

AMENDED IN ASSEMBLY MAY 19, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 53

Introduced by Assembly Member Solorio
(Coauthors: Assembly Members Davis, Furutani, Mendoza, and
Portantino)
(Coauthor: Senator Price)

December 6, 2010

An act to add Article 10.2 (commencing with Section 927) to Chapter 1 of Part 2 of Division 1 of the Insurance Code, relating to insurers.

LEGISLATIVE COUNSEL'S DIGEST

AB 53, as amended, Solorio. Insurers: procurement contracts: ~~women~~, minority, *women*, and disabled veteran business enterprises.

Existing law requires each admitted insurer to provide information to the Insurance Commissioner on all of its community development investments and community development infrastructure investments in California.

This bill would require that each admitted insurer with ~~California~~ premiums written equal to or in excess of \$100,000,000 to submit ~~annually~~ to the commissioner, ~~commencing by July 1, 2013, a detailed and verifiable plan for increasing procurement from women, minority, 2012, a report on its minority, women, and disabled veteran business enterprises procurement efforts, as specified. Failure to file the report, by July 1, 2012, would subject the admitted insurer to civil penalties to be fixed by the commissioner, as provided.~~

~~The bill would require the commissioner to, among other things, establish guidelines for qualified admitted insurers to be used in establishing these programs, provide a report annually on the Department of Insurance's Internet Web site and to the Legislature on September 1 of each year on the progress of activities undertaken by each qualified admitted insurer in the implementation of these programs, and to require admitted insurers subject to this bill to implement an outreach program to inform and recruit eligible business enterprises to apply for procurement contracts.~~

~~The bill would provide that any person, corporation, or other organization, through its directors, officers, or agents, that falsely represents a business as a women, minority, or disabled veteran business enterprise in the procurement of, or attempt to procure, a contract from an admitted insurer subject to this bill would be barred from participating in the program for up to 3 years from the date of the false representation, as provided.~~

~~*The bill would require, among other things, that commencing July 1, 2014, each eligible admitted insurer biennially update its supplier diversity report and submit a new report, containing additional elements, to the commissioner no later than July 1.*~~

~~*The bill would require that, by July 31, 2012, the commissioner establish and maintain a link on the department's Internet Web site that provides public access to the contents of each admitted insurer's report on minority, women, and disabled veteran-owned business procurement efforts.*~~

~~*The bill would require that a supplier firm that provides a materially false statement regarding its status as a minority, women, or disabled veteran business enterprise be barred for up to 3 years from being considered as one of those enterprises.*~~

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. Article 10.2 (commencing with Section 927) is
- 2 added to Chapter 1 of Part 2 of Division 1 of the Insurance Code,
- 3 to read:

1 Article 10.2. Women, Minority, and Disabled Veteran Business
2 Enterprises

3
4 927. *The Legislature finds and declares all of the following:*

5 (a) *It is in the state’s interest to encourage competitive business*
6 *opportunities for all of its people. Insurers are uniquely positioned*
7 *to build relationships within the communities they serve through*
8 *the development, inclusion, and utilization of certified minority,*
9 *women, and disabled veteran-owned business enterprises whenever*
10 *possible. National companies are able to leverage buying power*
11 *to save costs to the benefit of policyholders.*

12 (b) *By providing that each major insurer submit to the Insurance*
13 *Commissioner a report and plan containing the insurer’s supplier*
14 *diversity statement and expressing its goals regarding certified*
15 *minority, women, and disabled veteran-owned business enterprises,*
16 *and the commissioner placing that information on the department’s*
17 *Internet Web site, that online resource will help facilitate these*
18 *supplier relationships.*

19 927.1. *For the purposes of this article, the following definitions*
20 *apply:*

21 (a) *“Control” means to exercise the power to make policy*
22 *decisions.*

23 (b) *“Disabled veteran business enterprise” has the same*
24 *meaning as defined in subparagraph (A) of paragraph (7) of*
25 *subdivision (b) of Section 999 of the Military and Veterans Code,*
26 *or any successor provision. Disabled veterans business enterprise*
27 *certification eligibility requirements shall be consistent with those*
28 *imposed by the Department of General Services, and this section*
29 *applies only to those disabled veteran business enterprises certified*
30 *by the Department of General Services.*

31 (c) *“Minority business enterprise” means a business enterprise,*
32 *physically located in the United States or its trust territories, that*
33 *is at least 51 percent owned by a minority group or groups, or, in*
34 *the case of any publicly owned business, at least 51 percent of the*
35 *stock of which is owned by one or more minority groups, and whose*
36 *management and daily business operations are controlled by one*
37 *or more of those individuals. “Minority” includes African*
38 *Americans, Hispanic Americans, Native Americans, and Asian*
39 *Pacific Americans who provide proof of United States citizenship*
40 *or legal resident alien status.*

1 (d) “Operate” means to be actively involved in the day-to-day
2 management of the enterprise and not to be merely officers or
3 directors.

4 (e) “Women business enterprise” means a business enterprise
5 physically located in the United States or its trust territories, that
6 is at least 51 percent owned by a woman or women, or, in the case
7 of any publically owned business at least 51 percent of the stock
8 of which is owned by one or more women, and whose management
9 and daily business operations are controlled by one or more of
10 those individuals, who provide proof of United States citizenship
11 or legal resident alien status.

12 927.2. (a) (1) By July 1, 2012, each admitted insurer, with
13 premiums written of one hundred million dollars (\$100,000,000)
14 or more, shall submit a report to the commissioner on its minority,
15 women, and disabled veteran-owned business procurement efforts.

16 (2) The report shall include all of the following:

17 (A) The insurer’s supplier diversity policy statement.

18 (B) The insurer’s outreach and communications to minority,
19 women, and disabled veteran business enterprises, including:

20 (i) How the insurer encourages and seeks out minority, women,
21 and disabled veteran owned business enterprises to become
22 potential suppliers.

23 (ii) How the insurer encourages its employees involved in
24 procurement to seek out minority, women, and disabled
25 veteran-owned business enterprises to become potential suppliers.

26 (iii) How the insurer conducts outreach and communication to
27 minority, women, and disabled veteran business enterprises.

28 (iv) How the insurer supports organizations that promote or
29 certify minority, women, and disabled veteran-owned business
30 enterprises.

31 (v) Information regarding appropriate contacts at the insurer
32 for interested business enterprises.

33 (C) The report shall include information about which
34 procurements are made from minority, women, and disabled
35 veteran business enterprises with at least a majority of the
36 enterprise’s workforce in California, to the extent that information
37 is readily accessible.

38 (b) Nothing in this section shall be construed to require quotas,
39 set-asides, or preferences in an admitted insurer’s procurement
40 of goods or services, nor does this section apply to insurer

1 *producer or licensee contracts. Admitted insurers retain the*
2 *authority to use business judgment to select the supplier for a*
3 *particular contract.*

4 *(c) Nothing in this section shall preclude an admitted insurer*
5 *that is a member of an insurance holding company system, as*
6 *defined in Article 4.7 (commencing with Section 1215) of Chapter*
7 *2, from complying with paragraphs (1) and (2) of subdivision (a)*
8 *through a single filing on behalf of the entire group of affiliated*
9 *companies.*

10 *(d) Failure to file the report required by subdivision (a), by July*
11 *1, 2012, shall subject the admitted insurer to a civil penalty to be*
12 *fixed by the commissioner, not to exceed five thousand dollars*
13 *(\$5,000), or if the act or practice was willful, a civil penalty not*
14 *to exceed ten thousand dollars (\$10,000). If the insurer has failed*
15 *to file the report within 30 days of a written notice by the*
16 *commissioner, the commissioner may find that the failure to file*
17 *the report was willful and increase the civil penalty to an amount*
18 *not to exceed ten thousand dollars (\$10,000). The penalty imposed*
19 *by this section is appealable by means of any remedy provided by*
20 *Section 12940, or by Chapter 5 (commencing with Section 11500)*
21 *of Part 1 of Division 3 of Title 2 of the Government Code.*

22 *(e) (1) Commencing July 1, 2014, each admitted insurer*
23 *specified in subdivision (a) shall biennially update its supplier*
24 *diversity report and submit the new report to the commissioner no*
25 *later than July 1.*

26 *(2) By July 1, 2014, each insurer specified in subdivision (a)*
27 *shall, as part of the supplier diversity report, submit to the*
28 *commissioner a plan that includes the goals and outreach efforts*
29 *that are planned in connection with procurement from minority,*
30 *women, and disabled veteran business enterprises during the*
31 *current and following calendar year. The plan shall also include*
32 *all of the elements contained in subdivision (a).*

33 *(f) By July 31, 2012, the commissioner shall establish and*
34 *maintain a link on the department's Internet Web site that provides*
35 *public access to the contents of each admitted insurer's report on*
36 *minority, women, and disabled veteran-owned business*
37 *procurement efforts.*

38 *(g) Each insurer required to submit a report or plan pursuant*
39 *to this section may request verification of the status of any supplier*
40 *that asserts it qualifies as a women business enterprise, a minority*

1 *business enterprise, or a disabled veteran business enterprise from*
2 *the Public Utilities Commission, the Department of General*
3 *Services, the Department of Insurance, or any entity selected or*
4 *recognized by these agencies for the purpose of verifying the*
5 *accuracy of that assertion.*

6 *(h) (1) In the event that the report or plan includes a goal to*
7 *increase procurement from minority, women, or disabled veteran*
8 *business enterprises, then the procurement attributed to a minority,*
9 *women, or disabled veteran business enterprise, for statistical*
10 *purposes, shall be one that is verified as one of those enterprises*
11 *by the primary entity selected by the Public Utilities Commission,*
12 *by the Department of General Services, or by the Department of*
13 *Insurance for this purpose, or by another entity or organization*
14 *that is recognized by any of these agencies to conduct supplier*
15 *verifications. Insurers are encouraged to utilize these verification*
16 *resources.*

17 *(2) This subdivision does not require any state agency to conduct*
18 *these verifications, contract with any entity to conduct these*
19 *verifications, or to recognize any other entity or organization for*
20 *this purpose.*

21 *(i) A supplier firm that provides a materially false statement*
22 *regarding its status as a minority, women, or disabled veteran*
23 *business enterprise shall be barred for up to 3 years from being*
24 *counted as one of those enterprises for purposes of this section.*

25 ~~927. (a) The Legislature hereby declares that the essence of~~
26 ~~the American economic system of private enterprise is free~~
27 ~~competition. Only through full and free competition can free~~
28 ~~markets, reasonable and just prices, free entry into business, and~~
29 ~~opportunities for the expression and growth of personal initiative~~
30 ~~and individual judgment be ensured in all of the state's~~
31 ~~communities. The preservation and expansion of that competition~~
32 ~~is basic to the economic well-being of this state and that well-being~~
33 ~~cannot be realized unless the actual and potential capacities of~~
34 ~~women, minority, and disabled veteran business enterprises are~~
35 ~~encouraged and developed. The state's diverse composition propels~~
36 ~~economic innovation and growth, and the economy's full~~
37 ~~employment potential cannot be achieved if these communities~~
38 ~~are left underutilized. Therefore, it is the declared policy of the~~
39 ~~state to aid the interests of women, minority, and disabled veteran~~
40 ~~business enterprises in order to preserve reasonable and just prices~~

1 and a free competitive enterprise, to ensure that a fair proportion
2 of the total purchases and contracts or subcontracts for
3 commodities, supplies, technology, property, and services for
4 insurers are awarded to women, minority, and disabled veteran
5 business enterprises, and to maintain and strengthen the overall
6 stability and growth of the state's economy.

7 (b) (1) The Legislature declares all of the following:

8 (A) The opportunity for full participation in our free enterprise
9 system by women, minority, and disabled veteran business
10 enterprises is essential if this state is to approach full employment
11 of its human resources and improve economic efficiency and equity
12 in opportunity.

13 (B) Public utilities and telecommunications companies, which
14 have established short- and long-range women, minority, and
15 disabled veteran business enterprise goals, are awarding 30 percent
16 or more of their contracts to these business enterprises.

17 (C) Women, minority, and disabled veteran business enterprises
18 have traditionally received less than a proportionate share of
19 regulated procurement contracts.

20 (D) It is in the state's interest to expeditiously improve the
21 economically disadvantaged position of women, minority, and
22 disabled veteran business enterprises.

23 (E) The position of these businesses can be improved by
24 providing long-range substantial goals for procurement by insurers
25 of technology, equipment, supplies, services, materials, and
26 construction work from women, minority, and disabled veteran
27 businesses.

28 (F) That procurement also benefits the regulated insurance
29 companies and consumers of the state by encouraging the
30 expansion of the number of suppliers for procurements, thereby
31 encouraging competition among the suppliers and promoting
32 economic efficiency in the process.

33 (2) It is the purpose of this article to do all of the following:

34 (A) Encourage greater economic opportunity for women,
35 minority, and disabled veteran business enterprises in the one
36 hundred sixteen billion dollar (\$116,000,000,000) California
37 insurance market.

38 (B) Promote competition among the suppliers of insurers in
39 order to enhance economic efficiency in the procurement of

1 ~~contracts relevant to the insurance industry and contracts of the~~
2 ~~subsidiaries and affiliates of those insurance providers.~~

3 ~~(C) Clarify and expand the program for the procurement by~~
4 ~~insurers of technology, equipment, supplies, services, materials,~~
5 ~~and construction work from women, minority, and disabled veteran~~
6 ~~business enterprises.~~

7 ~~927.1. For the purposes of this article, the following definitions~~
8 ~~apply:~~

9 ~~(a) “Women business enterprise” means a business enterprise~~
10 ~~that is at least 51 percent owned by a woman or women, or, in the~~
11 ~~case of any publicly owned business, at least 51 percent of the~~
12 ~~stock of which is owned by one or more women, and whose~~
13 ~~management and daily business operations are controlled by one~~
14 ~~or more of those individuals.~~

15 ~~(b) “Minority business enterprise” means a business enterprise~~
16 ~~that is at least 51 percent owned by a minority group or groups,~~
17 ~~or, in the case of any publicly owned business, at least 51 percent~~
18 ~~of the stock of which is owned by one or more minority groups,~~
19 ~~and whose management and daily business operations are~~
20 ~~controlled by one or more of those individuals. The contracting~~
21 ~~admitted insurer shall presume that minority includes African~~
22 ~~Americans, Hispanic Americans, Native Americans, and Asian~~
23 ~~Pacific Americans.~~

24 ~~(c) “Disabled veteran business enterprise” has the same meaning~~
25 ~~as defined in subparagraph (A) of paragraph (7) of subdivision (b)~~
26 ~~of Section 999 of the Military and Veterans Code, or any successor~~
27 ~~provision.~~

28 ~~(d) To “control” means exercise the power to make policy~~
29 ~~decisions.~~

30 ~~(e) To “operate” means to be actively involved in the day-to-day~~
31 ~~management and not merely officers or directors.~~

32 ~~(f) “Women, minority, or disabled veteran business enterprise”~~
33 ~~or “WMDVBE” means an enterprise as defined in subdivisions~~
34 ~~(a), (b), or (c), respectively.~~

35 ~~927.2. (a) (1) Each insurer admitted in California, with~~
36 ~~California premiums written equal to or in excess of one hundred~~
37 ~~million dollars (\$100,000,000) shall be required to submit annually~~
38 ~~to the commissioner, commencing July 1, 2013, a detailed and~~
39 ~~verifiable plan for increasing procurement from women, minority,~~
40 ~~and disabled veteran business enterprises.~~

1 ~~(2) These annual plans shall include short- and long-term goals~~
2 ~~and timetables, but not quotas, and shall include methods for~~
3 ~~encouraging contractors to engage women, minority, and disabled~~
4 ~~veteran business enterprises in subcontracts in all areas that provide~~
5 ~~subcontracting opportunities.~~

6 ~~(b) The commissioner shall establish guidelines for all admitted~~
7 ~~insurers with California premiums written equal to or in excess of~~
8 ~~one hundred million dollars (\$100,000,000) to be utilized in~~
9 ~~establishing programs pursuant to this article.~~

10 ~~(c) Each admitted insurer, with California premiums written~~
11 ~~equal to or in excess of one hundred million dollars (\$100,000,000),~~
12 ~~shall furnish an annual report to the commissioner regarding the~~
13 ~~implementation of programs established pursuant to this article in~~
14 ~~a form that the commissioner shall require, and at the time that the~~
15 ~~commissioner shall annually designate.~~

16 ~~(d) (1) Notwithstanding Section 10231.5 of the Government~~
17 ~~Code, the commissioner shall annually report on the department's~~
18 ~~Internet Web site and provide a report to the Legislature on~~
19 ~~September 1 of each year on the progress of activities undertaken~~
20 ~~by each admitted insurer with California premiums written equal~~
21 ~~to or in excess of one hundred million dollars (\$100,000,000)~~
22 ~~pursuant to this article in the implementation of women, minority,~~
23 ~~and disabled veteran business enterprise development programs.~~
24 ~~The report shall include information about which procurements~~
25 ~~are made from women, minority, and disabled veteran business~~
26 ~~enterprises with at least a majority of the enterprise's workforce~~
27 ~~in California, to the extent that information is readily accessible.~~
28 ~~The commissioner shall recommend a program for carrying out~~
29 ~~the policy declared in this article, together with recommendations~~
30 ~~for legislation that the commissioner deems necessary or desirable~~
31 ~~to further that policy.~~

32 ~~(2) In regard to disabled veteran business enterprises, the~~
33 ~~commissioner shall ensure that the programs and legislation~~
34 ~~recommended pursuant to paragraph (1) are consistent with the~~
35 ~~disabled veteran business enterprise certification eligibility~~
36 ~~requirements imposed by the Department of General Services and~~
37 ~~that the recommendations address themselves to only those disabled~~
38 ~~veteran business enterprises certified by the Department of General~~
39 ~~Services. The Department of General Services shall, as requested~~

1 by the Department of Insurance, advise and assist in the
2 administration of this section.

3 (3) A report to be submitted pursuant to this subdivision shall
4 be submitted in compliance with Section 9795 of the Government
5 Code.

6 (e) The Legislature declares that each admitted insurer that is
7 not required to submit a plan pursuant to subdivision (a) is
8 encouraged to voluntarily adopt a plan for increasing women,
9 minority, and disabled veteran business enterprise procurement.
10 The commissioner may publicize participants and nonparticipants
11 in the program.

12 927.3. (a) (1) The commissioner shall, by regulation, adopt
13 criteria for verifying and determining the eligibility of women and
14 minority business enterprises for procurement contracts.

15 (2) The commissioner shall adopt the Department of General
16 Services' disabled veteran business enterprise certification
17 eligibility requirements for verifying and determining the eligibility
18 of disabled veteran business enterprises for procurement contracts,
19 and shall not deem eligible those disabled veteran business
20 enterprises that are not certified by the Department of General
21 Services.

22 (3) The commissioner shall, to the extent possible, coordinate
23 with the Public Utilities Commission for the sharing of WMDVBE
24 identification and verification information.

25 (b) The commissioner shall require each admitted insurer with
26 California premiums written equal to or in excess of one hundred
27 million dollars (\$100,000,000) to implement an outreach program
28 to inform and recruit women, minority, and disabled veteran
29 business enterprises to apply for procurement contracts under this
30 article.

31 927.4. Any person, corporation, or other organization, through
32 its directors, officers, or agents, that falsely represents a business
33 as a women, minority, or disabled veteran business enterprise in
34 the procurement of, or attempt to procure, a contract from a
35 California admitted insurer with California premiums written equal
36 to or in excess of one hundred million dollars (\$100,000,000)
37 subject to this article, shall be barred from participating in the
38 program for up to three years from the date of the false
39 representation. In the case of a corporation or other organization,
40 this punishment shall be imposed on the corporation or other

1 ~~organization and every director, officer, or agent responsible for~~
2 ~~the false statements.~~

3 ~~927.5.~~

4 927.3. In order to facilitate the participation of women-owned
5 businesses, minority-owned businesses, disabled veteran-owned
6 businesses, and small businesses in contract procurement, any
7 insurer subject to this article may consider the following measures
8 to include those businesses in all phases of their contracting:

9 (a) Timely or progressive payments to those businesses.

10 (b) The provision of assistance to those businesses by securing
11 contract payments to those businesses with letters of credit,
12 negotiable securities, or other financing arrangements or measures.

O