

Senate Bill No. 1530

Passed the Senate August 30, 1998

Secretary of the Senate

Passed the Assembly August 27, 1998

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

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, 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. The bill would also provide that the department has an affirmative duty to play an independent role in representing the interests of Holocaust survivors.

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.

Appropriation: yes.

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

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

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

(a) Up to the amount that will repay principal and interest on the General Fund loan authorized by Item



0845-001-0001 of the Budget Act of 1996 for expenditure as provided in Section 12936 of the Insurance Code.

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

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

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

(b) As used in this section:

(1) “Holocaust survivor” means any person who is the beneficiary of an insurance policy, if the insurance policy insured a person’s life, property, or other interest, and the insured person was killed, died, was displaced, or was otherwise a victim of persecution of Jewish and other peoples preceding and during World War II by Germany, its allies, or sympathizers.

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

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

(4) An “affiliate” of, or person “affiliated” with, a specific person, means a person who directly, or indirectly through one or more intermediaries, controls,



or is controlled by, or is under common control with, the person specified.

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

(c) An action to suspend a certificate of authority under this section shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except that (1) if the Office of Administrative Hearings is unable to assign an administrative law judge to preside over a hearing that commences within 30 days of the filing of an accusation or order initiating an action under this section, the administrative law judge may be appointed by the commissioner; and (2) if the commissioner determines that it is necessary to protect the interests of Holocaust survivors, he or she may issue an order of suspension pursuant to this section prior to holding a hearing.

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

(e) When considering an action to suspend a certificate of authority under this section, the



commissioner shall include consideration of whether the insurer has participated in good faith in an international commission on Holocaust survivor insurance claims, and whether the commission is making meaningful and expeditious progress toward paying claims to survivors and righting the historic wrong done to Holocaust victims.

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

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

(2) If the Director of Finance determines that funds subject to escheat for the 1997–98 fiscal year are insufficient to repay the General Fund loan plus the interest owed, funds subject to escheat in the 1998–99 fiscal year, up to the amount necessary to repay the General Fund loan plus the interest owed, shall be available for expenditure by the commissioner to repay the principal and interest on the General Fund loan. Notwithstanding the loan repayment date specified in Item 0845-001-0001 of the Budget Act of 1996, such a determination by the Director of Finance shall trigger an extension of the loan repayment date to June 30, 1999.

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

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



12967. (a) (1) (A) The department shall develop and implement a coordinated approach to gather, review, and analyze the archives of insurers 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. Information compiled shall be placed in a centralized data base for the retention of policy and claimant data, and the data shall be used to implement this section and Section 790.15.

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

(2) The department has an affirmative duty to play an independent role in representing the interests of Holocaust survivors where necessary, including the duty to carry out research, investigations, and advocacy. The department shall cooperate with, participate in, promote coordination with, and to the extent feasible and consistent with the purposes of this section, work jointly with the National Association of Insurance Commissioners and the international commission on Holocaust survivor claims or any other entity involved in the documentation, resolution, settlement, or distribution of insurance claims, including documentation of unpaid claims and distribution of proceeds, and establishment and maintenance of a data



base to contain information relevant to claimants and documents and historical information. The department shall work to recover information and records that will strengthen the claims of California residents.

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

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

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

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

(i) The contract shall contain a provision that expresses a formal commitment on the part of the firm to aggressively pursue a maximum just settlement for Holocaust survivors and their families without regard to any adverse impacts on insurers, affiliates of insurers, nations, or others that may have employed the firm or affiliates of the firm that is contracting with the commissioner to assist in carrying out the commissioner's responsibilities under this section.



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

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

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

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

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

Funds made available to implement this section shall be used 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 consisting of individuals with expertise in accounting, law, insurance archaeology, economics, and public



information. The information compiled shall be placed in a centralized data base for the retention of policy and claimant data, and that data shall be used by the department to implement this section.

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

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

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

SEC. 5. 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:

Many of the victims of the Holocaust are elderly. In order to permit testimony by and compensation to these persons, it is necessary for this act to take effect immediately.



Approved _____, 1998

Governor

