

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2411

Introduced by Assembly Member Jones
*(Coauthors: Assembly Members Charles Calderon, Carter, Feuer,
Salas, Solorio, and Torres)*

February 19, 2010

An act to amend Sections 100, 700.01, 739, and 1063 of, to add Section 119.7 to, and to add Part 9 (commencing with Section 12880) to Division 2 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2411, as amended, Jones. Pet insurance.

Existing law provides for the regulation of various types of insurance by the Department of Insurance.

This bill would provide for the regulation of pet insurance, as defined. The bill would ~~prohibit a pet insurer from excluding coverage on the basis of a preexisting condition provision for a period beyond 6 months following the insured's effective date of coverage and would specify that a preexisting condition provision may only relate to conditions for which medical advice, diagnosis, care, or treatment, including, but not limited to, use of prescription drugs, was recommended or received from a veterinarian during the 6 months immediately preceding the effective date of coverage. The bill would authorize a pet insurer that does not utilize a preexisting condition provision to impose a waiting or affiliation period of no more than 30 days. The bill would require a pet insurer to provide specified reimbursement for covered veterinary expenses incurred by an insured and would also require a pet insurer to make a reasonable disclosure, as part of its solicitation and sales~~

materials, of certain terms and conditions contained in its pet insurance policies, as specified, in connection with the sale of a new, amended, or renewed pet insurance policy on or after July 1, 2011, require pet insurers to reasonably disclose to the consumer (1) if the policy excludes coverage on the basis of a preexisting condition or other disorder, as specified, (2) any policy provision that limits coverage in a specified manner, and (3) whether the insurer reduces coverage or increases premiums based on claims experience in any preceding policy period. The bill would also, with respect to pet insurance policies marketed, issued, amended, renewed, or delivered on or after July 1, 2011, require pet insurers that determine claim payments on any basis to clearly disclose that basis in the policy and through a link on the insurer's Internet Web site, as specified. The bill would enact other related conforming provisions.

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

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

- 1 SECTION 1. Section 100 of the Insurance Code is amended
- 2 to read:
- 3 100. Insurance in this state is divided into the following classes:
- 4 (1) Life
- 5 (2) Fire
- 6 (3) Marine
- 7 (4) Title
- 8 (5) Surety
- 9 (6) Disability
- 10 (7) Plate glass
- 11 (8) Liability
- 12 (9) Workmen's compensation
- 13 (10) Common carrier liability
- 14 (11) Boiler and machinery
- 15 (12) Burglary
- 16 (13) Credit
- 17 (14) Sprinkler
- 18 (15) Team and vehicle
- 19 (16) Automobile
- 20 (17) Mortgage
- 21 (18) Aircraft

- 1 (19) Mortgage guaranty
- 2 (19.5) Insolvency
- 3 (19.6) Legal insurance
- 4 (19.7) Pet insurance
- 5 (20) Miscellaneous

6 SEC. 2. Section 119.7 is added to the Insurance Code, to read:

7 119.7. "Pet insurance" has the same meaning as that term is
8 defined in Section 12880.

9 SEC. 3. Section 700.01 of the Insurance Code is amended to
10 read:

11 700.01. In addition to any or all of the classes of insurance that
12 it is permitted to transact by all other applicable provisions of this
13 code, any incorporated insurer admitted or hereafter admitted for
14 one or more of the classes of insurance stated in Section 100,
15 except life, title, mortgage, or mortgage guaranty, shall (subject
16 to any limitations contained in its articles of incorporation or
17 charter) be admitted after January 1, 1990, for any or all of the
18 following classes, upon making application therefor and complying
19 with all applicable requirements of law, if its paid-in capital is not
20 less than two million six hundred thousand dollars (\$2,600,000)
21 or the aggregate of the amounts hereinafter set forth opposite the
22 classes transacted by it in the United States if an alien insurer, or
23 in any jurisdiction if other than an alien insurer, whichever is lower;
24 provided, that the paid-in capital of incorporated insurers not
25 transacting either fire, marine or surety insurance making
26 application under this section shall be at least three hundred
27 thousand dollars (\$300,000) in excess of that aggregate amount.
28 In no event shall any incorporated insurer, as a condition for its
29 admission, be permitted to have a paid-in capital of less than one
30 million dollars (\$1,000,000) or be required to have a paid-in capital
31 in excess of two million six hundred thousand dollars (\$2,600,000)
32 for any or all of the classes of insurance hereinafter set forth.

33

34 Number and name of class	Amount
	of capital
35	
36 2. Fire	\$350,000
37 3. Marine	350,000
38 5. Surety	350,000
39 6. Disability	250,000
40 7. Plate glass	100,000

1	8. Liability	} 300,000 for
2	9. Workers'		
3	compensation		
4	10. Common carrier		
5	liability		any or all of
6	11. Boiler and machinery		these
7	12. Burglary		100,000
8	13. Credit		100,000
9	14. Sprinkler		100,000
10	15. Team and vehicle		100,000
11	16. Automobile		200,000
12	18. Aircraft		100,000
13	19. Pet		100,000
14	20. Miscellaneous		100,000

15
 16 This section shall not be applicable to life, title, mortgage, or
 17 mortgage guaranty insurance, and an insurer now or hereafter
 18 admitted to transact life, title, mortgage, or mortgage guaranty
 19 insurance shall not be admitted under the provisions of this section,
 20 but its admission is governed by other applicable provisions of
 21 this code.

22 Insurers admitted for one or more classes of insurance on
 23 December 31, 1989, shall be governed by the provisions of this
 24 section in effect as of December 31, 1989, until December 31,
 25 1999. After December 31, 1999, all insurers governed by this
 26 section shall meet the capital requirements of this section as
 27 become effective January 1, 1990. Insurers admitted for one or
 28 more classes of insurance on December 31, 1989, that thereafter
 29 amend their certificate of authority to add a class or classes of
 30 insurance shall become subject to the capital requirements of this
 31 section.

32 SEC. 4. Section 739 of the Insurance Code is amended to read:
 33 739. As used in this article, these terms shall have the following
 34 meanings:

- 35 (a) "Adjusted RBC Report" means a Risk-Based Capital (RBC)
 36 report that has been adjusted by the commissioner in accordance
 37 with subdivision (c) of Section 739.2.
- 38 (b) "Corrective Order" means an order issued by the
 39 commissioner specifying corrective actions that the commissioner
 40 has determined are required.

- 1 (c) “Domestic insurer” means any life or health insurer or
2 property and casualty insurer organized in this state.
- 3 (d) “Foreign insurer” means any life or health insurer or property
4 and casualty insurer that is licensed to do business in this state but
5 is not domiciled in this state.
- 6 (e) “Life or health insurer” means any admitted insurer issuing
7 insurance subject to Part 2 (commencing with Section 10110) of
8 Division 2, or a licensed property and casualty insurer writing only
9 disability insurance.
- 10 (f) “NAIC” means the National Association of Insurance
11 Commissioners.
- 12 (g) “Negative trend” means, with respect to a life or health
13 insurer, a negative trend over a period of time, as determined in
14 accordance with the “Trend Test Calculation” included in the RBC
15 Instructions defined in subdivision (i).
- 16 (h) “Property and casualty insurer” means any admitted insurer
17 writing insurance as described in Section 102, 103, 105, 107, 108,
18 109, 110, 111, 112, 113, 114, 115, 116, 118, 119.5, 119.6, 119.7,
19 or 120, but does not include monoline mortgage guaranty insurers,
20 financial guaranty insurers, or title insurers.
- 21 (i) “RBC Instructions” means the RBC Report, including
22 risk-based capital instructions adopted by the NAIC, and as the
23 RBC Instructions may be amended by the NAIC from time to time
24 in accordance with the procedures adopted by the NAIC.
- 25 (j) “RBC Level” means an insurer’s Company Action Level
26 RBC, Regulatory Action Level RBC, Authorized Control Level
27 RBC, or Mandatory Control Level RBC where:
- 28 (1) “Company Action Level RBC” means, with respect to any
29 insurer, the product of 2.0 and its Authorized Control Level RBC.
- 30 (2) “Regulatory Action Level RBC” means the product of 1.5
31 and its Authorized Control Level RBC.
- 32 (3) “Authorized Control Level RBC” means the number
33 determined under the risk-based capital formula in accordance
34 with the RBC Instructions.
- 35 (4) “Mandatory Control Level RBC” means the product of .70
36 and the Authorized Control Level RBC.
- 37 (k) “RBC Plan” means a comprehensive financial plan
38 containing the elements specified in subdivision (b) of Section
39 739.3. If the commissioner rejects the RBC Plan, and it is revised

1 by the insurer, with or without the commissioner’s
2 recommendation, the plan shall be called the “Revised RBC Plan.”

3 (l) “RBC Report” means the report required in Section 739.2.

4 (m) “Total Adjusted Capital” means the sum of:

- 5 (1) An insurer’s statutory capital and surplus.
- 6 (2) Other items, if any, that the RBC Instructions may provide.

7 SEC. 5. Section 1063 of the Insurance Code is amended to
8 read:

9 1063. (a) Within 60 days after the original effective date of
10 this article, all insurers, including reciprocal insurers, admitted to
11 transact insurance in this state of any or all of the following classes
12 only in accordance with the provisions of Chapter 1 (commencing
13 with Section 100) of Part 1 of this division: fire (see Section 102),
14 marine (see Section 103), plate glass (see Section 107), liability
15 (see Section 108), workers’ compensation (see Section 109),
16 common carrier liability (see Section 110), boiler and machinery
17 (see Section 111), burglary (see Section 112), sprinkler (see Section
18 114), team and vehicle (see Section 115), automobile (see Section
19 116), aircraft (see Section 118), pet (see Section 119.7), and
20 miscellaneous (see Section 120), shall establish the California
21 Insurance Guarantee Association (the association); provided,
22 however, this article shall not apply to the following classes or
23 kinds of insurance: life and annuity (see Section 101), title (see
24 Section 104), fidelity or surety including fidelity or surety bonds,
25 or any other bonding obligations (see Section 105), disability or
26 health (see Section 106), credit (see Section 113), mortgage (see
27 Section 117), mortgage guaranty, insolvency or legal (see Section
28 119), financial guaranty or other forms of insurance offering
29 protection against investment risks (see Section 124), the ocean
30 marine portion of any marine insurance or ocean marine coverage
31 under any insurance policy including the following: the Jones Act
32 (46 U.S.C. Sec. 688), the Longshore and Harbor Workers’
33 Compensation Act (33 U.S.C. Sec. 901 et seq.), or any other similar
34 federal statutory enactment, or any endorsement or policy affording
35 protection and indemnity coverage, or reinsurance as defined in
36 Section 620, or fraternal fire insurance written by associations
37 organized and operating under Sections 9080 to 9103, inclusive.
38 Any insurer admitted to transact only those classes or kinds of
39 insurance excluded from this article shall not be a member insurer
40 of the association. Each insurer admitted to transact a class of

1 insurance included in this article, including the State Compensation
2 Insurance Fund, as a condition of its authority to transact insurance
3 in this state, shall participate in the association whether established
4 voluntarily or by order of the commissioner after the elapse of 60
5 days following the original effective date of this article in
6 accordance with rules to be established as provided in this article.
7 It shall be the purpose of the association to provide for each
8 member insurer insolvency insurance as defined in Section 119.5.

9 (b) The association shall be managed by a board of governors,
10 composed of nine member insurers, each of which shall be
11 appointed by the commissioner to serve initially for terms of one,
12 two, or three years and thereafter for three-year terms so that three
13 terms shall expire each year on December 31, and shall continue
14 in office until his or her successor shall be appointed and qualified.
15 At least five members of the board shall be domestic insurers. At
16 least three of the members shall be stock insurers, and at least three
17 shall be nonstock insurers. The nine members shall be
18 representative, as nearly as possible, of the classes of insurance
19 and of the kinds of insurers covered by this article. In case of a
20 vacancy for any reason on the board, the commissioner shall
21 appoint a member insurer to fill the unexpired term. In addition to
22 the nine member insurers, the membership of the board shall also
23 include one public member appointed by the President pro Tempore
24 of the Senate, one public member appointed by the Speaker of the
25 Assembly, one business member appointed by the commissioner,
26 and one labor member appointed by the commissioner.

27 (c) The association shall adopt a plan of operations, and any
28 amendments thereto, not inconsistent with the provisions of this
29 article, necessary to assure the fair, reasonable, and equitable
30 manner of administering the association, and to provide for other
31 matters as are necessary or advisable to implement the provisions
32 of this article. The plan of operations and any amendments thereto
33 shall be subject to prior written approval by the commissioner. All
34 members of the association shall adhere to the plan of operation.

35 (d) If for any reason the association fails to adopt a suitable plan
36 of operation within 90 days following the original effective date
37 of this article, or if at any time thereafter the association fails to
38 adopt suitable amendments to the plan of operation, the
39 commissioner shall after hearing adopt and promulgate reasonable
40 rules as are necessary or advisable to effectuate the provisions of

1 this chapter. These rules shall continue in force until modified by
2 the commissioner after hearing or superseded by a plan of
3 operation, adopted by the association and approved by the
4 commissioner.

5 (e) In accordance with its plan of operation, the association may
6 designate one or more of its members as a servicing facility, but
7 a member may decline this designation. Each servicing facility
8 shall be reimbursed by the association for all reasonable expenses
9 it incurs and for all payments it makes on behalf of the association.
10 Each servicing facility shall have authority to perform any
11 functions of the association that the board of governors lawfully
12 may delegate to it and to do so on behalf of and in the name of the
13 association. The designation of servicing facilities shall be subject
14 to the approval of the commissioner.

15 (f) The association shall have authority to borrow funds when
16 necessary to effectuate the provisions of this article, and may
17 provide in its plan of operations for any of the following:

18 (1) The issuance of notes, bonds, or debentures, or the
19 establishment of a special purpose trust or other entity, solely for
20 the purpose of facilitating a financing.

21 (2) The securing of that borrowing or those notes, bonds, or
22 debentures by pledging or granting liens or mortgages, or by
23 otherwise encumbering its real or personal property, including,
24 but not limited to, premiums levied under Section 1063.5.

25 (g) The association, either in its own name or through servicing
26 facilities, may be sued and may use the courts to assert or defend
27 any rights the association may have by virtue of this article as
28 reasonably necessary to fully effectuate the provisions thereof.

29 (h) The association shall have the right to intervene as a party
30 in any proceeding instituted pursuant to Section 1016 wherein
31 liquidation of a member insurer as defined in Section 1063.1 is
32 sought.

33 (i) (1) The association shall have an annual audit of its financial
34 condition conducted by an independent certified public accountant.
35 The audit shall be conducted, to the extent possible, in accordance
36 with generally accepted auditing standards (GAAS) and the report
37 of the audit shall be submitted to the commissioner.

38 (2) The association shall annually audit at least one-third of the
39 service companies retained by the association to adjust claims of
40 insolvent insurers. The audits shall (A) assure that all covered

1 claims are being investigated, adjusted, and paid in accordance
2 with customary industry standards and practices and all applicable
3 statutes, rules and regulations, and (B) examine the management
4 and supervisory systems overseeing the claims functions. The
5 audits shall be conducted by the association or an independent
6 auditor, provided that the three largest service companies, as
7 measured by the number of claims processed for the association
8 during the previous three fiscal years, shall be audited by an
9 independent auditor at least once every three years. The association
10 shall implement systems to retain independent auditing firms for
11 the purpose of this paragraph, provided that no one firm is
12 designated or utilized as an exclusive provider. Audits conducted
13 pursuant to this paragraph shall be submitted annually to the
14 commissioner for review.

15 (j) The commissioner shall examine the association to the same
16 extent as, and in accordance with, the requirements of Article 4
17 (commencing with Section 730) of Chapter 1 of Part 2 of Division
18 2, which sets forth the examination requirements applicable to
19 admitted insurers. A copy of the examination report shall be filed
20 with the Chairpersons of the Senate and Assembly Committees
21 on Insurance no later than December 31 of the year the report is
22 completed.

23 SEC. 6. Part 9 (commencing with Section 12880) is added to
24 Division 2 of the Insurance Code, to read:

25
26 **PART 9. PET INSURANCE**

27
28 12880. For purposes of this part, the following definitions shall
29 apply:

30 (a) "Pet insurance" means an individual or group insurance
31 policy that provides coverage for veterinary expenses.

32 (b) "Veterinarian" means an individual who holds a valid license
33 to practice veterinary medicine from the Veterinary Medical Board
34 pursuant to Chapter 11 (commencing with Section 4800) of
35 Division 2 of the Business and Professions Code or other
36 appropriate licensing entity in the jurisdiction in which he or she
37 practices.

38 (c) "Veterinary expenses" means the costs associated with any
39 medical advice, diagnosis, care, or treatment provided by a

1 veterinarian, including, but not limited to, the cost of drugs
2 prescribed by a veterinarian.

3 (d) “Hereditary disorder” means an abnormality that is
4 genetically transmitted from parent to offspring and may cause
5 illness or disease.

6 ~~(e) “Reasonable and customary charges” means the average
7 amounts charged by veterinarians for veterinary expenses as
8 identified in any respected source of the veterinary industry,
9 including, but not limited to, the sixth edition, or any subsequent
10 edition, of the American Animal Hospital Association’s Veterinary
11 Fee Reference.~~

12 12880.1. A policy of pet insurance that is marketed, issued,
13 amended, renewed, or delivered to a resident of this state on or
14 after ~~January~~ *July* 1, 2011, regardless of the situs of the contract
15 or master group policyholder, shall be subject to this part.

16 ~~12880.2. (a) A pet insurer shall not exclude coverage on the
17 basis of a preexisting condition provision for a period beyond six
18 months following the insured’s effective date of coverage. A
19 preexisting condition provision contained in a pet insurance policy
20 may only relate to conditions for which medical advice, diagnosis,
21 care, or treatment, including, but not limited to, use of prescription
22 drugs, was recommended or received from a veterinarian during
23 the six months immediately preceding the effective date of
24 coverage.~~

25 ~~(b) A pet insurer that does not utilize a preexisting condition
26 provision may impose a waiting or affiliation period not to exceed
27 30 days before the coverage subject to this part shall become
28 effective. During the waiting or affiliation period, the insurer is
29 not required to provide coverage for veterinary expenses and no
30 premium shall be charged to the policyholder or insured.~~

31 ~~12880.3. A pet insurer shall do one of the following:~~

32 ~~(a) Provide reimbursement for the covered veterinary expenses
33 incurred by the insured without limitation, except for any applicable
34 coinsurance.~~

35 ~~(b) Provide reimbursement for the covered veterinary expenses
36 incurred by the insured, limited by any applicable coinsurance and
37 one of the following:~~

38 ~~(1) The reasonable and customary charges for the veterinary
39 expenses incurred by the insured, as established in the geographic
40 area or metropolitan status where the expenses were incurred. The~~

1 insurer shall clearly disclose the source of those reasonable and
2 customary charges.

3 (2) The insurer's benefit schedule which, if used, must include
4 a side-by-side comparison between that schedule and the reasonable
5 and customary charges for the veterinary expenses incurred by the
6 insured, as established in the geographic area or metropolitan status
7 where the expenses were incurred. The insurer shall also clearly
8 disclose the source of the reasonable and customary charges.

9 12880.4. In connection with the offering for sale of a pet
10 insurance policy, an insurer shall make a reasonable disclosure,
11 as part of its solicitation and sales materials, of the terms and
12 conditions relating to any preexisting condition provision,
13 hereditary disorder provision, waiting or affiliation period
14 provision, deductible provision, coinsurance provision, coverage
15 limit provision, and benefit schedule provision contained in the
16 policy. The disclosures required by this section shall be in addition
17 to any other disclosures required by law.

18 12880.4. (a) In connection with the sale of a new, amended,
19 or renewed policy of pet insurance on or after July 1, 2011, a pet
20 insurer shall reasonably disclose all of the following to the
21 consumer:

22 (1) If the policy excludes coverage due to any of the following:

23 (A) A preexisting condition.

24 (B) A hereditary disorder.

25 (C) A congenital anomaly or disorder.

26 (2) Any policy provision that limits coverage through a waiting
27 or affiliation period, a deductible, coinsurance, or an annual or
28 lifetime policy limit.

29 (3) Whether the insurer reduces coverage or increases premiums
30 based on claims experience in any preceding policy period.

31 (b) If a pet insurer uses any of the terms set forth in
32 subparagraph (A) to (C), inclusive, of paragraph (1) of subdivision
33 (a) in a policy of pet insurance, the insurer shall include a
34 definition of the term in the policy and shall make that definition
35 available via a link on the main page of the insurer's Internet Web
36 site.

37 (c) A pet insurer that determines claim payments under a pet
38 insurance policy on any basis shall clearly disclose that basis in
39 the policy and through a link on the main page of the insurer's
40 Internet Web site.

- 1 (d) A pet insurer that uses a benefit schedule to determine claim
2 payments under a pet insurance policy shall do both of the
3 following:
- 4 (1) Include the applicable benefit schedule in the policy.
5 (2) Disclose all benefit schedules used by the insurer under its
6 pet insurance policies through a link on the main page of the
7 insurer’s Internet Web site.
- 8 (e) A pet insurer that determines claim payments under a pet
9 insurance policy based on usual and customary fees, or any other
10 reimbursement limitation based on prevailing veterinary service
11 provider charges, shall do both of the following:
- 12 (1) Include a usual and customary fee limitation provision in
13 the policy that clearly describes the insurer’s basis for determining
14 usual and customary fees and how that basis is applied in
15 calculating claim payments.
16 (2) Disclose the insurer’s basis for determining usual and
17 customary charges under the policy via a link on the main page
18 of the insurer’s Internet Web site.
- 19 (f) The disclosures required by this section shall be in addition
20 to any other disclosures required by other applicable law.