

AMENDED IN SENATE AUGUST 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1426

Introduced by ~~Committee on Insurance (Assembly Members Solorio (Chair), Carter, Feuer, Hayashi, Skinner, Torres, and Wiecewski)~~ Assembly Member Solorio

March 22, 2011

An act to amend Section 11629.79 of, and to repeal Section 1758.994 of, the Insurance Code, relating to insurance. An act to amend Sections 110, 123.5, 123.6, 127, 133, 138, 138.1, 138.2, 5307, 5307.3, 5310, 5311.5, 5500.3, and 5502 of, and to repeal Section 127.5 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1426, as amended, ~~Committee on Insurance Solorio. Insurance. Workers' compensation: court administrator.~~

Existing law creates the position of court administrator with respect to the workers' compensation adjudicatory process at the trial level. The court administrator is appointed by the Governor with the advice and consent of the Senate and has specified powers and duties relating to the workers' compensation trial process, including supervision of administrative law judges and prescribing certain forms and calendars.

This bill would remove the position of court administrator and distribute the duties to the Workers' Compensation Appeals Board and the Administrative Director of the Division of Workers' Compensation, as specified. The bill would make other technical and conforming changes.

~~(1) Existing law requires the Insurance Commissioner to report to the Legislature by June 30, 2004, regarding the effectiveness of specified~~

~~provisions regulating credit insurance agents in protecting consumers involved in credit insurance transactions.~~

~~This bill would repeal this reporting requirement provision.~~

~~(2) Existing law establishes a low-cost automobile insurance program. Existing law, subject to exceptions, requires that the Office of Administrative Law review administrative regulations proposed by state agencies prior to their adoption. Exceptions to this requirement authorized the Insurance Commissioner to adopt emergency regulations relating to the low-cost automobile insurance program as it commenced in 2000, and as it was expanded in 2006, that are not subject to the review process of the Office of Administrative Law.~~

~~This bill would repeal the language that authorized the commissioner to adopt emergency regulations in relation to the low-cost automobile insurance program.~~

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

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

1 *SECTION 1. The Legislature finds and declares that the court*
 2 *administrator in the Division of Workers' Compensation, created*
 3 *pursuant to Chapter 6 of the Statutes of 2002, fails to achieve the*
 4 *intended uniformity and expedition of proceedings in the district*
 5 *offices of the workers' compensation appeals board. The court*
 6 *administrator creates divided lines of authority and accountability,*
 7 *and it does not promote coordination of the functions of the*
 8 *Division of Workers' Compensation. The Legislature therefore*
 9 *intends to eliminate the position of the court administrator and to*
 10 *reassign the powers and duties of the court administrator to the*
 11 *Workers' Compensation Appeals Board or to the Administrative*
 12 *Director of the Division of Workers' Compensation, as appropriate.*

13 *SEC. 2. Section 110 of the Labor Code is amended to read:*

14 110. As used in this chapter:

15 (a) "Appeals board" means the Workers' Compensation Appeals
 16 Board. The title of a member of the board is "commissioner."

17 (b) "Administrative director" means the Administrative Director
 18 of the Division of Workers' Compensation.

19 (c) "Division" means the Division of Workers' Compensation.

20 (d) "Medical director" means the physician appointed by the
 21 administrative director pursuant to Section 122.

1 (e) “Qualified medical evaluator” means physicians appointed
2 by the administrative director pursuant to Section 139.2.

3 ~~(f) “Court administrator” means the administrator of the~~
4 ~~workers’ compensation adjudicatory process at the trial level.~~

5 *SEC. 3. Section 123.5 of the Labor Code is amended to read:*

6 123.5. (a) Workers’ compensation administrative law judges
7 employed by the administrative director ~~and supervised by the~~
8 ~~court administrator pursuant to this chapter~~ shall be taken from an
9 eligible list of attorneys licensed to practice law in this state, who
10 have the qualifications prescribed by the State Personnel Board.
11 In establishing eligible lists for this purpose, state civil service
12 examinations shall be conducted in accordance with the State Civil
13 Service Act (Part 2 (commencing with Section 18500) of Division
14 5 of Title 2 of the Government Code). Every workers’
15 compensation judge shall maintain membership in the State Bar
16 of California during his or her tenure.

17 A workers’ compensation administrative law judge may not
18 receive his or her salary as a workers’ compensation administrative
19 law judge while any cause before the workers’ compensation
20 administrative law judge remains pending and undetermined for
21 90 days after it has been submitted for decision.

22 (b) All workers’ compensation administrative law judges
23 appointed on or after January 1, 2003, shall be attorneys licensed
24 to practice law in California for five or more years prior to their
25 appointment and shall have experience in workers’ compensation
26 law.

27 *SEC. 4. Section 123.6 of the Labor Code is amended to read:*

28 123.6. (a) All workers’ compensation administrative law judges
29 employed by the administrative director ~~and supervised by the~~
30 ~~court administrator~~ shall subscribe to the Code of Judicial Ethics
31 adopted by the Supreme Court pursuant to subdivision (m) of
32 Section 18 of Article VI of the California Constitution for the
33 conduct of judges and shall not otherwise, directly or indirectly,
34 engage in conduct contrary to that code or to the commentary to
35 the Code of Judicial Ethics.

36 In consultation with ~~both the court administrator and the~~
37 Commission on Judicial Performance, the administrative director
38 shall adopt regulations to enforce this section. ~~Existing regulations~~
39 ~~shall remain in effect until new regulations based on the~~
40 ~~recommendations of the court administrator and the Commission~~

1 ~~on Judicial Performance have become effective.~~ To the extent
2 possible, the rules shall be consistent with the procedures
3 established by the Commission on Judicial Performance for
4 regulating the activities of state judges, and, to the extent possible,
5 with the gift, honoraria, and travel restrictions on legislators
6 contained in the Political Reform Act of 1974 (Title 9 (commencing
7 with Section 81000) of the Government Code). ~~The court~~
8 ~~administrator shall have the authority to enforce the rules adopted~~
9 ~~by the administrative director.~~

10 (b) Honoraria or travel allowed by the ~~court administrator~~
11 *administrative director*, and not otherwise prohibited by this section
12 in connection with any public or private conference, convention,
13 meeting, social event, or like gathering, the cost of which is
14 significantly paid for by attorneys who practice before the board,
15 may not be accepted unless the ~~court administrator~~ *administrative*
16 *director* has provided prior approval in writing to the workers'
17 compensation administrative law judge allowing him or her to
18 accept those payments.

19 *SEC. 5. Section 127 of the Labor Code is amended to read:*

20 127. The administrative director ~~and court administrator~~ may
21 *do all of the following:*

22 (a) Charge and collect fees for copies of papers and records, for
23 certified copies of official documents and orders or of the evidence
24 taken or proceedings had, for transcripts of testimony, and for
25 inspection of case files not stored in the place where the inspection
26 is requested. The administrative director shall fix those fees in an
27 amount sufficient to recover the actual costs of furnishing the
28 services. No fees for inspection of case files shall be charged to
29 an injured employee or his or her representative.

30 (b) Publish and distribute from time to time, in addition to the
31 reports to the Governor, further reports and pamphlets covering
32 the operations, proceedings, and matters relative to the work of
33 the division.

34 (c) Prepare, publish, and distribute an office manual, for which
35 a reasonable fee may be charged, and to which additions, deletions,
36 amendments, and other changes from time to time may be adopted,
37 published, and distributed, for which a reasonable fee may be
38 charged for the revision, or for which a reasonable fee may be
39 fixed on an annual subscription basis.

40 (d) Fix and collect reasonable charges for publications issued.

1 *SEC. 6. Section 127.5 of the Labor Code is repealed.*

2 ~~127.5. In the exercise of his or her functions, the court~~
3 ~~administrator shall further the interests of uniformity and expedition~~
4 ~~of proceedings before workers' compensation administrative law~~
5 ~~judges, assure that all workers' compensation administrative law~~
6 ~~judges are qualified and adhere to deadlines mandated by law or~~
7 ~~regulations, and manage district office procedural matters at the~~
8 ~~trial level.~~

9 *SEC. 7. Section 133 of the Labor Code is amended to read:*

10 133. The Division of Workers' Compensation, including the
11 administrative director, ~~the court administrator~~, and the appeals
12 board, shall have power and jurisdiction to do all things necessary
13 or convenient in the exercise of any power or jurisdiction conferred
14 upon it under this code.

15 *SEC. 8. Section 138 of the Labor Code is amended to read:*

16 138. The administrative director ~~and the court administrator~~
17 ~~may each~~ appoint a deputy to act ~~during that time as~~ *when* he or
18 ~~she may be~~ *is* absent from the state due to official business,
19 vacation, or illness.

20 *SEC. 9. Section 138.1 of the Labor Code is amended to read:*

21 138.1. ~~(a)~~ The administrative director shall be appointed by
22 the Governor with the advice and consent of the Senate and shall
23 hold office at the pleasure of the Governor. He or she shall receive
24 the salary provided for by Chapter 6 (commencing with Section
25 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

26 ~~(b) The court administrator shall be appointed by the Governor~~
27 ~~with the advice and consent of the Senate. The court administrator~~
28 ~~shall hold office for a term of five years. The court administrator~~
29 ~~shall receive the salary provided for by Chapter 6 (commencing~~
30 ~~with Section 11550) of Part 1 of Division 3 of Title 2 of the~~
31 ~~Government Code.~~

32 *SEC. 10. Section 138.2 of the Labor Code is amended to read:*

33 138.2. (a) The headquarters of the Division of Workers'
34 Compensation shall be based at and operated from a centrally
35 located city.

36 The administrative director ~~and the court administrator~~ shall
37 have an office in that city with suitable rooms, necessary office
38 furniture, stationery, and supplies, and may rent quarters in other
39 places for the purpose of establishing branch or service offices,

1 and for that purpose may provide those offices with necessary
2 furniture, stationery, and supplies.

3 (b) The administrative director shall provide suitable rooms,
4 with necessary office furniture, stationery, and supplies, for the
5 appeals board at the centrally located city in which the board shall
6 be based and from which it shall operate, and may rent quarters
7 in other places for the purpose of establishing branch or service
8 offices for the appeals board, and for that purpose may provide
9 those offices with necessary furniture, stationery, and supplies.

10 (c) All meetings held by the administrative director shall be
11 open and public. Notice thereof shall be published in papers of
12 general circulation not more than 30 days and not less than 10 days
13 prior to each meeting in Sacramento, San Francisco, Fresno, Los
14 Angeles, and San Diego. Written notice of all meetings shall be
15 given to all persons who request, in writing directed to the
16 administrative director, that they be given notice.

17 *SEC. 11. Section 5307 of the Labor Code is amended to read:*

18 5307. (a) ~~Except for those rules and regulations within the~~
19 ~~authority of the court administrator regarding trial level proceedings~~
20 ~~as defined in subdivision (e), the~~ *The* appeals board may, by an
21 order signed by four members, *do all of the following:*

22 (1) Adopt reasonable and proper rules of practice and procedure.

23 (2) Regulate and provide the manner in which, and by whom,
24 minors and incompetent persons are to appear and be represented
25 before it.

26 (3) Regulate and prescribe the kind and character of notices,
27 where not specifically prescribed by this division, and the service
28 thereof.

29 (4) Regulate and prescribe the nature and extent of the proofs
30 and evidence.

31 (b) No rule or regulation of the appeals board pursuant to this
32 section shall be adopted, amended, or rescinded without public
33 hearings. Any written request filed with the appeals board seeking
34 a change in its rules or regulations shall be deemed to be denied
35 if not set by the appeals board for public hearing to be held within
36 six months of the date on which the request is received by the
37 appeals board.

38 ~~(e) The court administrator shall adopt reasonable, proper, and~~
39 ~~uniform rules for district office procedure regarding trial level~~

1 proceedings of the workers' compensation appeals board. These
2 rules shall include, but not be limited to, all of the following:

3 (1) ~~Rules regarding conferences, hearings, continuances, and~~
4 ~~other matters deemed reasonable and necessary to expeditiously~~
5 ~~resolve disputes.~~

6 (2) ~~The kind and character of forms to be used at all trial level~~
7 ~~proceedings.~~

8 ~~All rules and regulations adopted by the court administrator~~
9 ~~pursuant to this subdivision shall be subject to the requirements~~
10 ~~of the rulemaking provisions of the Administrative Procedure Act~~
11 ~~(Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
12 ~~Division 3 of Title 2 of the Government Code).~~

13 *SEC. 12. Section 5307.3 of the Labor Code is amended to read:*

14 5307.3. The administrative director may adopt, amend, or
15 repeal any rules and regulations that are reasonably necessary to
16 enforce this division, except where this power is specifically
17 reserved to the appeals board ~~or the court administrator.~~

18 No rule or regulation of the administrative director pursuant to
19 this section shall be adopted, amended, or rescinded without public
20 hearings. Any written request filed with the administrative director
21 seeking a change in its rules or regulations shall be deemed to be
22 denied if not set by the administrative director for public hearing
23 to be held within six months of the date on which the request is
24 received by the administrative director.

25 *SEC. 13. Section 5310 of the Labor Code is amended to read:*

26 5310. The appeals board may appoint one or more workers'
27 compensation administrative law judges in any proceeding, as it
28 may deem necessary or advisable, and may refer, remove to itself,
29 or transfer to a workers' compensation administrative law judge
30 the proceedings on any claim. The administrative director, ~~after~~
31 ~~consideration of the recommendation of the court administrator,~~
32 may appoint workers' compensation administrative law judges.
33 Any workers' compensation administrative law judge appointed
34 by the administrative director has the powers, jurisdiction, and
35 authority granted by law, by the order of appointment, and by the
36 rules of the appeals board.

37 *SEC. 14. Section 5311.5 of the Labor Code is amended to read:*

38 5311.5. The administrative director ~~or the court administrator~~
39 shall require all workers' compensation administrative law judges
40 to participate in continuing education to further their abilities as

1 workers' compensation administrative law judges, including
 2 courses in ethics and conflict of interest. The director may
 3 coordinate the requirements with those imposed upon attorneys
 4 by the State Bar in order that the requirements may be consistent.

5 *SEC. 15. Section 5500.3 of the Labor Code is amended to read:*

6 5500.3. (a) ~~The court administrator appeals board shall~~
 7 establish uniform district office procedures, uniform forms, and
 8 uniform time of court settings for all district offices of the appeals
 9 board. No district office of the appeals board or workers'
 10 compensation ~~administration~~ administrative law judge shall require
 11 forms or procedures other than as established by the ~~court~~
 12 ~~administrator appeals board.~~ ~~The court administrator shall take~~
 13 ~~reasonable steps to ensure enforcement of this section.~~ A workers'
 14 compensation administrative law judge who violates this section
 15 may be subject to disciplinary proceedings.

16 (b) The appeals board shall establish uniform court procedures
 17 and uniform forms for all other proceedings of the appeals board.
 18 ~~No district office of the appeals board or workers' compensation~~
 19 ~~administrative law judge shall require forms or procedures other~~
 20 ~~than as established by the appeals board.~~

21 *SEC. 16. Section 5502 of the Labor Code is amended to read:*

22 5502. (a) Except as provided in subdivisions (b) and (d), the
 23 hearing shall be held not less than 10 days, and not more than 60
 24 days, after the date a declaration of readiness to proceed, on a form
 25 prescribed by the ~~court administrator appeals board~~, is filed. If a
 26 claim form has been filed for an injury occurring on or after
 27 January 1, 1990, and before January 1, 1994, an application for
 28 adjudication shall accompany the declaration of readiness to
 29 proceed.

30 (b) ~~The court administrator~~ administrative director shall
 31 establish a priority calendar for issues requiring an expedited
 32 hearing and decision. A hearing shall be held and a determination
 33 as to the rights of the parties shall be made and filed within 30
 34 days after the declaration of readiness to proceed is filed if the
 35 issues in dispute are any of the following:

- 36 (1) The employee's entitlement to medical treatment pursuant
- 37 to Section 4600.
- 38 (2) The employee's entitlement to, or the amount of, temporary
- 39 disability indemnity payments.

1 ~~(3) The employee's entitlement to vocational rehabilitation~~
2 ~~services, or the termination of an employer's liability to provide~~
3 ~~these services to an employee.~~

4 ~~(4)~~

5 (3) The employee's entitlement to compensation from one or
6 more responsible employers when two or more employers dispute
7 liability as among themselves.

8 ~~(5)~~

9 (4) Any other issues requiring an expedited hearing and
10 determination as prescribed in rules and regulations of the
11 administrative director.

12 (c) ~~The court administrator~~ *administrative director* shall
13 establish a priority conference calendar for cases in which the
14 employee is represented by an attorney and the issues in dispute
15 are employment or injury arising out of employment or in the
16 course of employment. The conference shall be conducted by a
17 workers' compensation administrative law judge within 30 days
18 after the declaration of readiness to proceed. If the dispute cannot
19 be resolved at the conference, a trial shall be set as expeditiously
20 as possible, unless good cause is shown why discovery is not
21 complete, in which case status conferences shall be held at regular
22 intervals. The case shall be set for trial when discovery is complete,
23 or when the workers' compensation administrative law judge
24 determines that the parties have had sufficient time in which to
25 complete reasonable discovery. A determination as to the rights
26 of the parties shall be made and filed within 30 days after the trial.

27 (d) ~~The court administrator~~ *administrative director* shall report
28 quarterly to the Governor and to the Legislature concerning the
29 frequency and types of issues which are not heard and decided
30 within the period prescribed in this section and the reasons therefor.

31 (e) (1) In all cases, a mandatory settlement conference shall be
32 conducted not less than 10 days, and not more than 30 days, after
33 the filing of a declaration of readiness to proceed. If the dispute is
34 not resolved, the regular hearing shall be held within 75 days after
35 the declaration of readiness to proceed is filed.

36 (2) The settlement conference shall be conducted by a workers'
37 compensation administrative law judge or by a referee who is
38 eligible to be a workers' compensation administrative law judge
39 or eligible to be an arbitrator under Section 5270.5. At the
40 mandatory settlement conference, the referee or workers'

1 compensation administrative law judge shall have the authority to
2 resolve the dispute, including the authority to approve a
3 compromise and release or issue a stipulated finding and award,
4 and if the dispute cannot be resolved, to frame the issues and
5 stipulations for trial. The appeals board shall adopt any regulations
6 needed to implement this subdivision. The presiding workers'
7 compensation administrative law judge shall supervise settlement
8 conference referees in the performance of their judicial functions
9 under this subdivision.

10 (3) If the claim is not resolved at the mandatory settlement
11 conference, the parties shall file a pretrial conference statement
12 noting the specific issues in dispute, each party's proposed
13 permanent disability rating, and listing the exhibits, and disclosing
14 witnesses. Discovery shall close on the date of the mandatory
15 settlement conference. Evidence not disclosed or obtained
16 thereafter shall not be admissible unless the proponent of the
17 evidence can demonstrate that it was not available or could not
18 have been discovered by the exercise of due diligence prior to the
19 settlement conference.

20 (f) In cases involving the Director of the Department of
21 Industrial Relations in his or her capacity as administrator of the
22 Uninsured Employers Fund, this section shall not apply unless
23 proof of service, as specified in paragraph (1) of subdivision (d)
24 of Section 3716, has been filed with the appeals board and provided
25 to the Director of Industrial Relations, valid jurisdiction has been
26 established over the employer, and the fund has been joined.

27 (g) Except as provided in subdivision (a) and in Section 4065,
28 the provisions of this section shall apply irrespective of the date
29 of injury.

30 *SEC. 17. All regulations adopted by the court administrator*
31 *shall remain in effect unless amended or repealed by either the*
32 *Workers' Compensation Appeals Board or the Administrative*
33 *Director of the Division of Workers' Compensation. Regulations*
34 *of the court administrator that have been adopted pursuant to*
35 *Sections 5307, 5500.3, or subdivision (a) of Section 5502 shall be*
36 *deemed to be regulations of the Workers' Compensation Appeals*
37 *Board. All other regulations of the court administrator shall be*
38 *deemed to be regulations of the Administrative Director of the*
39 *Division of Workers' Compensation.*

1 SECTION 1.— Section 1758.994 of the Insurance Code is
2 repealed.

3 SEC. 2.— Section 11629.79 of the Insurance Code is amended
4 to read:

5 11629.79. (a) The program for the County of Los Angeles and
6 the City and County of San Francisco is authorized to commence
7 operations on January 1, 2000, but shall be fully operational no
8 later than July 1, 2000.

9 (b) To this end, the commissioner, in consultation with the
10 California Automobile Assigned Risk Plan, shall adopt regulations
11 to implement the provisions of this article within 60 days of its
12 effective date.

13 (c) The program for the Counties of Alameda, Fresno, Orange,
14 Riverside, San Bernardino, and San Diego shall commence
15 operations on April 1, 2006, and shall be made operational in all
16 other counties of California according to the discretion of the
17 commissioner. The commissioner, in consultation with the
18 California Automobile Assigned Risk Plan, shall adopt regulations
19 to implement the expansion of the program to these counties.