

Assembly Bill No. 730

Passed the Assembly September 9, 2009

Chief Clerk of the Assembly

Passed the Senate September 3, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 10400 of the Insurance Code, relating to health insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 730, De La Torre. Health insurance: unlawful postclaims underwriting: penalties.

Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits a health insurer from engaging in the practice of postclaims underwriting, which is defined to mean the rescinding, canceling, or limiting of a health insurance policy or certificate due to the insurer's failure to complete medical underwriting and resolve all reasonable questions arising from written information submitted on or with an insurance application. Existing law provides that any person willfully violating various provisions governing disability insurance policies, including health insurance policies, or orders of the commissioner in that regard, shall forfeit to the state a sum not to exceed \$118 for each violation. Existing law requires these sums to be paid to the Insurance Commissioner and transmitted to the State Treasury for deposit in the General Fund.

This bill would provide that a health insurer that unlawfully engages in the postclaims underwriting of a health insurance policy shall be liable to the state for a civil penalty to be fixed by the commissioner in an amount not to exceed \$5,000, except that if the insurer knew, or had reason to know, that the act of postclaims underwriting was unlawful, the civil penalty shall be fixed by the commissioner in an amount not to exceed \$10,000 for each act or violation. The bill would require the first \$118 of these penalties to be deposited in the General Fund and the balance to be deposited in the Major Risk Medical Insurance Fund, to be used, upon appropriation by the Legislature, for the Major Risk Medical Insurance Program. The bill would make other related changes.

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

SECTION 1. Section 10400 of the Insurance Code is amended to read:

10400. (a) Any person willfully violating any provision of this chapter or order of the commissioner made in accordance therewith shall be liable to the state for a civil penalty to be fixed by the commissioner in an amount not to exceed one hundred eighteen dollars (\$118) for each violation. The commissioner may also suspend or revoke the license of an insurer or agent for any willful violation in that regard.

(b) (1) In lieu of the civil penalty specified in subdivision (a), a health insurer that unlawfully engages in the postclaims underwriting of a health insurance policy, as defined in Section 10384, shall be liable to the state for a civil penalty to be fixed by the commissioner, in an amount not to exceed five thousand dollars (\$5,000) for each act of postclaims underwriting of a policy, except that if the insurer knew, or had reason to know, that the act of postclaims underwriting was unlawful, the civil penalty shall be fixed by the commissioner in an amount not to exceed ten thousand dollars (\$10,000) for each act or violation.

(2) The first one hundred eighteen dollars (\$118) of each penalty collected pursuant to this subdivision shall be deposited in the General Fund, and the balance of each penalty shall be deposited in the Major Risk Medical Insurance Fund created pursuant to Section 12739 to be used, upon appropriation by the Legislature, for the Major Risk Medical Insurance Program for the purposes specified in Section 12739.1.

(c) The civil penalties and disciplinary actions provided for in this section shall be determined at a hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all the powers granted by that act.

Approved _____, 2009

Governor