

AMENDED IN ASSEMBLY MARCH 31, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2710

Introduced by Assembly Member Cooley

February 19, 2016

An act to amend, renumber, and add Sections 1063.5 and 1063.14 of, and to repeal Sections 1063.45 and 1063.135 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2710, as amended, Cooley. Insurance: California Insurance Guarantee Association: premium charges.

(1) Existing law creates the California Insurance Guarantee Association (CIGA) and requires all insurers admitted to transact specified insurance lines in this state to become members. Each time an insurer becomes insolvent, to the extent necessary to secure funds for payment of covered claims of that insolvent insurer and also for payment of reasonable costs of adjusting the claims, CIGA is required to collect premium payments from its member insurers sufficient to discharge its obligations, as specified.

This bill, among other things, would no longer require an insurer to become insolvent in order for CIGA to collect premium payments from the member insurers and would require CIGA to collect premiums in order to secure funds for the payment of its administrative expenses.

(2) Existing law requires that the rate of premium charged be a uniform percentage of net direct written premium, as defined, in the preceding calendar year applicable to specific categories of insurance.

The rate of premium charges to each member insurer in the appropriate categories are initially based on the written premium of each insurer as shown in the latest year's annual financial statement on file with the Insurance Commissioner and are later adjusted as provided. *Existing law authorizes CIGA to refund any credit due in a specific category of insurance to a member insurer as a result of the adjusted premium calculation, as provided.*

This bill would instead require CIGA, with regard to premium charges paid prior to January 1, 2017, to refund to a member insurer any credit due in a specific category as a result of the adjusted premium calculation.

~~This bill~~ *bill, with regard to premium charges paid on or after January 1, 2017, would delete the requirements that the rate of premium charges be initially based on the written premium of each insurer and insurer; that the premium charges be adjusted later as provided, and that the member insurer be eligible for a refund of any credit due to that member insurer as a result of the adjusted premium calculation, and would instead require that the rate of premium charges to each member insurer in the appropriate categories be based on the net direct written premium of each insurer as shown in the latest year's annual financial statement on file with the commissioner. The bill would also make conforming changes.*

(3) Existing law authorizes CIGA to exempt or defer a member insurer from paying the premium charge if the payment would cause the member insurer's financial statement to reflect an amount of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Deferred premium charges are required to be paid when the payment will not reduce capital or surplus below required minimums. These payments are credited against future premium charges to those companies receiving larger premium charges by virtue of the deferment.

This bill would delete the requirement that the payments be credited against future premium charges to those companies receiving larger premium charges by virtue of the deferment.

(4) Existing law requires CIGA's plan of operations to contain provisions requiring each member insurer to recoup the premium charge paid to CIGA from its insureds over a reasonable length of time by way of a reasonably calculated surcharge on insurance policies to which the provisions of CIGA apply.

~~This bill, commencing January 1, 2017, among other things, bill would instead require each member insurer to recoup the premium charge from its insureds in the year following the charge, would charge. The bill, with regard to premium charges paid on or after January 1, 2017, among other things, would require the member insurer to file a report in accordance with the provisions of the plan of operation indicating the amount of surcharges it has collected, and would prohibit a member insurer electing to omit collecting surcharges from any of its insureds from being entitled to any reimbursement from CIGA, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 1063.5 of the Insurance Code is amended
 2 and renumbered, to immediately precede Section 1063.5 of the
 3 Insurance Code, to read:
 4 1063.45. (a) (1) ~~Each time an insurer becomes insolvent then,~~
 5 ~~to~~ To the extent necessary to secure funds for the association for
 6 payment of *administrative expenses of the association and covered*
 7 ~~claims of that insolvent insurer insolvent insurers~~ and also for
 8 payment of reasonable costs of adjusting the claims, the association
 9 shall collect premium payments from its member insurers sufficient
 10 to discharge its obligations.
 11 (2) The association shall allocate its claim payments and costs,
 12 incurred or estimated to be incurred, to one or more of the
 13 following categories:
 14 (A) Workers' compensation claims.
 15 (B) Homeowners' claims and automobile claims, including all
 16 of the following:
 17 (i) Automobile material damage.
 18 (ii) Automobile liability (both personal injury and death and
 19 property damage).
 20 (iii) Medical payments.
 21 (iv) Uninsured motorist claims.
 22 (C) Claims other than workers' compensation, homeowners,
 23 and automobile, as defined above.
 24 (3) Separate premium payments shall be required for each
 25 category.

1 (4) The premium payments for each category shall be used to
2 pay the claims and costs allocated to that category.

3 (b) (1) The rate of premium charged shall be a uniform
4 percentage of net direct written premium in the preceding calendar
5 year applicable to that category.

6 (2) The rate of premium charges to each member insurer in the
7 appropriate categories shall initially be based on the written
8 premium of each insurer as shown in the latest year's annual
9 financial statement on file with the commissioner.

10 (3) The initial premium shall be adjusted by applying the same
11 rate of premium charge as initially used to each insurer's written
12 premium as shown on the annual statement for the second year
13 following the year on which the initial premium charge was based.

14 (4) (A) The difference between the initial premium charge and
15 the adjusted premium charge shall be charged or credited to each
16 member insurer by the association as soon as practical after the
17 filing of the annual statements of the member insurers with the
18 commissioner for the year on which the adjusted premium is based.

19 (B) Any credit due in a specific category to a member insurer
20 as a result of the adjusted premium calculation ~~may shall~~ be
21 refunded to the member insurer at the discretion of the association
22 if the member insurer has agreed with the commissioner to no
23 longer write insurance in that category but has not withdrawn from
24 the state and surrendered its certificate of authority. However, in
25 the case of an insurer that was a member insurer when the initial
26 premium charge was made and that paid the initial assessment but
27 is no longer a member insurer at the time of the adjusted premium
28 charge by reason of its insolvency or its withdrawal from the state
29 and surrender of its certificate of authority to transact insurance
30 in this state, any credit accruing to that insurer shall be refunded
31 to it by the association. *insurer.*

32 (c) (1) For purposes of this section, "net direct written
33 premiums" means the amount of gross premiums, less return
34 premiums, received in that calendar year upon business done in
35 this state, other than premiums received for reinsurance.

36 (2) In cases of a dispute as to the amount of the net direct written
37 premium between the association and one of its member insurers,
38 the written decision of the commissioner shall be final.

39 (d) (1) The premium charged to any member insurer for any
40 of the three categories or a category established by the association

1 shall not be more than 2 percent of the net direct premium written
2 in that category in this state by that member insurer per year,
3 starting on January 1, 2003, until December 31, 2007, and
4 thereafter shall be 1 percent per year, until January 1, 2015.

5 (2) Commencing January 1, 2015, the premium charged to any
6 member insurer for any of the three categories or a category
7 established by the association shall not be more than 2 percent of
8 the net direct written premium unless there are bonds outstanding
9 that were issued pursuant to Article 14.25 (commencing with
10 Section 1063.50) or Article 14.26 (commencing with Section
11 1063.70).

12 (3) If bonds issued pursuant to either article are outstanding,
13 the premium charged to a member insurer for the category for
14 which the bond proceeds are being used to pay claims and expenses
15 shall not be more than 1 percent of the net direct written premium
16 for that category.

17 (e) (1) The association may exempt or defer, in whole or in
18 part, the premium charge of any member insurer, if the premium
19 charge would cause the member insurer's financial statement to
20 reflect an amount of capital or surplus less than the minimum
21 amounts required for a certificate of authority by any jurisdiction
22 in which the member insurer is authorized to transact insurance.
23 However, during the period of deferment, no dividends shall be
24 paid to shareholders or policyholders by the company whose
25 premium charge was deferred.

26 (2) Deferred premium charges shall be paid when the payment
27 will not reduce capital or surplus below required minimums. ~~These~~
28 ~~payments shall be credited against future premium charges to those~~
29 ~~companies receiving larger premium charges by virtue of the~~
30 ~~deferment.~~

31 (f) After all covered claims of the insolvent insurer and expenses
32 of administration have been paid, any unused premiums and any
33 reimbursements or claims dividends from the liquidator remaining
34 in any category shall be retained by the association and applied to
35 reduce future premium charges in the appropriate category.
36 ~~However, an insurer that ceases to be a member of the association,~~
37 ~~other than an insurer that has become insolvent or has withdrawn~~
38 ~~from the state and has surrendered its certificate of authority~~
39 ~~following an initial assessment that is entitled to a refund based~~
40 ~~upon an adjusted assessment as provided above in this section,~~

1 shall have no right to a refund of any premium previously remitted
2 to the association.

3 (g) The commissioner may suspend or revoke the certificate of
4 authority to transact business in this state of a member insurer that
5 fails to pay a premium when due and after demand has been made.

6 (h) Interest at a rate equal to the current federal reserve discount
7 rate plus 2 ½ percent per annum shall be added to the premium of
8 any member insurer that fails to submit the premium requested by
9 the association within 30 days after the mailing request. However,
10 in no event shall the interest rate exceed the legal maximum.

11 (i) This section shall apply only to premium charges paid prior
12 to January 1, 2017.

13 (j) This section shall remain in effect only until January 1, 2020,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2020, deletes or extends that date.

16 SEC. 2. Section 1063.5 is added to the Insurance Code, to read:

17 1063.5. (a) (1) To the extent necessary to secure funds for the
18 association for payment of the administrative expenses of the
19 association, covered claims of insolvent insurers, and for payment
20 of reasonable costs of adjusting the claims, the association shall
21 collect premium payments from its member insurers sufficient to
22 discharge its obligations.

23 (2) The association shall allocate its claim payments and costs,
24 incurred or estimated to be incurred, to one or more of the
25 following categories:

26 (A) Workers' compensation claims.

27 (B) Homeowners' claims and automobile claims, including all
28 of the following:

29 (i) Automobile material damage.

30 (ii) Automobile liability (both personal injury and death and
31 property damage).

32 (iii) Medical payments.

33 (iv) Uninsured motorist claims.

34 (C) Claims other than workers' compensation, homeowners',
35 and automobile, as defined above.

36 (3) Separate premium payments shall be required for each
37 category.

38 (4) The premium payments for each category shall be used to
39 pay the claims and costs allocated to that category.

1 (b) (1) The rate of premium charged shall be a uniform
2 percentage of net direct written premium in the preceding calendar
3 year applicable to that category.

4 (2) ~~(A)~~—The rate of premium charges to each member insurer
5 in the appropriate categories shall be based on the net direct written
6 premium of each member insurer as shown in the latest year’s
7 annual financial statement on file with the commissioner.

8 ~~(B) Any credit due in a specific category to a member insurer
9 may be used as an offset against any subsequent premium charge
10 in that category and may be refunded to the member insurer at the
11 discretion of the association if the member insurer has agreed with
12 the commissioner to no longer write insurance in that category but
13 has not withdrawn from the state and surrendered its certificate of
14 authority. However, in the case of an insurer that was a member
15 insurer when the premium charge was made and that paid the
16 premium charge but is no longer a member insurer by reason of
17 its insolvency or its withdrawal from the state and surrender of its
18 certificate of authority to transact insurance in this state, any credit
19 accruing to that insurer shall be refunded to it by the association.~~

20 (c) (1) For purposes of this section, “net direct written
21 premiums” means the amount of gross premiums, less return
22 premiums, received in that calendar year upon business done in
23 this state, other than premiums received for reinsurance.

24 (2) In cases of a dispute as to the amount of the net direct written
25 premium between the association and one of its member insurers,
26 the written decision of the commissioner shall be final.

27 (d) In charging premiums to member insurers, the association
28 shall adjust, if necessary, the net direct written premiums shown
29 on a member insurer’s annual statement by excluding any
30 premiums written for any lines of insurance or types of coverage
31 not covered by this article under paragraph (3) of subdivision (c)
32 of Section 1063.1.

33 (e) (1) The premium charged to any member insurer for any of
34 the three categories or a category established by the association
35 shall not be more than 2 percent of the net direct written premium
36 unless there are bonds outstanding that were issued pursuant to
37 Article 14.25 (commencing with Section 1063.50) or Article 14.26
38 (commencing with Section 1063.70).

39 (2) If bonds issued pursuant to either article are outstanding,
40 the premium charged to a member insurer for the category for

1 which the bond proceeds are being used to pay claims and expenses
 2 shall not be more than 1 percent of the net direct written premium
 3 for that category.

4 (f) (1) The association may exempt or defer, in whole or in
 5 part, the premium charge of any member insurer, if the premium
 6 charge would cause the member insurer’s financial statement to
 7 reflect an amount of capital or surplus less than the minimum
 8 amounts required for a certificate of authority by any jurisdiction
 9 in which the member insurer is authorized to transact insurance.
 10 However, during the period of deferment, no dividends shall be
 11 paid to shareholders or policyholders by the company whose
 12 premium charge was deferred.

13 (2) Deferred premium charges shall be paid when the payment
 14 will not reduce capital or surplus below required minimums.

15 (g) After all covered claims of insolvent insurers and expenses
 16 of administration have been paid, any unused premiums and any
 17 reimbursements or claims dividends from liquidators remaining
 18 in any category shall be retained by the association and applied to
 19 reduce future premium charges in the appropriate category.

20 (h) The commissioner may suspend or revoke the certificate of
 21 authority to transact business in this state of a member insurer that
 22 fails to pay a premium when due and after demand has been made.

23 (i) Interest at a rate equal to the current federal reserve discount
 24 rate plus 2 ½ percent per annum shall be added to the premium of
 25 any member insurer that fails to submit the premium requested by
 26 the association within 30 days after the mailing request. However,
 27 in no event shall the interest rate exceed the legal maximum.

28 (j) This section shall apply only to premium charges paid on or
 29 after January 1, 2017.

30 SEC. 3. Section 1063.14 of the Insurance Code is amended
 31 and renumbered, to immediately precede Section 1063.14 of the
 32 Insurance Code, to read:

33 1063.135. (a) The plan of operation adopted pursuant to
 34 subdivision (c) of Section 1063 shall contain provisions whereby
 35 each member insurer is required to recoup ~~over a reasonable length~~
 36 ~~of time in the year following the premium charge~~ a sum reasonably
 37 calculated to recoup the ~~assessments~~ *premium charge* paid by the
 38 member insurer under this article by way of a surcharge on
 39 premiums charged for insurance policies to which this article
 40 applies. Amounts recouped shall not be considered premiums for

1 any other purpose, including the computation of gross premium
2 tax or agents' commission.

3 (b) The amount of any surcharge shall be separately stated on
4 either a billing or policy declaration sent to an insured. The
5 association shall determine the rate of the surcharge and the
6 collection period for each category and these shall be mandatory
7 for all member insurers of the association who write business in
8 those categories. Member insurers who collect surcharges in excess
9 of premiums paid pursuant to Section 1063.45 for an insolvent
10 insurer shall remit the excess to the association as an additional
11 premium within 30 days after the association has determined the
12 amount of the excess recoupment and given notice to the member
13 insurer of that amount. The excess shall be applied to reduce future
14 premium charges in the appropriate category.

15 (c) The plan of operation may permit a member insurer to omit
16 collection of the surcharge from its insureds when the expense of
17 collecting the surcharge would exceed the amount of the surcharge.
18 However, nothing in this section shall relieve the member insurer
19 of its obligation to recoup the amount of surcharge otherwise
20 collectible.

21 (d) This section shall apply only to premium charges paid prior
22 to January 1, 2017.

23 (e) This section shall remain in effect only until January 1, 2020,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2020, deletes or extends that date.

26 SEC. 4. Section 1063.14 is added to the Insurance Code, to
27 read:

28 1063.14. (a) (1) The plan of operation adopted pursuant to
29 subdivision (c) of Section 1063 shall contain provisions whereby
30 each member insurer is required to recoup in the year following
31 the premium charge a sum calculated to recoup the premium charge
32 paid by the member insurer under this article by way of a surcharge
33 on premiums charged for insurance policies to which this article
34 applies.

35 (2) Amounts recouped shall not be considered premiums for
36 any other purpose, including the computation of gross premium
37 tax or agents' commission.

38 (b) (1) The amount of any surcharge shall be separately stated
39 on either a billing or policy declaration sent to an insured. The
40 association shall determine the rate of the surcharge and the

1 collection period for each category, and these shall be mandatory
2 for all member insurers of the association who write business in
3 those categories.

4 (2) Each member insurer shall file a report in accordance with
5 the provisions of the plan of operation indicating the amount of
6 surcharges it has collected.

7 (A) Member insurers who collect surcharges in excess of
8 premium charges paid in the preceding year pursuant to Section
9 1063.5 shall remit the excess to the association as an additional
10 premium within 30 days after the association has determined the
11 amount of the excess recoupment and given notice to the member
12 insurer of that amount. The excess shall be applied to reduce future
13 premium charges in the appropriate category.

14 (B) Member insurers who report surcharge collections that are
15 less than what they paid in the preceding year's premium charge
16 shall receive reimbursement from the association for the shortfall
17 in surcharge collection.

18 (c) (1) The plan of operation may permit a member insurer to
19 omit collection of the surcharge from its insureds when the expense
20 of collecting the surcharge would exceed the amount of the
21 surcharge.

22 (2) A member insurer electing to omit collecting surcharges
23 from any of its insureds shall not be entitled to any reimbursement
24 from the association pursuant to subdivision (b).

25 (3) However, nothing in this section shall relieve the member
26 insurer of its obligation to recoup the amount of surcharge
27 otherwise collectible.

28 (d) This section shall apply only to premium charges paid on
29 or after January 1, 2017.