# ASSEMBLY BILL No. 2535

**Introduced by Assembly Member Blakeslee**

February 19, 2010

An act to amend Section 10089.16 of the Insurance Code, relating to insurance.

legislative counsel's digest

AB 2535, as introduced, Blakeslee. Insurance: California Earthquake Authority.

Existing law authorizes the California Earthquake Authority, administered under the authority of the commissioner, to transact basic residential earthquake insurance. Existing law authorizes the governing board of the authority to take certain actions to open the authority to participation by insurers, who have not elected to participate in the authority by contributing the required operating capital, in order to act upon findings and recommendations reported to the Legislature or to implement a specific finding by the commissioner or the board that modification of the requirements for entry into the authority is necessary to broaden the availability of residential property or residential earthquake insurance. Any action by the board, to act upon findings and recommendations reported to the Legislature or to implement a specific finding by the commissioner or the board that modification of requirements for entry into the authority is necessary to broaden the availability of residential property or residential earthquake insurance, is subject to certain limitations, including, but not limited to, a finding of necessity, as specified. All materials and documents prepared or used by the authority to make a finding of necessity, other than proprietary materials and documents owned or licensed by third parties, are considered public documents and are required to be made available to the public.

This bill would require that the above-mentioned materials and documents be made available in electronic form upon request by a member of the public.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 10089.16 of the Insurance Code is amended to read:

10089.16. (a) On application to the board, payment of any assessments and fees calculated by the board, and fulfillment of any additional requirements imposed by the board, nonparticipating insurers may become participants in the authority with all rights and privileges attendant to that participation.

(b) In order to act upon any findings and recommendations reported to the Legislature pursuant to Section 10089.13, or to implement a specific finding by the commissioner or the board that modification of requirements for entry into the authority is necessary to broaden the availability of residential property or residential earthquake insurance, the board is authorized to open the authority to participation by insurers who have not elected to participate in compliance with Section 10089.15. In implementing the authority granted by this section, the board may:

(1) Offer incentives for insurers to participate in the authority.

(2) Allow any insurer or insurer group that has not elected to become a participating insurer to become an associate participating insurer without complying with the capital contribution requirements of Section 10089.15 if it has maintained or exceeded its number of policies of residential property insurance written as of January 1, 1996.

(c) Any action by the board pursuant to subdivision (b) shall be subject to the following conditions and limitations:

(1) Any deliberation and action by the board shall be conducted at a public meeting of the board.

(2) No action may be taken within one year of the date upon which the authority begins writing policies of basic residential earthquake insurance.

(3) The board shall have no authority to modify the requirements of Section 10089.23, 10089.30, or 10089.31, or to provide, in any other manner, for reduction of the liability of an insurer or insurer group to comply with the assessments placed upon participating insurers in the event of a loss.

(4) Notwithstanding Section 10089.11, any action of the board pursuant to subdivision (b) shall be by regulation promulgated by the board. Notwithstanding any other provision of law, there shall be no authority by the board to promulgate emergency regulations to implement subdivision (b). No regulations may be proposed within one year of the date upon which the authority begins writing policies of basic residential earthquake insurance. Notwithstanding any exception provided in Section 11343 of the Government Code, any regulation adopted pursuant to subdivision (b) shall be submitted to the Office of Administrative Law for approval pursuant to the Administrative Procedure Act *(Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code)*.

(5) Any action by the board to establish an incentive pursuant to subdivision (b) that is available to a single insurer or insurer group shall be based upon standards adopted by the board that are not arbitrary or discriminatory. Notwithstanding Section 10089.11, these standards shall be established by regulation promulgated by the board.

(6) A finding of necessity pursuant to subdivision (b) shall state the specific facts and conditions that establish the necessity and justify the actions to implement subdivision (b). All materials and documents prepared or used by the authority to determine the necessity to implement subdivision (b), other than proprietary materials and documents owned or licensed by third parties, shall be considered public documents, and copies of the public documents shall be made available to the public for inspection at no charge. Members of the public may purchase copies of these documents from the authority at actual cost. *All such materials and documents shall also be made available in electronic form upon request by a member of the public.*

(d) (1) A nonparticipating insurer that applies to the board to become an authority participant ~~must~~ *shall* submit to the authority, in connection with its application, earthquake insurance policy data sufficient for the authority to ascertain through computer modeling the current likelihood and magnitude of earthquake insurance losses that would be attributable to that insurer's book of earthquake insurance business during its first full year of authority participation. The authority's modeled representation of such insured earthquake losses shall be termed the "earthquake insurance risk profile" of that insurer.

(2) If in the board's sole judgment the earthquake insurance risk profile the nonparticipating insurer would bring to the authority would be more likely to produce losses for the authority, or would be likely to produce greater losses for the authority, than would a book of existing authority business of similar size, the board may require as a condition for approving the insurer's application that the insurer pay up to five annual risk capital surcharges into the authority in addition to any capital contribution required by Section 10089.15 and any assessment obligations required by Sections 10089.23, 10089.30, and 10089.31.

(3) The board shall first calculate the nonparticipating insurer's risk capital surcharge as of the first anniversary of the date the insurer first placed or renewed into the authority earthquake insurance policies. The board shall recalculate the risk capital surcharge for each of up to four years after the first year of calculation and shall impose the resulting surcharge; if the insurer's earthquake insurance risk profile becomes substantially similar to the authority's average risk profile for a book of authority earthquake insurance business of similar size, the board shall relieve the insurer of any further obligation to pay risk capital surcharges.

(4) Each annual risk capital surcharge shall be in an amount that, in the board's determination, is equal to the authority's increased cost of providing capacity to insure that insurer's excess earthquake insurance risk. The authority shall cause to be sent to each such insurer a notice of that insurer's annual risk capital surcharge.

(5) Full payment of a noticed risk capital surcharge shall be due within 30 days and shall be overdue after 30 days. Penalties and interest shall be assessed for late payments in the same manner as provided for late payments of the insurer gross premium tax provided for in Section 12258 of the Revenue and Taxation Code. The board may waive the penalties and interest for good cause shown.

(e) Associate participating insurers shall place all new policies of residential earthquake insurance, when writing new policies of residential property insurance, into the authority. Insurers placing policies with the authority under this section shall be subject to the assessments provided for in Sections 10089.23, 10089.30, and 10089.31. Notwithstanding subdivision (m) of Section 10089.5, “residential earthquake insurance market share” for purposes of any assessments pursuant to Sections 10089.23, 10089.30, and 10089.31 levied on an associate participating insurer shall mean an individual associate participating insurer’s total direct premium received for residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(f) (1) An associate participating insurer shall not cancel or refuse to renew a residential property insurance policy existing on the date it elected to become an associate participating insurer after an offer of earthquake coverage is accepted solely because the insured has accepted that offer of earthquake coverage.

(2) An associate participating insurer shall maintain in force any policy of residential property insurance existing on the date it elected to become an associate participating insurer after an offer of earthquake insurance has been accepted, unless the policy is properly canceled pursuant to Section 676 or the associate participating insurer has grounds for nonrenewal pursuant to subdivision (g).

(g) An associate participating insurer may refuse to renew a policy of residential property insurance after an offer of earthquake coverage has been accepted if one of the following exceptions applies:

(1) The policy is terminated by the named insured.

(2) The policy is refused renewal on the basis of sound underwriting principles that relate to the coverages provided by the underlying policy of residential property insurance and that are consistent with the approved rating plan and related documents filed with the department as required by existing law.

(3) The commissioner finds that the exposure to potential losses will threaten the solvency of the associate participating insurer or

place the associate participating insurer in a hazardous condition. "Hazardous condition" has the same meaning as in Section 1065.1 and includes, but is not limited to, a condition in which an associate participating insurer makes claims payments for losses resulting from an earthquake that occurred within the preceding two years and that required a reduction in policyholder surplus of at least 25 percent for payment of those claims.

(4) There is cancellation under Section 676.

(5) The associate participating insurer has lost or experienced a substantial reduction in the availability or scope of reinsurance coverage or a substantial increase in the premium charged for reinsurance coverage for its residential property insurance policies, and the commissioner has approved a plan for the nonrenewals that is fair and equitable, and that is responsive to the changes in the associate participating insurer's reinsurance position.

(6) The named insured is insured based upon membership in a motor club, as defined in Section 12142, and the membership in that organization is terminated as provided in paragraph (2) of subdivision (c) of Section 1861.03.

(h) For associate participating insurers, underwriting standards applicable to residential property insurance shall not be applied in an unfairly discriminatory fashion against any person who accepts or elects to continue earthquake coverage.

(i) Associate participating insurers shall be subject to the following requirements:

(1) Associate participating insurers shall conform to all provisions of the authority's plan of operation applicable to participating insurers.

(2) No property that has previously been covered by a policy of residential earthquake insurance written by the associate participating insurer or associate participating insurer group, absent at least one full policy year with an insurer not affiliated with the associate participating insurer or its group, may be placed into the authority by an associate participating insurer.

(3) Any associate participating insurer or associate participating insurer group defined in paragraph (2) of subdivision (b) that has failed to maintain or exceed the number of policies of residential property insurance in force on January 1, 1996, may become an associate participating insurer by contributing additional capital into the authority at a rate to be established by the board, which

shall be a per policy rate comparable to the average cost per policy paid by a participating insurer that joins the authority pursuant to Section 10089.15.

(j) Any associate participating insurer shall be required to establish procedures to verify compliance with this section. The procedures shall require verification that each basic residential earthquake policy written by the authority complies with paragraph (2) of subdivision (i).

(k) Any violation of this section may be enforced as a violation of the Unfair Trade Practices Act (Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1). Each policy of basic residential earthquake insurance written in the authority by an associate participating insurer in violation of this section shall be deemed to be a separate violation of the Unfair Trade Practices Act.

(*l*) For purposes of this section, no insurer or associate participating insurer may participate in the authority unless all affiliated insurers participate in the authority.

(m) Policies of basic residential earthquake insurance written by associate participating insurers shall be subject to assessment by the California Insurance Guarantee Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1. Except as provided in Section 10089.34, insurance policies written by participating insurers that are not associate participating insurers shall not be subject to assessment by the California Insurance Guarantee Association if the assessment is imposed to pay claims covered by policies of basic residential earthquake insurance written by an associate participating insurer.

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