

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1263

Introduced by Assembly Member Williams

February 18, 2011

An act to add Section 11785.5 to the Insurance Code, relating to the State Compensation Insurance Fund.

LEGISLATIVE COUNSEL'S DIGEST

AB 1263, as amended, Williams. State Compensation Insurance Fund: ~~postemployment noncompetition clause~~. *directors and officers: postemployment.*

Existing law provides for the existence of the State Compensation Insurance Fund to be administered by a board of directors for the purpose of transacting workers' compensation insurance, and insurance against the expense of defending any suit for serious and willful misconduct, against an employer or his or her agent, and insurance to employees and other persons of the compensation fixed by the workers' compensation laws for employees and their dependents.

Existing law provides that the board of directors shall appoint a president, a chief financial officer, a chief operating officer, a chief information technology officer, a chief investment officer, a chief risk officer, and a general counsel. The positions are subject to the Milton Marks Postgovernment Employment Restrictions Act of 1990 which, among other things, prohibits specified employees, officers, and consultants, for one year after leaving office or employment, from engaging in specified activities for the purpose of influencing administrative or legislative action. This provision is an exception to

the general rule that contracts in restraint of trade are void and unenforceable.

~~This bill would provide that, notwithstanding any other provision to the contrary, the employment contracts of the above positions at the fund shall contain employment restrictions prohibiting competition of any kind during the term of contract of employment, and prohibiting a person in any of those positions, for 2 years after terminating his or her employment contract with the fund, from being employed by a competitor of, consulting with, or lobbying the fund, if those activities would result in competing with the fund through the use of the fund's trade secrets or confidential information or if those activities would constitute engaging in or aiding others in engaging in unfair competition against the fund, use of the fund's confidential information, or misappropriating the fund's proprietary information. The bill would state the findings, declarations, and intent of the Legislature relating to the need for enactment of this measure.~~

This bill would prohibit the members of the fund's board of directors and fund officers appointed by the board from lobbying the fund for 2 years after leaving the fund. The bill would require that any consulting for the fund by former members of the fund's board of directors and former fund officers, who had been appointed by the board, be approved by the board.

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

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

- 1 SECTION 1. ~~(a)~~The Legislature hereby finds and declares
- 2 the following:
- 3 ~~(1)~~
- 4 (a) The State Compensation Insurance Fund is a nonprofit,
- 5 self-supporting, fairly competitive public enterprise that serves a
- 6 dual role as both a market of choice and the safety net for California
- 7 employers seeking workers' compensation insurance.
- 8 ~~(2)~~
- 9 (b) The State Compensation Insurance Fund plays a critical role
- 10 in California's workers' compensation system.
- 11 SEC. 2. Section 11785.5 is added to the Insurance Code, to
- 12 read:

1 11785.5. (a) Notwithstanding any other provision of law to
2 the contrary, the members of the Board of Directors of the State
3 Compensation Insurance Fund and officers of the fund appointed
4 by the board of directors, including, but not limited to, the
5 president, chief financial officer, chief operating officer, chief
6 information technology officer, chief investment officer, chief risk
7 officer, and general counsel, are prohibited from lobbying the fund
8 for two years after leaving employment with the fund.

9 (b) Notwithstanding any other provision of law to the contrary,
10 any consulting for the fund by former members of the Board of
11 Directors of the State Compensation Insurance Fund and former
12 officers of the fund appointed by the board of directors, including,
13 but not limited to, the president, chief financial officer, chief
14 operating officer, chief information technology officer, chief
15 investment officer, chief risk officer, and general counsel, shall be
16 approved by the board of directors.

17 ~~(3) The successful governance of the State Compensation~~
18 ~~Insurance Fund directly correlates with a strong workers'~~
19 ~~compensation insurance market.~~

20 ~~(b) It is the intent of the Legislature in enacting this measure to~~
21 ~~ensure that the State Compensation Insurance Fund is better able~~
22 ~~to compete with other insurers and perform its various critical~~
23 ~~functions.~~

24 ~~SEC. 2. Section 11785.5 is added to the Insurance Code, to~~
25 ~~read:~~

26 ~~11785.5. Notwithstanding any other provision to the contrary,~~
27 ~~the employment contract of the president and officers of the board~~
28 ~~of directors (hereafter "employees" or "employee") of the State~~
29 ~~Compensation Insurance Fund, as specified in subdivision (a) of~~
30 ~~Section 11785, shall contain the following employment restrictions:~~

31 ~~(a) (1) Competition of any kind whatsoever shall be prohibited~~
32 ~~during the term of the contract of employment.~~

33 ~~(2) In support of the application of paragraph (1) to an employee,~~
34 ~~it is agreed by the fund and by the employee that the fund would~~
35 ~~suffer irreparable harm should the employee engage in competition~~
36 ~~in violation of the employment contract and that the fund would~~
37 ~~be entitled to injunctive relief.~~

38 ~~(b) After an employee terminates his or her employment contract~~
39 ~~with the fund, the employee shall be prohibited for two years from~~
40 ~~being employed by a competitor of, consulting with, or lobbying~~

1 the fund, if those activities would result in competing with the
2 fund through the use of the fund's trade secrets or confidential
3 information or if those activities would constitute engaging in or
4 aiding others in engaging in unfair competition against the fund,
5 use of the fund's confidential information, or misappropriating the
6 fund's proprietary information.

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