

AMENDED IN ASSEMBLY JUNE 18, 2013

AMENDED IN SENATE APRIL 17, 2013

AMENDED IN SENATE APRIL 8, 2013

**SENATE BILL**

**No. 476**

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**Introduced by Senator Steinberg**

February 21, 2013

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An act to repeal and add Sections 1872.81, 1874.8, and 10127.17 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 476, as amended, Steinberg. Insurance: special assessments.

(1) Existing law, until January 1, 2015, imposes on an insurer a \$0.30 special purpose assessment on each vehicle insured under an insurance policy issued in this state by the insurer. Existing law specifies that \$0.20 of each \$0.30 special purpose assessment shall be used to fund specified consumer service functions of the Department of Insurance relating to motor vehicle insurance. Existing law further specifies that the remaining \$0.10 of each \$0.30 special purpose assessment shall be used to fund the improvement of certain consumer functions of the department.

This bill would revise and recast those provisions, delete the date of repeal, and require a special purpose assessment of \$0.25, *commencing July 1, 2014, and* until January 1, ~~2015~~ 2016, and not exceeding \$0.25 thereafter, on each vehicle insured under an insurance policy issued in this state by the insurer. The bill would also specify that, upon appropriation,  $\frac{2}{3}$  of the special purpose assessment be used for the purpose of funding the consumer service functions of the department related to regulating automobile insurers, as provided, and  $\frac{1}{3}$  of the

special purpose assessment be used for the purpose of improving consumer functions of the department, related to regulating automobile insurers, as specified.

The bill would authorize the department, upon appropriation by the Legislature, to use up to \$0.05 of the \$0.25 special purpose assessment revenues collected to notify insurers and other members of the public about the existence of any low-cost automobile insurance program.

(2) Existing law provides that each insurer doing business in this state shall pay an annual special purpose assessment to be determined by the Insurance Commissioner, but not to exceed \$0.50 annually for each vehicle insured under an insurance policy the insurer issues in this state, in order to fund the Fraud Division and the Organized Automobile Fraud Activity Interdiction Program. Under existing law, of the funds collected, 42.5% are required to be distributed to district attorneys, 42.5% are required to be distributed to the department's Fraud Division, and 15% are required to be distributed to the Department of the California Highway Patrol, to be used as provided. Existing law provides that this assessment be repealed on January 1, 2015.

This bill would revise and recast those provisions, delete the date of repeal, and make the distribution of funds by the commissioner upon appropriation by the Legislature.

(3) Existing law creates the Life and Annuity Consumer Protection Fund as a special account within the Insurance Fund, and, until January 1, 2015, requires each insurer admitted to transact insurance in this state to pay a fee determined by the commissioner, not to exceed \$1, for each individual life insurance policy and each individual annuity product that it issues to a resident of this state with a value of \$15,000 or more. If an insurer elects to charge the purchaser of a life insurance policy or annuity product this fee, the fee is required to be set forth as a separate charge in the contract schedule or premium notice. The moneys in the Life and Annuity Consumer Protection Fund are to be distributed, as provided, and are required to be used exclusively for the purpose of protecting consumers of life insurance and annuity products in this state. Existing law requires that 50% of the moneys in the fund be distributed within the department for functions related to individual life insurance and annuity products, including, but not limited to, educating consumers in all aspects of life insurance and annuity products, consumer protection, purchasing and using insurance and annuity products, claim filing, benefit delivery, and dispute resolution.

This bill would revise and recast those provisions, delete the date of repeal, and require that the moneys distributed by the commissioner, upon appropriation by the Legislature, fund the reasonable costs incurred in regulating entities transacting life insurance and annuity products in this state. The bill would delete the requirement that each individual life insurance policy and each individual annuity product have a value of \$15,000 or more in order for the special assessment to apply. The bill would also require that instead of consumer education, the moneys in the fund distributed within the department for functions related to individual life insurance and annuity products be used to disseminate information to insurers, insureds, and others regarding the applicable regulation of life insurance and annuity products, including consumer protection, purchasing and using insurance and annuity products, claim filing, benefit delivery, and dispute resolution.

*(4) Existing law requires the Insurance Commissioner to, on or before the first day of August in each year, make a report to the Governor, the Legislature, and to the committees of the Senate and Assembly having jurisdiction over insurance containing specified information, including the condition of the insurance business and interests in this state.*

*This bill would additionally require the annual report to contain information pertaining to consumer complaints, investigations, and administrative and regulatory cases pertaining to automobile insurance, as specified.*

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. The Legislature finds and declares all of the  
2 following:  
3 (a) Automobile insurance rates are approved by the Insurance  
4 Commissioner, who is required to ensure that automobile insurance  
5 is fair, available, and affordable to all Californians. Several factors  
6 guide the commissioner's ratesetting powers, including factors  
7 that have a substantial relationship to the risk of loss. The  
8 California Low-Cost Automobile Insurance Program makes  
9 automobile insurance available to low-income drivers, thereby  
10 reducing the number of uninsured motorists on California's roads.  
11 Since the program's inception in 2005, 59 percent of those  
12 receiving insurance coverage through the program were previously

1 uninsured, and the program has covered \$7.56 million in property  
2 damage claims and \$8.5 million in bodily injury claims, directly  
3 protecting insurers and insureds from the risk of loss associated  
4 with the full cost of injuries and damages had those motorists  
5 remained uninsured.

6 (b) The Organized Automobile Fraud Activity Interdiction  
7 Program merges the resources of the Department of Insurance, the  
8 Department of the California Highway Patrol, and district attorneys  
9 to combat automobile insurance fraud, which includes the staging  
10 of automobile accidents and the filing of fraudulent automobile  
11 accidents or damage claims. The program provides a direct benefit  
12 to insurers by prioritizing the remediation of automobile insurance  
13 fraud, resulting in reduced claims costs for insurers.

14 (c) The Department of Insurance is responsible for investigating  
15 violations of the Insurance Code related to life insurance policies  
16 and annuity products. The role of district attorneys in prioritizing  
17 the prosecution of fraudulent activities involving insurance and  
18 annuity products, including the economic abuse of consumers,  
19 enables the department to take prompt and decisive action to restrict  
20 or terminate the licenses of persons criminally convicted of  
21 financial abuse crimes. The department's regulatory purposes of  
22 deterring insurance and annuity fraud are also furthered by warning  
23 consumers, particularly seniors, about unsavory sales practices  
24 and by helping consumers understand the types of fraudulent  
25 activities being perpetrated.

26 SEC. 2. Section 1872.81 of the Insurance Code is repealed.

27 SEC. 3. Section 1872.81 is added to the Insurance Code, to  
28 read:

29 1872.81. In addition to the special purpose assessment imposed  
30 pursuant to Section 1872.8, *effective July 1, 2014*, an insurer doing  
31 business in this state shall, until January 1, ~~2015~~ 2016, pay to the  
32 commissioner an annual special purpose assessment of twenty-five  
33 cents (\$0.25), and thereafter pay to the commissioner an annual  
34 special purpose assessment in an amount not to exceed twenty-five  
35 cents (\$0.25), as determined by the commissioner, for each vehicle  
36 insured under an insurance policy it issues in this state, for  
37 expenditure, upon appropriation by the Legislature, as follows:

38 (a) Two-thirds of the special purpose assessment shall be used  
39 for the purpose of funding the consumer service functions of the  
40 department that are related to regulating automobile insurers,

1 including those functions performed by the rating and underwriting  
2 service bureau, the claims service bureau, the investigations bureau,  
3 or any successor bureaus of the department that may assume the  
4 consumer service functions of these bureaus, and legal services in  
5 support of these bureaus.

6 (b) One-third of the special purpose assessment shall be used  
7 for the purpose of improving consumer functions identified in  
8 subdivision (a) of the department that are related to regulating  
9 automobile insurers, including, for improving the ability of the  
10 department to respond to consumer complaints and information  
11 requests through the department's toll-free telephone number, and  
12 for improving the ability of the department to offer information  
13 about automobile insurance rates to the public.

14 (c) Upon appropriation by the Legislature, the Department of  
15 Insurance may use up to five cents (\$0.05) of the special purpose  
16 assessment revenues collected pursuant to this section to notify  
17 insurers and other members of the public about the existence of  
18 any low-cost automobile insurance program established pursuant  
19 to Section 11629.7 or other statutes that establish a program of the  
20 type identified in Section 11629.7. In requesting an appropriation  
21 for this purpose under its proposed ~~departmental budget submitted~~  
22 ~~to the Department of Finance~~ *plan developed pursuant to Section*  
23 *11629.85*, the Department of Insurance shall explain, with as much  
24 specificity as is reasonably possible, the objectives for the use of  
25 the funds and the quantitative criteria by which the Legislature  
26 may evaluate the effectiveness of the department's use of the funds.

27 (d) *The commissioner shall include, in the annual report*  
28 *submitted pursuant to Section 12922, all of the following*  
29 *information:*

30 (1) *The number of opened consumer complaints related to*  
31 *automobile insurance.*

32 (2) *The number of opened investigations related to automobile*  
33 *insurance.*

34 (3) *The number of investigations related to automobile insurance*  
35 *referred to prosecuting agencies.*

36 (4) *The number of administrative or regulatory cases related*  
37 *to automobile insurance referred to the department's legal division.*

38 (5) *The number of administrative or regulatory enforcement*  
39 *actions taken in cases related to automobile insurance.*

40 SEC. 4. Section 1874.8 of the Insurance Code is repealed.

1 SEC. 5. Section 1874.8 is added to the Insurance Code, to read:

2 1874.8. (a) Each insurer doing business in this state shall pay  
3 an annual special purpose assessment to be determined by the  
4 commissioner in an amount not to exceed fifty cents (\$0.50) for  
5 each vehicle insured under an insurance policy it issues in this  
6 state, in order to fund the Fraud Division and the Organized  
7 Automobile Fraud Activity Interdiction Program.

8 (b) (1) From the funds to be distributed to district attorneys  
9 under this section, the commissioner shall fund between three and  
10 10 grants at any one time for a coordinated program targeted at  
11 the successful prosecution and elimination of organized automobile  
12 fraud activity. These grants may be awarded only to district  
13 attorneys.

14 (2) In determining whether to award a district attorney a grant  
15 pursuant to this subdivision, the commissioner shall consider  
16 factors indicating organized automobile fraud activity in the district  
17 attorney's county, including, but not limited to, the county's level  
18 of general criminal activity, population density, automobile  
19 insurance claims frequency, number of suspected fraudulent claims,  
20 and prior and current evidence of organized automobile fraud  
21 activity. Funding priority shall be given to those grant applications  
22 with the potential to have the greatest impact on reducing organized  
23 automobile insurance fraud activity committed by ~~insurers an~~  
24 *insurer's employees or agents, brokers, insureds, and others*, and  
25 lessening the economic losses realized by insurers from that fraud.

26 (3) All participants of a grant under this subdivision shall  
27 coordinate their efforts and work in conjunction with the Fraud  
28 Division, other participating agencies, and all interested insurers  
29 in this regard.

30 (c) Of the funds collected pursuant to this section, upon  
31 appropriation by the Legislature, 42.5 percent shall be distributed  
32 to district attorneys, 42.5 percent shall be distributed to the Fraud  
33 Division, and 15 percent shall be distributed to the Department of  
34 the California Highway Patrol. Funds distributed pursuant to this  
35 section to the Fraud Division and to the Department of the  
36 California Highway Patrol shall be used to fund Fraud Division  
37 and Department of the California Highway Patrol investigators to  
38 work in conjunction with district attorneys who are awarded grants.  
39 Each grantee shall be notified by the Fraud Division of the identity  
40 of the investigators assigned to work with the grantee. ~~Each grantee~~

1 ~~shall provide the Fraud Division with any information requested~~  
2 ~~by the division relative to a prosecution prior to filing a case. In~~  
3 ~~accordance with the terms and conditions of the applicable grant,~~  
4 ~~each grantee shall provide the Fraud Division with information~~  
5 ~~resulting from the investigations the grantee conducts pursuant~~  
6 ~~to this section. This section does not prohibit the referral of any~~  
7 ~~cases developed by the Fraud Division to any appropriate~~  
8 ~~prosecutorial entity.~~

9 (d) A grant under this section shall be awarded on the basis of  
10 a single application for a period of three years and shall be subject  
11 where applicable to the requirements of subdivision (b) of Section  
12 1872.8, except for the requirement that grants be awarded according  
13 to population. Continued funding of a grant shall be contingent  
14 upon a grantee’s successful performance, as determined by an  
15 annual review by the commissioner. *Any redirection of grant funds*  
16 *under this section shall be made only for good cause.* The  
17 Department of the California Highway Patrol shall submit to the  
18 commissioner, for informational purposes only, an annual report  
19 on its expenditure of funds under this section in the same format  
20 as is required of grantees under this section.

21 (e) Two or more district attorneys may submit a joint application  
22 for a grant award under this section.

23 (f) The Fraud Division shall report to the Governor, the  
24 Legislature, and to the committees of the Senate and Assembly  
25 having jurisdiction over insurance on the results of the grant  
26 program established by this section, including funding distributed  
27 to the Department of the California Highway Patrol in the annual  
28 report submitted pursuant to Section 12922.

29 (g) For purposes of this section, “organized automobile fraud  
30 activity” means two or more persons who conspire, aid and abet,  
31 or in any other manner act together, to engage in economic  
32 automobile theft as defined in subdivision (f) of Section 1872.8,  
33 or to violate any of the following sections in a manner that involved  
34 an automobile insurance claim:

- 35 (1) Section 650 or 6152 of the Business and Professions Code.
- 36 (2) Section 750.
- 37 (3) Section 549, 550, or 551 of the Penal Code.

38 SEC. 6. Section 10127.17 of the Insurance Code is repealed.

39 SEC. 7. Section 10127.17 is added to the Insurance Code, to  
40 read:

1 10127.17. (a) The Life and Annuity Consumer Protection  
2 Fund is hereby created as a special account within the Insurance  
3 Fund. Each insurer admitted to transact insurance in this state shall  
4 pay a fee to be determined by the commissioner, not to exceed one  
5 dollar (\$1), for each individual life insurance policy and each  
6 individual annuity product that it issues to a resident of this ~~state~~.  
7 ~~state~~. If an insurer elects to charge the purchaser of a life insurance  
8 policy or annuity product this fee, the fee shall be set forth as a  
9 separate charge in the contract schedule or premium notice. Life  
10 insurance or annuity forms are not required to be filed again for  
11 review as a consequence of this provision. The revenue from this  
12 fee shall be deposited into the Life and Annuity Consumer  
13 Protection Fund.

14 (b) Moneys in the Life and Annuity Consumer Protection Fund  
15 shall be distributed by the commissioner, upon appropriation by  
16 the Legislature, to fund the reasonable costs incurred in regulating  
17 entities transacting life insurance and annuity products in this state.  
18 Moneys in the fund shall not be used for any other purpose.

19 (c) Fifty percent of these funds shall be distributed within the  
20 department for functions related to individual life insurance and  
21 annuity products, including, but not limited to:

22 (1) Investigating and prosecuting financial abuse by insurance  
23 licensees, or persons holding themselves out to be insurance  
24 licensees, or any person purporting to be engaged in the business  
25 of insurance.

26 (2) Responding to consumer inquiries and complaints related  
27 to life insurance or annuity products.

28 (3) Disseminating information to insurers, insureds, and others  
29 regarding the applicable regulation of life insurance and annuity  
30 products, including consumer protection, purchasing and using  
31 insurance and annuity products, claim filing, benefit delivery, and  
32 dispute resolution.

33 (4) Regulating and overseeing life insurance and annuity  
34 products and advertising for these products directed toward  
35 consumers.

36 (d) Fifty percent of the funds shall be distributed to district  
37 attorneys for investigating and prosecuting individual life insurance  
38 and annuity product financial abuse cases involving insurance  
39 licensees, or persons holding themselves out to be insurance  
40 licensees, or any person purporting to be engaged in the business

1 of insurance, and for other projects beneficial to insurance  
2 consumers.

3 (1) The commissioner shall distribute funds to district attorneys  
4 who are able to show a likely positive outcome that will benefit  
5 consumers in the local jurisdiction based on specific criteria  
6 promulgated by the commissioner. Each local district attorney  
7 desiring a portion of those funds shall submit to the commissioner  
8 an application, including, at a minimum all of the following:

9 (A) The proposed use of the moneys and the anticipated  
10 outcome.

11 (B) A list of all prior relevant cases or projects and a copy of  
12 the final accounting for each. If cases or projects are ongoing, the  
13 most recent accounting shall be provided.

14 (C) A detailed budget, including salaries and general expenses,  
15 and specifically identifying the cost of purchase or rental of  
16 equipment or supplies.

17 (2) Each district attorney that receives funds pursuant to this  
18 section shall submit a final detailed accounting at the conclusion  
19 or closure of each case or project. For cases or projects that  
20 continue longer than six months, interim accountings shall be  
21 submitted every six months, or as otherwise directed by the  
22 commissioner.

23 (3) Each district attorney that receives funds pursuant to this  
24 section shall submit a final report to the commissioner, which may  
25 be made public, as to the success of the case or project conducted.  
26 The report shall provide information and statistics on the number  
27 of active investigations, arrests, indictments, and convictions. The  
28 applications for moneys, the distribution of moneys, and the annual  
29 reports shall be public documents.

30 (4) Notwithstanding any other provision of this section,  
31 information submitted to the commissioner pursuant to this section  
32 concerning criminal investigations, whether active or inactive,  
33 shall be confidential.

34 (5) The commissioner may conduct a fiscal audit of the programs  
35 administered under this subdivision. This fiscal audit shall be  
36 conducted by an internal audit unit of the department. The cost of  
37 any fiscal audits shall be paid for from the Life and Annuity  
38 Consumer Protection Fund established by this section.

39 (6) If the commissioner determines that a district attorney is  
40 unable or unwilling to investigate or prosecute a relevant financial

1 abuse case, the commissioner may discontinue distribution of funds  
2 allocated for that matter and may redistribute those funds to other  
3 eligible district attorneys.

4 (e) If, as of June 30 of any calendar year, the total amount in  
5 the Life and Annuity Consumer Protection Fund exceeds five  
6 million dollars (\$5,000,000), the commissioner shall reduce the  
7 amount of the assessment accordingly for the following year to  
8 eliminate that excess. An insurer, upon receipt of an invoice, shall  
9 transmit payment to the department for deposit in the Life and  
10 Annuity Consumer Protection Fund. Any balance remaining in  
11 the Life and Annuity Consumer Protection Fund at the end of the  
12 fiscal year shall be retained in the account, to be available in the  
13 next fiscal year.

14 (f) The commissioner may develop guidelines for implementing  
15 or clarifying these provisions, including guidelines for the  
16 allocation, distribution, and potential return of unused funds. The  
17 commissioner may, from time to time, issue regulations for  
18 implementing or clarifying these provisions.

19 (g) The commissioner shall provide a consolidated report  
20 annually on the department’s Internet Web site, which shall  
21 include, but is not limited to, the following information:

22 (1) The number of opened consumer complaints related to life  
23 insurance or annuity products.

24 (2) The number of opened investigations related to life insurance  
25 or annuity products.

26 (3) The number of investigations related to life insurance or  
27 annuity products referred to and reported by prosecuting agencies.

28 (4) The number of administrative or regulatory cases related to  
29 life insurance or annuity products referred to the department’s  
30 legal division.

31 (5) The number of administrative or regulatory enforcement  
32 actions taken in cases related to life insurance or annuity products.

33 (6) Descriptions of efforts by the department to disseminate  
34 information to insurers and others regarding the applicable  
35 regulation of life insurance and annuity products, including  
36 consumer protection, purchasing and using insurance and annuity  
37 products, claim filing, benefit delivery, and dispute resolution.

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