

Assembly Bill No. 1072

Passed the Assembly September 2, 2015

Chief Clerk of the Assembly

Passed the Senate September 1, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 expected to be adequate to satisfy contractual provisions, are based on reasonable assumptions, and are based on specified actuarial 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 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.

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

SECTION 1. Section 11401.5 is added to the Insurance Code, to read:

11401.5. (a) (1) Each association that holds a certificate of authority pursuant to this chapter and that issues long-term disability or long-term care policies or contracts shall submit to the commissioner the opinion of a qualified actuary as to whether the reserves and related actuarial items that support the policies or contracts issued pursuant to this chapter, including policies and

contracts issued by entities established by these associations that provide benefits described in this chapter, are expected to be adequate to satisfy contractual provisions, are based on reasonable assumptions, and are based on actuarial standards of practice published by the American Academy of Actuaries and the Actuarial Standards Board. An association that holds a certificate of authority pursuant to this chapter shall file its opinion no later than July 1, 2016. The opinion shall have been completed no earlier than December 31, 2013.

(2) An association is considered to have issued a long-term care or disability policy or contract if it self-funds all or part of the resulting obligation. An association that markets long-term policies or contracts issued by an insurer that is admitted by the department to offer insurance products in the state is exempt from this reporting requirement.

(3) An association seeking a certificate of authority pursuant to this chapter shall file an opinion, to the extent feasible, that establishes that it would have adequate resources to provide benefits described in this chapter as required to satisfy its proposed contractual obligations.

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

(c) The opinion required by subdivision (a) shall be governed by the following provisions:

(1) It shall include supporting memoranda consistent with actuarial standards of practice published by the American Academy of Actuaries and the Actuarial Standards Board.

(2) If the association fails to provide an opinion and supporting memoranda to the commissioner that meets the requirements of this section, the commissioner shall notify the association of the

deficiencies in the filing, and shall make a specific request that identifies the issues that should be addressed in an amended filing. The requests shall be consistent with actuarial standards of practice published by the American Academy of Actuaries and the Actuarial Standards Board.

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

(e) Documents, materials, or other information, including the opinion with supporting memoranda, submitted pursuant to this section that are in the possession or control of the Department of Insurance and that are obtained by, created by, or disclosed to the commissioner or any other person pursuant to this section, are recognized by this state as being proprietary and to contain trade secrets. Those documents, materials, or other information shall be confidential by law and privileged, shall not be subject to disclosure by the commissioner pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall not be subject to subpoena or discovery from the commissioner or admissible into evidence, in a private civil action if obtained from the commissioner. The commissioner shall not otherwise make those documents, materials, or other information public without the prior written consent of the association.

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

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

11401.6. (a) An association that self-funds all or part of the benefits provided under this chapter shall include the following language, or other language approved by the commissioner, in all contracts that are not regulated by the department, and in

certificates evidencing coverage under those contracts, in capital letters and in a minimum of 12-point type:

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

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

SEC. 3. The Legislature finds and declares that Section 1 of this act, which adds Section 11401.5 of the Insurance Code, imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect proprietary information, it is necessary to enact legislation that limits the public’s right of access to insurance holding company information that is provided pursuant to Section 11401.5 of the Insurance Code.

Approved _____, 2015

Governor