

## Senate Bill No. 87

### CHAPTER 893

An act to amend Section 11040 of the Government Code, and to amend Sections 1036 and 1064.2 of the Insurance Code, relating to the Attorney General.

[Approved by Governor October 13, 1995. Filed  
with Secretary of State October 16, 1995.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 87, Kopp. Attorney General: legal services.

(1) Existing law provides that the written consent of the Attorney General is required prior to the employment of counsel for representation of any state agency or employee in any judicial proceeding. There is an express exception provided to specified state agencies and to the Insurance Commissioner with respect to certain delinquency proceedings. Existing law also provides that an exception may be made by other statutory waivers.

This bill would delete the exception provided to the commissioner and remove the specific authority of the commissioner to employ counsel in connection with delinquency proceedings. This bill would also make legislative findings that it is in the best interest of the state that the Attorney General be provided with the resources needed to perform specified duties.

(2) Under existing law the Attorney General has the authority to appoint and employ any legal counsel that he or she deems necessary to assist the commissioner in the performance of his or her duties.

This bill would state that in the institution and prosecution of all insurance delinquency proceedings, the general provisions requiring written consent of the Attorney General to employ counsel shall apply. The bill would state the intent and finding of the Legislature that it is in the best interest of the people of the State of California that the Attorney General and the Insurance Commissioner consult and cooperate in regard to utilizing agency counsel of the Department of Insurance in delinquency proceedings, as specified.

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

SECTION 1. Section 11040 of the Government Code is amended to read:

11040. (a) This article does not affect the right of any state agency or employee to employ counsel in any matter of the state, after first having obtained the written consent of the Attorney General.

(b) It is the intent of the Legislature that overall efficiency and economy in state government be enhanced by employment of the Attorney General as counsel for the representation of state agencies and employees in judicial and other proceedings.

The Legislature finds that it is in the best interests of the people of the State of California that the Attorney General be provided with the resources needed to develop and maintain the Attorney General's capability to provide competent legal representation of state agencies and employees in any judicial proceeding.

(c) Except with respect to employment by the state officers and agencies specified by title or name in Section 11041 or when specifically waived by statute other than Section 11041, the written consent of the Attorney General is required prior to employment of counsel for representation of any state agency or employee in any judicial proceeding.

SEC. 2. Section 1036 of the Insurance Code is amended to read:

1036. Notwithstanding any other provision of law, the provisions of Article 4 (commencing with Section 11040) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, pertaining to legal services, shall apply in the institution and prosecution of all insurance delinquency proceedings under this code. The compensation of any counsel outside of California state service who is employed pursuant to these provisions to represent the commissioner as receiver shall be fixed by the commissioner, subject to the approval of the court. Compensation of counsel representing the commissioner as receiver shall be paid from the assets of the person against whom the commissioner has proceeded under this article. It is the intent of the Legislature and the Legislature finds it is in the best interest of the people of the State of California that the Attorney General and the Insurance Commissioner consult and cooperate in regard to utilizing agency counsel of the Department of Insurance as the commissioner's legal counsel in delinquency proceedings, judicial and otherwise, to the extent appropriate and consistent with the interests of the parties beneficially interested in those proceedings and if that use would result in the savings of costs to the parties beneficially interested in those proceedings.

SEC. 3. Section 1064.2 of the Insurance Code is amended to read:

1064.2. (a) Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the commissioner as receiver. Upon the appointment, the court shall direct the receiver forthwith to take possession of the assets of the insurer and to administer them under the orders of the court.

(b) The domiciliary receiver and his or her successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of the order of his or her



appointment, and he or she shall have the right to recover the same and reduce them to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in this article for ancillary receivers appointed in this state as to assets located in this state. The filing or recording of the order appointing the receiver or certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded. The domiciliary receiver shall be responsible on his or her official bond for the proper administration of all assets coming into his or her possession or control.

(c) Upon taking possession of the assets of a delinquent insurer the domiciliary receiver shall, subject to the direction of the court, and in accordance with those procedures that the receiver may petition the court to establish, immediately proceed to conduct the business of the insurer or to take the steps authorized by the laws of this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer. In connection with delinquency proceedings, he or she may appoint one or more special deputy commissioners to act for him or her, and may employ clerks and assistants as he or she deems necessary. The compensation of the special deputies, clerks, or assistants and all expenses of taking possession of the delinquent insurer and of conducting the delinquency proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them, special deputies shall possess all the powers given to them, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to delinquency proceedings.

