

ASSEMBLY BILL

No. 2301

Introduced by Committee on Insurance (Solorio (Chair), Hagman (Vice Chair), Bradford, Carter, Feuer, Hayashi, Olsen, Skinner, Torres, and Wieckowski)

February 24, 2012

An act to amend Section 1063.1 of the Insurance Code, relating to the California Insurance Guarantee Association.

LEGISLATIVE COUNSEL'S DIGEST

AB 2301, as introduced, Committee on Insurance. California Insurance Guarantee Association: definitions.

Existing law establishes the California Insurance Guarantee Association to provide coverage against losses arising from the failure of an insolvent property, casualty, or workers' compensation insurer to discharge its obligations under its insurance policies. Existing law defines certain terms, such as "covered claims," in relation to the association.

This bill would make technical, nonsubstantive changes to those provisions.

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. Section 1063.1 of the Insurance Code is amended
- 2 to read:
- 3 1063.1. As used in this article:

1 (a) “Member insurer” means an insurer required to be a member
2 of the association in accordance with subdivision (a) of Section
3 1063, except and to the extent that the insurer is participating in
4 an insolvency program adopted by the United States government.

5 (b) “Insolvent insurer” means an insurer that was a member
6 insurer of the association, consistent with paragraph (11) of
7 subdivision (c), either at the time the policy was issued or when
8 the insured event occurred, and against which an order of
9 liquidation with a finding of insolvency has been entered by a court
10 of competent jurisdiction, or, in the case of the State Compensation
11 Insurance Fund, if a finding of insolvency is made by a duly
12 enacted legislative measure.

13 (c) (1) “Covered claims” means the obligations of an insolvent
14 insurer, including the obligation for unearned premiums, that satisfy
15 all of the following requirements:

16 (A) Imposed by law and within the coverage of an insurance
17 policy of the insolvent insurer.

18 (B) Which were unpaid by the insolvent insurer.

19 (C) Which are presented as a claim to the liquidator in this state
20 or to the association on or before the last date fixed for the filing
21 of claims in the domiciliary liquidating proceedings.

22 (D) Which were incurred prior to the date coverage under the
23 policy terminated and prior to, on, or within 30 days after the date
24 the liquidator was appointed.

25 (E) For which the assets of the insolvent insurer are insufficient
26 to discharge in full.

27 (F) In the case of a policy of workers’ compensation insurance,
28 to provide workers’ compensation benefits under the workers’
29 compensation law of this state.

30 (G) In the case of other classes of insurance if the claimant or
31 insured is a resident of this state at the time of the insured
32 occurrence, or the property from which the claim arises is
33 permanently located in this state.

34 (2) “Covered claims” also includes the obligations assumed by
35 an assuming insurer from a ceding insurer where the assuming
36 insurer subsequently becomes an insolvent insurer if, at the time
37 of the insolvency of the assuming insurer, the ceding insurer is no
38 longer admitted to transact business in this state. Both the assuming
39 insurer and the ceding insurer shall have been member insurers at
40 the time the assumption was made. “Covered claims” under this

1 paragraph shall be required to satisfy the requirements of
2 subparagraphs (A) to (G), inclusive, of paragraph (1), except for
3 the requirement that the claims be against policies of the insolvent
4 insurer. The association shall have a right to recover any deposit,
5 bond, or other assets that may have been required to be posted by
6 the ceding company to the extent of covered claim payments and
7 shall be subrogated to any rights the policyholders may have
8 against the ceding insurer.

9 (3) “Covered claims” does not include obligations arising from
10 the following:

11 (A) Life, annuity, health, or disability insurance.

12 (B) Mortgage guaranty, financial guaranty, or other forms of
13 insurance offering protection against investment risks.

14 (C) Fidelity or surety insurance including fidelity or surety
15 bonds, or any other bonding obligations.

16 (D) Credit insurance.

17 (E) Title insurance.

18 (F) Ocean marine insurance or ocean marine coverage under
19 an insurance policy including claims arising from the following:
20 the Jones Act (46 U.S.C. Secs. 30104 and 30105), the Longshore
21 and Harbor Workers’ Compensation Act (33 U.S.C. Sec. 901 et
22 seq.), or any other similar federal statutory enactment, or an
23 endorsement or policy affording protection and indemnity
24 coverage.

25 (G) Any claims servicing agreement or insurance policy
26 providing retroactive insurance of a known loss or losses, except
27 a special excess workers’ compensation policy issued pursuant to
28 subdivision (c) of Section 3702.8 of the Labor Code that covers
29 all or any part of workers’ compensation liabilities of an employer
30 that is issued, or was previously issued, a certificate of consent to
31 self-insure pursuant to subdivision (b) of Section 3700 of the Labor
32 Code.

33 (4) “Covered claims” does not include any obligations of the
34 insolvent insurer arising out of any reinsurance contracts, nor any
35 obligations incurred after the expiration date of the insurance policy
36 or after the insurance policy has been replaced by the insured or
37 canceled at the insured’s request, or after the insurance policy has
38 been canceled by the liquidator, nor any obligations to a state or
39 to the federal government.

1 (5) “Covered claims” does not include any obligations to
2 insurers, insurance pools, or underwriting associations, nor their
3 claims for contribution, indemnity, or subrogation, equitable or
4 otherwise, except as otherwise provided in this chapter.

5 An insurer, insurance pool, or underwriting association may not
6 maintain, in its own name or in the name of its insured, a claim or
7 legal action against the insured of the insolvent insurer for
8 contribution, indemnity or by way of subrogation, except insofar
9 as, and to the extent only, that the claim exceeds the policy limits
10 of the insolvent insurer’s policy. In those claims or legal actions,
11 the insured of the insolvent insurer is entitled to a credit or setoff
12 in the amount of the policy limits of the insolvent insurer’s policy,
13 or in the amount of the limits remaining, where those limits have
14 been diminished by the payment of other claims.

15 (6) “Covered claims,” except in cases involving a claim for
16 workers’ compensation benefits or for unearned premiums, does
17 not include a claim in an amount of one hundred dollars (\$100) or
18 less, nor that portion of a claim that is in excess of any applicable
19 limits provided in the insurance policy issued by the insolvent
20 insurer.

21 (7) “Covered claims” does not include that portion of a claim,
22 other than a claim for workers’ compensation benefits, that is in
23 excess of five hundred thousand dollars (\$500,000).

24 (8) “Covered claims” does not include any amount awarded as
25 punitive or exemplary damages, nor any amount awarded by the
26 Workers’ Compensation Appeals Board pursuant to Section 5814
27 or 5814.5 of the Labor Code because payment of compensation
28 was unreasonably delayed or refused by the insolvent insurer.

29 (9) “Covered claims” does not include (A) a claim to the extent
30 it is covered by any other insurance of a class covered by this
31 article available to the claimant or insured or (B) a claim by a
32 person other than the original claimant under the insurance policy
33 in his or her own name, his or her assignee as the person entitled
34 thereto under a premium finance agreement as defined in Section
35 673 and entered into prior to insolvency, his or her executor,
36 administrator, guardian, or other personal representative or trustee
37 in bankruptcy, and does not include a claim asserted by an assignee
38 or one claiming by right of subrogation, except as otherwise
39 provided in this chapter.

1 (10) “Covered claims” does not include any obligations arising
2 out of the issuance of an insurance policy written by the separate
3 division of the State Compensation Insurance Fund pursuant to
4 Sections 11802 and 11803.

5 (11) “Covered claims” does not include any obligations of the
6 insolvent insurer arising from a policy or contract of insurance
7 issued or renewed prior to the insolvent insurer’s admission to
8 transact insurance in the State of California.

9 (12) “Covered claims” does not include surplus deposits of
10 subscribers as defined in Section 1374.1.

11 (13) “Covered claims” shall also include obligations arising
12 under an insurance policy written to indemnify a permissibly
13 self-insured employer pursuant to subdivision (b) or (c) of Section
14 3700 of the Labor Code for its liability to pay workers’
15 compensation benefits in excess of a specific or aggregate retention,
16 provided, however, that for purposes of this article, those claims
17 shall not be considered workers’ compensation claims and therefore
18 are subject to the per claim limit in paragraph (7) and any payments
19 and expenses related thereto shall be allocated to category (c) for
20 claims other than workers’ compensation, homeowners, and
21 automobile, as provided in Section 1063.5.

22 These provisions shall apply to obligations arising under a policy
23 as described herein issued to a permissibly self-insured employer
24 or group of self-insured employers pursuant to Section 3700 of
25 the Labor Code and notwithstanding any other provision of ~~the~~
26 ~~Insurance Code~~ *this code*, those obligations shall be governed by
27 this provision in the event that the Self-Insurers’ Security Fund is
28 ordered to assume the liabilities of a permissibly self-insured
29 employer or group of self-insured employers pursuant to Section
30 3701.5 of the Labor Code. The provisions of this paragraph apply
31 only to insurance policies written to indemnify a permissibly
32 self-insured employer or group of self-insured employers under
33 subdivision (b) or (c) of Section 3700 *of the Labor Code*, for its
34 liability to pay workers’ compensation benefits in excess of a
35 specific or aggregate retention, and this paragraph does not apply
36 to special excess workers’ compensation insurance policies unless
37 issued pursuant to authority granted in subdivision (c) of Section
38 3702.8 of the Labor Code, and as provided for in subparagraph
39 (G) of paragraph (3) ~~of subdivision (e)~~. In addition, this paragraph
40 does not apply to any claims servicing agreement or insurance

1 policy providing retroactive insurance of a known loss or losses
2 as are excluded in subparagraph (G) of paragraph (3) of subdivision
3 (e).

4 Each permissibly self-insured employer or group of self-insured
5 employers, or the Self-Insurers' Security Fund, shall, to the extent
6 required by the Labor Code, be responsible for paying, adjusting,
7 and defending each claim arising under policies of insurance
8 covered under this section, unless the benefits paid on a claim
9 exceed the specific or aggregate retention, in which case:

10 (A) If the benefits paid on the claim exceed the specific or
11 aggregate retention, and the policy requires the insurer to defend
12 and adjust the claim, the California Insurance Guarantee
13 Association (CIGA) shall be solely responsible for adjusting and
14 defending the claim, and shall make all payments due under the
15 claim, subject to the limitations and exclusions of this article with
16 regards regard to covered claims. As to each claim subject to this
17 paragraph, notwithstanding any other provisions of the Insurance
18 Code ~~this code~~ or the Labor Code, and regardless of whether the
19 amount paid by CIGA is adequate to discharge a claim obligation,
20 neither the self-insured employer, group of self-insured employers,
21 nor the Self-Insurers' Security Fund, shall have any obligation to
22 pay benefits over and above the specific or aggregate retention,
23 except as provided in *this* subdivision ~~(e)~~.

24 (B) If the benefits paid on the claim exceed the specific or
25 aggregate retention, and the policy does not require the insurer to
26 defend and adjust the claim, the permissibly self-insured employer
27 or group of self-insured employers, or the Self-Insurers' Security
28 Fund, shall not have any further payment obligations with respect
29 to the claim, but shall continue defending and adjusting the claim,
30 and shall have the right, but not the obligation, in any proceeding
31 to assert all applicable statutory limitations and exclusions as
32 contained in this article with regard to the covered claim. CIGA
33 shall have the right, but not the obligation, to intervene in any
34 proceeding where the self-insured employer, group of self-insured
35 employers, or the Self-Insurers' Security Fund is defending a claim
36 and shall be permitted to raise the appropriate statutory limitations
37 and exclusions as contained in this article with respect to covered
38 claims. Regardless of whether the self-insured employer or group
39 of self-insured employers, or the Self-Insurers' Security Fund,
40 asserts the applicable statutory limitations and exclusions, or

1 whether CIGA intervenes in a proceeding, CIGA shall be solely
2 responsible for paying all benefits due on the claim, subject to the
3 exclusions and limitations of this article with respect to covered
4 claims. As to each claim subject to this paragraph, notwithstanding
5 any other provision of the Insurance Code or the Labor Code and
6 regardless of whether the amount paid by CIGA is adequate to
7 discharge a claim obligation, neither the self-insured employer,
8 group of self-insured employers, nor the Self-Insurers' Security
9 Fund, shall have an obligation to pay benefits over and above the
10 specific or aggregate retention, except as provided in this
11 subdivision.

12 (C) In the event that the benefits paid on the covered claim
13 exceed the per claim limit in paragraph (7) ~~of subdivision (e)~~, the
14 responsibility for paying, adjusting, and defending the claim shall
15 be returned to the permissibly self-insured employer or group of
16 employers, or the Self-Insurers' Security Fund.

17 These provisions shall apply to all pending and future
18 insolvencies. For purposes of this paragraph, a pending insolvency
19 is one involving a company that is currently receiving benefits
20 from the ~~guaranty~~ *guarantee* association.

21 (d) "Admitted to transact insurance in this state" means an
22 insurer possessing a valid certificate of authority issued by the
23 department.

24 (e) "Affiliate" means a person who directly or indirectly, through
25 one or more intermediaries, controls, is controlled by, or is under
26 common control with an insolvent insurer on December 31 of the
27 year next preceding the date the insurer becomes an insolvent
28 insurer.

29 (f) "Control" means the possession, direct or indirect, of the
30 power to direct or cause the direction of the management and
31 policies of a person, whether through the ownership of voting
32 securities, by contract other than a commercial contract for goods
33 or nonmanagement services, or otherwise, unless the power is the
34 result of an official position with or corporate office held by the
35 person. Control is presumed to exist if a person, directly or
36 indirectly, owns, controls, holds with the power to vote, or holds
37 proxies representing, 10 percent or more of the voting securities
38 of any other person. This presumption may be rebutted by showing
39 that control does not in fact exist.

1 (g) “Claimant” means an insured making a first party claim or
2 a person instituting a liability claim; provided that no person who
3 is an affiliate of the insolvent insurer may be a claimant.

4 (h) “Ocean marine insurance” includes marine insurance as
5 defined in Section 103, except for inland marine insurance, as well
6 as any other form of insurance, regardless of the name, label, or
7 marketing designation of the insurance policy, that insures against
8 maritime perils or risks and other related perils or risks, that are
9 usually insured against by traditional marine insurance such as
10 hull and machinery, marine builders’ risks, and marine protection
11 and indemnity. Those perils and risks insured against include,
12 without limitation, loss, damage, or expense or legal liability of
13 the insured arising out of or incident to ownership, operation,
14 chartering, maintenance, use, repair, or construction of a vessel,
15 craft or instrumentality in use in ocean or inland waterways,
16 including liability of the insured for personal injury, illness, or
17 death for loss or damage to the property of the insured or another
18 person.

19 (i) “Unearned premium” means that portion of a premium as
20 calculated by the liquidator that had not been earned because of
21 the cancellation of the insolvent insurer’s policy and is that
22 premium remaining for the unexpired term of the insolvent
23 insurer’s policy. “Unearned premium” does not include any amount
24 sought as return of a premium under a policy providing retroactive
25 insurance of a known loss or return of a premium under a
26 retrospectively rated policy or a policy subject to a contingent
27 surcharge or a policy in which the final determination of the
28 premium cost is computed after expiration of the policy and is
29 calculated on the basis of actual loss experience during the policy
30 period.