

AMENDED IN ASSEMBLY MAY 3, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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~~ *the authority to make all nonproprietary materials and documents available in the electronic form in which it holds the information or which has been used by the authority to create copies for its own use or for provision to others.*

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 10089.16 of the Insurance Code is
- 2 amended to read:
- 3 10089.16. (a) On application to the board, payment of any
- 4 assessments and fees calculated by the board, and fulfillment of
- 5 any additional requirements imposed by the board, nonparticipating
- 6 insurers may become participants in the authority with all rights
- 7 and privileges attendant to that participation.
- 8 (b) In order to act upon any findings and recommendations
- 9 reported to the Legislature pursuant to Section 10089.13, or to
- 10 implement a specific finding by the commissioner or the board
- 11 that modification of requirements for entry into the authority is
- 12 necessary to broaden the availability of residential property or
- 13 residential earthquake insurance, the board is authorized to open
- 14 the authority to participation by insurers who have not elected to
- 15 participate in compliance with Section 10089.15. In implementing
- 16 the authority granted by this section, the board may:
- 17 (1) Offer incentives for insurers to participate in the authority.
- 18 (2) Allow any insurer or insurer group that has not elected to
- 19 become a participating insurer to become an associate participating
- 20 insurer without complying with the capital contribution
- 21 requirements of Section 10089.15 if it has maintained or exceeded
- 22 its number of policies of residential property insurance written as
- 23 of January 1, 1996.
- 24 (c) Any action by the board pursuant to subdivision (b) shall be
- 25 subject to the following conditions and limitations:

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

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

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

11 (4) Notwithstanding Section 10089.11, any action of the board
12 pursuant to subdivision (b) shall be by regulation promulgated by
13 the board. Notwithstanding any other provision of law, there shall
14 be no authority by the board to promulgate emergency regulations
15 to implement subdivision (b). No regulations may be proposed
16 within one year of the date upon which the authority begins writing
17 policies of basic residential earthquake insurance. Notwithstanding
18 any exception provided in Section 11343 of the Government Code,
19 any regulation adopted pursuant to subdivision (b) shall be
20 submitted to the Office of Administrative Law for approval
21 pursuant to the Administrative Procedure Act (Chapter 3.5
22 (commencing with Section 11340) of Part 1 of Division 3 of Title
23 2 of the Government Code).

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

30 (6) A finding of necessity pursuant to subdivision (b) shall state
31 the specific facts and conditions that establish the necessity and
32 justify the actions to implement subdivision (b). All materials and
33 documents prepared or used by the authority to determine the
34 necessity to implement subdivision (b), other than proprietary
35 materials and documents owned or licensed by third parties, shall
36 be considered public documents, and copies of the public
37 documents shall be made available to the public for inspection at
38 no charge. Members of the public may purchase copies of these
39 documents from the authority at actual cost. ~~All such materials~~
40 ~~and documents shall also be made available in electronic form~~

1 ~~upon request by a member of the public. The authority shall make~~
2 ~~all nonproprietary materials and documents available in the~~
3 ~~electronic form in which it holds the information or which has~~
4 ~~been used by the authority to create copies for its own use or for~~
5 ~~provision to others.~~

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

16 (2) If in the board's sole judgment the earthquake insurance risk
17 profile the nonparticipating insurer would bring to the authority
18 would be more likely to produce losses for the authority, or would
19 be likely to produce greater losses for the authority, than would a
20 book of existing authority business of similar size, the board may
21 require as a condition for approving the insurer's application that
22 the insurer pay up to five annual risk capital surcharges into the
23 authority in addition to any capital contribution required by Section
24 10089.15 and any assessment obligations required by Sections
25 10089.23, 10089.30, and 10089.31.

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

37 (4) Each annual risk capital surcharge shall be in an amount
38 that, in the board's determination, is equal to the authority's
39 increased cost of providing capacity to insure that insurer's excess
40 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

1 coverage has been accepted if one of the following exceptions
2 applies:

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

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

9 (3) The commissioner finds that the exposure to potential losses
10 will threaten the solvency of the associate participating insurer or
11 place the associate participating insurer in a hazardous condition.
12 “Hazardous condition” has the same meaning as in Section 1065.1
13 and includes, but is not limited to, a condition in which an associate
14 participating insurer makes claims payments for losses resulting
15 from an earthquake that occurred within the preceding two years
16 and that required a reduction in policyholder surplus of at least 25
17 percent for payment of those claims.

18 (4) There is cancellation under Section 676.

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

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

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

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

36 (1) Associate participating insurers shall conform to all
37 provisions of the authority’s plan of operation applicable to
38 participating insurers.

39 (2) No property that has previously been covered by a policy
40 of residential earthquake insurance written by the associate

1 participating insurer or associate participating insurer group, absent
2 at least one full policy year with an insurer not affiliated with the
3 associate participating insurer or its group, may be placed into the
4 authority by an associate participating insurer.

5 (3) Any associate participating insurer or associate participating
6 insurer group defined in paragraph (2) of subdivision (b) that has
7 failed to maintain or exceed the number of policies of residential
8 property insurance in force on January 1, 1996, may become an
9 associate participating insurer by contributing additional capital
10 into the authority at a rate to be established by the board, which
11 shall be a per policy rate comparable to the average cost per policy
12 paid by a participating insurer that joins the authority pursuant to
13 Section 10089.15.

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

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

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

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

- 1 covered by policies of basic residential earthquake insurance
- 2 written by an associate participating insurer.

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