

Assembly Bill No. 499

CHAPTER 549

An act to amend Sections 10083 and 10087 of, and to amend and repeal Section 10086 of, the Insurance Code, relating to insurance.

[Approved by Governor September 24, 2016. Filed with Secretary of State September 24, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 499, Cooley. Insurance: earthquake: mandatory offer.

Existing law provides that a policy of residential property insurance may not be issued or delivered or, under certain circumstances, initially renewed by an insurer unless the named insured is offered coverage for loss or damage caused by an earthquake. The required offer of earthquake coverage is authorized to be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy and must contain certain disclosure language. Existing law provides that when the insurer, agent, or broker establishes delivery of the disclosure form by obtaining the signature of the applicant or insured, or when an insurer, agent, or broker provides the applicant with the disclosure form and the applicant does not return a signed acknowledgment of receipt within 60 days of the date it was provided, there is a conclusive presumption that the insurer, agent, or broker has complied with the disclosure requirements.

This bill would delete the above presumption.

Existing law requires that if an offer of earthquake coverage is accepted, the coverage continues at the applicable rates and conditions for the policy term, provided the policy of residential property insurance is not terminated by the named insured or insurer. At any renewal, an insurer is authorized to modify the terms and conditions of an existing earthquake insurance policy, rider, or endorsement as long as the modified terms and conditions provide the minimum insurance coverages required and the insurer provides the insured with a stand-alone document disclosing the changes, as specified.

This bill would, among other things, instead require an insurer modifying the terms and conditions of an existing earthquake insurance policy, rider, or endorsement at renewal to provide the insured with the stand-alone document disclosing the changes when the modification of the terms and conditions reduces or substantially differs from the coverage previously provided to the insured.

Existing law provides that proof of mailing of the offer by first-class mail addressed to a named insured or applicant at the mailing address shown on the policy or application, or proof that the offer of coverage was sent to the named insured or applicant by electronic transmission, creates a conclusive presumption that the offer was made.

This bill would, among other things, add that if an offer, disclosure, or document required to be delivered is not mailed, but hand delivered to the insured, the insured’s signed receipt would create a conclusive presumption that the offer was provided or that the disclosure or document was delivered as required.

This bill would also make technical and clarifying changes.

This bill would provide that specified provisions of the act would only become operative if AB 2591 is enacted and takes effect on or before January 1, 2017.

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

SECTION 1. Section 10083 of the Insurance Code, as added by Section 2.5 of Chapter 419 of the Statutes of 2014, is amended to read:

10083. (a) The offer of coverage required by Section 10081 may be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or on the application. The offer may be made electronically pursuant to Section 38.5.

(1) If the offer is made by a nonparticipating insurer as defined in Section 10089.5, the offer of earthquake coverage shall contain all of the following language in at least 10-point boldface type:

“Your residential property insurance policy does not cover earthquake damage to your home or its contents.

To cover earthquake damage to your home and its contents you need to purchase a separate earthquake insurance policy. The coverage provided by an earthquake insurance policy is different from, and typically more limited than, the coverage provided by your residential property insurance policy.

California law requires insurance companies to offer earthquake insurance in conjunction with a residential property insurance policy. If you do not accept the offer of earthquake insurance below within 30 days of the mailing of this notice, your insurance company shall presume that you have not accepted this offer of earthquake insurance.

You may purchase earthquake insurance coverage on the following terms:

- (A) Amount of Dwelling/Building Coverage Limit: _____
- (B) Deductible: _____
- (C) Contents Coverage Limit: _____
- (D) Additional Living Expenses Coverage Limit: _____
- (E) Estimated Annual Premium: _____

The deductible represents the amount of damage your covered property must incur before the earthquake insurance coverage begins. If your covered loss is less than the applicable deductible, you may not receive any payment.

Contact your insurance agent or your insurance company to obtain details regarding this offer of earthquake insurance and other coverage options.”

(2) If the offer is made by a participating insurer as defined by Section 10089.5, the offer of earthquake coverage shall contain all of the following language in at least 10-point boldface type:

“Your residential property insurance policy does not cover earthquake damage to your home or its contents.

To cover earthquake damage to your home and its contents you need to purchase a separate earthquake insurance policy. The coverage provided by an earthquake insurance policy is different from, and typically more limited than, the coverage provided by your residential property insurance policy.

California law requires insurance companies to offer earthquake insurance in conjunction with a residential property insurance policy. If you do not accept the offer of earthquake insurance below within 30 days of the mailing of this notice, your insurance company shall presume that you have not accepted this offer of earthquake insurance.

You may purchase earthquake insurance coverage on the following terms:

- (A) Amount of Dwelling/Building Coverage Limit: _____
- (B) Deductible: _____
- (C) Contents Coverage Limit: _____
- (D) Additional Living Expenses Coverage Limit: _____
- (E) Estimated Annual Premium: _____

The deductible represents the amount of damage your covered property must incur before the earthquake insurance coverage begins. If your covered loss is less than the applicable deductible, you may not receive any payment.

If you choose not to accept this offer within the 30-day period, you may apply for earthquake coverage at a later date.

Your insurance company contracts with the California Earthquake Authority (CEA) to offer earthquake insurance to its customers. For an additional premium, you can choose CEA coverage options such as higher limits for Contents or Additional Living Expenses, increased building code upgrade limits, or a lower deductible. You can also choose to buy certain CEA coverages separately.

Contact your insurance agent or your insurance company to obtain details regarding this offer of earthquake insurance and other coverage options.”

(b) If the offer of earthquake coverage made pursuant to Section 10081 is not accepted, the insurer or any affiliated insurer shall be required on an every other year basis to offer earthquake coverage in connection with any continuation, renewal, or reinstatement of the policy following any lapse thereof, or with respect to any other policy that extends, changes, supersedes, or replaces the policy of residential property insurance.

(c) The offer may contain additional provisions not in conflict with or in derogation of this section.

(d) The commissioner may approve modifications to the language prescribed in subdivision (a) only if all of the following conditions are met:

(1) The modifications are not in conflict with or in derogation of any provision of this section or Section 10089.

(2) The modifications accurately describe the coverage provided by the policy being offered.

(3) The modifications are strictly limited to necessary changes so that the modified offer is otherwise identical to the offer prescribed in subdivision (a).

(e) Use of the language prescribed by this section, or modified language approved pursuant to subdivision (d), shall constitute compliance with the requirements of Section 10081 by an insurer subject to the requirements.

(f) (1) If an insurer issues or causes to be issued a policy with earthquake coverages other than the coverages specified in subdivisions (a) and (b) of Section 10089, pursuant to a rate application approved by the commissioner in accordance with subdivision (c) of Section 10089, no further or other offer of earthquake coverage as specified in subdivisions (a) and (b) of Section 10089 and no further or other notice of noncoverage is required by the insurer if both of the following apply:

(A) A renewal of that policy is offered.

(B) A written notice is provided with that renewal regarding additional earthquake coverage that is available.

(2) The form of the written notice in paragraph (1) shall be filed with the commissioner at least 30 days before its first use. The form shall not be used if the commissioner disapproves the form of the written notice within that period for being misleading or incomplete.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 2. Section 10083 of the Insurance Code, as amended by Section 2.5 of Chapter 427 of the Statutes of 2014, is amended to read:

10083. (a) The offer of coverage required by Section 10081 may be made prior to, concurrent with, or within 60 days following the issuance or renewal of a residential property insurance policy. If the offer of coverage is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or on the application.

(1) If the offer is made by a nonparticipating insurer as defined in Section 10089.5, the offer of earthquake coverage shall contain all of the following language in at least 10-point boldface type:

“Your residential property insurance policy does not cover earthquake damage to your home or its contents.

To cover earthquake damage to your home and its contents you need to purchase a separate earthquake insurance policy. The coverage provided by an earthquake insurance policy is different from, and typically more limited than, the coverage provided by your residential property insurance policy.

California law requires insurance companies to offer earthquake insurance in conjunction with a residential property insurance policy. If you do not

accept the offer of earthquake insurance below within 30 days of the mailing of this notice, your insurance company shall presume that you have not accepted this offer of earthquake insurance.

You may purchase earthquake insurance coverage on the following terms:

- (A) Amount of Dwelling/Building Coverage Limit: _____
- (B) Deductible: _____
- (C) Contents Coverage Limit: _____
- (D) Additional Living Expenses Coverage Limit: _____
- (E) Estimated Annual Premium: _____

The deductible represents the amount of damage your covered property must incur before the earthquake insurance coverage begins. If your covered loss is less than the applicable deductible, you may not receive any payment.

Contact your insurance agent or your insurance company to obtain details regarding this offer of earthquake insurance and other coverage options.”

(2) If the offer is made by a participating insurer as defined by Section 10089.5, the offer of earthquake coverage shall contain all of the following language in at least 10-point boldface type:

“Your residential property insurance policy does not cover earthquake damage to your home or its contents.

To cover earthquake damage to your home and its contents you need to purchase a separate earthquake insurance policy. The coverage provided by an earthquake insurance policy is different from, and typically more limited than, the coverage provided by your residential property insurance policy.

California law requires insurance companies to offer earthquake insurance in conjunction with a residential property insurance policy. If you do not accept the offer of earthquake insurance below within 30 days of the mailing of this notice, your insurance company shall presume that you have not accepted this offer of earthquake insurance.

You may purchase earthquake insurance coverage on the following terms:

- (A) Amount of Dwelling/Building Coverage Limit: _____
- (B) Deductible: _____
- (C) Contents Coverage Limit: _____
- (D) Additional Living Expenses Coverage Limit: _____
- (E) Estimated Annual Premium: _____

The deductible represents the amount of damage your covered property must incur before the earthquake insurance coverage begins. If your covered loss is less than the applicable deductible, you may not receive any payment.

If you choose not to accept this offer within the 30-day period, you may apply for earthquake coverage at a later date.

Your insurance company contracts with the California Earthquake Authority (CEA) to offer earthquake insurance to its customers. For an additional premium, you can choose CEA coverage options such as higher limits for Contents or Additional Living Expenses, increased building code upgrade limits, or a lower deductible. You can also choose to buy certain CEA coverages separately.

Contact your insurance agent or your insurance company to obtain details regarding this offer of earthquake insurance and other coverage options.”

(b) If the offer of earthquake coverage made pursuant to Section 10081 is not accepted, the insurer or any affiliated insurer shall be required on an every other year basis to offer earthquake coverage in connection with any continuation, renewal, or reinstatement of the policy following any lapse thereof, or with respect to any other policy that extends, changes, supersedes, or replaces the policy of residential property insurance.

(c) The offer may contain additional provisions not in conflict with or in derogation of this section.

(d) The commissioner may approve modifications to the language prescribed in subdivision (a) only if all of the following conditions are met:

(1) The modifications are not in conflict with or in derogation of any provision of this section or Section 10089.

(2) The modifications accurately describe the coverage provided by the policy being offered.

(3) The modifications are strictly limited to necessary changes so that the modified offer is otherwise identical to the offer prescribed in subdivision (a).

(e) Use of the language prescribed by this section, or modified language approved pursuant to subdivision (d), shall constitute compliance with the requirements of Section 10081 by an insurer subject thereto.

(f) (1) If an insurer issues or causes to be issued a policy with earthquake coverages other than the coverages specified in subdivisions (a) and (b) of Section 10089, pursuant to a rate application approved by the commissioner in accordance with subdivision (c) of Section 10089, no further or other offer of earthquake coverage as specified in subdivisions (a) and (b) of Section 10089 and no further or other notice of noncoverage is required by the insurer if both of the following apply:

(A) A renewal of that policy is offered.

(B) A written notice is provided with that renewal regarding additional earthquake coverage that is available.

(2) The form of the written notice in paragraph (1) shall be filed with the commissioner at least 30 days before its first use. The form shall not be used if the commissioner disapproves the form of the written notice within that period for being misleading or incomplete.

(g) This section shall become operative on January 1, 2019.

SEC. 3. Section 10086 of the Insurance Code, as added by Section 5 of Chapter 419 of the Statutes of 2014, is amended to read:

10086. (a) If an offer of earthquake coverage, made pursuant to Section 10081, is accepted, the coverage shall be continued at the applicable rates and conditions for the policy term, provided the policy of residential property insurance is not terminated by the named insured or insurer.

(1) At any renewal, an insurer may modify the terms and conditions of an existing policy, rider, or endorsement providing coverage against loss

or damage caused by the peril of earthquake if the modified terms and conditions provide the minimum coverages required by Section 10089.

(2) If the modification referenced in paragraph (1) reduces or substantially differs from the coverage previously provided, an insurer shall provide the insured with the renewal offer required by Section 10083 and a stand-alone document stating the changes in the terms and conditions of the insured's existing policy, rider, or endorsement. The offer of renewal may be made electronically pursuant to Section 38.5. Proof of mailing of the offer of renewal by first-class mail to a named insured at the mailing address shown on the policy or application, or proof consistent with Section 38.5 that the offer of renewal of coverage was sent to the named insured or applicant by electronic transmission, creates a conclusive presumption that the offer of renewal was provided. The stand-alone document shall include the following statement in 14-point boldface type:

“THE COVERAGE IN THE POLICY WE ARE OFFERING YOU WITH THIS RENEWAL HAS BEEN REDUCED, AND SUBSTANTIALLY DIFFERS FROM THE COVERAGES PROVIDED BY YOUR HOMEOWNERS’ POLICY. INSURANCE COMPANIES ARE ALLOWED TO RENEW EARTHQUAKE INSURANCE POLICIES WITH COVERAGE THAT IS REDUCED FROM THE COVERAGE YOU PREVIOUSLY PURCHASED. YOU MAY REQUEST A SAMPLE COPY OF THIS NEW POLICY TO REVIEW PRIOR TO MAKING A DECISION TO ACCEPT THIS RENEWAL, AND WE WILL MAIL OR DELIVER IT TO YOU WITHIN 14 DAYS OF YOUR REQUEST. A REQUEST FOR THE SAMPLE COPY SHALL NOT CHANGE OR EXTEND THE POLICY EXPIRATION DATE SPECIFIED IN THE RENEWAL NOTICE. A SUMMARY OF THE CHANGES IS INCLUDED WITH THIS NOTICE.”

(3) The commissioner shall approve the offer of renewal at the time he or she approves the policy. The offer of renewal shall include the information contained in subdivision (a) of Section 10083, and may be included with the renewal notice in standard type.

(4) The commissioner may approve a substantially similar form of the offer of renewal if necessary to accurately disclose relevant information to the policyholder.

(b) Nothing in this section shall preclude the named insured from terminating the earthquake coverage at any time.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 3.5. Section 10086 of the Insurance Code, as added by Section 5 of Chapter 419 of the Statutes of 2014, is repealed.

SEC. 4. Section 10086 of the Insurance Code, as amended by Section 6 of Chapter 419 of the Statutes of 2014, is amended to read:

10086. (a) If an offer of earthquake coverage, made pursuant to Section 10081, is accepted, the coverage shall be continued at the applicable rates

and conditions for the policy term, provided the policy of residential property insurance is not terminated by the named insured or insurer.

(1) At any renewal, an insurer may modify the terms and conditions of an existing policy, rider, or endorsement providing coverage against loss or damage caused by the peril of earthquake if the modified terms and conditions provide the minimum coverages required by Section 10089.

(2) If the modification referenced in paragraph (1) reduces or substantially differs from the coverage previously provided, an insurer shall provide the insured with the renewal offer required by Section 10083 and a stand-alone document stating the changes in the terms and conditions of the insured's existing policy, rider, or endorsement. The stand-alone document shall include the following statement in 14-point boldface type:

“THE COVERAGE IN THE POLICY WE ARE OFFERING YOU WITH THIS RENEWAL HAS BEEN REDUCED, AND SUBSTANTIALLY DIFFERS FROM THE COVERAGES PROVIDED BY YOUR HOMEOWNERS’ POLICY. INSURANCE COMPANIES ARE ALLOWED TO RENEW EARTHQUAKE INSURANCE POLICIES WITH COVERAGE THAT IS REDUCED FROM THE COVERAGE YOU PREVIOUSLY PURCHASED. YOU MAY REQUEST A SAMPLE COPY OF THIS NEW POLICY TO REVIEW PRIOR TO MAKING A DECISION TO ACCEPT THIS RENEWAL, AND WE WILL MAIL OR DELIVER IT TO YOU WITHIN 14 DAYS OF YOUR REQUEST. A REQUEST FOR THE SAMPLE COPY SHALL NOT CHANGE OR EXTEND THE POLICY EXPIRATION DATE SPECIFIED IN THE RENEWAL NOTICE. A SUMMARY OF THE CHANGES IS INCLUDED WITH THIS NOTICE.”

(3) The commissioner shall approve the form of the offer of renewal at the time he or she approves the policy. The offer of renewal shall include the information contained in subdivision (a) of Section 10083, and may be included with the renewal notice in standard type.

(4) The commissioner may approve a substantially similar form of the offer of renewal if necessary to accurately disclose relevant information to the policyholder.

(b) Nothing in this section shall preclude the named insured from terminating the earthquake coverage at any time.

(c) This section shall become operative on January 1, 2019.

SEC. 4.5. Section 10086 of the Insurance Code, as amended by Section 6 of Chapter 419 of the Statutes of 2014, is amended to read:

10086. (a) If an offer of earthquake coverage, made pursuant to Section 10081, is accepted, the coverage shall be continued at the applicable rates and conditions for the policy term, provided the policy of residential property insurance is not terminated by the named insured or insurer.

(1) At any renewal, an insurer may modify the terms and conditions of an existing policy, rider, or endorsement providing coverage against loss or damage caused by the peril of earthquake if the modified terms and conditions provide the minimum coverages required by Section 10089.

(2) If the modification referenced in paragraph (1) reduces or substantially differs from the coverage previously provided, an insurer shall provide the insured with the renewal offer required by Section 10083 and a stand-alone document stating the changes in the terms and conditions of the insured's existing policy, rider, or endorsement. The stand-alone document shall include the following statement in 14-point boldface type:

“THE COVERAGE IN THE POLICY WE ARE OFFERING YOU WITH THIS RENEWAL HAS BEEN REDUCED, AND SUBSTANTIALLY DIFFERS FROM THE COVERAGES PROVIDED BY YOUR HOMEOWNERS’ POLICY. INSURANCE COMPANIES ARE ALLOWED TO RENEW EARTHQUAKE INSURANCE POLICIES WITH COVERAGE THAT IS REDUCED FROM THE COVERAGE YOU PREVIOUSLY PURCHASED. YOU MAY REQUEST A SAMPLE COPY OF THIS NEW POLICY TO REVIEW PRIOR TO MAKING A DECISION TO ACCEPT THIS RENEWAL, AND WE WILL MAIL OR DELIVER IT TO YOU WITHIN 14 DAYS OF YOUR REQUEST. A REQUEST FOR THE SAMPLE COPY SHALL NOT CHANGE OR EXTEND THE POLICY EXPIRATION DATE SPECIFIED IN THE RENEWAL NOTICE. A SUMMARY OF THE CHANGES IS INCLUDED WITH THIS NOTICE.”

(3) The commissioner shall approve the form of the offer of renewal at the time he or she approves the policy. The offer of renewal shall include the information contained in subdivision (a) of Section 10083, and may be included with the renewal notice in standard type.

(4) The commissioner may approve a substantially similar form of the offer of renewal if necessary to accurately disclose relevant information to the policyholder.

(b) Nothing in this section shall preclude the named insured from terminating the earthquake coverage at any time.

SEC. 5. Section 10087 of the Insurance Code, as amended by Section 16 of Chapter 369 of the Statutes of 2013, is amended to read:

10087. (a) As used in this chapter, “policy of residential property insurance” shall mean a policy insuring individually owned residential structures of not more than four dwelling units, individually owned condominium units, or individually owned mobilehomes, and their contents, located in this state and used exclusively for residential purposes or a tenant’s policy insuring personal contents of a residential unit located in this state. “Policy of residential property insurance,” as defined, shall not include insurance for real property or its contents used for any commercial, industrial, or business purpose, except a structure of not more than four dwelling units rented for individual residential purposes. A policy that does not include any of the perils insured against in a standard fire policy shall not be included in the definition of “policy of residential property insurance.”

(b) Proof of mailing of any offer, disclosure, or document required to be delivered by this chapter by first-class mail addressed to a named insured or applicant at the mailing address shown on the policy or application, or

proof consistent with Section 38.5 that the offer of coverage was sent to the named insured or applicant by electronic transmission, shall create a conclusive presumption that the offer was made or that the disclosure or document was delivered as required. If an offer, disclosure, or document required to be delivered by this chapter is not mailed, but is hand delivered to the insured, the insured's signed receipt creates a conclusive presumption that the offer was provided or that the disclosure or document was delivered as required.

(c) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 6. Section 10087 of the Insurance Code, as added by Section 17 of Chapter 369 of the Statutes of 2013, is amended to read:

10087. (a) As used in this chapter "policy of residential property insurance" shall mean a policy insuring individually owned residential structures of not more than four dwelling units, individually owned condominium units, or individually owned mobilehomes, and their contents, located in this state and used exclusively for residential purposes or a tenant's policy insuring personal contents of a residential unit located in this state. "Policy of residential property insurance," as defined, shall not include insurance for real property or its contents used for any commercial, industrial or business purpose, except a structure of not more than four dwelling units rented for individual residential purposes. A policy that does not include any of the perils insured against in a standard fire policy shall not be included in the definition of "policy of residential property insurance."

(b) Proof of mailing of any offer, disclosure, or document required to be delivered by this chapter by first-class mail addressed to a named insured or applicant at the mailing address shown on the policy or application shall create a conclusive presumption that the offer was made or that the disclosure or document was delivered as required. If an offer, disclosure, or document required to be delivered by this chapter is not mailed, but is hand delivered to the insured, the insured's signed receipt creates a conclusive presumption that the offer was provided or that the disclosure or document was delivered as required.

(c) This section shall become operative on January 1, 2019.

SEC. 7. (a) Section 3.5 of this bill, which repeals Section 10086 of the Insurance Code, as added by Section 5 of Chapter 419 of the Statutes of 2014, shall become operative only if Assembly Bill 2591 of the 2015–16 Regular Session is enacted and takes effect on or before January 1, 2017, in which case Section 3 of this bill shall not become operative.

(b) Section 4.5 of this bill, which amends Section 10086 of the Insurance Code, as amended by Section 6 of Chapter 419 of the Statutes of 2014, shall become operative only if Assembly Bill 2591 of the 2015–16 Regular Session is enacted and takes effect on or before January 1, 2017, in which case Section 4 of this bill shall not become operative.

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