

**Introduced by Committee on Insurance (Senators Calderon (Chair), Anderson, Corbett, Correa, Gaines, Lowenthal, Price, and Wyland)**

February 18, 2011

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An act to amend Sections 790.03, 10234.86, 11093, 11788, 11790, 11874, and 12352 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 712, as introduced, Committee on Insurance. Insurance.

Existing law creates the State Compensation Insurance Fund to be administered by its 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 gives the Insurance Commissioner certain powers and duties regarding domestic fraternal benefit societies.

Existing law requires every title insurer to deposit \$100,000 with the Insurance Commissioner or other designated official of its home state, as provided.

Existing law requires long-term care insurers to maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

Existing law defines unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.

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 790.03 of the Insurance Code is amended  
2 to read:

3 790.03. The following are hereby defined as unfair methods  
4 of competition and unfair and deceptive acts or practices in the  
5 business of insurance.

6 (a) Making, issuing, circulating, or causing to be made, issued  
7 or circulated, any estimate, illustration, circular, or statement  
8 misrepresenting the terms of any policy issued or to be issued or  
9 the benefits or advantages promised thereby or the dividends or  
10 share of the surplus to be received thereon, or making any false or  
11 misleading statement as to the dividends or share of surplus  
12 previously paid on similar policies, or making any misleading  
13 representation or any misrepresentation as to the financial condition  
14 of any insurer, or as to the legal reserve system upon which any  
15 life insurer operates, or using any name or title of any policy or  
16 class of policies misrepresenting the true nature thereof, or making  
17 any misrepresentation to any policyholder insured in any company  
18 for the purpose of inducing or tending to induce the policyholder  
19 to lapse, forfeit, or surrender his or her insurance.

20 (b) Making or disseminating or causing to be made or  
21 disseminated before the public in this state, in any newspaper or  
22 other publication, or any advertising device, or by public outcry  
23 or proclamation, or in any other manner or means whatsoever, any  
24 statement containing any assertion, representation, or statement  
25 with respect to the business of insurance or with respect to any  
26 person in the conduct of his or her insurance business, which is  
27 untrue, deceptive, or misleading, and which is known, or which  
28 by the exercise of reasonable care should be known, to be untrue,  
29 deceptive, or misleading.

30 (c) Entering into any agreement to commit, or by any concerted  
31 action committing, any act of boycott, coercion, or intimidation  
32 resulting in or tending to result in unreasonable restraint of, or  
33 monopoly in, the business of insurance.

1 (d) Filing with any supervisory or other public official, or  
2 making, publishing, disseminating, circulating, or delivering to  
3 any person, or placing before the public, or causing directly or  
4 indirectly, to be made, published, disseminated, circulated,  
5 delivered to any person, or placed before the public any false  
6 statement of financial condition of an insurer with intent to deceive.

7 (e) Making any false entry in any book, report, or statement of  
8 any insurer with intent to deceive any agent or examiner lawfully  
9 appointed to examine into its condition or into any of its affairs,  
10 or any public official to whom the insurer is required by law to  
11 report, or who has authority by law to examine into its condition  
12 or into any of its affairs, or, with like intent, willfully omitting to  
13 make a true entry of any material fact pertaining to the business  
14 of the insurer in any book, report, or statement of the insurer.

15 (f) (1) Making or permitting any unfair discrimination between  
16 individuals of the same class and equal expectation of life in the  
17 rates charged for any contract of life insurance or of life annuity  
18 or in the dividends or other benefits payable thereon, or in any  
19 other of the terms and conditions of the contract.

20 **This**

21 (2) *This* subdivision shall be interpreted, for any contract of  
22 ordinary life insurance or individual life annuity applied for and  
23 issued on or after January 1, 1981, to require differentials based  
24 upon the sex of the individual insured or annuitant in the rates or  
25 dividends or benefits, or any combination thereof. This requirement  
26 is satisfied if those differentials are substantially supported by  
27 valid pertinent data segregated by sex, including, but not  
28 necessarily limited to, mortality data segregated by sex.

29 **However,**

30 (3) *However,* for any contract of ordinary life insurance or  
31 individual life annuity applied for and issued on or after January  
32 1, 1981, but before the compliance date, in lieu of those  
33 differentials based on data segregated by sex, rates, or dividends  
34 or benefits, or any combination thereof, for ordinary life insurance  
35 or individual life annuity on a female life may be calculated as  
36 follows: ~~(a)~~ (A) according to an age not less than three years nor  
37 more than six years younger than the actual age of the female  
38 insured or female annuitant, in the case of a contract of ordinary  
39 life insurance with a face value greater than five thousand dollars  
40 (\$5,000) or a contract of individual life annuity; and ~~(b)~~ (B)

1 according to an age not more than six years younger than the actual  
2 age of the female insured, in the case of a contract of ordinary life  
3 insurance with a face value of five thousand dollars (\$5,000) or  
4 less. "Compliance date" as used in this paragraph shall mean the  
5 date or dates established as the operative date or dates by future  
6 amendments to this code directing and authorizing life insurers to  
7 use a mortality table containing mortality data segregated by sex  
8 for the calculation of adjusted premiums and present values for  
9 nonforfeiture benefits and valuation reserves as specified in  
10 Sections ~~10163.5~~ 10163.1 and 10489.2 or successor sections.

11 **Notwithstanding**

12 (4) *Notwithstanding* the provisions of this subdivision, sex-based  
13 differentials in rates or dividends or benefits, or any combination  
14 thereof, shall not be required for ~~(1)~~ (A) any contract of life  
15 insurance or life annuity issued pursuant to arrangements which  
16 may be considered terms, conditions, or privileges of employment  
17 as these terms are used in Title VII of the Civil Rights Act of 1964  
18 (Public Law 88-352), as amended, and ~~(2)~~ (B) tax sheltered  
19 annuities for employees of public schools or of tax exempt  
20 organizations described in Section 501(c)(3) of the Internal  
21 Revenue Code.

22 (g) Making or disseminating, or causing to be made or  
23 disseminated, before the public in this state, in any newspaper or  
24 other publication, or any other advertising device, or by public  
25 outcry or proclamation, or in any other manner or means whatever,  
26 whether directly or by implication, any statement that a named  
27 insurer, or named insurers, are members of the California Insurance  
28 Guarantee Association, or insured against insolvency as defined  
29 in Section 119.5. This subdivision shall not be interpreted to  
30 prohibit any activity of the California Insurance Guarantee  
31 Association or the commissioner authorized, directly or by  
32 implication, by Article 14.2 (commencing with Section 1063).

33 (h) Knowingly committing or performing with such frequency  
34 as to indicate a general business practice any of the following  
35 unfair claims settlement practices:

36 (1) Misrepresenting to claimants pertinent facts or insurance  
37 policy provisions relating to any coverages at issue.

38 (2) Failing to acknowledge and act reasonably promptly upon  
39 communications with respect to claims arising under insurance  
40 policies.

1 (3) Failing to adopt and implement reasonable standards for the  
2 prompt investigation and processing of claims arising under  
3 insurance policies.

4 (4) Failing to affirm or deny coverage of claims within a  
5 reasonable time after proof of loss requirements have been  
6 completed and submitted by the insured.

7 (5) Not attempting in good faith to effectuate prompt, fair, and  
8 equitable settlements of claims in which liability has become  
9 reasonably clear.

10 (6) Compelling insureds to institute litigation to recover amounts  
11 due under an insurance policy by offering substantially less than  
12 the amounts ultimately recovered in actions brought by the  
13 insureds, when the insureds have made claims for amounts  
14 reasonably similar to the amounts ultimately recovered.

15 (7) Attempting to settle a claim by an insured for less than the  
16 amount to which a reasonable person would have believed he or  
17 she was entitled by reference to written or printed advertising  
18 material accompanying or made part of an application.

19 (8) Attempting to settle claims on the basis of an application  
20 which was altered without notice to, or knowledge or consent of,  
21 the insured, his or her representative, agent, or broker.

22 (9) Failing, after payment of a claim, to inform insureds or  
23 beneficiaries, upon request by them, of the coverage under which  
24 payment has been made.

25 (10) Making known to insureds or claimants a practice of the  
26 insurer of appealing from arbitration awards in favor of insureds  
27 or claimants for the purpose of compelling them to accept  
28 settlements or compromises less than the amount awarded in  
29 arbitration.

30 (11) Delaying the investigation or payment of claims by  
31 requiring an insured, claimant, or the physician of either, to submit  
32 a preliminary claim report, and then requiring the subsequent  
33 submission of formal proof of loss forms, both of which  
34 submissions contain substantially the same information.

35 (12) Failing to settle claims promptly, where liability has become  
36 apparent, under one portion of the insurance policy coverage in  
37 order to influence settlements under other portions of the insurance  
38 policy coverage.

39 (13) Failing to provide promptly a reasonable explanation of  
40 the basis relied on in the insurance policy, in relation to the facts

1 or applicable law, for the denial of a claim or for the offer of a  
2 compromise settlement.

3 (14) Directly advising a claimant not to obtain the services of  
4 an attorney.

5 (15) Misleading a claimant as to the applicable statute of  
6 limitations.

7 (16) Delaying the payment or provision of hospital, medical,  
8 or surgical benefits for services provided with respect to acquired  
9 immune deficiency syndrome or AIDS-related complex for more  
10 than 60 days after the insurer has received a claim for those  
11 benefits, where the delay in claim payment is for the purpose of  
12 investigating whether the condition preexisted the coverage.  
13 However, this 60-day period shall not include any time during  
14 which the insurer is awaiting a response for relevant medical  
15 information from a health care provider.

16 (i) Canceling or refusing to renew a policy in violation of  
17 Section 676.10.

18 SEC. 2. Section 10234.86 of the Insurance Code is amended  
19 to read:

20 10234.86. (a) Every insurer shall maintain records for each  
21 agent of that agent’s amount of replacement sales as a percent of  
22 the agent’s total annual sales and the amount of lapses of long-term  
23 care insurance policies sold by the agent as a percent of the agent’s  
24 total annual sales.

25 (b) Every insurer shall report annually by June 30, the 10 percent  
26 of its agents in the state with the greatest percentage of lapses and  
27 replacements as measured by subdivision (a).

28 (c) Every insurer shall report annually by June 30, the number  
29 of lapsed policies as a percent of its total annual sales in the state,  
30 as a percent of its total number of policies in force in the state, and  
31 as a total number of each policy form in the state, as of the end of  
32 the preceding calendar year.

33 (d) Every insurer shall report annually by June 30, the number  
34 of replacement policies sold as a percent of its total annual sales  
35 in the state and as a percent of its total number of policies in force  
36 in the state as of the end of the preceding calendar year.

37 (e) Reported replacement and lapse rates do not alone constitute  
38 a violation of insurance laws or ~~necessarily~~ imply wrongdoing.  
39 The reports are for the purpose of reviewing more closely agent  
40 activities regarding the sale of long-term care insurance.

1 SEC. 3. Section 11093 of the Insurance Code is amended to  
2 read:

3 11093. (a) If the commissioner finds that any of the conditions  
4 set forth in Section 11092 exist in respect to a domestic society,  
5 he *or she* shall, in an order to show cause, notify the society of his  
6 *or her* findings and wherein ~~such~~ *those* conditions exist and shall  
7 set a date after a reasonable period of time on which it shall show  
8 cause why it should not be enjoined from carrying on any business  
9 until the overt act or violation complained of shall have been  
10 corrected, or why an action in quo warranto should not be  
11 commenced against the society.

12 If

13 (b) *If* on such date the society does not present good and  
14 sufficient reason why it should not be so enjoined or why such  
15 action should not be commenced, the commissioner may present  
16 the facts relating thereto to the Attorney General who shall, if he  
17 *or she* deems the circumstances warrant, commence an action to  
18 enjoin the society from transacting business or in quo warranto.

19 The

20 (c) *The* court shall thereupon notify the society of a hearing. If  
21 after a full hearing it appears that the society should be so enjoined  
22 or liquidated or a receiver appointed, the court shall enter the  
23 necessary order.

24 SEC. 4. Section 11788 of the Insurance Code is amended to  
25 read:

26 11788. The State Treasurer shall be custodian of all securities  
27 belonging to the State Compensation Insurance Fund, except as  
28 otherwise provided in this chapter. ~~He~~ *He or she* shall be liable on  
29 his *or her* official bond for the safe keeping thereof.

30 SEC. 5. Section 11790 of the Insurance Code is amended to  
31 read:

32 11790. All securities belonging to the fund shall be delivered  
33 to the State Treasurer and held by him *or her* until otherwise  
34 disposed of as provided in this chapter. Upon delivery of ~~such~~  
35 *those* securities into the custody of the State Treasurer, ~~such~~ *the*  
36 securities shall be credited by the State Treasurer to the fund.

37 SEC. 6. Section 11874 of the Insurance Code is amended to  
38 read:

39 11874. On the effective date of this act the Controller shall  
40 draw his *or her* warrant in favor of the State Compensation

1 Insurance Fund for the total amount of the funds in the custody of  
2 the Treasurer belonging to the State Compensation Insurance Fund,  
3 and the Treasurer shall pay ~~such~~ *that* warrant.

4 SEC. 7. Section 12352 of the Insurance Code is amended to  
5 read:

6 12352. If the deposit is made in this ~~State~~ *state*, it shall first be  
7 approved by the commissioner, who shall forthwith make a special  
8 deposit thereof in the State treasury, for the purpose specified in  
9 section 12350. The Treasurer shall give his *or her* receipt therefor,  
10 to the commissioner.

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