 of
24 Part 3 of Division 2 of the Insurance Code, and any other sources
25 deemed likely to lead to the identification of unlawfully
26 uninsured employers. All state departments and agencies and any
27 rating organization licensed by the Insurance Commissioner
28 pursuant to Article 3 (commencing with Section 11750) of
29 Chapter 3 of Part 3 of Division 2 of the Insurance Code shall
30 cooperate with the Labor Commissioner and on reasonable
31 request provide information and data in their possession
32 reasonably necessary to carry out the program.

33 (c) As part of the program, the Labor Commissioner shall
34 establish procedures for ensuring that employers with payroll but
35 with no record of workers' compensation coverage are contacted
36 and, if no valid reason for the lack of record of coverage is
37 shown, inspected on a priority basis.

38 (d) The program shall commence operations not later than July
39 1, 2008, and the Labor Commissioner shall report to the
40 Legislature, not later than March 1, 2009, and annually

1 thereafter, concerning the effectiveness of the program. The
2 report shall include, but not be limited to, all of the following:
3 (1) The number of unlawfully uninsured employers identified
4 pursuant to the program.
5 (2) The number of employers matched to records of insurance
6 coverage.
7 (3) The number of employers notified that there was no record
8 of their insurance coverage.
9 (4) The number of employers inspected.
10 (5) The number and amount of penalties assessed pursuant to
11 Section 3722 as a result of the program.
12 (6) The cost of operation of the program.
13 (7) The net cost or revenue to the Uninsured Employers
14 Benefits Trust Fund resulting from the operation of the program.
15 (e) The enforcement-of-coverage program, set forth in
16 Sections 11751.1, 11751.5, and 11752.75 of the Insurance Code
17 shall be funded by funds from the Uninsured Employers Benefits
18 Trust Fund established pursuant to subdivision (c) of Section
19 62.5.

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