

**ASSEMBLY BILL**

**No. 1072**

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**Introduced by Assembly Member Daly**

February 27, 2015

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An act to repeal and add Chapter 10A (commencing with Section 11400) of Part 2 of Division 2 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1072, as introduced, Daly. Insurance: firefighters or police officers' benefit and relief associations.

(1) Existing law generally provides for the regulation of insurers by the Department of Insurance pursuant to laws set forth in the Insurance Code. Existing law authorizes the Insurance Commissioner to make certain examinations, investigations, and prosecutions and, upon making a determination of the existence of certain conduct, conditions, or grounds, to issue orders reasonably necessary to correct, eliminate, or remedy the conduct, conditions, or grounds. Existing law also prohibits insurers from engaging in unfair or deceptive acts or practices, including advertising insurance that an insurer will not sell. A violation of that prohibition is a misdemeanor.

Existing law exempts from the requirements set forth in the Insurance Code firemen's, policemen's, and peace officers' benefit and relief associations that comply with specified criteria, including, among other things, a requirement that the membership consist solely of peace officers, members of police or fire departments, and emergency medical personnel employed by fire departments, as specified. Existing law prohibits an association from operating or doing business in the state

without a certificate of authority, and imposes a filing fee of \$590 for the application for that certificate.

This bill would repeal those provisions and would enact new provisions governing those entities. Among other things, the bill would revise requirements governing membership, by authorizing these associations to consist of a majority of the members described above.

The bill would also impose new reporting, reserve, and disclosure requirements upon certain associations that offer long-term benefits, as defined. The bill would authorize the commissioner to examine the operations, affairs, transactions, conduct, and financial condition of an association, and to carry out other enforcement duties with respect to these associations. The bill would require these associations to pay a filing fee of \$590 for the application for the certificate, and an annual fee of \$350, thereby imposing taxes, and would require these associations to pay \$347 for filing financial information. The bill would also make these associations subject to the prohibitions against unfair or deceptive acts or practices. By expanding the scope of a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

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

- 1 SECTION 1. Chapter 10A (commencing with Section 11400)
- 2 of Part 2 of Division 2 of the Insurance Code is repealed.
- 3 SEC. 2. Chapter 10A (commencing with Section 11400) is
- 4 added to Part 2 of Division 2 of the Insurance Code, to read:

1 CHAPTER 10A. FIREFIGHTERS', POLICE OFFICERS', OR PEACE  
2 OFFICERS' BENEFIT AND RELIEF ASSOCIATIONS

3  
4 Article 1. Definitions and Scope  
5

6 11400. (a) For purposes of this chapter, the following  
7 definitions apply:

8 (1) "ERISA" refers to the Employee Retirement Income Security  
9 Act of 1974 (Public Law 93-406).

10 (2) "Long-term benefits" means scheduled member benefits  
11 that are eligible to be paid for a period exceeding one year in  
12 duration. These benefits include, without limitation, any benefit  
13 providing coverage for loss of income as a result of disability, as  
14 described in Section 799.01, or for long-term care insurance, as  
15 defined in Section 10231.2, or any similar coverage or benefit  
16 providing for payments which may last for a period longer than  
17 one year.

18 (b) Firefighters', police officers', or peace officers' benefit and  
19 relief associations now existing, or which may be formed on and  
20 after January 1, 2016, for the purpose of aiding their members or  
21 dependents of their members in case of sickness, accident, distress,  
22 or death, shall be subject to the provisions of this chapter.

23 (c) An association that offers benefits, and that operates in, and  
24 accepts members as described in Section 11403 only from a single  
25 government entity, shall comply with this article, but is not subject  
26 to Article 2 (commencing with Section 11408). If an association  
27 operates strictly in accordance with this article, it shall not be  
28 subject to any other provision of this code, nor to any law of this  
29 state relating to insurance, whether now existing or hereafter  
30 enacted, except as expressly provided in this chapter.

31 (d) (1) An association that either offers long-term benefits, or  
32 operates in and accepts members as described in Section 11403  
33 from more than one government entity, or that does both, shall  
34 comply with this chapter, except that the association may receive  
35 support from bona fide employee organizations which represent  
36 a majority of 50 percent of the membership plus one member of  
37 the association's members in negotiations with their employers.

38 (2) An association described in paragraph (1) shall also comply  
39 with Article 2 (commencing with Section 11408), except as  
40 otherwise provided in paragraph (3).

1 (3) An association that arranges at all times to have all long-term  
2 benefits provided completely and continuously by an insurer  
3 admitted in this state for the class of benefits offered shall not be  
4 subject to Article 2 (commencing with Section 11408).

5 (e) The commissioner may take regulatory action pursuant to  
6 any remedy specified in this code against any association which  
7 fails to comply with the applicable provisions of this chapter.

8 (f) The commissioner may adopt reasonable rules and  
9 regulations for the implementation and administration of this  
10 chapter.

11 (g) This chapter shall not be construed in a manner that conflicts  
12 with ERISA. Associations governed by ERISA, as amended, shall  
13 also comply with this chapter, except to the extent that the  
14 association reasonably believes that compliance with this chapter  
15 would conflict or interfere with or unduly burden the association's  
16 obligation to comply with ERISA.

17 11401. An association shall not operate or do business in this  
18 state without a certificate of authority. The commissioner shall  
19 issue a certificate of authority to an association unless he or she  
20 determines, after examination, that it does not comply with the  
21 applicable provisions of this chapter. The filing fee for the  
22 application for the certificate of authority shall be five hundred  
23 ninety dollars (\$590). An association shall apply for a certificate  
24 no later than 18 months after its establishment or the effective date  
25 of this chapter, whichever is later. An association shall be permitted  
26 to operate or do business in this state during the first 18 months  
27 of its establishment and while its application for a certificate of  
28 authority is pending, provided the association complies in good  
29 faith with this chapter.

30 11402. The association may be incorporated or unincorporated,  
31 but, if incorporated, it shall neither issue nor be authorized to issue  
32 shares of stock.

33 11403. The membership of an association shall consist solely  
34 of the following or any combination thereof:

35 (a) (1) A majority consisting of at least 50 percent of the  
36 membership plus one member of the association's members of  
37 police departments of municipal or public corporations or districts.

38 (2) Other associations that are each comprised of a majority  
39 consisting of at least 50 percent of the membership plus one  
40 member of police departments of municipal or public corporations

1 or districts that meet the eligibility criteria to participate in an  
2 association and that satisfy the criteria to participate in an  
3 association that intends to comply with the requirements of this  
4 chapter and has been admitted to participate by the association.

5 (b) (1) A majority consisting of at least 50 percent of the  
6 membership plus one member of the association's members of fire  
7 departments of municipal or public corporations or districts.

8 (2) Other associations that are each comprised of a majority  
9 consisting of at least 50 percent of the membership plus one  
10 member of the association's members of fire departments of  
11 municipal or public corporations or districts and that satisfy the  
12 criteria to participate in an association that intends to comply with  
13 the requirements of this chapter and has been admitted to  
14 participate by the association.

15 (c) (1) A majority consisting of at least 50 percent of the  
16 membership plus one member of the association's peace or law  
17 enforcement officers who are regular and salaried officers or  
18 employees of the state or of a single county or other political  
19 subdivision or public or municipal corporation.

20 (2) Other associations that are each comprised of a majority  
21 consisting of at least 50 percent of the membership plus one  
22 member of the peace or law enforcement officers who are regular  
23 and salaried officers or employees of the state or of a single county  
24 or other political subdivision or public or municipal corporation  
25 and that satisfy the criteria to participate in an association that  
26 intends to comply with the requirements of this chapter and has  
27 been admitted to participate by the association.

28 (d) (1) A majority consisting of at least 50 percent of the  
29 membership plus one member of the association's persons who  
30 are emergency medical services personnel and employed by a fire  
31 department of a city, county, or district.

32 (2) Other associations that are each comprised of a majority  
33 consisting of at least 50 percent of the membership plus one  
34 member of the peace or law enforcement officers who are  
35 emergency medical services personnel and employed by a fire  
36 department of a city, county, or district and that satisfy the criteria  
37 to participate in an association that intends to comply with the  
38 requirements of this chapter and has been admitted to participate  
39 by the association.

1 (e) A majority consisting of at least 50 percent of the  
2 membership plus one member of the association’s persons who at  
3 the time of becoming members of the association were qualified  
4 pursuant to subdivision (a), (b), (c), or (d).

5 11404. The association shall not pay or promise or agree to  
6 pay, either directly or indirectly, any consideration of any nature  
7 for the solicitation or procuring of members or applications for  
8 membership.

9 11405. The membership of the association who are eligible to  
10 vote shall elect the trustees or directors, or the governing body of  
11 the association, by whatever name their office is known or  
12 designated.

13 11406. Moneys or property directly or indirectly contributed  
14 to the association by its members shall not be paid out as benefits  
15 to any persons other than its members, their dependents, or  
16 beneficiaries nominated in writing by the members or as provided  
17 by a written plan document governing the payment of that benefit.

18 11407. The association shall be supported mainly by  
19 contributions from its members, whether in the form of fees, dues,  
20 assessments, or otherwise, and by donations made to it from time  
21 to time and from any investment earnings on those contributions.

22

23 Article 2. Benefit and Relief Associations Providing Long-Term  
24 Benefits or Comprised of Multiple Government Subdivisions:  
25 Reserve Requirements

26

27 11408. An association that is subject to this article shall do all  
28 of the following:

29 (a) Operate in accordance with sound actuarial principles, and  
30 be able to meet its obligation to provide the benefits that it promises  
31 to its members.

32 (b) Establish and maintain appropriate loss and loss adjustment  
33 reserves determined by sound actuarial principles as provided in  
34 Section 11410 to adequately fund the present value of expected  
35 future payments provided that the reserve on all policies to which  
36 the method or basis applied is not less in the aggregate than the  
37 required reserves as determined in Section 11409 or as determined  
38 by a qualified actuary that satisfies the requirements of Section  
39 10489.15 and is based on the standards adopted by the Actuarial  
40 Standards Board.

1 (c) Maintain a contingency reserve of not less than 20 percent  
2 of the greater of the past 12 months' premium or the expected  
3 annual premium for the next 12 months.

4 (d) Hold all reserves and other funds for the payment and  
5 administration of benefits provided pursuant to this chapter in trust,  
6 to be used for the exclusive purpose for which they were intended,  
7 which may include necessary and reasonable administrative costs.

8 11409. (a) Reserves required by this article shall be invested  
9 as prescribed in this subdivision and subdivision (b). An association  
10 shall maintain at least 25 percent of the contingency reserve  
11 required by subdivision (d) of Section 11408 in investments  
12 specified in Article 3 (commencing with Section 1170) of Chapter  
13 2 of Part 2 of Division 1 and in Section 1192.5.

14 (b) The balance of the assets of the association in an amount  
15 equal to the reserves may be invested in assets permissible for  
16 investment by multiple employer welfare arrangements pursuant  
17 to subdivision (b) of Section 742.245.

18 (c) The commissioner may, after a hearing, by written order,  
19 require the disposal of any investment made pursuant to subdivision  
20 (b) if the association has failed to maintain cash or liquid assets  
21 sufficient to meet its claims and any other contractual obligations.

22 11410. (a) Each association that is subject to this article shall  
23 file with the commissioner, no later than the last day of the  
24 11-month period after the end of each calendar year, or the last  
25 day of the 11-month period after the end of each fiscal year not  
26 on a calendar year basis, or within 30 days of the filing of the  
27 association's annual return with the United States Department of  
28 Labor, whichever is earlier, financial statements audited by a  
29 certified public accountant. Furthermore, no later than May 1 of  
30 every third calendar year or the first day of the fifth month after  
31 the end of each third fiscal year not on a calendar year basis,  
32 beginning January 1, 2014, an actuarial opinion shall be rendered  
33 by a qualified actuary that satisfies the requirements of Section  
34 10489.15. The opinion shall be based on standards adopted from  
35 time to time by the Actuarial Standards Board and on any  
36 additional standards that the commissioner may by regulation  
37 prescribe. For the purposes of this section, "qualified actuary"  
38 means a member in good standing of the American Academy of  
39 Actuaries who meets the requirements set forth in regulations of  
40 the commissioner.

1 (b) Each association that is subject to this article shall provide  
2 to its members a summary annual report within the meaning of  
3 ERISA detailing the association's year-end financial condition.  
4 The report shall be provided to members in the time and manner  
5 required by ERISA. The association shall also provide a copy of  
6 the report to the commissioner.

7 11411. The commissioner or any persons designated by the  
8 commissioner shall have the power to examine the operations,  
9 affairs, transactions, conduct, and financial condition of an  
10 association, and for that purpose shall have access to all books,  
11 records, and documents that relate to the business of the association  
12 that is regulated by this chapter during the normal and regular  
13 business hours of the association, and may examine under oath its  
14 trustees, officers, agents, and employees in relation to the  
15 operations, affairs, transactions, conduct, and condition of the  
16 association. If, after a duly noticed hearing with the association  
17 during which the association is given a full and fair opportunity  
18 to address the written issues or concerns raised by the  
19 commissioner following his or her examination of the association's  
20 operations, affairs, transactions, conduct, and financial condition  
21 of the association, the commissioner determines that the  
22 association's operations, affairs, transactions, conduct, or financial  
23 condition do not comply with requirements of this chapter, the  
24 commissioner may apply any remedies authorized by this code.  
25 Examinations will be conducted at the expense of the department.

26 11412. (a) Upon reasonable request of the commissioner, and  
27 at reasonable intervals as prescribed by him or her, any association  
28 that reasonably appears to the commissioner to require immediate  
29 regulatory attention based on written evidence or other information  
30 shall provide to the commissioner supplemental accounting,  
31 financial, and actuarial information. The commissioner shall  
32 provide all written evidence or other information that forms the  
33 basis of the commissioner's request to an association at the time  
34 the request is made. The commissioner may request that an  
35 association select and retain an independent certified public  
36 accountant, a certified public accountant corporation, an actuarial  
37 corporation, or an independent actuary satisfactory to the  
38 commissioner, if the association has not already retained experts  
39 of this type who meet the then-current regulatory standards of the  
40 actuarial society. The commissioner, at the expense of the

1 association, may select or retain an independent certified public  
2 accountant, a certified public accountant corporation, an actuarial  
3 corporation, or an independent actuary, if the association does not  
4 within a reasonable time make the selection as requested by the  
5 commissioner.

6 (b) The provisions of Sections 925.1 to 925.4, inclusive, shall  
7 apply to all proceedings under this section.

8 11413. Books, records, and documents pertaining to the  
9 business of an association that is subject to this article shall be  
10 maintained either by the association or by its administrator if any,  
11 or both, for a period of five years after the end of the year when  
12 the transaction evidenced thereby ends. "Administrator," as used  
13 in this section, has the same meaning as that contained in Section  
14 1002(16)(A) of Title 29 of the United States Code.

15 11414. An association that is subject to this article shall not  
16 avoid the applicability of this article by making statements in any  
17 contract for benefits, or by any other means, to the effect that  
18 payment of benefits to any member when eligible for benefits  
19 based on the date of injury (and provided the member has satisfied  
20 the association's reasonable claims procedure) is contingent upon  
21 the availability of assets, moneys, or other financial resources  
22 sufficient to make the payment. This article does not provide for  
23 the vesting of any benefit that is not already in pay status and does  
24 not affect an association's right to amend or terminate a plan in  
25 whole or in part.

26 11415. (a) All contracts that are not regulated by the  
27 department for benefits, and certificates evidencing coverage  
28 thereunder, shall include the following disclosure, in capital letters  
29 and in a minimum of 12-point font:  
30

31 THE ASSOCIATION DOES NOT PARTICIPATE IN ANY  
32 OF THE INSURANCE GUARANTEE FUNDS CREATED BY  
33 CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL  
34 NOT PAY YOUR CLAIMS OR PROTECT YOUR BENEFITS  
35 IF THE ASSOCIATION BECOMES INSOLVENT AND IS  
36 UNABLE TO MAKE PAYMENTS AS PROMISED.

37 THE ASSOCIATION IS NOT REGULATED BY THE STATE  
38 OF CALIFORNIA TO THE SAME EXTENT AS INSURERS  
39 THAT PARTICIPATE IN ANY OF THE INSURANCE  
40 GUARANTEE FUNDS CREATED BY CALIFORNIA LAW,

1 AND ARE LICENSED UNDER OTHER PROVISIONS OF THE  
2 CALIFORNIA INSURANCE CODE.

3

4 (b) An association shall, upon written request from any member,  
5 provide to that member a copy of the contract for benefits,  
6 certificate evidencing coverage, or other plan document that  
7 describes the benefits being provided to that member, within 30  
8 days of the request.

9 (c) Members shall be given notice of any material benefit plan  
10 amendment within the time and in the manner required for  
11 Summary Material Modifications under ERISA.

12 (d) If an association maintains an Internet Web site, the  
13 association shall provide an electronic link within that Internet  
14 Web site where both members and prospective members can see  
15 the most current benefit plan documents and the most recent  
16 certified audited financial statements that the association is required  
17 to file with the United States Department of Labor, Internal  
18 Revenue Service, or the Franchise Tax Board.

19 11416. (a) An association that elects to cease operation in this  
20 state shall be governed by and comply with the provisions of  
21 Sections 1070 to 1076, inclusive.

22 (b) Notwithstanding subdivision (a), if an association is a  
23 tax-exempt voluntary employee benefit association (VEDA), it  
24 shall cease operations in accordance with the rules applicable to  
25 VEDA's and ERISA plans.

26 11417. An association shall owe and pay the following annual  
27 fees, in addition to any other remuneration required by law:

28 (a) An annual fee of three hundred fifty dollars (\$350) in  
29 advance, that shall be due on each March 1, and shall be delinquent  
30 on and after April 1.

31 (b) An annual fee of three hundred forty-seven dollars (\$347)  
32 for filing of financial information, due when the information is  
33 filed pursuant to Section 11410.

34 11418. The commissioner may exercise stop order power over  
35 an association that is subject to this article, pursuant to Sections  
36 1065.1 to 1065.7, inclusive.

37 11419. (a) An association shall continue to provide long-term  
38 benefits to any individual or entity that is no longer a member but  
39 became entitled to benefits prior to the end of membership, as if

1 that individual or entity remained a member, provided the member  
2 satisfied the association’s reasonable claims procedure.

3 (b) Benefits may be limited to the duration of the benefit period,  
4 if any, or to payment of the maximum benefits, and may be subject  
5 to any policy waiting period, and all other applicable provisions  
6 of the policy consistent with this section, including any reasonable  
7 claims procedure.

8 (c) An association may stop providing benefits to an individual  
9 or entity specified in subdivision (a) upon receipt of written  
10 confirmation from a successor association or admitted insurer that  
11 the individual or entity will begin receiving those benefits without  
12 lapse. Notwithstanding the foregoing, an association may reduce  
13 or coordinate the member’s benefit with the successor association’s  
14 plan or insurer’s policy if the association has a reasonable belief  
15 that the member is receiving or is eligible for benefits under the  
16 successor plan or insurance policy.

17 (d) Notwithstanding any other provision of this chapter, any  
18 individual or entity that is no longer a member of the association,  
19 but, while still a member, paid all funds or contributions necessary  
20 to be entitled to paid-up, long-term benefits, shall be entitled to  
21 receive benefits as if that individual or entity remained a member,  
22 unless the obligation to pay those benefits is assumed by a  
23 successor association or admitted insurer.

24 11419.5. An association that is subject to this article is subject  
25 to the provisions of Sections 790 to 790.09, inclusive.

26 11419.6. (a) (1) Any individual or entity aggrieved by an  
27 action taken by an association regarding payment of benefits, or  
28 entitlement to benefits, or eligibility to participate in a plan  
29 sponsored by an association, may file a complaint or submit an  
30 inquiry to the commissioner pursuant to the applicable provisions  
31 of Sections 12921.1 to 12921.4, inclusive.

32 (2) Notwithstanding paragraph (1), for an association whose  
33 plan provides benefits that are subject to this chapter that are also  
34 subject to ERISA, an individual or entity may not file a complaint  
35 or submit an inquiry regarding the payment of those benefits, or  
36 entitlement to benefits, or eligibility to participate in a plan  
37 sponsored by an association, to the commissioner until the  
38 individual or entity has exhausted the association’s internal claims  
39 and appeals procedure.

1 (b) An individual or entity may file a complaint or submit an  
2 inquiry to the commissioner regarding an association’s compliance  
3 with Section 11401, 11402, 11403, 11404, 11405, 11406, 11407,  
4 11408, 11409, 11410, or 11415 pursuant to the applicable  
5 provisions of Sections 12921.1 to 12921.4, inclusive.

6 11419.7. If, upon sufficient complaint or inquiry as provided  
7 in subdivision (a) or (b) of Section 11419.6, the commissioner has  
8 good cause to believe that an association has violated any of the  
9 provisions of this chapter, the commissioner may hold a public  
10 hearing in connection with those violations. This hearing may be  
11 in accordance with the administrative adjudication provisions of  
12 the Administrative Procedure Act (Chapter 4.5 (commencing with  
13 Section 11400) of, and Chapter 5 (commencing with Section  
14 11500) of, Part 1 of Division 3 of Title 2 of the Government Code),  
15 and the commissioner shall have all the powers granted pursuant  
16 to these provisions. For any complaint or inquiry as provided in  
17 subdivision (a) of Section 11419.6 regarding the payment of  
18 benefits, or entitlement to benefits, the commissioner shall not  
19 have the power to direct the payment of any benefit to a member  
20 unless the terms of the plan governing the benefit expressly allows  
21 for that payment.

22 11419.8. If, after a hearing pursuant to Section 11419.7  
23 regarding a complaint or inquiry as provided in Section 11419.6  
24 and the administrative adjudication provisions of the  
25 Administrative Procedure Act (Chapter 4.5 (commencing with  
26 Section 11400) of, and Chapter 5 (commencing with Section  
27 11500) of, Part 1 of Division 3 of Title 2 of the Government Code),  
28 the commissioner finds that an association has violated the  
29 provisions of this chapter, the commissioner may, in addition to  
30 other penalties and remedies provided in this code, suspend or  
31 revoke, in whole or in part, the certificate of authority of any  
32 association granted pursuant to Section 11401.

33 SEC. 3. No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 the only costs that may be incurred by a local agency or school  
36 district will be incurred because this act creates a new crime or  
37 infraction, eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section 17556 of  
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

O