

## Senate Bill No. 476

### CHAPTER 347

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

[Approved by Governor September 24, 2013. Filed with  
Secretary of State September 24, 2013.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 476, 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, administrative and regulatory cases pertaining to automobile insurance, and revenue and expenditures relating to automobile insurance policy assessments, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) Automobile insurance rates are approved by the Insurance Commissioner, who is required to ensure that automobile insurance is fair, available, and affordable to all Californians. Several factors guide the commissioner's ratesetting powers, including factors that have a substantial relationship to the risk of loss. The California Low-Cost Automobile Insurance Program makes automobile insurance available to low-income drivers, thereby reducing the number of uninsured motorists on California's roads. Since the program's inception in 2005, 59 percent of those receiving insurance coverage through the program were previously uninsured, and the program has covered \$7.56 million in property damage claims and \$8.5 million in bodily injury claims, directly protecting insurers and insureds from the risk of loss associated with the full cost of injuries and damages had those motorists remained uninsured.

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

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

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

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

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

(a) Two-thirds of the special purpose assessment shall be used for the purpose of funding the consumer service functions of the department that are related to regulating automobile insurers, including those functions performed by the rating and underwriting service bureau, the claims service

bureau, the investigations bureau, or any successor bureaus of the department that may assume the consumer service functions of these bureaus, and legal services in support of these bureaus.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Of the funds collected pursuant to this section, upon appropriation by the Legislature, 42.5 percent shall be distributed to district attorneys, 42.5 percent shall be distributed to the Fraud Division, and 15 percent shall be distributed to the Department of the California Highway Patrol. Funds distributed pursuant to this section to the Fraud Division and to the Department of the California Highway Patrol shall be used to fund Fraud Division and Department of the California Highway Patrol investigators to work in conjunction with district attorneys who are awarded grants. Each grantee shall be notified by the Fraud Division of the identity of the investigators assigned to work with the grantee. In accordance with the terms and conditions of the applicable grant, each grantee shall provide the Fraud Division with information resulting from the investigations the grantee conducts pursuant to this section. This section does not prohibit the referral of any cases developed by the Fraud Division to any appropriate prosecutorial entity.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Disseminating 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) Regulating and overseeing life insurance and annuity products and advertising for these products directed toward consumers.

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

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

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

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

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

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

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

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

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

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

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

(f) The commissioner may develop guidelines for implementing or clarifying these provisions, including guidelines for the allocation, distribution, and potential return of unused funds. The commissioner may,

from time to time, issue regulations for implementing or clarifying these provisions.

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

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

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

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

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

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

(6) Descriptions of efforts by the department to disseminate information to insurers 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.