AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL No. 2692

Introduced by Assembly Member Hernandez

February 22, 2008

An act to ~~amend Section 11732 of, and to~~ add Section 11732.7 to~~,~~ the Insurance Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2692, as amended, Hernandez. Insurance: workers' compensation.

Existing law regulates workers' compensation insurance rates and, among other things, requires that rates be adequate to cover an insurer's losses and expenses. Existing law requires the Insurance Commissioner to take various actions to approve or disapprove workers' compensation rates and insurance premium increases.

~~This bill would prohibit excessive rates.~~

~~This bill would require the commissioner, by regulation, to determine the minimum presumptively reasonable pure loss ratio and the minimum presumptively reasonable combined loss and adjustment expense ratio for purposes of workers' compensation insurance rates, and would provide that those rates shall be presumed to be excessive if pure loss ratios or combined loss and loss ratios are lower than the minimum presumptively reasonable ratios, as determined by the commissioner. The bill would authorize the commissioner, after notice and opportunity for the insurer to present evidence, to find an insurer's rates to be excessive, based on the evidence presented, without regard to this presumption. The bill would require the commissioner, if he or she determines that the rates charged by an insurer are excessive, to determine a reasonable rate and order the insurer to refund the difference~~

~~to employers insured by the insurer at the time the rates were determined to be excessive, in accordance with a rebate plan required to be approved by the commissioner. The bill would require an insurer, to the extent the payment of those refunds is not practical, to pay the difference to the California Insurance Guaranty Association, for credit to the category of workers' compensation claims, as provided. The bill would require the commissioner to promulgate regulations for the conduct of those proceedings.~~

This bill would require the commissioner, by regulation, to establish the minimum reasonable pure loss ratio for all workers' compensation insurers. This bill would establish procedures for determining whether the rate of an individual insurer is excessive relative to the minimum reasonable pure loss ratio and would provide for the refund of excess proceeds to employers insured by the insurer during the time when an excessive rate was in effect, as specified.

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

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

SECTION 1. Section 11732.7 is added to the Insurance Code, to read:

11732.7. (a) The commissioner shall, by regulation, establish the minimum reasonable pure loss ratio for all insurers.

(b) The rates of any individual insurer shall be presumed to be excessive if the minimum reasonable pure loss ratio established by the commissioner is not met.

(c) An insurer may petition the commissioner to determine that its rate is reasonable. In that proceeding, the burden of proof shall be on the insurer to demonstrate that the proposed rate is reasonable.

(d) If the commissioner has determined that the insurer's rate is excessive and the insurer did not meet the burden of proof to determine its rate to be reasonable, the commissioner shall determine the reasonable rate and order the insurer to refund any difference to employers that were insured by the insurer during the time when the excessive rates were in effect.

(e) The commissioner may adopt regulations to carry out the purposes of this section.

~~SECTION 1. Section 11732 of the Insurance Code is amended to read:~~

~~11732. Rates shall be adequate to cover an insurer's losses and expenses. Rates shall not be excessive. Rates shall not tend to create a monopoly in the market. For the purpose of this section, the rates of any individual insurer, other than the State Compensation Insurance Fund, are presumed to create a monopoly in the market if the insurer has a market share, based on a percentage of statewide workers' compensation premium, equivalent to 20 percent or more of the premium written by all insurers other than the State Compensation Insurance Fund.~~

~~SEC. 2. Section 11732.7 is added to the Insurance Code, to read:~~

~~11732.7. (a) The commissioner shall, by regulation, determine the minimum presumptively reasonable pure loss ratio and the minimum presumptively reasonable combined loss and adjustment expense ratio. Rates shall be presumed to be excessive if pure loss ratios or combined loss and loss adjustment expense ratios are lower than the minimum presumptively reasonable ratios, as determined by the commissioner. The commissioner may, after notice and opportunity for the insurer to present evidence, find an insurer's rates to be excessive, based on the evidence presented, without regard to this presumption. Where the presumption does apply, it may be rebutted by the insurer by demonstrating to the satisfaction of the commissioner that the rate is reasonable under the circumstances, including consideration of the criteria set forth in Section 11733.~~

~~(b) If the commissioner determines that the rates charged by an insurer are excessive pursuant to subdivision (a), the commissioner shall determine a reasonable rate and order the insurer to refund the difference to employers insured by the insurer at the time the excessive rates were in effect, in accordance with a rebate plan required to be approved by the commissioner. An insurer, to the extent that the payment of those refunds is not practical, shall pay the difference to the California Insurance Guaranty Association for credit to the category of workers' compensation claims. Proceedings to compel refund or payment of excess premiums shall be commenced within three years of the expiration of the~~

~~policy of insurance. The commissioner shall adopt regulations for the conduct of proceedings pursuant to this section.~~

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