

AMENDED IN ASSEMBLY JULY 2, 2013
AMENDED IN ASSEMBLY JUNE 18, 2013
AMENDED IN SENATE APRIL 17, 2013
AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 476

Introduced by Senator Steinberg

February 21, 2013

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, 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, *and revenue and expenditures relating to automobile insurance policy assessments*, 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

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

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

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

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 Section 1872.81 of the Insurance Code is repealed.

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

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

39 (a) Two-thirds of the special purpose assessment shall be used
40 for the purpose of funding the consumer service functions of the

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

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

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

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

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

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

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

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

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

1 (6) *Total aggregate annual assessment revenue and expenditures*
2 *pursuant to the assessment.*

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

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

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

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

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

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

33 (c) Of the funds collected pursuant to this section, upon
34 appropriation by the Legislature, 42.5 percent shall be distributed
35 to district attorneys, 42.5 percent shall be distributed to the Fraud
36 Division, and 15 percent shall be distributed to the Department of
37 the California Highway Patrol. Funds distributed pursuant to this
38 section to the Fraud Division and to the Department of the
39 California Highway Patrol shall be used to fund Fraud Division
40 and Department of the California Highway Patrol investigators to

1 work in conjunction with district attorneys who are awarded grants.
2 Each grantee shall be notified by the Fraud Division of the identity
3 of the investigators assigned to work with the grantee. In
4 accordance with the terms and conditions of the applicable grant,
5 each grantee shall provide the Fraud Division with information
6 resulting from the investigations the grantee conducts pursuant to
7 this section. This section does not prohibit the referral of any cases
8 developed by the Fraud Division to any appropriate prosecutorial
9 entity.

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

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

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

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

36 (1) Section 650 or 6152 of the Business and Professions Code.

37 (2) Section 750.

38 (3) Section 549, 550, or 551 of the Penal Code.

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

1 SEC. 7. Section 10127.17 is added to the Insurance Code, to
2 read:

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

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

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

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

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

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

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

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

1 licensees, or any person purporting to be engaged in the business
2 of insurance, and for other projects beneficial to insurance
3 consumers.

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

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

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

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

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

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

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

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

1 (6) If the commissioner determines that a district attorney is
2 unable or unwilling to investigate or prosecute a relevant financial
3 abuse case, the commissioner may discontinue distribution of funds
4 allocated for that matter and may redistribute those funds to other
5 eligible district attorneys.

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

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

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

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

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

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

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

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

35 (6) Descriptions of efforts by the department to disseminate
36 information to insurers and others regarding the applicable
37 regulation of life insurance and annuity products, including

- 1 consumer protection, purchasing and using insurance and annuity
- 2 products, claim filing, benefit delivery, and dispute resolution.

O