

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2230**

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**Introduced by Assembly Member Cooley**

February 20, 2014

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An act to amend ~~Section~~ *Sections 1063.2, 1063.5, and 1063.74 of the Insurance Code*, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2230, as amended, Cooley. Insurance: Workers'—~~Comp~~ *Compensation Bond Fund*: assessments.

Existing law creates the California Insurance Guarantee Association (CIGA) and requires all insurers admitted to transact insurance in this state to become members. CIGA is required to collect premium payments from members to discharge its obligations to cover claims of an insolvent insurer. *Existing law provides that CIGA shall be a party in interest in all proceedings involving a covered claim, and has all of the rights an insolvent insurer would have if the insurer was not in liquidation.* CIGA is required to allocate its claim payments and costs based on categories of insurance, including, but not limited to, workers' compensation claims and homeowners' claims. The premium payments from each category are separate and required to be used to pay the claims and costs allocated to that category. *Existing law provides that the premium charged to a member insurer for any of the categories of insurance is 1% of the net direct written premium, as defined, written in the category by the member per year.*

Existing law authorizes CIGA to request the issuance of bonds by the California Infrastructure and Economic Development Bank to pay for covered claims that arise as a result of the insolvency of workers'

compensation insurers. Proceeds from the sale of the bonds are deposited in the Workers’ Comp Bond Fund, and CIGA distributes this money to pay covered claims. Principal and interest on the bonds are paid from special bond assessments levied by CIGA on workers’ compensation insurers, as provided.

This bill would delete the provisions regarding CIGA as a party in interest for proceedings involving covered claims. The bill would, commencing January 1, 2015, provide that the premium charged to a member insurer for a category of insurance would be 2% of the net direct written premium, unless there are outstanding bonds, as specified, in which case the premium would not exceed 1% of the net direct written premium for any category of insurance for which the bond proceeds are being used to pay claims and expenses. The bill would prohibit, once all the bonds issued pursuant to these provisions are redeemed, further initial special bond assessments from being levied or made. The bill would require that any premium adjustments applicable to the special bond assessments continue to be made and determined, and that any credits or charges that result from the premium adjustments be credited or charged to the workers’ compensation assessments that the insurers are otherwise required to pay CIGA.

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 1063.2 of the Insurance Code is amended
- 2 to read:
- 3 1063.2. (a) The association shall pay and discharge covered
- 4 claims and in connection therewith pay for or furnish loss
- 5 adjustment services and defenses of claimants when required by
- 6 policy provisions. It may do so either directly by itself or through
- 7 a servicing facility or through a contract for reinsurance and
- 8 assumption of liabilities by one or more member insurers or
- 9 through a contract with the liquidator, upon terms satisfactory to
- 10 the association and to the liquidator, under which payments on
- 11 covered claims would be made by the liquidator using funds
- 12 provided by the association.
- 13 (b) The association ~~shall be a party in interest in all proceedings~~
- 14 ~~involving a covered claim, and~~ shall have the same rights as the
- 15 insolvent insurer would have had if not in liquidation, including,

1 but not limited to, the right to: (1) appear, defend, and appeal a  
2 claim in a court of competent jurisdiction, (2) receive notice of,  
3 investigate, adjust, compromise, settle, and pay a covered claim,  
4 and (3) investigate, handle, and deny a noncovered claim. The  
5 association shall have no cause of action against the insureds of  
6 the insolvent insurer for any sums it has paid out, except as  
7 provided by this article.

8 (c) (1) If damages against uninsured motorists are recoverable  
9 by the claimant from his or her own insurer, the applicable limits  
10 of the uninsured motorist coverage shall be a credit against a  
11 covered claim payable under this article. Any person having a  
12 claim that may be recovered under more than one insurance  
13 guaranty association or its equivalent shall seek recovery first from  
14 the association of the place of residence of the insured, except that  
15 if it is a first-party claim for damage to property with a permanent  
16 location, he or she shall seek recovery first from the association  
17 of the permanent location of the property, and if it is a workers'  
18 compensation claim, he or she shall seek recovery first from the  
19 association of the residence of the claimant. Any recovery under  
20 this article shall be reduced by the amount of recovery from any  
21 other insurance guaranty association or its equivalent. A member  
22 insurer may recover in subrogation from the association only  
23 one-half of any amount paid by that insurer under uninsured  
24 motorist coverage for bodily injury or wrongful death (and nothing  
25 for a payment for anything else), in those cases where the injured  
26 person insured by such an insurer has proceeded under his or her  
27 uninsured motorist coverage on the ground that the tortfeasor is  
28 uninsured as a result of the insolvency of his or her liability insurer  
29 (an insolvent insurer as defined in this article), provided that the  
30 member insurer shall waive all rights of subrogation against the  
31 tortfeasor. Any amount paid a claimant in excess of the amount  
32 authorized by this section may be recovered by action, or other  
33 proceeding, brought by the association.

34 (2) Any claimant having collision coverage on a loss that is  
35 covered by the insolvent company's liability policy shall first  
36 proceed against his or her collision carrier. Neither that claimant  
37 nor the collision carrier, if it is a member of the association, shall  
38 have the right to sue or continue a suit against the insured of the  
39 insolvent insurance company for that collision damage.

1 (d) The association shall have the right to recover from any  
2 person who is an affiliate of the insolvent insurer and whose  
3 liability obligations to other persons are satisfied in whole or in  
4 part by payments made under this article the amount of any covered  
5 claim and allocated claims expense paid on behalf of that person  
6 pursuant to this article.

7 (e) Any person having a claim or legal right of recovery under  
8 any governmental insurance or guaranty program which is also a  
9 covered claim, shall be required to first exhaust his or her right  
10 under the program. Any amount payable on a covered claim shall  
11 be reduced by the amount of any recovery under the program.

12 (f) “Covered claims” for unearned premium by lenders under  
13 insurance premium finance agreements as defined in Section 673  
14 shall be computed as of the earliest cancellation date of the policy  
15 pursuant to Section 673.

16 (g) “Covered claims” shall not include any judgments against  
17 or obligations or liabilities of the insolvent insurer or the  
18 commissioner, as liquidator, or otherwise resulting from alleged  
19 or proven torts, nor shall any default judgment or stipulated  
20 judgment against the insolvent insurer, or against the insured of  
21 the insolvent insurer, be binding against the association.

22 (h) “Covered claims” shall not include any loss adjustment  
23 expenses, including adjustment fees and expenses, attorney’s fees  
24 and expenses, court costs, interest, and bond premiums, incurred  
25 prior to the appointment of a liquidator.

26 *SEC. 2. Section 1063.5 of the Insurance Code is amended to*  
27 *read:*

28 1063.5. Each time an insurer becomes insolvent then, to the  
29 extent necessary to secure funds for the association for payment  
30 of covered claims of that insolvent insurer and also for payment  
31 of reasonable costs of adjusting the claims, the association shall  
32 collect premium payments from its member insurers sufficient to  
33 discharge its obligations. The association shall allocate its claim  
34 payments and costs, incurred or estimated to be incurred, to one  
35 or more of the following categories: (a) workers’ compensation  
36 claims; (b) homeowners’ claims, and automobile claims, which  
37 shall include: automobile material damage, automobile liability  
38 (both personal injury and death and property damage), medical  
39 payments and uninsured motorist claims; and (c) claims other than  
40 workers’ compensation, homeowners’, and automobile, as above

1 defined. Separate premium payments shall be required for each  
2 category. The premium payments for each category shall be used  
3 to pay the claims and costs allocated to that category. The rate of  
4 premium charged shall be a uniform percentage of net direct written  
5 premium in the preceding calendar year applicable to that category.  
6 The rate of premium charges to each member in the appropriate  
7 categories shall initially be based on the written premium of each  
8 insurer as shown in the latest year's annual financial statement on  
9 file with the commissioner. The initial premium shall be adjusted  
10 by applying the same rate of premium charge as initially used to  
11 each insurer's written premium as shown on the annual statement  
12 for the second year following the year on which the initial premium  
13 charge was based. The difference between the initial premium  
14 charge and the adjusted premium charge shall be charged or  
15 credited to each member insurer by the association as soon as  
16 practical after the filing of the annual statements of the member  
17 insurers with the commissioner for the year on which the adjusted  
18 premium is based. Any credit due in a specific category to a  
19 member insurer as a result of the adjusted premium calculation  
20 may be refunded to the member insurer at the discretion of the  
21 association if the member insurer has agreed with the commissioner  
22 to no longer write insurance in that category but has not withdrawn  
23 from the state and surrendered its certificate of authority. However,  
24 in the case of an insurer that was a member insurer when the initial  
25 premium charge was made and that paid the initial assessment but  
26 is no longer a member insurer at the time of the adjusted premium  
27 charge by reason of its insolvency or its withdrawal from the state  
28 and surrender of its certificate of authority to transact insurance  
29 in this state, any credit accruing to that insurer shall be refunded  
30 to it by the association. "Net direct written premiums" shall mean  
31 the amount of gross premiums, less return premiums, received in  
32 that calendar year upon business done in this state, other than  
33 premiums received for reinsurance. In cases of a dispute as to the  
34 amount of the net direct written premium between the association  
35 and one of its members the written decision of the commissioner  
36 shall be final. The premium charged to any member insurer for  
37 any of the three categories or a category established by the  
38 association shall not be more than 2 percent of the net direct  
39 premium written in that category in this state by that member per  
40 year, starting on January 1, 2003, until December 31, 2007, and

1 thereafter shall be 1 percent per ~~year~~. *year, until January 1, 2015.*  
2 *Commencing January 1, 2015, the premium charged to any*  
3 *member insurer for any of the three categories or a category*  
4 *established by the association shall not be more than 2 percent of*  
5 *the net direct written premium unless there are bonds outstanding*  
6 *that were issued pursuant to Article 14.25 (commencing with*  
7 *Section 1063.50) or Article 14.26 (commencing with Section*  
8 *1063.70). If bonds issued pursuant to either article are outstanding,*  
9 *the premium charged to a member insurer for the category for*  
10 *which the bond proceeds are being used to pay claims and expenses*  
11 *shall not be more than 1 percent of the net direct written premium*  
12 *for that category. The association may exempt or defer, in whole*  
13 *or in part, the premium charge of any member insurer, if the*  
14 *premium charge would cause the member insurer's financial*  
15 *statement to reflect an amount of capital or surplus less than the*  
16 *minimum amounts required for a certificate of authority by any*  
17 *jurisdiction in which the member insurer is authorized to transact*  
18 *insurance. However, during the period of deferment, no dividends*  
19 *shall be paid to shareholders or policyholders by the company*  
20 *whose premium charge was deferred. Deferred premium charges*  
21 *shall be paid when the payment will not reduce capital or surplus*  
22 *below required minimums. These payments shall be credited*  
23 *against future premium charges to those companies receiving larger*  
24 *premium charges by virtue of the deferment. After all covered*  
25 *claims of the insolvent insurer and expenses of administration have*  
26 *been paid, any unused premiums and any reimbursements or claims*  
27 *dividends from the liquidator remaining in any category shall be*  
28 *retained by the association and applied to reduce future premium*  
29 *charges in the appropriate category. However, an insurer which*  
30 *ceases to be a member of the association, other than an insurer that*  
31 *has become insolvent or has withdrawn from the state and has*  
32 *surrendered its certificate of authority following an initial*  
33 *assessment that is entitled to a refund based upon an adjusted*  
34 *assessment as provided above in this section, shall have no right*  
35 *to a refund of any premium previously remitted to the association.*  
36 *The commissioner may suspend or revoke the certificate of*  
37 *authority to transact business in this state of a member insurer*  
38 *which fails to pay a premium when due and after demand has been*  
39 *made.*

1 Interest at a rate equal to the current federal reserve discount  
2 rate plus 2 ½ percent per annum shall be added to the premium of  
3 any member insurer which fails to submit the premium requested  
4 by the association within 30 days after the mailing request.  
5 However, in no event shall the interest rate exceed the legal  
6 maximum.

7 SECTION 1.

8 SEC. 3. Section 1063.74 of the Insurance Code is amended to  
9 read:

10 1063.74. (a) Notwithstanding any other limits on assessments,  
11 CIGA shall have the authority to levy upon member insurers special  
12 bond assessments in the amount necessary to pay the principal of  
13 and interest on the bonds, and to meet other requirements  
14 established by agreements relating to the bonds. The assessments  
15 shall be collected only from the member insurers providing  
16 workers' compensation insurance, in the same manner as separate  
17 premium payments are used to pay the claims and costs allocated  
18 to that category pursuant to Section 1063.5. Special bond  
19 assessments made pursuant to this section shall also be subject to  
20 the surcharge provisions in Sections 1063.14 and 1063.145.

21 (b) Notwithstanding any other law, after all bonds issued  
22 pursuant to this article have been redeemed, no further *initial*  
23 special bond assessments shall be levied or made. Any premium  
24 adjustments called for and described in Section 1063.5, as applied  
25 to special bond assessments initially charged, shall continue to be  
26 made and determined. Any credits or charges that result from the  
27 premium adjustments on the special bond assessments shall be  
28 credited or charged to the assessments called for and described in  
29 Section 1063.5.

30 (c) In addition to the special bond assessments provided for in  
31 this section, the board in its discretion and subject to other  
32 obligations of the association, may utilize current funds of CIGA,  
33 premium assessments made under Section 1063.5, and advances  
34 or dividends received from the liquidators of insolvent insurers to  
35 pay the principal and interest on any bonds issued at the board's  
36 request and shall utilize, to the extent feasible, the recoveries from  
37 the liquidators of the estates of insolvent workers' compensation

- 1 carriers to pay bonds issued at the board's request to fund workers'
- 2 compensation claims.

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