

AMENDED IN ASSEMBLY MAY 10, 2010

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2782

Introduced by Committee on Insurance (Solorio (Chair), Bradford, Carter, Feuer, Hayashi, Nava, and Torres)

March 3, 2010

An act to amend Sections 31, 33, 34, 1192.9, 1621, 1623, 1625, 1637, 1639, 1749, 1749.3, 1758.96, 1758.992, 1802.1, 1807.5, 1807.7, 1808, 1810.7, 1811, 1871.7, 14090, 14090.1, 15054, and 15059.1 of, to add Sections 1742.3, 1807.8, and 1807.9 to, and to repeal Section 1673 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2782, as amended, Committee on Insurance. Insurance omnibus.

(1) Existing law prohibits insurance agents, insurance brokers, and insurance solicitors from transacting in life insurance.

This bill would also prohibit insurance agents, insurance brokers, and insurance solicitors from transacting in disability insurance, health insurance, and 24-hour care coverage.

(2) *Existing law authorizes a domestic insurer to make excess funds investments in shares of an investment company, as defined, if certain requirements are satisfied. Among those requirements are that the investment company be domiciled in the United States with all assets held in the United States by a bank, trust company, or other authorized custodian chartered by the United States, its territories, possessions, or states. Existing law also requires that, in order for a domestic insurer*

to make excess funds investments in an investment company, the investment company issue its shares to the insurer or to the insurer's custodian, subcustodian, or depository designated pursuant to certain provisions, or have its shares be retained by a bank, trust company, or other entity other than the investment company that is authorized by the United States to act as a transfer and divided paying agent for the investment company.

This bill would still require that an investment company in which a domestic insurer may make excess funds investments be domiciled in the United States, but would delete the requirements that all assets be held in the United States by a bank, trust company, or other authorized custodian chartered by the United States, its territories, possessions, or states. The bill would also provide that specified laws that generally relate to an insurer's custodians, subcustodians, or depositories are not applicable to assets or investments held by an investment company in which a domestic insurer may make excess funds investments.

(2)

(3) Existing law provides that a fire and casualty licensee is a person authorized to act as an insurance agent, broker, or solicitor, and a fire and casualty broker-agent license is a license to make those insurance transactions. A fire and casualty licensee is authorized to transact 24-hour care coverage and any coverage that a personal lines licensee is authorized to transact.

This bill would delete the authorization of a fire and casualty licensee to transact 24-hour care coverage and any coverage that a personal lines licensee is authorized to transact. This bill would divide the fire and casualty broker-agent license into 2 insurance license types: property broker-agent licenses, for insurance coverage on the direct or consequential loss or damage to property of every kind, and casualty broker-agent licenses, for insurance coverage against legal liability, including for death, injury, disability, or damage to real or personal property.

(3)

(4) Existing law requires a minimum of 40 hours of prelicensing study as a prerequisite to qualification for a fire and casualty broker-agent license.

This bill would require a minimum of 20 hours of prelicensing study as a prerequisite to qualification for a property broker-agent license, and a minimum of 20 hours of prelicensing study as a prerequisite to qualification for a casualty broker-agent license.

~~(4)~~

(5) Existing law requires a fire and casualty broker agent to complete an annual minimum of 25 hours of continuing education for the first 4 years of his or her licensing, and after 4 years the licensee is required to complete a minimum of 24 hours of continuing education prior to license renewal, every 2 years.

This bill would instead require the property or casualty broker-agent to complete 24 hours of continuing education prior to license renewal.

~~(5)~~

(6) Existing law authorizes a person licensed as a fire and casualty broker-agent or a life licensee to transact disability insurance on behalf of an insurer which is authorized to transact disability insurance by filing a notice of appointment for that purpose.

This bill would delete that provision.

~~(6)~~

(7) Existing law authorizes the Insurance Commissioner, where a licensee has been found by the commissioner to have violated any provision of the code that would justify the suspension or revocation of a license held, or where a person is applying for a license and there exists grounds for the denial of the application by the commissioner, to after a hearing, revoke the license held or deny the application for an unrestricted license, and in lieu of an unrestricted license issue a restricted license.

This bill would authorize the commissioner, without a hearing, to issue an order denying an application by a business entity for an unrestricted license and granting instead a restricted license. The bill would also authorize this action by the commissioner where a controlling person of the business entity, as defined, holds a restricted license. The bill would provide for a means by which the business entity would be authorized to request reconsideration of the commissioner's decision. The bill would require that if the commissioner determines that the business entity should have been granted an unrestricted license, the unrestricted license would be required to be granted retroactively.

~~(7)~~

(8) Existing law authorizes licensed insurance agents, insurance brokers, and credit insurance agents to act as credit insurance agents for an authorized insurer with respect to certain kinds of insurance sold in connection with and incidental to a loan or other extension of credit, as specified.

This bill would include in the definition of credit insurance guaranteed automobile protection insurance, as defined, and any other form of insurance declared by the commissioner to be credit insurance.

~~(8)~~

(9) Existing law requires an insurer not to execute an undertaking of bail except by and through a person holding a bail license issued by the commissioner. Bail licenses are renewable annually by way of a notice of intention to keep licenses in force or applications for renewal of licenses filed on or before June 30 of each year.

This bill would, commencing January 1, 2011, delete the notice of intention to keep licenses in force as a renewal method, and make bail licenses renewable every 2 years, as prescribed.

~~(9)~~

(10) Existing law makes it unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or workers' compensation benefits or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer. The commissioner is authorized to bring a civil action against any person violating this provision and, on and after January 1, 2006, and prior to January 1, 2011, if the commissioner has brought an action or has proceeded with an action brought by another person under this provision, the commissioner is entitled to attorney's fees and costs in addition to any judgment.

This bill would delete the January 1, 2011, repeal date for the attorney's fees and costs provision.

~~(10)~~

(11) Existing law requires that insurance adjusters and public insurance adjusters be licensed by the commissioner. Adjuster licenses expire on May 31 of each even-numbered year. Licensees are required, if not exempt, to complete a minimum of 24 hours of continuing education, including ethics.

This bill would change the expiration of those licenses to the day 2 years after the last calendar day of the month in which the initial license was issued. The bill would require licenses issued prior to January 1, 2011, to expire on May 31 of each even-numbered year. The bill also would require that 3 hours of the continuing education requirement consist of ethics.

~~(11)~~

(12) This bill would make conforming and related changes and delete obsolete 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 31 of the Insurance Code is amended to
2 read:

3 31. "Insurance agent" means a person authorized, by and on
4 behalf of an insurer, to transact all classes of insurance other than
5 life, disability, or health insurance, on behalf of an admitted
6 insurance company.

7 SEC. 2. Section 33 of the Insurance Code is amended to read:

8 33. "Insurance broker" means a person who, for compensation
9 and on behalf of another person, transacts insurance other than
10 life, disability, or health with, but not on behalf of, an insurer.

11 SEC. 3. Section 34 of the Insurance Code is amended to read:

12 34. "Insurance solicitor" means a natural person employed to
13 aid a property and casualty broker-agent acting as an insurance
14 agent or insurance broker in transacting insurance other than life,
15 disability, or health.

16 SEC. 4. Section 1192.9 of the Insurance Code is amended to
17 read:

18 1192.9. Notwithstanding Section 1100, a domestic insurer may
19 make excess funds investments in shares of an investment
20 company, as defined in the Federal Investment Company Act of
21 1940, if the requirements of subdivisions (b) and (c) are satisfied.
22 No investment made pursuant to this section that ceases to satisfy
23 the requirements of subdivision (b) or (c) shall be retained as an
24 excess fund investment. No domestic insurer shall invest under
25 any provision of this code in the shares of any investment company
26 ~~which~~ *that* has more than 33.33 percent of its investments in foreign
27 investments that do not comply with paragraph (4) of subdivision
28 (b).

29 (a) The definitions in this subdivision apply to the following
30 terms when used in this section:

31 (1) A mutual fund is an open-end management company as
32 defined in Section 5(a)(1) of the Federal Investment Company Act
33 of 1940 (15 U.S.C. Sec. 80(a)-5(a)(1)).

(2) An exchange traded fund is either an open-ended management company as defined in Section 5(a)(1) of the Federal Investment Company Act of 1940, or a unit investment trust as defined in Section 4(2) of the Federal Investment Company Act of 1940 (15 U.S.C. Sec. ~~80a-4(1)~~ 80a-4(2)), that is registered under the Federal Investment Company Act of 1940 and that satisfies the terms of exemptive orders issued by the United States Securities and Exchange Commission ~~which~~ *that* qualify it to be an exchange-traded fund.

(3) A fund is any investment company authorized in this section as an excess fund investment.

(b) The investment company shall:

(1) Be registered with and reporting to the United States Securities and Exchange Commission.

(2) Be domiciled in the United States ~~with all assets held in the United States by a bank, trust company, or other authorized custodian chartered by the United States, its territories, possessions, or states.~~

(3) Have assets in excess of one hundred million dollars (\$100,000,000), or be affiliated with other investment companies that have, in the aggregate, assets in excess of one billion dollars (\$1,000,000,000).

(4) Have at least 66.67 percent of its investments be investments that are authorized under Article 3 (commencing with Section 1170) and Article 4 (commencing with Section 1190), except that any amount of a fund's assets may consist of foreign investments, provided that if more than 50 percent of its total investments consist of foreign investments, then the insurer's investment in that fund shall comply with the provisions of subparagraph (C) of paragraph (1) of subdivision (c), notwithstanding any other provision of this section or this code.

(5) Have at least 36 months of active investment history.

(6) Issue its shares as fully paid and nonassessable, with no preemptive, conversion, or exchange rights.

(7) Issue its shares to the insurer or to the insurer's custodian, subcustodian, or depository designated pursuant to Section 1104.9, or have its shares be retained by a bank, trust company, or other entity other than the investment company ~~which~~ *that* is authorized by the United States to act as a transfer and dividend paying agent for the investment company, *provided that, notwithstanding any*

1 *other provision of this code, Section 1104.9 shall not apply to the*
2 *assets or investments held by the investment company.*

3 (8) Provide equal rights and privileges to each share within the
4 same class or series, and entitle each share within its class or series
5 to vote and to participate equally in dividends and distributions
6 declared by the investment company and in the net distributable
7 assets of the investment company on liquidation.

8 (9) If it is a mutual fund, entitle shareholders to require the
9 investment company to redeem all shares.

10 (10) If it is an exchange-traded fund, all of its shares are both
11 of the following:

12 (A) Registered under the Federal Securities Act of 1933.

13 (B) Either listed and traded on a national securities exchange
14 registered under the Securities Exchange Act of 1934 or have
15 prices ascertained by quotations furnished through a nationwide
16 automated quotations system approved by the Financial Industry
17 Regulatory Authority.

18 (11) Have no investment policies that authorize any of the
19 following:

20 (A) Borrowings to exceed $33\frac{1}{3}$ percent of its total assets.

21 (B) The aggregate notional value of its derivative instruments
22 outstanding to exceed 10 percent of its total assets.

23 (C) Investment in commodities or direct ownership of real estate.

24 (12) Have an expense ratio that does not exceed the following
25 amounts of its average daily net asset values:

26 (A) For a money market fund, 100 basis points.

27 (B) For a bond fund, 200 basis points.

28 (C) For a stock or mixed stock/bond fund, 300 basis points.

29 (c) An insurer shall do the following:

30 (1) At no time make or retain an excess fund investment under
31 the authority of this section that exceeds the following limits:

32 (A) An amount of its admitted assets, as reported in its most
33 recent annual statement, that is more than any of the following:

34 (i) Three percent in a single investment company or 7 percent
35 in an affiliated group of investment companies.

36 (ii) Twenty-five percent in all investments authorized by this
37 section.

38 (B) One hundred percent of its surplus as regards policyholders,
39 as reported in its most recent annual statement, in all investments
40 authorized by this section.

(C) For an investment in a fund~~which~~ *that* has more than 50 percent of its assets in foreign investments, those foreign investments shall be foreign investments as defined by Section 1240 and shall be considered foreign investments, investments denominated in foreign currencies, or both, as applicable, for purposes of the limitations set forth in subdivisions (a) and (b) of Section 1241. No insurer shall invest in any such fund pursuant to any other provision of this code.

(D) An investment in any single investment company that exceeds 10 percent of the total net asset value of that investment company.

(2) Make a specific determination, pursuant to Sections 1200 and 1201, that an investment company has stated investment policies that are suitable for the insurer's investment objectives.

(d) In addition to any other remedies available under this code for any violation of this section, the commissioner may, after giving an insurer notice and an opportunity to be heard, deny credit in any financial statement filed with the commissioner for all or any part of an investment in an investment company, even if it otherwise complies with this section, if he or she finds the investment to be unsound or hazardous.

The grounds for finding an investment unsound or hazardous may include, but are not limited to, the following determinations:

(1) The investment company's investment adviser or subadviser lacks sufficient investment experience to render reliable investment advice; or lacks good professional character or good standing with any securities licensing authorities having jurisdiction over them.

(2) The portfolio turnover rate of the investment company is excessive in relation to its investment goals.

(3) The investment company's annual investment management fee, or other fees or charges incurred by the investment company or the insurer, are not reasonable when compared to charges or fees associated with similar investment companies.

(4) An investment company fails to mirror substantially any security index upon which its stated investment policy is based.

~~SEC. 4.~~

SEC. 5. Section 1621 of the Insurance Code is amended to read:

1621. An insurance agent is a person who transacts insurance, other than life, disability, or health insurance, on behalf of an

1 admitted insurance company. The term “insurance agent” as used
2 in this chapter does not include a life agent as defined in this article.

3 ~~SEC. 5.~~

4 SEC. 6. Section 1623 of the Insurance Code is amended to
5 read:

6 1623. (a) An insurance broker is a person who, for
7 compensation and on behalf of another person, transacts insurance
8 other than life, disability, or health insurance with, but not on
9 behalf of, an admitted insurer. It shall be presumed that the person
10 is acting as an insurance broker if the person is licensed to act as
11 an insurance broker, maintains the bond required by this chapter,
12 and discloses, in a written agreement signed by the consumer, all
13 of the following:

14 (1) That the person is transacting insurance on behalf of the
15 consumer.

16 (2) A description of the basic services the person will perform
17 as a broker.

18 (3) The amount of all broker fees being charged by the person.

19 (4) If applicable, the fact that the person may be entitled to
20 receive compensation from the insurer, directly or indirectly, for
21 the consumer’s purchase of insurance as a consequence of the
22 transaction.

23 (b) If a transaction involves both a retail broker and a wholesale
24 intermediary broker, the wholesale intermediary broker shall be
25 deemed to have satisfied its disclosure obligations under this
26 section if it provides written disclosure to the retail broker of the
27 criteria set forth in paragraphs (2), (3), and (4) of subdivision (a).

28 (c) The presumption of broker status is rebutted as to any
29 transaction in the admitted market in which any of the following
30 is present:

31 (1) The licensee is appointed, pursuant to Section 1704, as an
32 agent of the insurer for the particular class or type of insurance
33 being transacted.

34 (2) The licensee has a written agreement with an insurer
35 containing express terms that authorize the licensee to obligate the
36 insurer without first obtaining notification from the insurer that
37 the insurer has accepted, conditionally or unconditionally, the
38 submitted risk.

(3) The licensee is authorized, pursuant to a written agreement with an insurer, to appoint other licensees as agents of the insurer, pursuant to Section 1704.

(4) The licensee is authorized, pursuant to a written agreement with an insurer, to pay claims on behalf of the insurer.

(d) In all other cases, the presumption of broker status is rebutted based on the totality of the circumstances indicating that the broker-agent is acting on behalf of the insurer.

(e) For purposes of this section, “totality of the circumstances” means evidence indicating whether a broker-agent was acting on behalf of the insurer or was acting on behalf of a third person. In determining the totality of circumstances, all relevant facts and circumstances shall be reviewed and the review is not limited to any particular fact or factors and this section does not require that any particular circumstance receive greater or lesser weight.

~~SEC. 6.~~

SEC. 7. Section 1625 of the Insurance Code is amended to read:

1625. (a) A fire and casualty licensee is a person authorized to act as an insurance agent, broker, or solicitor, and a fire and casualty broker-agent license is a license so to act.

(b) Licenses to act as a fire and casualty broker-agent under this chapter shall be of the following types:

(1) Property, which shall entitle the licensee to transact insurance coverage on the direct or consequential loss or damage to property of every kind.

(2) Casualty, which shall entitle the licensee to transact insurance coverage against legal liability, including that for death, injury, disability, or damage to real or personal property.

~~SEC. 7.~~

SEC. 8. Section 1637 of the Insurance Code is amended to read:

1637. An organization may hold any license or licenses necessary to act in the following capacities under this chapter and no others:

(a) A license to act as a life-only agent.

(b) A license to act as an accident and health agent.

(c) A license to act as a property broker-agent.

(d) A license to act as a casualty broker-agent.

(e) A license to act as a cargo shipper’s agent.

- 1 (f) A license to act as a personal lines licensee.
- 2 (g) A license to act as a credit insurance agent.
- 3 (h) A license to act as a rental car agent.
- 4 (i) A nonresident license to act as a limited lines licensee
- 5 pursuant to subdivision (i) of Section 1639.
- 6 (j) A license to act as a self-service storage agent.
- 7 (k) A license to act as a limited lines automobile insurance agent.

8 ~~SEC. 8.~~

9 *SEC. 9.* Section 1639 of the Insurance Code is amended to
10 read:

11 1639. The following types of licenses under this chapter may
12 be issued to nonresidents:

13 (a) A property broker-agent or a casualty broker-agent if the
14 nonresident is duly licensed to transact those lines of insurance
15 described in Section 1625, under the laws of the state, territory of
16 the United States, or province of Canada where the resident license
17 is maintained.

18 (b) A personal lines broker-agent if the nonresident is duly
19 licensed to transact those lines of insurance described in Section
20 1625.5, under the laws of the state, territory of the United States,
21 or province of Canada where the resident license is maintained.

22 (c) A life-only agent or an accident and health agent if the
23 nonresident possesses a resident license in another state, territory
24 of the United States, or province of Canada to transact life
25 insurance or disability insurance.

26 (d) A nonresident life-only agent may be granted authority to
27 transact variable contracts if he or she has been granted that
28 authority by the state where the resident license is maintained.

29 (e) A surplus line broker and a special lines surplus broker if
30 the nonresident holds that type of license in the state or territory
31 of the United States where the resident license is maintained.

32 (f) A credit insurance agent if the nonresident holds that type
33 of license in the state, territory of the United States, or province
34 of Canada where the resident license is maintained.

35 (g) A rental car agent if the nonresident holds that type of license
36 in the state, territory of the United States, or province of Canada
37 where the resident license is maintained.

38 (h) A cargo shipper's agent if the nonresident holds that type
39 of license in the state, territory of the United States, or province
40 of Canada where the resident license is maintained.

(i) A limited lines license if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained. As used in this section, “limited lines license” means any authority granted by the resident state that restricts the authority of the license to less than the total authority granted by any of the types of licenses identified in this section.

(j) A self-service storage agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

~~SEC. 9.~~

SEC. 10. Section 1673 of the Insurance Code is repealed.

~~SEC. 10.~~

SEC. 11. Section 1742.3 is added to the Insurance Code, to read:

1742.3. (a) The commissioner may, without hearing, issue an order denying an application by a business entity for an unrestricted license and granting instead a restricted license. The commissioner may do so when a controlling person of the business entity, as defined in subdivision (b) of Section 1668.5, holds a restricted license. The commissioner may impose any reasonable restriction on the business entity’s authority to transact insurance that is similar or related to the restriction imposed upon the controlling person. A description of the nature and scope of the restriction imposed upon the business entity shall be included in the commissioner’s order. The business entity shall have no property right in the restricted license and the commissioner may, with or without hearing or cause, suspend or revoke the restricted license. The restricted license shall be issued in the normal course of business following the issuance of the order and shall remain in effect pending the outcome of any request for reconsideration and any decision following a hearing pursuant to that request.

(b) The business entity may request reconsideration of the commissioner’s decision to deny an unrestricted license within 30 days from the date that the decision is mailed to the entity. If the business entity requests a hearing on the request for reconsideration, the hearing shall be conducted pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, and the business entity shall bear the burden of proving by clear and convincing

1 evidence that an unrestricted license should have been granted
2 instead of a restricted license. If the commissioner determines,
3 after a hearing, that the business entity should have been granted
4 an unrestricted license, the entity shall be granted that unrestricted
5 license retroactive to the date of the granting of the restricted
6 license.

7 ~~SEC. 11.~~

8 *SEC. 12.* Section 1749 of the Insurance Code is amended to
9 read:

10 1749. The department shall require all new applicants for
11 license as a property broker-agent, casualty broker-agent, limited
12 lines automobile insurance agent, personal lines broker-agent,
13 life-only agent, or accident and health agent to meet prelicensing
14 education standards as follows:

15 (a) Require a minimum of 20 hours of prelicensing study as a
16 prerequisite to qualification for a property broker-agent license.
17 The curriculum for satisfying this requirement shall be approved
18 by the curriculum board and submitted to the commissioner for
19 final approval. Any additions to the minimum requirements
20 provided by this section shall be approved by the curriculum board
21 pursuant to Section 1749.1 and certified by the department.

22 (b) Require a minimum of 20 hours of prelicensing study as a
23 prerequisite to qualification for a casualty broker-agent license.
24 The curriculum for satisfying this requirement shall be approved
25 by the curriculum board and submitted to the commissioner for
26 final approval. Any additions to the minimum requirements
27 provided by this section shall be approved by the curriculum board
28 pursuant to Section 1749.1 and certified by the department.

29 (c) Require a minimum of 20 hours of prelicensing study as a
30 prerequisite for qualification for a personal lines broker-agent
31 license. The curriculum for satisfying this requirement shall be
32 approved by the curriculum board and submitted to the
33 commissioner for final approval. Any additions to the minimum
34 requirements provided by this section shall be approved by the
35 curriculum board pursuant to Section 1749.1 and certified by the
36 department.

37 (d) Require a minimum of 20 hours of prelicensing study as a
38 prerequisite for qualification for a life-only agent license. The
39 curriculum for satisfying this requirement shall be approved by
40 the curriculum board and submitted to the commissioner for final

1 approval. Any additions to the minimum requirements provided
2 by this section shall be approved by the curriculum board pursuant
3 to Section 1749.1 and certified by the department.

4 (e) Require a minimum of 20 hours of prelicensing study as a
5 prerequisite for qualification for a limited lines automobile
6 insurance agent license. The curriculum for satisfying this
7 requirement shall be approved by the curriculum board and
8 submitted to the commissioner for final approval. Any additions
9 to the minimum requirements under this section shall be approved
10 by the curriculum board pursuant to Section 1749.1 and certified
11 by the department.

12 (f) Require a minimum of 20 hours of prelicensing study as a
13 prerequisite for qualification for an accident and health insurance
14 agent license. The curriculum for satisfying this requirement shall
15 be approved by the curriculum board and submitted to the
16 commissioner for final approval. Any additions to the minimum
17 requirements under this section shall be approved by the curriculum
18 board pursuant to Section 1749.1 and certified by the department.
19 This curriculum shall also include instruction in workers'
20 compensation and general principles of employers' liability.

21 (g) In addition to the 20 hours of prelicensing education required
22 to qualify for a license as a property broker-agent, casualty
23 broker-agent, personal lines broker-agent, a life-only agent, or an
24 accident and health agent, or the 20 hours of prelicensing education
25 required to qualify for a license as a limited lines automobile
26 insurance agent, the department shall require 12 hours of study on
27 ethics and this code. Where an applicant seeks a license for more
28 than one of the following license types: a fire and casualty
29 broker-agent license, a personal lines broker-agent license, a
30 life-only license, or an accident and health license, the applicant
31 shall only be required to complete one 12-hour course on ethics
32 and this code. The curriculum for satisfying this requirement shall
33 be approved by the curriculum board and submitted to the
34 commissioner for final approval.

35 (h) An applicant for a life-only agent license, an accident and
36 health license, a personal lines broker-agent license, or a limited
37 lines automobile insurance agent license, who is currently licensed
38 as a nonresident in this state shall be required to complete only the
39 course of study on ethics and this code, as required by this section.
40 Additionally, any applicant for that license holding one or more

1 of the designations specified in subdivisions (a) to (p), inclusive,
2 of Section 1749.4 shall be exempted from any requirement for
3 courses in general insurance that would otherwise be a condition
4 of issuance of the license.

5 (i) An applicant for a property broker-agent or casualty
6 broker-agent license who is currently licensed as a nonresident in
7 this state shall be required to complete only the course of study on
8 ethics and this code, as required by subdivision (g). Additionally,
9 any applicant for a license holding one or more of the designations
10 specified in subdivisions (a) to (p), inclusive, of Section 1749.4,
11 shall be exempted from any requirement for courses in general
12 insurance that would otherwise be a condition of issuance of a
13 license.

14 (j) An applicant for a property broker-agent or casualty
15 broker-agent license or both who is licensed as a personal lines
16 agent shall complete a minimum of 20 hours of prelicensing study
17 as a prerequisite for each of these licenses. The curriculum for
18 satisfying this requirement shall be approved by the curriculum
19 board and submitted to the commissioner for final approval. The
20 applicant shall not be required to repeat any prelicensing
21 requirements completed as a prerequisite to being licensed as a
22 personal lines agent.

23 (k) Review and approval of prelicensing courses not conducted
24 in a classroom, as referenced in subdivisions (a) to (j), inclusive,
25 shall include an evaluation of the safeguards in place to ensure
26 that the student completing the course is the person enrolled in the
27 course, methods used to monitor the student's attendance are
28 adequate, methods for the student to interact with the entity
29 providing the training exist, and methods used to record the times
30 spent completing the course are adequate.

31 (l) Prelicensing certificates of completion expire three years
32 from the completion date of the course, whether or not a license
33 is issued.

34 ~~SEC. 12.~~

35 *SEC. 13.* Section 1749.3 of the Insurance Code is amended to
36 read:

37 1749.3. An individual licensed as a life-only agent or an
38 accident and health agent and also licensed as a property or casualty
39 broker-agent, or an individual only licensed as a property or
40 casualty broker-agent, shall complete those courses, programs of

1 instruction, or seminars approved by the commissioner for the type
2 of license held. Completion of specified product training required
3 in subdivision (d) of Section 1749.33, subdivision (b) of Section
4 1749.8, and paragraph (4) of subdivision (a) of Section 10234.93
5 may result in the completion of more than the minimum of required
6 continuing education hours. The minimum number of hours
7 required is as follows:

8 (a) Any licensee, as specified in this section, shall satisfactorily
9 complete 24 hours of instruction prior to renewal of the license.
10 These hours of instruction may be completed at any time prior to
11 renewal of the license.

12 (b) An individual licensed as a property broker-agent or casualty
13 broker-agent and as a life-only agent or an accident and health
14 agent shall satisfy the requirements of this section by demonstrating
15 completion of the courses, programs of instruction, or seminars
16 approved by the commissioner for any of the license types listed
17 in this section.

18 (c) A licensee shall not be required to comply with the
19 requirements of this article if the licensee submits proof satisfactory
20 to the commissioner that he or she has been a licensee in good
21 standing for 30 continuous years in this state and is 70 years of
22 age or older. This exemption shall not apply to those individuals
23 licensed for the first time on or after January 1, 2010.

24 ~~SEC. 13.~~

25 *SEC. 14.* Section 1758.96 of the Insurance Code is amended
26 to read:

27 1758.96. A person licensed pursuant to this article may act as
28 a credit insurance agent for an authorized insurer only with respect
29 to the kinds of insurance specified in this section sold in connection
30 with and incidental to a loan or other extension of credit other than
31 a loan in excess of sixty thousand dollars (\$60,000) relating to or
32 secured by real property where the repayment period does not
33 exceed 10 years. The sale of credit insurance products as specified
34 in this section in excess of sixty thousand dollars (\$60,000) relating
35 to or secured by real property where any compensation, fee, or
36 commission is paid dependent on the placement of credit insurance,
37 requires a license to act as an insurance agent or life agent pursuant
38 to Section 1621 or 1622.

39 (a) Credit life insurance.

40 (b) Credit disability insurance.

1 (c) Credit involuntary unemployment insurance or credit
2 loss-of-income insurance.

3 (d) Credit property insurance.

4 (e) Guaranteed automobile protection (GAP) insurance.

5 (f) Any other form of insurance declared by the commissioner
6 to be subject to this section pursuant to subdivision (d) of Section
7 1758.992.

8 ~~SEC. 14.~~

9 *SEC. 15.* Section 1758.992 of the Insurance Code is amended
10 to read:

11 1758.992. As used in this article, the following definitions have
12 the following meanings:

13 (a) “Enrollment” means the process of soliciting or accepting
14 enrollments or applications from a debtor under a credit insurance
15 policy, which includes informing the debtor of the availability of
16 coverage, calculating the insurance charge, preparing and delivering
17 the certificate of insurance or notice of proposed insurance,
18 answering questions regarding the coverage, or otherwise assisting
19 the debtor in making an informed decision whether or not to elect
20 to purchase credit insurance.

21 (b) “Creditor” means a lender of money or a vendor or lessor
22 of goods, services, property, rights, or privileges, for which
23 payment is arranged through a credit transaction, or any successor
24 to the right, title, or interest of that lender, vendor, or lessor, and
25 any affiliate, associate, subsidiary, subcontractor, director, officer,
26 or employee of any of them or any other person in any way
27 associated with any of them.

28 (c) “Credit insurance agent license” means an agent license
29 issued to an individual or organization for the enrollment and sale
30 of credit insurance.

31 (d) “Credit insurance” includes credit life insurance, credit
32 disability insurance, credit involuntary unemployment insurance,
33 credit loss-of-income insurance, credit property insurance, or
34 guaranteed automobile protection (GAP) insurance.

35 Credit insurance also includes any other form of insurance
36 offered in connection with an extension of credit that is limited to
37 partially or wholly extinguishing that credit obligation that the
38 commissioner determines should be designated a form of credit
39 insurance.

1 The commissioner may adopt, pursuant to Chapter 3.5
2 (commencing with Section 11340) of Part 1 of Division 3 of Title
3 2 of the Government Code, reasonable rules and regulations
4 necessary to carry out this subdivision.

5 (e) (1) “Credit life insurance” means insurance on the life of a
6 debtor pursuant to or in connection with a specific loan or other
7 credit transaction, exclusive of any insurance procured at no
8 expense to the debtor. Insurance shall be deemed procured at no
9 expense to the debtor unless the cost of the credit transaction to
10 the debtor varies depending on whether or not the insurance is
11 procured.

12 (2) “Credit disability insurance” means insurance on a debtor
13 to provide indemnity for payments becoming due on a specific
14 loan or other credit transaction while the debtor is disabled, as
15 defined in the policy, exclusive of any insurance procured at no
16 expense to the debtor. Insurance shall be deemed to have been
17 procured at no expense to the debtor unless the cost of the credit
18 transaction to the debtor varies depending on whether or not the
19 insurance is procured.

20 (f) “Credit involuntary unemployment insurance” or “credit
21 loss-of-income insurance” means insurance issued to provide
22 indemnity for payments becoming due on a specific loan or other
23 credit transaction while the debtor is involuntarily unemployed,
24 as defined in the policy.

25 (g) “Credit property insurance” means insurance that provides
26 coverage (1) on personal property pledged or offered as collateral
27 for securing a personal or consumer loan, or (2) on personal
28 property purchased under an installment sales agreement or through
29 a consumer credit transaction, but does not include any insurance
30 that provides theft, collision, liability, property damage, or
31 comprehensive insurance coverage in any automobile or any other
32 self-propelled vehicle that is designed primarily for operation in
33 the air or on the highways, waterways, or sea, and its operating
34 equipment, or that is necessitated by reason of the liability imposed
35 by law for damages arising out of the ownership, operation,
36 maintenance, or use of those vehicles. However, that excluded
37 insurance does include single interest coverage on any of those
38 vehicles that insures the interest of the creditor in the same manner
39 as collateral secures a loan.

(h) (1) “Guaranteed automobile protection” (GAP) insurance means insurance in which a person agrees to indemnify a vehicle purchaser or lessee for any of the difference between the actual cash value of the insured’s vehicle at the time of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle. GAP insurance may also include a promise to pay up to five thousand dollars (\$5,000) to an insured, in addition to the sum needed to indemnify the insured for the difference between the actual cash value and the outstanding debt, to purchase or lease another vehicle.

(2) GAP insurance does not include, and no insurance license of any type under this code is required to offer, any of the following:

(A) A promise contained in a conditional sales contract for the sale of a vehicle by a licensed motor vehicle dealer or a promise contained in a lease agreement for the lease of a vehicle by a licensed motor vehicle dealer or leasing company to waive all or a portion of the difference between the actual cash value of the insured’s vehicle at the time of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle.

(B) A promise by a lender as part of a debt obligation to purchase or lease a vehicle in which the lender agrees to waive all or a portion of the difference between the actual cash value of the insured’s vehicle at the time of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle.

(C) Coverage under subparagraphs (A) and (B) may not include a promise to pay money to a vehicle purchaser or lessee in addition to waiving the difference between the actual cash value and the amount owed.

~~SEC. 15.~~

SEC. 16. Section 1802.1 of the Insurance Code is amended to read:

1802.1. Every applicant for a license to act as a bail agent shall file with the commissioner a notice of appointment executed by a surety insurer or its authorized representative authorizing that

1 applicant to execute undertakings of bail and to solicit and negotiate
2 those undertakings on its behalf. Additional notices of appointment
3 may be filed by other surety insurers, upon the payment for each
4 additional notice of the fees specified in subdivision (a) of Section
5 1811, before the license is issued and thereafter, as long as the
6 license remains in force. Each appointment shall, by its terms,
7 continue in force until any of the following occur:

- 8 (a) Termination of the bail agent's license.
- 9 (b) The end of the license term, if the fee provided in subdivision
10 (e) of Section 1811 for filing a renewal application is not paid.
- 11 (c) The filing of a notice of termination by the insurer, its
12 representative, or by the bail agent.

13 ~~SEC. 16.~~

14 *SEC. 17.* Section 1807.5 of the Insurance Code is amended to
15 read:

16 1807.5. Except as provided in Sections 1669 and 1738, the
17 commissioner shall not suspend or revoke any license, issued under
18 this article, without first granting a hearing, upon reasonable notice
19 to the applicant, except that he may temporarily suspend a license
20 for a period not exceeding 15 days pending the hearing. Where a
21 hearing is held under this section the proceedings shall be
22 conducted in accordance with Chapter 5 (commencing with Section
23 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
24 and the commissioner shall have all the powers granted pursuant
25 to that chapter.

26 ~~SEC. 17.~~

27 *SEC. 18.* Section 1807.7 of the Insurance Code is amended to
28 read:

29 1807.7. Commencing on January 1, 2011, all licenses issued
30 pursuant to this article shall be for a license term of two years.

31 ~~SEC. 18.~~

32 *SEC. 19.* Section 1807.8 is added to the Insurance Code, to
33 read:

34 1807.8. "License term" as used in this chapter means all of
35 that two-year period beginning as described in subdivision (a) or
36 (b) of Section 1807.9, as applicable, and ending on the day two
37 years after the last calendar day of the month in which the initial
38 license was issued. Licenses issued prior to January 1, 2011, shall
39 expire on June 30 of each odd-numbered year.

~~SEC. 19.~~

SEC. 20. Section 1807.9 is added to the Insurance Code, to read:

1807.9. "License year" as used in this chapter shall be determined for each individual and entity as follows:

(a) Upon initial licensing, the license year starts on the date the license is issued.

(b) Subsequently, each license year starts the first day of the month following the month in which the initial license was issued.

(c) A license year ends the following calendar year on the last calendar day of the month in which the initial license was issued.

(d) A license year for licenses issued prior to January 1, 2011, starts on July 1 and ends on June 30.

~~SEC. 20.~~

SEC. 21. Section 1808 of the Insurance Code is amended to read:

1808. (a) Applications for renewal of licenses may be filed on or before the expiration date upon payment of the fees for filing specified in Section 1811.

(b) Upon failure to file the application as provided in subdivision (a), the license shall expire on the first day of the next month, but the holder may file an application for a new license. Until that same month and day of the next succeeding year the fee shall be twice that specified in Section 1811 for the filing.

(c) No application shall be deemed filed within the meaning of this section unless the document itself has been actually delivered to, and the proper fee for its filing has been paid at, the office of the commissioner during office hours, or unless both the document and the fee have been filed and remitted pursuant to Sections 11002 and 11003 of the Government Code.

~~SEC. 21.~~

SEC. 22. Section 1810.7 of the Insurance Code is amended to read:

1810.7. (a) In order to be eligible to take the examination required to be licensed under this chapter, the applicant shall have completed not less than 12 hours of classroom education in subjects pertinent to the duties and responsibilities of a bail licensee, including, but not limited to, all related laws and regulations, rights of the accused, ethics, and apprehension of bail fugitives. Additionally, a licensee shall complete in each two-year license

1 term not less than 12 hours of continuing education in these
2 subjects prior to renewal of his or her license.

3 (b) The commissioner shall approve or disapprove an applicant
4 to provide education for licensure as required by this section within
5 90 days of receipt of the applicant's full and complete application.
6 However, this 90-day period shall be tolled during the pendency
7 of any investigation of the applicant by the commissioner for an
8 alleged violation that would, if proven, result in the suspension,
9 revocation, or denial of the provider's approval to provide
10 continuing education to bail agents as prescribed in Section 1813.
11 Failure to disapprove an applicant within this period shall result
12 in the automatic approval of the application. Approval shall be
13 valid for two years. The commissioner may, at any time, disapprove
14 any provider who is not qualified or whose course outlines are not
15 approved, who is not of good business reputation, or who is lacking
16 in integrity, honesty, or competency. A provider shall not provide
17 education for licensure following the expiration of the two-year
18 approval period unless the commissioner has renewed the
19 provider's approval. The commissioner shall, at the time of
20 renewal, approve or disapprove the course outlines and schedule
21 of classes to be provided.

22 (c) Providers responsible for providing education for licensure
23 under this chapter shall consult with the California State Sheriffs'
24 Association, the California District Attorneys Association, and the
25 County Counsels Association of California prior to submission of
26 the course outlines for approval by the commissioner, and these
27 entities may respond within 30 days of receipt of a request for
28 consultation from a provider. Providers shall maintain records of
29 their requests for consultation and any responses from these
30 entities, and make these records available to the department for
31 review as requested. The bail license fee shall be increased, the
32 amount of which shall be determined by the commissioner, which
33 shall be deposited in the Insurance Fund for the purposes of
34 recovering the administrative costs for meeting the conditions and
35 purposes of this section. Providers of education or continuing
36 education shall offer courses to all applicants at the same course
37 fees.

38 (d) Any person who falsely represents to the commissioner that
39 compliance with this section has been met shall be subject, after

1 notice and hearing, to the penalties and fines set out in Section
2 1814.

3 (e) A licensee shall not be required to comply with the
4 continuing education requirements of this section if the licensee
5 submits proof satisfactory to the commissioner that he or she has
6 been a licensee in good standing for 30 continuous years in this
7 state and is 70 years of age or older.

8 (f) The commissioner may make reasonable rules and regulations
9 necessary, advisable, and convenient for the administration and
10 enforcement of this chapter. The rules and regulations may include
11 a schedule establishing fees to be paid by an applicant seeking
12 approval to act as a provider and to deliver courses under this
13 section. Those fees shall be in an amount no greater than fees paid
14 by applicants providing similar courses to other insurance agents
15 licensed by the department, as specified in Section 1751.1.

16 (g) Nothing in this chapter shall preclude completion of the bail
17 agent continuing education requirements of this section through a
18 course of instruction offered via the Internet or correspondence.
19 However, this subdivision shall not be construed to allow
20 completion of the prelicensing education requirements of this
21 section through a course of instruction.

22 (h) Successful completion of the continuing education
23 requirements by means of an Internet or correspondence course
24 shall require obtaining a passing grade of at least 70 percent on a
25 written final examination. The final examination shall be open
26 book and shall be graded by the approved provider. The provider
27 shall issue certificates of completion only to those students who
28 have passed the final examination.

29 ~~SEC. 22.~~

30 *SEC. 23.* Section 1811 of the Insurance Code is amended to
31 read:

32 1811. For his services in connection with the filing of any
33 application or request for any license under this chapter, the
34 commissioner shall charge and collect the following fees:

35 (a) For filing an application or request for bail agent's license,
36 one hundred eighteen dollars (\$118) per year.

37 (b) For filing an application or request for bail solicitor's license,
38 one hundred eighteen dollars (\$118) per year.

39 (c) For filing an application or request for bail permittee's
40 license, two hundred thirty-six dollars (\$236).

(d) For filing an application for examination, or reexamination, twenty-four dollars (\$24).

(e) For a renewal application, a fee of thirty-five dollars (\$35) per year. In the case of a bail agent with more than one valid notice of appointment on file, the fee to be charged pursuant to this subdivision shall be the fee provided herein multiplied by the number of insurers whose valid appointments are on file at the date the document is filed unless the bail agent in that document advises the commissioner of his or her intent to terminate the appointment of one or more of those insurers, in which event the fee shall be based upon the number for insurers remaining.

(f) For a bail solicitor's renewal application, a fee of thirty-five dollars (\$35) per year.

(g) For a bail permittee's renewal application, a fee of one hundred forty-eight dollars (\$148) per year.

(h) At the time of filing an application for a license, if a qualifying examination is required for issue or in connection with the license, the fee for filing the first application to take the qualifying examination shall be paid at the time of filing application for the license.

(i) For filing application or request for approval of a true or fictitious name pursuant to Section 1724.5, twelve dollars (\$12), except that there shall be no fee when the name is contained in an original application.

(j) For filing a bond required by this chapter, except when the bond constitutes part of an original application, ten dollars (\$10).

(k) For filing a first amendment to an application, six dollars (\$6).

(l) For filing a second and each subsequent amendment to an application, twelve dollars (\$12).

~~SEC. 23.~~

SEC. 24. Section 1871.7 of the Insurance Code is amended to read:

1871.7. (a) It is unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or benefits pursuant to Division 4 (commencing with Section 3200) of the Labor Code or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer.

1 (b) Every person who violates any provision of this section or
2 Section 549, 550, or 551 of the Penal Code shall be subject, in
3 addition to any other penalties that may be prescribed by law, to
4 a civil penalty of not less than five thousand dollars (\$5,000) nor
5 more than ten thousand dollars (\$10,000), plus an assessment of
6 not more than three times the amount of each claim for
7 compensation, as defined in Section 3207 of the Labor Code or
8 pursuant to a contract of insurance. The court shall have the power
9 to grant other equitable relief, including temporary injunctive relief,
10 as is necessary to prevent the transfer, concealment, or dissipation
11 of illegal proceeds, or to protect the public. The penalty prescribed
12 in this paragraph shall be assessed for each fraudulent claim
13 presented to an insurance company by a defendant and not for each
14 violation.

15 (c) The penalties set forth in subdivision (b) are intended to be
16 remedial rather than punitive, and shall not preclude, nor be
17 precluded by, a criminal prosecution for the same conduct. If the
18 court finds, after considering the goals of disgorging unlawful
19 profit, restitution, compensating the state for the costs of
20 investigation and prosecution, and alleviating the social costs of
21 increased insurance rates due to fraud, that such a penalty would
22 be punitive and would preclude, or be precluded by, a criminal
23 prosecution, the court shall reduce that penalty appropriately.

24 (d) The district attorney or commissioner may bring a civil
25 action under this section. Before the commissioner may bring that
26 action, the commissioner shall be required to present the evidence
27 obtained to the appropriate local district attorney for possible
28 criminal or civil filing. If the district attorney elects not to pursue
29 the matter due to insufficient resources, then the commissioner
30 may proceed with the action.

31 (e) (1) Any interested persons, including an insurer, may bring
32 a civil action for a violation of this section for the person and for
33 the State of California. The action shall be brought in the name of
34 the state. The action may be dismissed only if the court and the
35 district attorney or the commissioner, whichever is participating,
36 give written consent to the dismissal and their reasons for
37 consenting.

38 (2) A copy of the complaint and written disclosure of
39 substantially all material evidence and information the person
40 possesses shall be served on the district attorney and commissioner.

1 The complaint shall be filed in camera, shall remain under seal for
2 at least 60 days, and shall not be served on the defendant until the
3 court so orders. The local district attorney or commissioner may
4 elect to intervene and proceed with the action within 60 days after
5 he or she receives both the complaint and the material evidence
6 and information. If more than one governmental entity elects to
7 intervene, the district attorney shall have precedence.

8 (3) The district attorney or commissioner may, for good cause
9 shown, move the court for extensions of the time during which the
10 complaint remains under seal under paragraph (2). The motions
11 may be supported by affidavits or other submissions in camera.
12 The defendant shall not be required to respond to any complaint
13 filed under this section until 20 days after the complaint is unsealed
14 and served upon the defendant.

15 (4) Before the expiration of the 60-day period or any extensions
16 obtained under paragraph (3), the district attorney or commissioner
17 shall either:

18 (A) Proceed with the action, in which case the action shall be
19 conducted by the district attorney or commissioner.

20 (B) Notify the court that it declines to take over the action, in
21 which case the person bringing the action shall have the right to
22 conduct the action.

23 (5) When a person or governmental agency brings an action
24 under this section, no person other than the district attorney or
25 commissioner may intervene or bring a related action based on the
26 facts underlying the pending action unless that action is authorized
27 by another statute or common law.

28 (f) (1) If the district attorney or commissioner proceeds with
29 the action, he or she shall have the primary responsibility for
30 prosecuting the action, and shall not be bound by an act of the
31 person bringing the action. That person shall have the right to
32 continue as a party to the action, subject to the limitations set forth
33 in paragraph (2).

34 (2) (A) The district attorney or commissioner may dismiss the
35 action notwithstanding the objections of the person initiating the
36 action if the person has been notified by the district attorney or
37 commissioner of the filing of the motion, and the court has
38 provided the person with an opportunity for a hearing on the
39 motion.

1 (B) The district attorney or commissioner may settle the action
2 with the defendant notwithstanding the objections of the person
3 initiating the action if the court determines, after a hearing, that
4 the proposed settlement is fair, adequate, and reasonable under all
5 the circumstances. Upon a showing of good cause, the hearing
6 may be held in camera.

7 (C) Upon a showing by the district attorney or commissioner
8 that unrestricted participation during the course of the litigation
9 by the person initiating the action would interfere with or unduly
10 delay the district attorney's or commissioner's prosecution of the
11 case, or would be repetitious, irrelevant, or for purposes of
12 harassment, the court may, in its discretion, impose limitations on
13 the person's participation, including, but not limited to, the
14 following:

- 15 (i) Limiting the number of witnesses the person may call.
- 16 (ii) Limiting the length of the testimony of those witnesses.
- 17 (iii) Limiting the person's cross-examination of witnesses.
- 18 (iv) Otherwise limiting the participation by the person in the
19 litigation.

20 (D) Upon a showing by the defendant that unrestricted
21 participation during the course of the litigation by the person
22 initiating the action would be for purposes of harassment or would
23 cause the defendant undue burden or unnecessary expense, the
24 court may limit the participation by the person in the litigation.

25 (3) If the district attorney or commissioner elects not to proceed
26 with the action, the person who initiated the action shall have the
27 right to conduct the action. If the district attorney or commissioner
28 so requests, he or she shall be served with copies of all pleadings
29 filed in the action and shall be supplied with copies of all deposition
30 transcripts, at the district attorney's or commissioner's expense.
31 When a person proceeds with the action, the court, without limiting
32 the status and rights of the person initiating the action, may
33 nevertheless permit the district attorney or commissioner to
34 intervene at a later date upon a showing of good cause.

35 (4) If at any time both a civil action for penalties and equitable
36 relief pursuant to this section and a criminal action are pending
37 against a defendant for substantially the same conduct, whether
38 brought by the government or a private party, the civil action shall
39 be stayed until the criminal action has been concluded at the trial
40 court level. The stay shall not preclude the court from granting or

1 enforcing temporary equitable relief during the pendency of the
2 actions. Whether or not the district attorney or commissioner
3 proceeds with the action, upon a showing by the district attorney
4 or commissioner that certain actions of discovery by the person
5 initiating the action would interfere with a law enforcement or
6 governmental agency investigation or prosecution of a criminal
7 or civil matter arising out of the same facts, the court may stay
8 discovery for a period of not more than 180 days. A hearing on a
9 request for the stay shall be conducted in camera. The court may
10 extend the 180-day period upon a further showing in camera that
11 the agency has pursued the criminal or civil investigation or
12 proceedings with reasonable diligence and any proposed discovery
13 in the civil action will interfere with the ongoing criminal or civil
14 investigation or proceedings.

15 (5) Notwithstanding subdivision (e), the district attorney or
16 commissioner may elect to pursue its claim through any alternate
17 remedy available to the district attorney or commissioner.

18 (g) (1) (A) (i) If the district attorney proceeds with an action
19 brought by a person under subdivision (e), that person shall, subject
20 to subparagraph (B), receive at least 30 percent but not more than
21 40 percent of the proceeds of the action or settlement of the claim,
22 depending upon the extent to which the person substantially
23 contributed to the prosecution of the action.

24 (ii) If the commissioner has brought an action or has proceeded
25 with an action brought by another person under this section on or
26 after January 1, 2006, the commissioner shall be entitled to
27 attorney's fees and costs in addition to any judgment, regardless
28 of the date that judgment is entered. The court shall determine and
29 award the commissioner the amount of reasonable attorney's fees,
30 including, but not limited to, reasonable fees for time expended
31 by attorneys employed by the department and for costs incurred.
32 Any attorney's fees or costs awarded to the commissioner and
33 collected shall be deposited in the Insurance Fund. In cases in
34 which the commissioner has intervened, the commissioner and the
35 person bringing the claim may stipulate to an allocation. The court
36 may allocate the funds pursuant to the stipulation if, after the
37 court's ruling on objection by the district attorney, if any, the court
38 finds it is in the interests of justice to follow the stipulation.

39 (iii) If the commissioner has proceeded with an action, if there
40 is no stipulation regarding allocation, and if a judgment has been

1 obtained or a settlement has been reached with the defendants, the
2 court shall determine the allocation, upon motion of the
3 commissioner or the person bringing the action, according to the
4 following priority:

5 (I) The person bringing the action, regardless of whether that
6 person paid money to the defendants as part of the acts alleged in
7 the complaint, shall first receive the amount the court determines
8 is reasonable for attorney's fees, costs, and expenses that the court
9 determines to have been necessarily incurred.

10 (II) The commissioner shall receive the amount the court
11 determines for reasonable attorney's fees and costs.

12 (III) If the person bringing the suit has paid moneys to the
13 defendants as part of the acts alleged in the complaint, that person
14 shall receive the amount paid to the defendants.

15 (IV) At least 30 percent, but not more than 40 percent, of the
16 remaining assets or moneys, shall be allocated to the person
17 bringing the action, depending upon the extent to which the person
18 substantially contributed to the prosecution of the action.

19 (iv) Those portions of a judgment or settlement not distributed
20 pursuant to this subdivision shall be paid to the General Fund of
21 the state and, upon appropriation by the Legislature, shall be
22 apportioned between the Department of Justice and the Department
23 of Insurance for enhanced fraud investigation and prevention
24 efforts.

25 (B) Where the action is one that the court finds to be based
26 primarily on disclosures of specific information, other than
27 information provided by the person bringing the action, relating
28 to allegations or transactions in a criminal, civil, or administrative
29 hearing, in a legislative or administrative report, hearing, audit, or
30 investigation, or from the news media, the court may award those
31 sums that it considers appropriate, but in no case more than 10
32 percent of the proceeds, taking into account the significance of the
33 information and the role of the person bringing the action in
34 advancing the case to litigation.

35 (C) Any payment to a person under subparagraph (A) or under
36 subparagraph (B) shall be made from the proceeds. The person
37 shall also receive an amount for reasonable expenses that the court
38 finds to have been necessarily incurred, plus reasonable attorney's
39 fees and costs. All of those expenses, fees, and costs shall be
40 awarded against the defendant.

(2) (A) If the district attorney or commissioner does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. Except as provided in subparagraph (B), the amount shall not be less than 40 percent and not more than 50 percent of the proceeds of the action or settlement and shall be paid out of the proceeds. That person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those attorney's fees and costs shall be imposed against the defendant. The parties shall serve the commissioner and the local district attorney with complete copies of any and all settlement agreements, and terms and conditions, for actions brought under this article at least 10 days prior to filing any motion for allocation with the court under this paragraph. The court may allocate the funds pursuant to the settlement agreement if, after the court's ruling on objection by the commissioner or the local district attorney, if any, the court finds it is in the interests of justice to follow the settlement agreement.

(B) If the person bringing the action, as a result of a violation of this section has paid money to the defendant or to an attorney acting on behalf of the defendant in the underlying claim, then he or she shall be entitled to up to double the amount paid to the defendant or the attorney if that amount is greater than 50 percent of the proceeds. That person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(3) If a local district attorney has proceeded with an action under this section, one-half of the penalties not awarded to a private party, as well as any costs awarded shall go to the treasurer of the appropriate county. Those funds shall be used to investigate and prosecute fraud, augmenting existing budgets rather than replacing them. All remaining funds shall go to the state and be deposited in the General Fund and, when appropriated by the Legislature, shall be apportioned between the Department of Justice and the Department of Insurance for enhanced fraud investigation and prevention efforts.

(4) Whether or not the district attorney or commissioner proceeds with the action, if the court finds that the action was

1 brought by a person who planned and initiated the violation of this
2 section, that person shall be dismissed from the civil action and
3 shall not receive any share of the proceeds of the action. The
4 dismissal shall not prejudice the right of the district attorney or
5 commissioner to continue the action on behalf of the state.

6 (5) If the district attorney or commissioner does not proceed
7 with the action, and the person bringing the action conducts the
8 action, the court may award to the defendant its reasonable
9 attorney's fees and expenses if the defendant prevails in the action
10 and the court finds that the claim of the person bringing the action
11 was clearly frivolous, clearly vexatious, or brought primarily for
12 purposes of harassment.

13 (h) (1) In no event may a person bring an action under
14 subdivision (e) that is based upon allegations or transactions that
15 are the subject of a civil suit or an administrative civil money
16 penalty proceeding in which the Attorney General, district attorney,
17 or commissioner is already a party.

18 (2) (A) No court shall have jurisdiction over an action under
19 this section based upon the public disclosure of allegations or
20 transactions in a criminal, civil, or administrative hearing in a
21 legislative or administrative report, hearing, audit, or investigation,
22 or from the news media, unless the action is brought by the
23 Attorney General or the person bringing the action is an original
24 source of the information.

25 (B) For purposes of this paragraph, "original source" means an
26 individual who has direct and independent knowledge of the
27 information on which the allegations are based and has voluntarily
28 provided the information to the district attorney or commissioner
29 before filing an action under this section that is based on the
30 information.

31 (i) Except as provided in subdivision (j), the district attorney or
32 commissioner is not liable for expenses that a person incurs in
33 bringing an action under this section.

34 (j) In civil actions brought under this section in which the
35 commissioner or a district attorney is a party, the court shall retain
36 discretion to impose sanctions otherwise allowed by law, including
37 the ability to order a party to pay expenses as provided in Sections
38 128.5 and 1028.5 of the Code of Civil Procedure.

39 (k) Any employee who is discharged, demoted, suspended,
40 threatened, harassed, or in any other manner discriminated against

1 in the terms and conditions of employment by his or her employer
2 because of lawful acts done by the employee on behalf of the
3 employee or others in furtherance of an action under this section,
4 including investigation for, initiation of, testimony for, or assistance
5 in an action filed or to be filed under this section, shall be entitled
6 to all relief necessary to make the employee whole. That relief
7 shall include reinstatement with the same seniority status the
8 employee would have had but for the discrimination, two times
9 the amount of backpay, interest on the backpay, and compensation
10 for any special damages sustained as a result of the discrimination,
11 including litigation costs and reasonable attorney's fees. An
12 employee may bring an action in the appropriate superior court
13 for the relief provided in this subdivision. The remedies under this
14 section are in addition to any other remedies provided by existing
15 law.

16 (l) (1) An action pursuant to this section may not be filed more
17 than three years after the discovery of the facts constituting the
18 grounds for commencing the action.

19 (2) Notwithstanding paragraph (1) no action may be filed
20 pursuant to this section more than eight years after the commission
21 of the act constituting a violation of this section or a violation of
22 Section 549, 550, or 551 of the Penal Code.

23 ~~SEC. 24.~~

24 SEC. 25. Section 14090 of the Insurance Code is amended to
25 read:

26 14090. Every license, branch office certificate, and pocket card
27 issued pursuant to this chapter shall expire on the day two years
28 after the last calendar day of the month in which the initial license
29 was issued. Licenses issued prior to January 1, 2011, shall expire
30 on May 31 of each even-numbered year. To renew an unexpired
31 license or certificate, the licensee shall, on or before the date on
32 which it would otherwise expire, apply for renewal on a form
33 prescribed by the commissioner, and pay the renewal fee prescribed
34 by this chapter. On renewal, the evidence of renewal of the license
35 or certificate as the commissioner may prescribe, and renewal
36 pocket cards for the persons mentioned in Section 14034, shall be
37 issued to the licensee.

38 ~~SEC. 25.~~

39 SEC. 26. Section 14090.1 of the Insurance Code is amended
40 to read:

1 14090.1. (a) An individual who holds an insurance adjuster
2 license and who is not exempt under subdivision (b) of this section
3 shall satisfactorily complete a minimum of 24 hours, of which
4 three hours are to be in ethics, of continuing education courses
5 pertinent to the duties and responsibilities of an insurance adjuster
6 license reported to the insurance commissioner on a biennial basis
7 in conjunction with his or her license renewal cycle.

8 (b) This section does not apply to either of the following:

9 (1) A licensee not licensed for one full year prior to the end of
10 the applicable continuing education biennium.

11 (2) A licensee holding a nonresident insurance adjuster license
12 who has met the continuing education requirements of his or her
13 designated resident state.

14 ~~SEC. 26.~~

15 *SEC. 27.* Section 15054 of the Insurance Code is amended to
16 read:

17 15054. Every license, branch office certificate, and pocket card
18 issued pursuant to this chapter shall expire on the day two years
19 after the last calendar day of the month in which the initial license
20 was issued. Licenses issued prior to January 1, 2011, shall expire
21 on May 31 of each even-numbered year. To renew an unexpired
22 license or certificate, the licensee shall, on or before the date on
23 which it would otherwise expire, apply for renewal on a form
24 prescribed by the commissioner, and pay the renewal fee prescribed
25 by this chapter. On renewal, the evidence of renewal of the license
26 or certificate as the commissioner may prescribe, and renewal
27 pocket cards for the persons mentioned in Section 15022 shall be
28 issued to the licensee.

29 ~~SEC. 27.~~

30 *SEC. 28.* Section 15059.1 of the Insurance Code is amended
31 to read:

32 15059.1. (a) An individual who holds a public insurance
33 adjuster license and who is not exempt under subdivision (b) shall
34 satisfactorily complete a minimum of 24 hours, of which three
35 hours are to be in ethics, of continuing education courses pertinent
36 to the duties and responsibilities of a public insurance adjuster
37 license, to be reported to the insurance commissioner on a biennial
38 basis in conjunction with his or her license renewal cycle.

39 (b) This section shall not apply to:

- 1 (1) A licensee not licensed for one full year prior to the end of
- 2 the applicable continuing education biennium.
- 3 (2) A licensee holding a nonresident public insurance adjuster
- 4 license who has met the continuing education requirements of his
- 5 or her designated state or residence.

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