

AMENDED IN ASSEMBLY APRIL 29, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2230

Introduced by Assembly Member Cooley

February 20, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2230, as amended, Cooley. Insurance: Workers' ~~Compensation~~ *Comp* 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.~~

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

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

36 ~~(2) Any claimant having collision coverage on a loss that is~~
37 ~~covered by the insolvent company's liability policy shall first~~
38 ~~proceed against his or her collision carrier. Neither that claimant~~
39 ~~nor the collision carrier, if it is a member of the association, shall~~

1 have the right to sue or continue a suit against the insured of the
2 insolvent insurance company for that collision damage.

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

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

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

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

24 ~~(h) "Covered claims" shall not include any loss adjustment
25 expenses, including adjustment fees and expenses, attorney's fees
26 and expenses, court costs, interest, and bond premiums, incurred
27 prior to the appointment of a liquidator.~~

28 ~~SEC. 2.~~

29 *SECTION 1.* Section 1063.5 of the Insurance Code is amended
30 to read:

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

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

1 association shall not be more than 2 percent of the net direct
2 premium written in that category in this state by that member per
3 year, starting on January 1, 2003, until December 31, 2007, and
4 thereafter shall be 1 percent per year, until January 1, 2015.
5 Commencing January 1, 2015, the premium charged to any member
6 insurer for any of the three categories or a category established by
7 the association shall not be more than 2 percent of the net direct
8 written premium unless there are bonds outstanding that were
9 issued pursuant to Article 14.25 (commencing with Section
10 1063.50) or Article 14.26 (commencing with Section 1063.70). If
11 bonds issued pursuant to either article are outstanding, the premium
12 charged to a member insurer for the category for which the bond
13 proceeds are being used to pay claims and expenses shall not be
14 more than 1 percent of the net direct written premium for that
15 category. The association may exempt or defer, in whole or in part,
16 the premium charge of any member insurer, if the premium charge
17 would cause the member insurer's financial statement to reflect
18 an amount of capital or surplus less than the minimum amounts
19 required for a certificate of authority by any jurisdiction in which
20 the member insurer is authorized to transact insurance. However,
21 during the period of deferment, no dividends shall be paid to
22 shareholders or policyholders by the company whose premium
23 charge was deferred. Deferred premium charges shall be paid when
24 the payment will not reduce capital or surplus below required
25 minimums. These payments shall be credited against future
26 premium charges to those companies receiving larger premium
27 charges by virtue of the deferment. After all covered claims of the
28 insolvent insurer and expenses of administration have been paid,
29 any unused premiums and any reimbursements or claims dividends
30 from the liquidator remaining in any category shall be retained by
31 the association and applied to reduce future premium charges in
32 the appropriate category. However, an insurer which ceases to be
33 a member of the association, other than an insurer that has become
34 insolvent or has withdrawn from the state and has surrendered its
35 certificate of authority following an initial assessment that is
36 entitled to a refund based upon an adjusted assessment as provided
37 above in this section, shall have no right to a refund of any
38 premium previously remitted to the association. The commissioner
39 may suspend or revoke the certificate of authority to transact

1 business in this state of a member insurer which fails to pay a
2 premium when due and after demand has been made.

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

9 ~~SEC. 3.~~

10 *SEC. 2.* Section 1063.74 of the Insurance Code is amended to
11 read:

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

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

32 (c) In addition to the special bond assessments provided for in
33 this section, the board in its discretion and subject to other
34 obligations of the association, may utilize current funds of CIGA,
35 premium assessments made under Section 1063.5, and advances
36 or dividends received from the liquidators of insolvent insurers to
37 pay the principal and interest on any bonds issued at the board's
38 request and shall utilize, to the extent feasible, the recoveries from
39 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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