

AMENDED IN ASSEMBLY AUGUST 24, 1998

AMENDED IN ASSEMBLY JULY 8, 1998

AMENDED IN SENATE MAY 27, 1998

AMENDED IN SENATE APRIL 28, 1998

AMENDED IN SENATE APRIL 23, 1998

AMENDED IN SENATE APRIL 13, 1998

SENATE BILL

No. 1530

Introduced by Senator Hayden

(Principal coauthor: Senator Kopp)

(Coauthors: Senators Solis and Watson)

(Coauthors: Assembly Members Aroner, Bustamante, Davis, Hertzberg, Kuehl, Lempert, Martinez, Migden, ~~and Murray~~ Murray, Shelley, Sweeney, Villaraigosa, and Washington)

February 10, 1998

An act to amend Section 1523 of the Code of Civil Procedure, and to amend Section 12936 of, and to add Sections 790.15 and 12967 to, the Insurance Code, relating to insurance practices, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1530, as amended, Hayden. Insurance practices: suspension for nonpayment of claims.

Under existing law, it is an unfair claims practice for an insurer to knowingly or with frequency fail to attempt in good

faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. Existing law provides for civil penalties and administrative sanctions for violations.

This bill would provide that if an insurer or any affiliate of an insurer has failed to pay any valid claim from Holocaust survivors, as defined, the certificate of authority of the insurer shall be suspended until the insurer, or its affiliates, pays the claim or claims.

Under existing law, the Insurance Commissioner and the Department of Insurance have various duties with respect to the investigation of insurers.

This bill would require the department to develop and implement a coordinated approach to gather, review, and analyze the archives of affected insurance groups, and other archives and records, using onsite teams and an oversight committee, to provide for research and investigation into insurance policies, unpaid insurance claims, and related matters of victims of the Holocaust or of the Nazi-controlled German government or its allies, and the beneficiaries and heirs of those victims, and for losses arising from the activities of the Nazi-controlled German government or its allies for insurance policies issued before and during World War II by insurers who have affiliates or subsidiaries authorized to do business in California.

Existing law provides that if an insurer is unable to locate and deliver a Proposition 103 rebate, the funds attributable to the rebate escheat to the state and are required to be transferred to the Insurance Fund to be used to repay a specified loan that was made to the Insurance Fund.

This bill would also provide for the transfer of \$4,000,000 of that money to the Insurance Fund for expenditure for the above purposes for the 1998-1999 fiscal year relating to Holocaust claims, and would provide that the money is appropriated to the Insurance Commissioner for that purpose. For subsequent fiscal years the bill would provide that the funding of these provisions would be subject to the Budget Act, and based on a plan for reimbursement of department expenses submitted by the commissioner, as specified.



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

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 1523 of the Code of Civil
2 Procedure is amended to read:

3 1523. If an insurer, after a good faith effort to locate
4 and deliver to a policyholder a Proposition 103 rebate
5 ordered or negotiated pursuant to Section 1861.01 of the
6 Insurance Code, determines that a policyholder cannot
7 be located, all funds attributable to that rebate escheat to
8 the state and shall be delivered to the Controller. The
9 funds subject to escheat on or after July 1, 1997, shall be
10 transferred by the Controller to the Department of
11 Insurance for deposit in the Insurance Fund in the
12 following amounts and for the following purposes:

13 (a) Up to the amount that will repay principal and
14 interest on the General Fund loan authorized by Item
15 0845-001-0001 of the Budget Act of 1996 for expenditure
16 as provided in Section 12936 of the Insurance Code.

17 (b) The sum of four million dollars (\$4,000,000) for
18 expenditure during the 1998-1999 fiscal year as provided
19 in Section 12967 of the Insurance Code.

20 SEC. 2. Section 790.15 is added to the Insurance Code,
21 to read:

22 790.15. (a) If an insurer or any affiliate of an insurer
23 has failed to pay any valid claim from Holocaust survivors,
24 the certificate of authority of the insurer shall be
25 suspended until the insurer, or its affiliates, pays the claim
26 or claims.

27 (b) As used in this section:

28 (1) "Holocaust survivor" means any person who is the
29 beneficiary of an insurance policy, if the insurance policy
30 insured a person's life, property, or other interest, and the
31 insured person was killed, died, was displaced, or was
32 otherwise a victim of German persecution of Jewish and



1 other peoples preceding and during World War II by
2 *Germany, its allies, or sympathizers.*

3 (2) “Beneficiary” means any person *or entity* entitled
4 to recover under any policy of insurance, including any
5 named beneficiary, any heir of a named beneficiary, and
6 any other person entitled to recover under the policy.

7 (3) “Claim” means any claim submitted by a
8 Holocaust survivor or other beneficiary arising under an
9 insurance policy for any loss or damage caused by or
10 arising because of discriminatory practices or persecution
11 by the Nazi-controlled German government or its allies,
12 or by insurers that refused to pay claims because of a claim
13 that policies of insurance or records were missing or
14 confiscated because of actions by the Nazi-controlled
15 German government or its agents or allies. Claim also
16 includes any claim by Holocaust survivors or beneficiaries
17 to collect proceeds from dowry or education policies or
18 from annuities.

19 (4) An “affiliate” of, or person “affiliated” with, a
20 specific person, means a person who directly, or
21 indirectly through one or more intermediaries, controls,
22 or is controlled by, or is under common control with, the
23 person specified.

24 (5) “Control” includes the terms “controlling,”
25 “controlled by,” and “under common control with,” and
26 means the possession, direct or indirect, of the power to
27 direct or cause the direction of the management and
28 policies of a person, whether through the ownership of
29 voting securities, by contract other than a commercial
30 contract for goods or nonmanagement services, or
31 otherwise, unless the power is the result of an official
32 position with or corporate office held by the person.
33 Control shall be presumed to exist if any person, directly
34 or indirectly, owns, controls, holds with the power to vote,
35 or holds proxies representing, more than 10 percent of the
36 voting securities of any other person.

37 (c) An action to suspend a certificate of authority
38 under this section shall be conducted in accordance with
39 the Administrative Procedure Act (Chapter 5
40 (commencing with Section 11500) of Part 1 of Division 3



1 of Title 2 of the Government Code), except that (1) if the
2 Office of Administrative Hearings is unable to assign an
3 administrative law judge to preside over a hearing that
4 commences within 30 days of the filing of an accusation
5 or order initiating an action under this section, the
6 administrative law judge may be appointed by the
7 commissioner; and (2) if the commissioner determines
8 that it is necessary to protect the interests of Holocaust
9 survivors, he or she may issue an order of suspension
10 pursuant to this section prior to holding a hearing.

11 (d) If the commissioner issues an order pursuant to
12 paragraph (2) of subdivision (c), he or she shall
13 immediately issue and serve upon the insurer a statement
14 of reasons for the immediate action, as well as a copy of
15 the accusation or order containing the allegations that
16 support the order. Any order issued pursuant to this
17 subdivision shall include a notice stating the time and
18 place of a hearing on the order, which shall not be less
19 than 20, nor more than 30 days after the order is served.

20 SEC. 3. Section 12936 of the Insurance Code is
21 amended to read:

22 12936. (a) (1) Escheated funds deposited in the
23 Insurance Fund pursuant to subdivision (a) of Section
24 1523 of the Code of Civil Procedure shall be transferred
25 to the General Fund on June 30, 1998, to repay the
26 principal and interest on the General Fund loan provided
27 pursuant to Item 0845-001-0001 of the Budget Act of 1996,
28 and such funds are hereby continuously appropriated for
29 that purpose.

30 (2) If the Director of Finance determines that funds
31 subject to escheat for the 1997-98 fiscal year are
32 insufficient to repay the General Fund loan plus the
33 interest owed, funds subject to escheat in the 1998-99
34 fiscal year, up to the amount necessary to repay the
35 General Fund loan plus the interest owed, shall be
36 available for expenditure by the commissioner to repay
37 the principal and interest on the General Fund loan.
38 Notwithstanding the loan repayment date specified in
39 Item 0845-001-0001 of the Budget Act of 1996, such a



1 determination by the Director of Finance shall trigger an
2 extension of the loan repayment date to June 30, 1999.

3 (b) A policyholder who was entitled to a rebate
4 pursuant to settlement or order of the commissioner and
5 who has not received the escheated rebate may submit a
6 claim to the Controller. The Controller shall pay the claim
7 from among the Proposition 103 refunds that have
8 escheated to the state and been deposited in the
9 Unclaimed Property Fund upon verification that the
10 claim is valid.

11 SEC. 4. Section 12967 is added to the Insurance Code,
12 to read:

13 12967. (a) (1) (A) The department shall develop
14 and implement a coordinated approach to gather,
15 review, and analyze the archives of insurers and other
16 archives and records, using onsite teams and an oversight
17 committee, to provide for research and investigation into
18 insurance policies, unpaid insurance claims, and related
19 matters of victims of the Holocaust or of the
20 Nazi-controlled German government or its allies, and the
21 beneficiaries and heirs of those victims, and for losses
22 arising from the activities of the Nazi-controlled German
23 government or its allies for insurance policies issued
24 before and during World War II by insurers who have
25 affiliates or subsidiaries authorized to do business in
26 California. Information compiled shall be placed in a
27 centralized data base for the retention of policy and
28 claimant data, and the data shall be used to implement
29 this section and Section 790.15.

30 (B) The oversight committee referred to in paragraph
31 (1) shall be composed of qualified individuals with
32 experience in Holocaust claims cases, similar
33 investigations, archival research, and international law.
34 The oversight committee shall also include Holocaust
35 survivors. No member of the oversight committee shall
36 have a potential or actual conflict of interest, or shall be
37 employed by a person who has a potential or actual
38 conflict of interest.

39 (2) The department shall cooperate with, participate
40 in, and promote coordination with, the National



1 Association of Insurance Commissioners Holocaust
2 Working Group, and with any other national or
3 international commission or entity involved in the
4 documentation, resolution, settlement, or distribution of
5 insurance claims, including documentation of unpaid
6 claims and distribution of proceeds, and establishment
7 and maintenance of a data base to contain information
8 relevant to claimants and documents and historical
9 information. The department shall work to recover
10 information and records that will strengthen the claims
11 of California residents.

12 (3) The department shall employ insurance
13 archaeologists, economists, attorneys, accountants, and
14 other specialists, in this country and in Europe, to
15 implement this section. The department shall work
16 jointly with the National Association of Insurance
17 Commissioners and other organizations for this purpose.
18 The department's cooperation with other states shall be
19 for the purpose of advancing survivors' claims while
20 avoiding duplication of efforts, and shall be dependent
21 upon contributions by other states.

22 (4) In order to assure that Holocaust survivors receive
23 the most aggressive and independent representation
24 possible in pursuit of their historic claims, in contracting
25 with accounting firms, law firms, economists, or others to
26 implement this section, the department shall, to the
27 maximum extent possible, avoid any potential or actual
28 conflict of interest by doing the following:

29 (A) Seek and give preference to firms that are entirely
30 free of any associations with firms representing insurers
31 and nations from which Holocaust survivors are seeking
32 just treatment of their claims.

33 (B) If the department finds that is necessary to
34 contract with a firm or firms that have conflicts or
35 potential conflicts of interest, those conflicts or potential
36 conflicts of interest shall be disclosed to the
37 commissioner, and the following requirements shall
38 apply:

39 (i) The contract shall contain a provision that
40 expresses a formal commitment on the part of the firm to



1 aggressively pursue a maximum just settlement for
2 Holocaust survivors and their families without regard to
3 any adverse impacts on insurers, affiliates of insurers,
4 nations, or others that may have employed the firm or
5 affiliates of the firm that is contracting with the
6 commissioner to assist in carrying out the commissioner's
7 responsibilities under this section.

8 (ii) If any conflict or potential conflict exists between
9 the firm, or an affiliate of the firm, and an insurer, an
10 affiliate of an insurer, a nation or others directly or
11 indirectly involving Holocaust claims, the firm shall
12 disclose both the fact of the conflict or potential conflict,
13 and all relevant information describing the nature of the
14 conflict or potential conflict.

15 (iii) If a conflict or potential conflict exists between
16 the firm, or an affiliate of the firm, and an insurer, an
17 affiliate of an insurer, a nation, or others that does not
18 directly or indirectly involve Holocaust claims, the firm
19 shall disclose the fact of the conflict or potential conflict
20 and identify the source of the conflict or potential
21 conflict, but need not describe the particular
22 circumstances or facts that create the conflict or potential
23 conflict.

24 (C) The department may take whatever special
25 measures it deems necessary to avoid either the
26 appearance or the reality of conflicts that may undermine
27 public confidence in the integrity of the effort to secure
28 justice for Holocaust survivors.

29 (b) The funding of the activities provided for by this
30 section for the 1998-1999 fiscal year shall be from funds
31 transferred pursuant to subdivision (b) of Section 1523 of
32 the Code of Civil Procedure, which funds are hereby
33 appropriated to the commissioner for that purpose. The
34 commissioner shall seek reimbursement of those funds as
35 provided in subdivision (c).

36 Funding for subsequent fiscal years shall be subject to
37 the Budget Act and based on a plan submitted by the
38 commissioner to the Legislature outlining the plan for
39 reimbursement of expenses of the department by
40 affected insurers.



1 Funds made available to implement this section shall
2 be used to develop and implement a coordinated
3 approach to gather, review, and analyze the archives of
4 affected insurance groups, and other archives and
5 records, using onsite teams and an oversight committee
6 consisting of individuals with expertise in accounting,
7 law, insurance archaeology, economics, and public
8 information. The information compiled shall be placed in
9 a centralized data base for the retention of policy and
10 claimant data, and that data shall be used by the
11 department to implement this section.

12 (c) (1) Any funds recovered by the department for
13 the purpose of reimbursing the state for costs associated
14 with investigation and enforcement actions under this
15 section shall not be deposited in the Insurance Fund, but
16 instead shall be delivered to the Controller for deposit
17 into the General Fund.

18 (2) To the maximum extent possible, the department
19 shall seek reimbursement for its costs incurred in
20 implementing this section, including funds transferred
21 pursuant to subdivision (b) of Section 1523 of the Code of
22 Civil Procedure, from any settlements reached with
23 affected insurers.

24 (d) The department shall report its progress in
25 implementing this section and its participation in the
26 identification and resolution of insurance claims of
27 Holocaust survivors and their beneficiaries and heirs. The
28 report shall also include an overview of current and
29 anticipated expenditures in implementing this section.
30 The department shall make this report biannually to the
31 insurance and budget committees of the Legislature.

32 SEC. 5. This act is an urgency statute necessary for the
33 immediate preservation of the public peace, health, or
34 safety within the meaning of Article IV of the
35 Constitution and shall go into immediate effect. The facts
36 constituting the necessity are:

37 Many of the victims of the Holocaust are elderly. In
38 order to permit testimony by and compensation to these



1 persons, it is necessary for this act to take effect
2 immediately.

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