

AMENDED IN ASSEMBLY JUNE 1, 1999
AMENDED IN ASSEMBLY MAY 19, 1999
AMENDED IN ASSEMBLY MAY 6, 1999
AMENDED IN ASSEMBLY APRIL 27, 1999
AMENDED IN ASSEMBLY MARCH 22, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 427

Introduced by Assembly Member Scott

February 12, 1999

An act to amend Sections 1035 and 1036 of the Insurance Code, relating to insurance, ~~and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 427, as amended, Scott. Insurance: delinquency proceedings.

Existing law provides for proceedings in cases of insolvency and delinquency of insurance companies and authorizes the Insurance Commissioner to appoint and employ special deputy commissioners, clerks, and assistants in this regard.

The bill would provide that any person appointed by the Insurance Commissioner to serve in the capacity of chief executive officer of the department's Conservation and Liquidation Division shall be subject to Senate confirmation.

Existing law generally prohibits, with specified exceptions, any state agency from employing, without the prior written

consent of the Attorney General, any legal counsel other than the Attorney General in any matter in which the agency is interested. This general prohibition specifically applies to the Department of Insurance in insurance delinquency proceedings.

This bill would clarify that this general prohibition applies to insurance insolvency, delinquency, and administrative proceedings and includes any proceedings ancillary or pendent thereto, whether judicial, administrative, or otherwise.

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

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

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

1 SECTION 1. Section 1035 of the Insurance Code is
2 amended to read:
3 1035. (a) In any proceeding under this article, the
4 commissioner shall have the power to appoint and
5 employ under his or her hand and official seal, special
6 deputy commissioners, as his or her agents, and to employ
7 clerks and assistants and to give to each of them those
8 powers that he or she deems necessary. Upon appointing
9 or employing special deputy commissioners, clerks, or
10 assistants, the commissioner shall notify the Chair of the
11 Joint Budget Committee of the Legislature, by letter, of
12 the action. The costs of employing special deputy
13 commissioners, clerks, and assistants appointed to carry
14 out this article, and all expenses of taking possession of,
15 conserving, conducting, liquidating, disposing of, or
16 otherwise dealing with the business and property of that
17 person under this article, shall be fixed by the
18 commissioner, subject to the approval of the court, and
19 shall be paid out of the assets of that person to the
20 department. In the event the property of that person
21 does not contain cash or liquid assets sufficient to defray
22 the cost of the services required to be performed under
23 the terms of this article, the commissioner may at any



1 time or from time to time pay the cost of those services
2 out of the appropriation for the maintenance of the
3 department, but not out of the assets of other estates. Any
4 amounts so paid shall be deemed expense of
5 administration and shall be repaid to the fund out of the
6 first available moneys in the estate.

7 (b) Any person appointed by the commissioner to
8 serve in the capacity of chief executive officer of the
9 department's Conservation and Liquidation Division
10 shall be subject to confirmation by the Senate.

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

13 1036. Notwithstanding any other provision of law,
14 Article 4 (commencing with Section 11040) of Chapter 1
15 of Part 1 of Division 3 of Title 2 of the Government Code,
16 pertaining to legal services, shall apply in the institution
17 and prosecution of all insurance insolvency, delinquency,
18 and administrative proceedings, and any proceedings
19 ancillary or pendent thereto, commenced pursuant to
20 this article or under this code, whether judicial,
21 administrative, or otherwise. The compensation of any
22 counsel outside of California state service who is
23 employed pursuant to these provisions to represent the
24 commissioner as receiver shall be fixed by the
25 commissioner, subject to the approval of the court.
26 Compensation of counsel representing the commissioner
27 as receiver shall be paid from the assets of the person
28 against whom the commissioner has proceeded under
29 this article. It is the intent of the Legislature and the
30 Legislature finds it is in the best interest of the people of
31 the state that although the first sentence applies to the use
32 of any counsel other than the Attorney General, including
33 the use of agency counsel, the Attorney General and the
34 Insurance Commissioner consult and cooperate in regard
35 to utilizing agency counsel of the Department of
36 Insurance as the commissioner's legal counsel in
37 delinquency proceedings, judicial and otherwise, to the
38 extent appropriate and consistent with the interests of
39 the parties beneficially interested in those proceedings



1 and if that use would result in the savings of costs to the
2 parties beneficially interested in those proceedings.

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

8 ~~In order to facilitate ongoing insurance delinquency~~
9 ~~proceedings by the Department of Insurance in the most~~
10 ~~efficient and effective manner, it is necessary that this act~~
11 ~~take effect immediately.~~

