

Assembly Bill No. 582

CHAPTER 1002

An act to amend Sections 1855.4 and 1855.5 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1996. Filed
with Secretary of State September 29, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 582, Hoge. Insurance.

Existing law authorizes insurers to use insurance policy or bond forms and manuals produced by insurer advisory organizations, but provides that insurers shall not agree with each other to adhere to those forms or manuals. Existing law provides that consistent or intermittent use by 2 or more insurers of the forms or manuals is insufficient by itself to support a finding that an agreement to adhere to those forms or manuals exists.

This bill would additionally provide that insurers shall not agree with each other to violate the antitrust or unfair business practice laws, as specified. The bill would also provide that certain acts, agreements, or practices are not unfair or unreasonable, as specified, unless proven by a preponderance of the evidence to be in violation of the antitrust or unfair business practice laws.

Under existing law, all insurance policy or bond forms or manuals, as specified, of an advisory organization are required, prior to being used by insurers, to be submitted in writing to the Insurance Commissioner for his or her consideration and approval, together with any information the commissioner may reasonably require. Under existing law, the commissioner may, for good cause and after a hearing, revoke approval of previously approved policy or bond forms or manuals.

This bill would provide that the commissioner may only revoke approval of policy or bond forms or manuals under specified conditions. The bill would also revise and recast related provisions.

Since Proposition 103 repealed provisions authorizing advisory organizations, and since this bill would amend provisions enacted after Proposition 103 that authorize certain activities by advisory organizations, this bill would have the effect of amending Proposition 103, and would require a $\frac{2}{3}$ vote for enactment.

The bill would also declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 1855.4 of the Insurance Code is amended to read:

1855.4. Members and subscribers of advisory organizations may use the policy or bond forms, or manuals, of advisory organizations, either consistently or intermittently, but, except for insurers having common ownership or management, shall not agree with each other or others to adhere thereto or violate the antitrust or unfair business practice laws. The fact that two or more admitted insurers are members or subscribers of an advisory organization, or the fact that they use, either consistently or intermittently, the policy or bond forms, or manuals, prepared by an advisory organization, shall not be sufficient evidence, alone or in conjunction with each other, to support a finding either that an agreement to adhere to those forms or manuals exists or that an insurer or advisory organization is violating the antitrust or unfair business practice laws. These facts may be used only for the purpose of supplementing or explaining other evidence of the existence of an agreement to adhere to those forms or manuals or the existence of the violation of the antitrust or unfair business practice laws. No act, agreement, or practice involving the activities of an advisory organization, an insurer's participation in those activities, or the use of an advisory organization's products or services shall be found to be unfair or unreasonable under this code because it is uncompetitive unless proven by a preponderance of the evidence that the act, agreement, or practice violates the antitrust or unfair business practice laws. Findings of this nature that are made in support of an order or regulation of the commissioner shall be determined and enforced under Article 7 (commencing with Section 1858) of this chapter. As used in this section, "antitrust laws" means Part 2 (commencing with Section 16600) of the Business and Professions Code, and "unfair business practice laws" means Part 3 (commencing with Section 17500) of the Business and Professions Code.

SEC. 2. Section 1855.5 of the Insurance Code is amended to read:

1855.5. (a) An advisory organization may prepare and distribute insurance policy or bond forms, and manuals, including policy writing rules, rating plans, classification codes and descriptions, territory codes and descriptions, prospective loss costs, and rules that include factors and relativities such as increased limits factors, classification relativities, or similar factors, if, prior to being used by insurers, they are submitted in writing to the commissioner for his or her consideration and approval, together with any information the commissioner may reasonably require. All of these documents shall be available for public inspection at the office of the commissioner. The commissioner shall approve advisory organization policy forms or bond forms, or manuals, that are not found by him or her to be



unfair, unreasonable, or violate the provisions of this code, including Sections 1861.02 and 1861.05.

(b) Upon submission of any advisory organization policy forms or bond forms, or manuals, the commissioner may review them, and if after a hearing, at which representatives of consumers and other interested parties may participate, upon not less than 10 days' notice to an advisory organization he or she finds that the contents of policy forms or bond forms, or manuals, are unfair or unreasonable, or violate the provisions of this code, he or she may issue a written order to the advisory organization specifying in what respect the contents of the policy forms, bond forms, or manuals, are unfair or unreasonable or violate the provisions of this code and disapprove the use of the forms or manuals.

(c) Notwithstanding the provisions of this section, if the commissioner fails to act within 90 days of the submission of a proposed policy or bond form, or manual by an advisory organization, the policy or bond form, or manual, shall be deemed approved.

(d) For good cause, and after a hearing, at which representatives of consumers and other interested parties may participate, upon not less than 10 days' notice to the advisory organization, the commissioner may revoke approval of any policy form or bond form or manual only upon his or her finding grounds that would permit disapproval of the policy or bond form, or manual, if submitted for approval at the time of the revocation hearing.

(e) Nothing in this chapter shall be interpreted to allow an advisory organization to set or establish rates or to issue any manual that contains final rates for any insurance coverage, policy endorsement, or bond.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify existing provisions of the Insurance Code at the earliest possible time, it is necessary that this act take effect immediately.

