

AMENDED IN SENATE AUGUST 19, 2015

AMENDED IN SENATE JULY 2, 2015

AMENDED IN SENATE JUNE 25, 2015

AMENDED IN SENATE JUNE 10, 2015

AMENDED IN ASSEMBLY APRIL 28, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1072

Introduced by Assembly Member Daly

February 27, 2015

An act to add and repeal Sections 11401.5 and 11401.6 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

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

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 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.

This bill would require every association that holds a certificate of authority and that issues long-term disability or long-term care policies or contracts, as specified, to submit to the commissioner the opinion, as specified, of a qualified actuary as to whether the reserves and related actuarial items that support the policies or contracts issued are ~~based on assumptions that expected to be adequate to satisfy contractual provisions, are consistent with prior reported amounts, based on reasonable assumptions, and are based on specified actuarial standards and procedures.~~ *standards.* The bill would also require an association seeking a certificate of authority to file an opinion that meets specified requirements and that establishes that it would have adequate resources to provide benefits, as specified, as required to satisfy its proposed contractual obligations. The bill would recognize that information submitted by a company pursuant to those provisions and in the possession or control of the department as *proprietary and containing trade secrets. The bill would require that information to be confidential and privileged, exempt from disclosure by the commissioner pursuant to the California Public Records Act, and not subject to subpoena or discovery from the commissioner or admissible into evidence in a private civil action if obtained from the commissioner.* The bill would require the commissioner to notify the association of the deficiencies in the filing if the association fails to provide an opinion and supporting memoranda to the commissioner that meets the requirements of the bill, as specified. The bill would require an association that self-funds all or part of the benefits to include specified disclosure language in all contracts that are not regulated by the department and in certificates evidencing coverage under those contracts. The bill would also require the commissioner, if he or she determines that the laws governing these associations are inadequate to protect the interests of the members of the associations, to develop and deliver recommendations to the Assembly Committee on Insurance and the Senate Committee on Insurance regarding changes in the law ~~that would better~~ *necessary to* protect the interests of members of the associations. The provisions of the bill would remain in effect only until December 31, 2018, and as of that date would be repealed.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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. Section 11401.5 is added to the Insurance Code,
2 to read:
3 11401.5. (a) (1) Each association that holds a certificate of
4 authority pursuant to this chapter and that issues long-term
5 disability or long-term care policies or contracts shall submit to
6 the commissioner the opinion of a qualified actuary as to whether
7 the reserves and related actuarial items that support the policies
8 or contracts issued pursuant to this chapter, including policies and
9 contracts issued by entities established by these associations that
10 provide benefits described in this chapter, ~~are based on assumptions~~
11 ~~that expected to be adequate to satisfy contractual provisions, are~~
12 ~~consistent with prior reported amounts, based on reasonable~~
13 ~~assumptions, and are based on actuarial standards and procedures~~
14 ~~established of practice published by the American Academy of~~
15 Actuaries and the Actuarial Standards Board. An association that
16 holds a certificate of authority pursuant to this chapter shall file
17 its opinion no later than July 1, 2016. The opinion shall have been
18 completed no earlier than December 31, 2013.
19 (2) An association is considered to have issued a long-term care
20 or disability policy or contract if it self-funds all or part of the
21 resulting obligation. An association that markets long-term policies
22 or contracts issued by an insurer that is admitted by the department
23 to offer insurance products in the state is exempt from this reporting
24 requirement.
25 (3) An association seeking a certificate of authority pursuant to
26 this chapter shall file an opinion, to the extent feasible, that
27 establishes that it would have adequate resources to provide
28 benefits described in this chapter as required to satisfy its proposed
29 contractual obligations.

1 (b) The opinion required by subdivision (a) shall include ~~an~~
 2 ~~opinion with supporting memoranda consistent with~~ *from* the same
 3 qualified actuary as to whether the reserves and related actuarial
 4 items held in support of the policies and contracts, when considered
 5 in light of the assets held by the association with respect to the
 6 reserves and related actuarial items, including, but not limited to,
 7 the investment earnings on the assets and the considerations
 8 anticipated to be received and retained under the policies and
 9 contracts, and shall make adequate provision for the association's
 10 obligations under the policies and contracts, including, but not
 11 limited to, the benefits ~~under any and any administrative and~~
 12 ~~operating~~ expenses associated with the policies and contracts.

13 (c) The opinion required by subdivision ~~(b)~~ *(a)* shall be governed
 14 by the following provisions:

15 (1) It shall include ~~a memorandum, in form and substance~~
 16 ~~supporting memoranda~~ consistent with actuarial standards ~~and~~
 17 ~~procedures acceptable to~~ *of practice published by* the American
 18 Academy of Actuaries and the Actuarial Standards ~~Board, in~~
 19 ~~support of the opinion.~~ *Board.*

20 (2) If the association fails to provide an opinion and supporting
 21 memoranda to the commissioner that meets the requirements of
 22 this section, the commissioner shall notify the association of the
 23 deficiencies in the filing, and shall make a specific request that
 24 identifies the issues that should be addressed in an amended filing.
 25 *The requests shall be consistent with actuarial standards of*
 26 *practice published by the American Academy of Actuaries and the*
 27 *Actuarial Standards Board.*

28 (d) If the commissioner determines, after a review of the filings
 29 from the associations, that the laws governing these associations
 30 are inadequate to protect the interests of the members of the
 31 associations, he or she shall, on or before July 1, 2017, develop
 32 and deliver recommendations to the Assembly Committee on
 33 Insurance and the Senate Committee on Insurance regarding
 34 changes in the law ~~that would better~~ *necessary to* protect the
 35 interests of members of the associations.

36 (e) Documents, materials, or other information, including the
 37 opinion with supporting memoranda, submitted pursuant to this
 38 section that are in the possession or control of the Department of
 39 Insurance and that are obtained by, created by, or disclosed to the
 40 commissioner or any other person pursuant to this section, are

1 recognized by this state as being proprietary and to contain trade
2 secrets. Those documents, materials, or other information shall be
3 confidential by law and privileged, shall not be subject to disclosure
4 by the commissioner pursuant to the California Public Records
5 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
6 of Title 1 of the Government Code), and shall not be subject to
7 subpoena or discovery from the commissioner or admissible into
8 evidence, in a private civil action if obtained from the
9 commissioner. The commissioner shall not otherwise make those
10 documents, materials, or other information public without the prior
11 written consent of the association.

12 (f) This section shall remain in effect only until December 31,
13 2018, and as of that date is repealed, unless a later enacted statute,
14 that is enacted before December 31, 2018, deletes or extends that
15 date.

16 SEC. 2. Section 11401.6 is added to the Insurance Code, to
17 read:

18 11401.6. (a) An association that self-funds all or part of the
19 benefits provided under this chapter shall include the following
20 language, or other language approved by the commissioner, in all
21 contracts that are not regulated by the department, and in
22 certificates evidencing coverage under those contracts, in capital
23 letters and in a minimum of 12-point type:
24

25 “ALL OR A PORTION OF THE BENEFITS PROVIDED BY
26 THIS CONTRACT ARE NOT SUBJECT TO REGULATION
27 BY THE CALIFORNIA DEPARTMENT OF INSURANCE, AND
28 THE CONTRACT IS NOT GUARANTEED BY THE
29 CALIFORNIA LIFE AND HEALTH INSURANCE
30 GUARANTEE ASSOCIATION.”
31

32 (b) This section shall remain in effect only until December 31,
33 2018, and as of that date is repealed, unless a later enacted statute,
34 that is enacted before December 31, 2018, deletes or extends that
35 date.

36 SEC. 3. The Legislature finds and declares that Section 1 of
37 this act, which adds Section 11401.5 of the Insurance Code,
38 imposes a limitation on the public’s right of access to the meetings
39 of public bodies or the writings of public officials and agencies
40 within the meaning of Section 3 of Article I of the California

1 Constitution. Pursuant to that constitutional provision, the
2 Legislature makes the following findings to demonstrate the interest
3 protected by this limitation and the need for protecting that interest:
4 In order to protect proprietary information, it is necessary to
5 enact legislation that limits the public's right of access to insurance
6 holding company information that is provided pursuant to Section
7 11401.5 of the Insurance Code.

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