

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE APRIL 5, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 712

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

February 18, 2011

An act to amend Sections 790.03, 10234.86, 11093, 11788, 11790, 11874, and 12352 of, and to add Section 923.6 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

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

(1) 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.

(2) Existing law requires insurers transacting business in this state to at all times maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses and claims for which the insurer may be liable, and to provide for the expense of adjustment or settlement of losses and claims.

This bill would require every admitted property and casualty insurer, unless otherwise exempted by the domiciliary commissioner, to annually submit a Statement of Actuarial Opinion in accordance with the appropriate Property and Casualty Annual Statement Instructions of the National Association of Insurance Commissioners and specified supporting materials, as provided, and would authorize the commissioner to adopt regulations related to those instructions. The bill would require that specified documents, materials, and other information provided to the commissioner in support of the opinion and any other material provided by the insurer to the commissioner in connection with the specified supporting documents be, among other things, confidential, privileged, and exempt from the requirements of the California Public Records Act.

(3) *Existing constitutional provisions require that a statute that limits the right of access to the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.*

The bill would make legislative findings to that effect.

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. 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.

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

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

25 (c) Entering into any agreement to commit, or by any concerted
26 action committing, any act of boycott, coercion, or intimidation
27 resulting in or tending to result in unreasonable restraint of, or
28 monopoly in, the business of insurance.

29 (d) Filing with any supervisory or other public official, or
30 making, publishing, disseminating, circulating, or delivering to
31 any person, or placing before the public, or causing directly or
32 indirectly, to be made, published, disseminated, circulated,
33 delivered to any person, or placed before the public any false
34 statement of financial condition of an insurer with intent to deceive.

35 (e) Making any false entry in any book, report, or statement of
36 any insurer with intent to deceive any agent or examiner lawfully
37 appointed to examine into its condition or into any of its affairs,
38 or any public official to whom the insurer is required by law to
39 report, or who has authority by law to examine into its condition
40 or into any of its affairs, or, with like intent, willfully omitting to

1 make a true entry of any material fact pertaining to the business
2 of the insurer in any book, report, or statement of the insurer.

3 (f) (1) Making or permitting any unfair discrimination between
4 individuals of the same class and equal expectation of life in the
5 rates charged for any contract of life insurance or of life annuity
6 or in the dividends or other benefits payable thereon, or in any
7 other of the terms and conditions of the contract.

8 (2) This subdivision shall be interpreted, for any contract of
9 ordinary life insurance or individual life annuity applied for and
10 issued on or after January 1, 1981, to require differentials based
11 upon the sex of the individual insured or annuitant in the rates or
12 dividends or benefits, or any combination thereof. This requirement
13 is satisfied if those differentials are substantially supported by
14 valid pertinent data segregated by sex, including, but not limited
15 to, mortality data segregated by sex.

16 (3) However, for any contract of ordinary life insurance or
17 individual life annuity applied for and issued on or after January
18 1, 1981, but before the compliance date, in lieu of those
19 differentials based on data segregated by sex, rates, or dividends
20 or benefits, or any combination thereof, for ordinary life insurance
21 or individual life annuity on a female life may be calculated as
22 follows: (A) according to an age not less than three years nor more
23 than six years younger than the actual age of the female insured
24 or female annuitant, in the case of a contract of ordinary life
25 insurance with a face value greater than five thousand dollars
26 (\$5,000) or a contract of individual life annuity; and (B) according
27 to an age not more than six years younger than the actual age of
28 the female insured, in the case of a contract of ordinary life
29 insurance with a face value of five thousand dollars (\$5,000) or
30 less. "Compliance date" as used in this paragraph shall mean the
31 date or dates established as the operative date or dates by future
32 amendments to this code directing and authorizing life insurers to
33 use a mortality table containing mortality data segregated by sex
34 for the calculation of adjusted premiums and present values for
35 nonforfeiture benefits and valuation reserves as specified in
36 Sections 10163.1 and 10489.2 or successor sections.

37 (4) Notwithstanding the provisions of this subdivision, sex-based
38 differentials in rates or dividends or benefits, or any combination
39 thereof, shall not be required for (A) any contract of life insurance
40 or life annuity issued pursuant to arrangements which may be

1 considered terms, conditions, or privileges of employment as these
2 terms are used in Title VII of the Civil Rights Act of 1964 (Public
3 Law 88-352), as amended, and (B) tax sheltered annuities for
4 employees of public schools or of tax exempt organizations
5 described in Section 501(c)(3) of the Internal Revenue Code.

6 (g) Making or disseminating, or causing to be made or
7 disseminated, before the public in this state, in any newspaper or
8 other publication, or any other advertising device, or by public
9 outcry or proclamation, or in any other manner or means whatever,
10 whether directly or by implication, any statement that a named
11 insurer, or named insurers, are members of the California Insurance
12 Guarantee Association, or insured against insolvency as defined
13 in Section 119.5. This subdivision shall not be interpreted to
14 prohibit any activity of the California Insurance Guarantee
15 Association or the commissioner authorized, directly or by
16 implication, by Article 14.2 (commencing with Section 1063).

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

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

22 (2) Failing to acknowledge and act reasonably promptly upon
23 communications with respect to claims arising under insurance
24 policies.

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

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

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

34 (6) Compelling insureds to institute litigation to recover amounts
35 due under an insurance policy by offering substantially less than
36 the amounts ultimately recovered in actions brought by the
37 insureds, when the insureds have made claims for amounts
38 reasonably similar to the amounts ultimately recovered.

39 (7) Attempting to settle a claim by an insured for less than the
40 amount to which a reasonable person would have believed he or

1 she was entitled by reference to written or printed advertising
2 material accompanying or made part of an application.

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

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

9 (10) Making known to insureds or claimants a practice of the
10 insurer of appealing from arbitration awards in favor of insureds
11 or claimants for the purpose of compelling them to accept
12 settlements or compromises less than the amount awarded in
13 arbitration.

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

19 (12) Failing to settle claims promptly, where liability has become
20 apparent, under one portion of the insurance policy coverage in
21 order to influence settlements under other portions of the insurance
22 policy coverage.

23 (13) Failing to provide promptly a reasonable explanation of
24 the basis relied on in the insurance policy, in relation to the facts
25 or applicable law, for the denial of a claim or for the offer of a
26 compromise settlement.

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

29 (15) Misleading a claimant as to the applicable statute of
30 limitations.

31 (16) Delaying the payment or provision of hospital, medical,
32 or surgical benefits for services provided with respect to acquired
33 immune deficiency syndrome or AIDS-related complex for more
34 than 60 days after the insurer has received a claim for those
35 benefits, where the delay in claim payment is for the purpose of
36 investigating whether the condition preexisted the coverage.
37 However, this 60-day period shall not include any time during
38 which the insurer is awaiting a response for relevant medical
39 information from a health care provider.

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

3 SEC. 2. Section 923.6 is added to the Insurance Code, to read:

4 923.6. (a) Every admitted property and casualty insurer, unless
5 otherwise exempted by the domiciliary commissioner, shall
6 annually submit the opinion of an Appointed Actuary entitled
7 “Statement of Actuarial Opinion.” This opinion shall be filed in
8 accordance with the appropriate Property and Casualty Annual
9 Statement Instructions of the National Association of Insurance
10 Commissioners (NAIC).

11 (1) For purposes of this section, the term, “property and casualty
12 insurer” means any admitted insurer writing insurance as described
13 in Section 102, 103, 105, 107, 108, 109, 110, 111, 112, 113, 114,
14 115, 116, 117, 118, 119, 119.6, 120, 124, or 124.5.

15 (2) For purposes of this section, the following terms have the
16 same meaning as used in the Property and Casualty Annual
17 Statement Instructions of the NAIC:

18 (A) Actuarial Opinion.

19 (B) Actuarial Opinion Summary.

20 (C) Actuarial Report.

21 (D) Appointed Actuary.

22 (E) Statement of Actuarial Opinion.

23 (F) Property and Casualty Annual Statement Instructions.

24 (3) The commissioner may adopt regulations related to the terms
25 and conditions required by the Property and Casualty Annual
26 Statement Instructions of the NAIC.

27 (b) Every property and casualty insurer domiciled in this state
28 that is required to submit a Statement of Actuarial Opinion shall
29 annually submit an Actuarial Opinion Summary, written by the
30 insurer’s Appointed Actuary. This Actuarial Opinion Summary
31 shall be filed in accordance with the appropriate Property and
32 Casualty Annual Statement Instructions of the NAIC and shall be
33 considered as a document supporting the Actuarial Opinion
34 required in subdivision (a).

35 (c) An admitted insurer not domiciled in this state shall provide
36 the Actuarial Opinion Summary upon request of the commissioner.

37 (d) An Actuarial Report and underlying workpapers as required
38 by the appropriate Property and Casualty Annual Statement
39 Instructions of the NAIC shall be prepared to support each
40 Actuarial Opinion. If an insurer fails to provide either a supporting

1 Actuarial Report or workpapers at the request of the commissioner,
2 or if the commissioner determines that the supporting Actuarial
3 Report or workpapers provided by the insurer are otherwise
4 unacceptable to the commissioner, the commissioner may engage
5 a qualified actuary at the expense of the insurer to review the
6 opinion and the basis for the opinion and prepare the supporting
7 Actuarial Report or workpapers.

8 (e) Notwithstanding subdivision (d) of Section 6254 of the
9 Government Code, subdivision (f), or any other provision of law,
10 the Statement of Actuarial Opinion required by subdivision (a)
11 shall be a public record and open to inspection.

12 (f) (1) Documents, materials, or other information in the
13 possession or control of the commissioner that are considered an
14 Actuarial Report, workpapers, or Actuarial Opinion Summary
15 provided in support of the Statement of Actuarial Opinion, and
16 any other material provided by the insurer to the commissioner in
17 connection with the Actuarial Report, workpapers, or Actuarial
18 Opinion Summary shall be confidential by law and privileged,
19 shall not be made public by the commissioner or any other person
20 and are exempt from the California Public Records Act (Chapter
21 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
22 the Government Code), shall not be subject to subpoena, and shall
23 not be subject to discovery or admissible in evidence in any civil
24 action brought by a private party.

25 (2) This subdivision shall not limit the commissioner's authority
26 to release the documents, materials, and other information
27 described in paragraph (1) to the American Academy of Actuaries'
28 Actuarial Board for Counseling and Discipline (ABCD), or its
29 successor, so long as those documents, materials, and other
30 information are required for the purpose of professional disciplinary
31 proceedings, and the ABCD establishes procedures satisfactory to
32 the commissioner for preserving the confidentiality of the
33 documents, nor shall this subdivision limit the commissioner's
34 authority to use those documents, materials, or other information
35 in furtherance of any regulatory or legal action brought as part of
36 the commissioner's official duties.

37 (3) The commissioner may also exercise, with respect to the
38 documents, materials, or other information described in paragraph
39 (1), all the authority specified in subdivision (b) of Section 735.5,
40 or any successor provision.

1 SEC. 3. Section 10234.86 of the Insurance Code is amended
2 to read:

3 10234.86. (a) Every insurer shall maintain records for each
4 agent of that agent's amount of replacement sales as a percent of
5 the agent's total annual sales and the amount of lapses of long-term
6 care insurance policies sold by the agent as a percent of the agent's
7 total annual sales.

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

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

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

20 (e) Reported replacement and lapse rates do not alone constitute
21 a violation of insurance laws or imply wrongdoing. The reports
22 are for the purpose of reviewing more closely agent activities
23 regarding the sale of long-term care insurance.

24 SEC. 4. Section 11093 of the Insurance Code is amended to
25 read:

26 11093. (a) If the commissioner finds that any of the conditions
27 set forth in Section 11092 exist in respect to a domestic society,
28 he or she shall, in an order to show cause, notify the society of his
29 or her findings and wherein those conditions exist and shall set a
30 date after a reasonable period of time on which it shall show cause
31 why it should not be enjoined from carrying on any business until
32 the overt act or violation complained of shall have been corrected,
33 or why an action in quo warranto should not be commenced against
34 the society.

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

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

SEC. 5. Section 11788 of the Insurance Code is amended to read:

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

SEC. 6. Section 11790 of the Insurance Code is amended to read:

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

SEC. 7. Section 11874 of the Insurance Code is amended to read:

11874. On the effective date of this act the Controller shall draw his or her warrant in favor of the State Compensation Insurance Fund for the total amount of the funds in the custody of the Treasurer belonging to the State Compensation Insurance Fund, and the Treasurer shall pay that warrant.

SEC. 8. Section 12352 of the Insurance Code is amended to read:

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

SEC. 9. The Legislature finds and declares that Section 2 of this act imposes a limitation on the public's right of access to the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

1 *In order to protect proprietary information, it is necessary to*
2 *enact legislation that the actuarial supporting documents provided*
3 *pursuant to this act are kept confidential.*

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