

Introduced by Senator Hall

February 27, 2015

An act to amend Section 1063.1 of the Insurance Code, relating to the California Insurance Guarantee Association.

LEGISLATIVE COUNSEL'S DIGEST

SB 604, as introduced, Hall. California Insurance Guarantee Association: definitions.

Existing law establishes the California Insurance Guarantee Association to provide coverage against losses arising from the failure of an insolvent property, casualty, or workers' compensation insurer to discharge its obligations under its insurance policies. Existing law requires the association to pay and discharge all "covered claims," which includes the obligations of the insolvent insurer.

This bill would additionally provide that a "covered claim" includes a claim filed by an employee of a general employer that has entered into a contractual relationship with a special employer that is a self-insured governmental entity. The bill would provide that in that case, if certain criteria are met, the contractual agreement would be conclusive proof that the special employer never intended to provide workers' compensation insurance for the employees of the general employer.

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 1063.1 of the Insurance Code is amended
- 2 to read:

1 1063.1. As used in this article:

2 (a) “Member insurer” means an insurer required to be a member
3 of the association in accordance with subdivision (a) of Section
4 1063, except and to the extent that the insurer is participating in
5 an insolvency program adopted by the United States government.

6 (b) “Insolvent insurer” means an insurer that was a member
7 insurer of the association, consistent with paragraph (11) of
8 subdivision (c), either at the time the policy was issued or when
9 the insured event occurred, and against which an order of
10 liquidation with a finding of insolvency has been entered by a court
11 of competent jurisdiction, or, in the case of the State Compensation
12 Insurance Fund, if a finding of insolvency is made by a duly
13 enacted legislative measure.

14 (c) (1) “Covered claims” means the obligations of an insolvent
15 insurer, including the obligation for unearned premiums, that satisfy
16 all of the following requirements:

17 (A) Imposed by law and within the coverage of an insurance
18 policy of the insolvent insurer.

19 (B) Which were unpaid by the insolvent insurer.

20 (C) Which are presented as a claim to the liquidator in the state
21 of domicile of the insolvent insurer or to the association on or
22 before the last date fixed for the filing of claims in the domiciliary
23 liquidating proceedings.

24 (D) Which were incurred prior to the date coverage under the
25 policy terminated and prior to, on, or within 30 days after the date
26 the liquidator was appointed.

27 (E) For which the assets of the insolvent insurer are insufficient
28 to discharge in full.

29 (F) In the case of a policy of workers’ compensation insurance,
30 to provide workers’ compensation benefits under the workers’
31 compensation law of this state.

32 (G) In the case of other classes of insurance if the claimant or
33 insured is a resident of this state at the time of the insured
34 occurrence, or the property from which the claim arises is
35 permanently located in this state.

36 (2) “Covered claims” also includes the obligations assumed by
37 an assuming insurer from a ceding insurer where the assuming
38 insurer subsequently becomes an insolvent insurer if, at the time
39 of the insolvency of the assuming insurer, the ceding insurer is no
40 longer admitted to transact business in this state. Both the assuming

1 insurer and the ceding insurer shall have been member insurers at
2 the time the assumption was made. “Covered claims” under this
3 paragraph shall be required to satisfy the requirements of
4 subparagraphs (A) to (G), inclusive, of paragraph (1), except for
5 the requirement that the claims be against policies of the insolvent
6 insurer. The association shall have a right to recover any deposit,
7 bond, or other assets that may have been required to be posted by
8 the ceding company to the extent of covered claim payments and
9 shall be subrogated to any rights the policyholders may have
10 against the ceding insurer.

11 (3) “Covered claims” does not include obligations arising from
12 the following:

13 (A) Life, annuity, health, or disability insurance.

14 (B) Mortgage guaranty, financial guaranty, or other forms of
15 insurance offering protection against investment risks.

16 (C) Fidelity or surety insurance including fidelity or surety
17 bonds, or any other bonding obligations.

18 (D) Credit insurance.

19 (E) Title insurance.

20 (F) Ocean marine insurance or ocean marine coverage under
21 an insurance policy including claims arising from the following:
22 the Jones Act (46 U.S.C. Secs. 30104 and 30105), the Longshore
23 and Harbor Workers’ Compensation Act (33 U.S.C. Sec. 901 et
24 seq.), or any other similar federal statutory enactment, or an
25 endorsement or policy affording protection and indemnity
26 coverage.

27 (G) Any claims servicing agreement or insurance policy
28 providing retroactive insurance of a known loss or losses, except
29 a special excess workers’ compensation policy issued pursuant to
30 subdivision (c) of Section 3702.8 of the Labor Code that covers
31 all or any part of workers’ compensation liabilities of an employer
32 that is issued, or was previously issued, a certificate of consent to
33 self-insure pursuant to subdivision (b) of Section 3700 of the Labor
34 Code.

35 (4) “Covered claims” does not include any obligations of the
36 insolvent insurer arising out of any reinsurance contracts, nor any
37 obligations incurred after the expiration date of the insurance policy
38 or after the insurance policy has been replaced by the insured or
39 canceled at the insured’s request, or after the insurance policy has

1 been canceled by the liquidator, nor any obligations to a state or
2 to the federal government.

3 (5) “Covered claims” does not include any obligations to
4 insurers, insurance pools, or underwriting associations, nor their
5 claims for contribution, indemnity, or subrogation, equitable or
6 otherwise, except as otherwise provided in this chapter.

7 An insurer, insurance pool, or underwriting association may not
8 maintain, in its own name or in the name of its insured, a claim or
9 legal action against the insured of the insolvent insurer for
10 contribution, indemnity, or by way of subrogation, except insofar
11 as, and to the extent only, that the claim exceeds the policy limits
12 of the insolvent insurer’s policy. In those claims or legal actions,
13 the insured of the insolvent insurer is entitled to a credit or setoff
14 in the amount of the policy limits of the insolvent insurer’s policy,
15 or in the amount of the limits remaining, where those limits have
16 been diminished by the payment of other claims.

17 (6) “Covered claims,” except in cases involving a claim for
18 workers’ compensation benefits or for unearned premiums, does
19 not include a claim in an amount of one hundred dollars (\$100) or
20 less, nor that portion of a claim that is in excess of any applicable
21 limits provided in the insurance policy issued by the insolvent
22 insurer.

23 (7) “Covered claims” does not include that portion of a claim,
24 other than a claim for workers’ compensation benefits, that is in
25 excess of five hundred thousand dollars (\$500,000).

26 (8) “Covered claims” does not include any amount awarded as
27 punitive or exemplary damages, nor any amount awarded by the
28 Workers’ Compensation Appeals Board pursuant to Section 5814
29 or 5814.5 of the Labor Code because payment of compensation
30 was unreasonably delayed or refused by the insolvent insurer.

31 (9) “Covered claims” does not include (A) a claim to the extent
32 it is covered by any other insurance of a class covered by this
33 article available to the claimant or insured or (B) a claim by a
34 person other than the original claimant under the insurance policy
35 in his or her own name, his or her assignee as the person entitled
36 thereto under a premium finance agreement as defined in Section
37 673 and entered into prior to insolvency, his or her executor,
38 administrator, guardian, or other personal representative or trustee
39 in bankruptcy, and does not include a claim asserted by an assignee

1 or one claiming by right of subrogation, except as otherwise
2 provided in this chapter.

3 (10) “Covered claims” does not include any obligations arising
4 out of the issuance of an insurance policy written by the separate
5 division of the State Compensation Insurance Fund pursuant to
6 Sections 11802 and 11803.

7 (11) “Covered claims” does not include any obligations of the
8 insolvent insurer arising from a policy or contract of insurance
9 issued or renewed prior to the insolvent insurer’s admission to
10 transact insurance in the State of California.

11 (12) “Covered claims” does not include surplus deposits of
12 subscribers as defined in Section 1374.1.

13 (13) “Covered claims” shall also include obligations arising
14 under an insurance policy written to indemnify a permissibly
15 self-insured employer pursuant to subdivision (b) or (c) of Section
16 3700 of the Labor Code for its liability to pay workers’
17 compensation benefits in excess of a specific or aggregate retention.
18 However, for purposes of this article, those claims shall not be
19 considered workers’ compensation claims and therefore are subject
20 to the per-claim limit in paragraph (7), and any payments and
21 expenses related thereto shall be allocated to category (c) for claims
22 other than workers’ compensation, homeowners, and automobile,
23 as provided in Section 1063.5.

24 These provisions shall apply to obligations arising under a policy
25 as described herein issued to a permissibly self-insured employer
26 or group of self-insured employers pursuant to Section 3700 of
27 the Labor Code and notwithstanding any other provision of this
28 code, those obligations shall be governed by this provision in the
29 event that the Self-Insurers’ Security Fund is ordered to assume
30 the liabilities of a permissibly self-insured employer or group of
31 self-insured employers pursuant to Section 3701.5 of the Labor
32 Code. The provisions of this paragraph apply only to insurance
33 policies written to indemnify a permissibly self-insured employer
34 or group of self-insured employers under subdivision (b) or (c) of
35 Section 3700 of the Labor Code, for its liability to pay workers’
36 compensation benefits in excess of a specific or aggregate retention,
37 and this paragraph does not apply to special excess workers’
38 compensation insurance policies unless issued pursuant to authority
39 granted in subdivision (c) of Section 3702.8 of the Labor Code,
40 and as provided for in subparagraph (G) of paragraph (3). In

1 addition, this paragraph does not apply to any claims servicing
2 agreement or insurance policy providing retroactive insurance of
3 a known loss or losses as are excluded in subparagraph (G) of
4 paragraph (3).

5 Each permissibly self-insured employer or group of self-insured
6 employers, or the Self-Insurers' Security Fund, shall, to the extent
7 required by the Labor Code, be responsible for paying, adjusting,
8 and defending each claim arising under policies of insurance
9 covered under this section, unless the benefits paid on a claim
10 exceed the specific or aggregate retention, in which case:

11 (A) If the benefits paid on the claim exceed the specific or
12 aggregate retention, and the policy requires the insurer to defend
13 and adjust the claim, the California Insurance Guarantee
14 Association (CIGA) shall be solely responsible for adjusting and
15 defending the claim, and shall make all payments due under the
16 claim, subject to the limitations and exclusions of this article with
17 regard to covered claims. As to each claim subject to this
18 paragraph, notwithstanding any other provisions of this code or
19 the Labor Code, and regardless of whether the amount paid by
20 CIGA is adequate to discharge a claim obligation, neither the
21 self-insured employer, group of self-insured employers, nor the
22 Self-Insurers' Security Fund shall have any obligation to pay
23 benefits over and above the specific or aggregate retention, except
24 as provided in this subdivision.

25 (B) If the benefits paid on the claim exceed the specific or
26 aggregate retention, and the policy does not require the insurer to
27 defend and adjust the claim, the permissibly self-insured employer
28 or group of self-insured employers, or the Self-Insurers' Security
29 Fund, shall not have any further payment obligations with respect
30 to the claim, but shall continue defending and adjusting the claim,
31 and shall have the right, but not the obligation, in any proceeding
32 to assert all applicable statutory limitations and exclusions as
33 contained in this article with regard to the covered claim. CIGA
34 shall have the right, but not the obligation, to intervene in any
35 proceeding where the self-insured employer, group of self-insured
36 employers, or the Self-Insurers' Security Fund is defending a claim
37 and shall be permitted to raise the appropriate statutory limitations
38 and exclusions as contained in this article with respect to covered
39 claims. Regardless of whether the self-insured employer or group
40 of self-insured employers, or the Self-Insurers' Security Fund,

1 asserts the applicable statutory limitations and exclusions, or
2 whether CIGA intervenes in a proceeding, CIGA shall be solely
3 responsible for paying all benefits due on the claim, subject to the
4 exclusions and limitations of this article with respect to covered
5 claims. As to each claim subject to this paragraph, notwithstanding
6 any other provision of the Insurance Code or the Labor Code and
7 regardless of whether the amount paid by CIGA is adequate to
8 discharge a claim obligation, neither the self-insured employer,
9 group of self-insured employers, nor the Self-Insurers' Security
10 Fund, shall have an obligation to pay benefits over and above the
11 specific or aggregate retention, except as provided in this
12 subdivision.

13 (C) In the event that the benefits paid on the covered claim
14 exceed the per-claim limit in paragraph (7), the responsibility for
15 paying, adjusting, and defending the claim shall be returned to the
16 permissibly self-insured employer or group of employers, or the
17 Self-Insurers' Security Fund.

18 These provisions shall apply to all pending and future
19 insolvencies. For purposes of this paragraph, a pending insolvency
20 is one involving a company that is currently receiving benefits
21 from the guarantee association.

22 (14) *“Covered claims” shall include any claims filed by an*
23 *employee of a general employer that has entered into a contractual*
24 *relationship with a special employer who is a self-insured*
25 *governmental entity and has satisfied the provisions of paragraph*
26 *(1) of subdivision (d) of Section 3602 of the Labor Code. In no*
27 *event is the self-insurance of a special employer governmental*
28 *entity to be considered other insurance for purposes of this article*
29 *if the provisions of paragraph (1) of subdivision (d) of Section*
30 *3602 of the Labor Code are required by contractual agreement*
31 *between the general employer and the special employer. The*
32 *contractual agreement shall be conclusive proof that the special*
33 *employer never had the intent to provide workers' compensation*
34 *insurance for the employees of the general employer.*

35 (d) “Admitted to transact insurance in this state” means an
36 insurer possessing a valid certificate of authority issued by the
37 department.

38 (e) “Affiliate” means a person who directly or indirectly, through
39 one or more intermediaries, controls, is controlled by, or is under
40 common control with an insolvent insurer on December 31 of the

1 year next preceding the date the insurer becomes an insolvent
2 insurer.

3 (f) “Control” means the possession, direct or indirect, of the
4 power to direct or cause the direction of the management and
5 policies of a person, whether through the ownership of voting
6 securities, by contract other than a commercial contract for goods
7 or nonmanagement services, or otherwise, unless the power is the
8 result of an official position with or corporate office held by the
9 person. Control is presumed to exist if a person, directly or
10 indirectly, owns, controls, holds with the power to vote, or holds
11 proxies representing, 10 percent or more of the voting securities
12 of any other person. This presumption may be rebutted by showing
13 that control does not in fact exist.

14 (g) “Claimant” means an insured making a first party claim or
15 a person instituting a liability claim. However, no person who is
16 an affiliate of the insolvent insurer may be a claimant.

17 (h) “Ocean marine insurance” includes marine insurance as
18 defined in Section 103, except for inland marine insurance, as well
19 as any other form of insurance, regardless of the name, label, or
20 marketing designation of the insurance policy, that insures against
21 maritime perils or risks and other related perils or risks, that are
22 usually insured against by traditional marine insurance such as
23 hull and machinery, marine builders’ risks, and marine protection
24 and indemnity. Those perils and risks insured against include,
25 without limitation, loss, damage, or expense or legal liability of
26 the insured arising out of or incident to ownership, operation,
27 chartering, maintenance, use, repair, or construction of a vessel,
28 craft, or instrumentality in use in ocean or inland waterways,
29 including liability of the insured for personal injury, illness, or
30 death for loss or damage to the property of the insured or another
31 person.

32 (i) “Unearned premium” means that portion of a premium as
33 calculated by the liquidator that had not been earned because of
34 the cancellation of the insolvent insurer’s policy and is that
35 premium remaining for the unexpired term of the insolvent
36 insurer’s policy. “Unearned premium” does not include any amount
37 sought as return of a premium under a policy providing retroactive
38 insurance of a known loss or return of a premium under a
39 retrospectively rated policy or a policy subject to a contingent
40 surcharge or a policy in which the final determination of the

- 1 premium cost is computed after expiration of the policy and is
- 2 calculated on the basis of actual loss experienced during the policy
- 3 period.

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