

Introduced by Senator Figueroa

February 19, 1999

An act to amend Sections 1033, 1077, and 1077.1 of, and to add Section 1034.2 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 539, as introduced, Figueroa. Insurance: insolvency, delinquency, administrative supervision.

(1) Existing law provides for proceedings in cases of insolvency and delinquency of insurance companies and sets forth the preference for settling claims.

This bill would correct a cross reference relating to claims excluded under provisions of the California Insurance Guarantee Association.

(2) Existing law provides that the Insurance Commissioner may file in the superior court to have the court issue an order to vest title to all of the assets of a person or entity that the commissioner has filed against for specified reasons. Existing law permits the Insurance Commission to act immediately, before applying to a superior court, to take possession of the property, business, books, records and accounts of that person or entity under specified conditions.

This bill would require any person or entity, except as specified, who is in possession, custody, or control of property of a person or entity against whom the commissioner has proceeded to deliver the property to the Insurance Commissioner. The bill would require any person or entity that owes a debt that is the property of a person or entity

against whom the commissioner has proceeded and that is mature, payable on demand, or payable on order, to pay the debt to the commissioner upon the order of the commissioner.

(3) Existing law permits the Insurance Commissioner, instead of either filing an action in court to seize, or exercising his or her summary power to seize the property, business, books, records or accounts of a life or disability insurer, to subject the insurer to administrative supervision by the commissioner when in the commissioner’s discretion specified conditions exist.

This bill would provide for administrative supervision by the commissioner for any kind of insurer when in the commissioner’s discretion specified conditions exist.

Vote: 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 1033 of the Insurance Code is
2 amended to read:

3 1033. (a) Claims allowed in a proceeding under this
4 article shall be given preference in the following order:

- 5 (1) Expense of administration.
- 6 (2) All claims of the California Insurance Guarantee
7 Association or the California Life and Health Insurance
8 Guarantee Association, and associations or entities
9 performing a similar function in other states, together
10 with claims for refund of unearned premiums and all
11 claims under insurance and annuity policies or contracts,
12 including funding agreements, of an insolvent insurer
13 that are not covered claims.

14 Claims excluded by paragraphs ~~(3)~~ (4) (except claims
15 for refund of unearned premiums), ~~(4)~~, (5), ~~(7)~~ (6), and
16 (8) of subdivision (c) of Section 1063.1, subdivisions (g)
17 and (h) of Section 1063.2, and paragraph (2) of
18 subdivision (b) of Section 1067.02, are excluded from this
19 priority.

20 (3) Claims having preference by the laws of the
21 United States.



1 (4) Unpaid charges due under the provisions of
2 Section 736.

3 (5) Taxes due to the State of California.

4 (6) Claims having preference by the laws of this state.

5 (7) All other claims.

6 (b) (1) Every claim allowed under a separate account
7 policy, contract, or agreement providing, in effect, that
8 the assets allocated to the separate account are not
9 chargeable with liabilities arising out of any other
10 business of the insurer, shall be satisfied out of the assets
11 properly allocated to and maintained in the separate
12 account, excluding amounts allocated or transferred to
13 the separate account by the insurer pursuant to
14 subdivision (b) of Section 10506, equal to the reserves
15 maintained in the separate account for the policies,
16 contracts, or agreements. No liabilities of the insurer
17 arising out of any other business of the insurer shall be
18 satisfied from assets properly allocated to and maintained
19 in a separate account except (A) from amounts allocated
20 or transferred to the separate account pursuant to
21 subdivision (b) of Section 10506 and (B) from any assets
22 allocated to the separate account that exceed the reserves
23 under the separate account policies, contracts, or
24 agreements. For the purposes of this subdivision,
25 “separate account policies, contracts, or agreements”
26 means any policies, contracts, or agreements that provide
27 for separate accounts as contemplated by Section 10506,
28 10506.3, 10506.4, or 10541. Any valid and allowed claim for
29 contractual benefits that cannot be satisfied out of the
30 assets properly allocated to and maintained in a separate
31 account for obligations authorized by subdivision (a) of
32 Section 10506.3 shall be included as a claim against the
33 general account within paragraph (2) of subdivision (a).
34 Any valid and allowed claim against the general account
35 for contractual benefits under an obligation authorized
36 by Section 10506.4 shall be included as a claim within
37 paragraph (2) of subdivision (a).

38 (2) Notwithstanding any other provision of law, to the
39 extent that any assets of a life insurer, other than those
40 assets properly allocated to, and maintained in, a separate



1 account, have been used to fund or pay any expenses,
2 taxes, or policyholder benefits that are attributable to a
3 separate account policy, contract, or agreement that
4 should have been paid by a separate account prior to the
5 commencement of delinquency proceedings, then upon
6 the commencement of delinquency proceedings, the
7 separate accounts that benefited from this payment or
8 funding shall first be used to repay or reimburse the
9 company's general assets or account for any
10 unreimbursed net sums due at the commencement of
11 delinquency proceedings prior to the application of the
12 separate account assets to the satisfaction of liabilities of
13 the corresponding separate account policies, contracts,
14 and agreements.

15 (c) Upon the issuance of an order appointing a
16 conservator or liquidator for any person under either
17 Section 1011 or 1016 or both these sections, the lien of
18 taxes due to the State of California imposed by Article 4
19 (commencing with Section 12491) of Chapter 4 of Part 7
20 of Division 2 of the Revenue and Taxation Code shall
21 become subordinate to the reasonable administrative
22 expenses of the proceeding under the order.

23 (d) The following definitions are for purposes of this
24 section only and shall not be used to determine coverage
25 under the California Life and Health Insurance
26 Guarantee Association Act (Article 14.7 (commencing
27 with Section 1067)):

28 (1) "Funding agreements" means those agreements
29 authorized to be delivered or issued pursuant to Section
30 10541.

31 (2) "Annuity" means only those annuity contracts,
32 including period-certain annuities issued by a life insurer,
33 that require for their lawful issuance a certificate of
34 authority from the commissioner, and excludes without
35 limitation all instruments for which the commissioner's
36 certificate of authority is not required, such as promissory
37 notes, installment loans, negotiable instruments,
38 mortgages, and debentures.

39 (3) Reinsurance contracts shall not be included as
40 insurance or annuity policies or contracts, or funding



1 agreements. However, any insurance or annuity policy or
2 contract, including any funding agreement, that is
3 assumed by an insurer under an assumption reinsurance
4 agreement pursuant to a plan of liquidation,
5 rehabilitation, or reorganization shall, unless the plan
6 provided otherwise, be deemed to retain the issue date of
7 the original insurance or annuity policy or contract, or
8 funding agreement that is assumed.

9 (e) The provisions of this section are severable. If any
10 portion of this section is held invalid or is preempted by
11 federal law, the remainder of the section and its
12 application shall not be affected. Specifically, should any
13 of paragraphs (1) to (6), inclusive, of subdivision (a) be
14 held to be invalid or preempted by federal law, the claims
15 included within the invalid paragraph shall be included
16 within paragraph (7) of subdivision (a), and the
17 remaining paragraphs shall not be affected thereby.

18 SEC. 2. Section 1034.2 is added to the Insurance Code,
19 to read:

20 1034.2. (a) Except as provided in subdivisions (c)
21 and (d), any person or entity in possession, custody, or
22 control of property of a person proceeded against under
23 this article shall deliver the property to the commissioner.

24 (b) Any person or entity that owes a debt that is
25 property of a person proceeded against and that is
26 matured, payable on demand, or payable on order, shall
27 pay the debt to the commissioner upon the order of the
28 court.

29 (c) Unless a court orders otherwise, any attorney,
30 accountant, agent, reinsurance intermediary,
31 management company, data processing company, or
32 affiliate of a person proceeded against, or any other entity
33 that possesses or controls any recorded information or
34 documents of any nature, including books, claims files,
35 records, and papers of or pertaining to the person
36 proceeded against, or of any affiliate thereof, that refer to
37 or contain any information about the person's assets,
38 liabilities, financial affairs, or business, immediately shall
39 disclose and, on order of the commissioner, turn over the



1 recorded information or documents, or if the court shall
2 so order, copies thereof, to the commissioner.

3 (d) As of the date of an order directing rehabilitation
4 or liquidation of the person proceeded against, no
5 possessory lien held by any attorney, accountant, agent,
6 management company, data processing company, or
7 affiliate including common law retaining liens, may be
8 asserted or enforced against the commissioner or the
9 person proceeded against as a basis for withholding files
10 or other property. No possessory lienholder shall be
11 granted secured status, security, or payment for his or her
12 claim against the person proceeded against in exchange
13 for the release of files or other property or the
14 extinguishment of the lien.

15 SEC. 3. Section 1077 of the Insurance Code is
16 amended to read:

17 1077. As used in this article:

18 (a) “Insurer” means and includes every person
19 engaged as indemnitor, surety, or contractor in the
20 business of entering into contracts of ~~life or disability~~
21 insurance or of annuities.

22 (b) “Exceeded its powers” means any of the following
23 conditions:

24 (1) The insurer has refused to permit examination of
25 its books, papers, accounts, records, or affairs by the
26 commissioner, his or her deputies, employees, or duly
27 commissioned examiners.

28 (2) A domestic insurer has unlawfully removed from
29 this state books, papers, accounts, or records necessary for
30 an examination of the insurer.

31 (3) The insurer has failed to promptly comply with the
32 applicable financial reporting statutes or rules and
33 departmental requests relating thereto.

34 (4) The insurer has neglected or refused to observe an
35 order of the commissioner to make good, within the time
36 prescribed by law, any prohibited deficiency in its capital,
37 capital stock, or surplus.

38 (5) The insurer is continuing to transact insurance or
39 write business after its license has been revoked or
40 suspended by the commissioner.



1 (6) The insurer, by contract or otherwise, has
2 unlawfully, or has in violation of an order of the
3 commissioner, or has without first having obtained
4 written approval of the commissioner, if approval is
5 required by law, done any of the following:

6 (A) Totally reinsured its entire outstanding business.

7 (B) Merged or consolidated substantially its entire
8 property or business with another insurer.

9 (7) The insurer engaged in any transaction in which it
10 is not authorized to engage under the laws of this state.

11 (8) The insurer refused to comply with a lawful order
12 of the commissioner.

13 (c) "Consent" means agreement to administrative
14 supervision by the insurer.

15 SEC. 4. Section 1077.1 of the Insurance Code is
16 amended to read:

17 1077.1. The provisions of the article shall apply to all
18 of the following:

19 (a) All domestic ~~life or disability~~ insurers.

20 (b) Any other ~~life or disability~~ insurer doing business
21 in this state whose state of domicile has asked the
22 commissioner to apply the provisions of this article as
23 ~~regards~~ *with regards to* that insurer.

