

AMENDED IN ASSEMBLY AUGUST 24, 2009

AMENDED IN ASSEMBLY JULY 13, 2009

AMENDED IN ASSEMBLY JUNE 26, 2009

SENATE BILL

No. 291

Introduced by Senator Calderon

(Principal coauthor: Assembly Member Solorio)

February 25, 2009

An act to amend Section 12640.05 of the Insurance Code, relating to insurance, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 291, as amended, Calderon. Insurance reserves.

Existing law requires a mortgage guaranty insurer to maintain a policyholders surplus at all times in an amount not less than the amount required, as specified, and defines "face amount of an insured mortgage" for these purposes. Existing law requires a mortgage guaranty insurer to cease new business if the insurer does not have the amount of policyholders surplus required, as specified.

This bill would revise the definition of "face amount of an insured mortgage" to exclude the outstanding principal balance of any loan that is in default and for which the insurer has established a loss reserve, as specified. The bill would provide that if a mortgage guaranty insurer will not have the amount of policyholders surplus required, it shall cease transacting new business, as specified, until its policyholders surplus is in compliance. The bill requires that the insurer notify the commissioner at least 60 days prior to the time the policyholders surplus is estimated to fall below the amount required and may at that time

request a waiver of the requirements. If the commissioner fails to issue an order in response to the waiver request within 60 days, the insurer may continue transacting new business in California until the commissioner issues an order. The insurer would bear the commissioner's cost of retaining consultants reasonably necessary to evaluate the waiver request, and reimburse the commissioner for the cost of a hearing held, as specified.

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

Vote: ~~majority~~^{2/3}. 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 12640.05 of the Insurance Code is
2 amended to read:

3 12640.05. (a) A mortgage guaranty insurer shall maintain a
4 policyholders surplus in an amount not less than the amount
5 required by this section. The policyholders surplus shall be the
6 calculated net of reinsurance ceded, but shall include reinsurance
7 assumed. "Face amount of an insured mortgage" means the
8 outstanding principal balance computed without any reduction
9 because of an insurer's option limiting its coverage, but shall
10 exclude the outstanding principal balance of any loan that is in
11 default and for which the insurer has established a loss reserve,
12 provided that the loss reserve established for that loan is equal to
13 or greater than the policyholders surplus the insurer would
14 otherwise be required to establish with respect to that loan, pursuant
15 to this section. Nothing in this subdivision limits the
16 commissioner's authority under Section 12640.04.

17 (b) If a policy of mortgage guaranty insurance insures individual
18 loans with a percentage claim settlement option on such loans, the
19 insurer shall maintain a policyholders surplus based on each one
20 hundred dollars (\$100) of the face amount of the mortgage, the
21 percentage coverage or claim settlement option, and the
22 loan-to-value category.

23 The required amount of policyholders surplus shall be calculated
24 in the following manner:

25 (1) If the total indebtedness is greater than 75 percent of the
26 value of the collateral property at the date of the insurance:

	Policyholders		Policyholders	
	Surplus per \$100		Surplus per \$100	
	of the Face		of the Face	
	Percent	Amount of the	Percent	Amount of the
	Coverage	Mortgage	Coverage	Mortgage
6	5%	\$.20	55%	\$1.50
7	10	.40	60	1.55
8	15	.60	65	1.60
9	20	.80	70	1.65
10	25	1.00	75	1.75
11	30	1.10	80	1.80
12	35	1.20	85	1.85
13	40	1.30	90	1.90
14	45	1.35	95	1.95
15	50	1.40	100	2.00

16

17 If the percent coverage is between any five-point increment,
 18 then the factor for policyholders surplus per one hundred dollars
 19 (\$100) of the face amount of the mortgage shall be prorated.

20 (2) If the total indebtedness is at least 50 percent and not more
 21 than 75 percent of the value of the collateral property at the date
 22 of insurance, the required amount of policyholders surplus shall
 23 be 50 percent of the amount required by paragraph (1) of
 24 subdivision (b).

25 (3) If the total indebtedness is less than 50 percent of the value
 26 of the collateral property at the date of insurance, the required
 27 amount of policyholders surplus shall be 25 percent of the amount
 28 required by paragraph (1) of subdivision (b).

29 (c) If a policy of mortgage guaranty insurance provides coverage
 30 on a group of loans subject to an aggregate loss limit, the
 31 policyholders surplus shall be:

32 (1) If the equity is not more than 50 percent and is at least 20
 33 percent, or equity plus prior insurance or a deductible equals 25
 34 percent of the value of the collateral property at the date of
 35 insurance, the required amount of policyholders surplus shall be
 36 calculated as follows:

	Policyholders		Policyholders	
	Surplus per \$100		Surplus per \$100	
	of the Face		of the Face	
	Percent	Amount of the	Percent	Amount of the
	Coverage	Mortgage	Coverage	Mortgage
6	1%	\$.30	50%	\$.825
7	5	.50	60	.85
8	10	.60	70	.875
9	15	.65	75	.90
10	20	.70	80	.925
11	25	.75	90	.95
12	30	.775	100	1.00
13	40	.80		

14
15 If the percent coverage is between any specified increment, then
16 the factor for policyholders surplus per one hundred dollars (\$100)
17 of the face amount of the mortgage shall be prorated.

18 (2) If the equity is less than 20 percent or the equity plus prior
19 insurance or a deductible is less than 25 percent of the value of
20 the collateral property at the date of insurance, the required amount
21 of policyholders surplus shall be 200 percent of the amount
22 required by paragraph (1) of subdivision (c).

23 (3) If the equity is more than 50 percent or the equity plus prior
24 insurance or a deductible is more than 55 percent of the value of
25 the collateral property at the date of insurance, the required amount
26 of policyholders surplus shall be 50 percent of the amount of
27 policyholders surplus required by paragraph (1) of subdivision (c).

28 (d) If a policy of mortgage guaranty insurance provides for
29 layers of coverage, deductibles or excess reinsurance, the required
30 amount of policyholders surplus may be computed by subtraction
31 of the required policyholders surplus for the lower percentage
32 coverage limits from the required policyholders surplus for the
33 upper or greater coverage limit.

34 (e) If a policy of mortgage guaranty insurance provides for
35 coverage on loans secured by second liens, the policyholders
36 surplus shall be:

37 (1) If the policy provides coverage on individual loans, the
38 required amount of policyholders surplus shall be calculated
39 according to subdivision (b) after the percent of coverage and the
40 loan-to-value ratios have been determined as follows:

1 (A) Divide the insured portion of the second loan by the entire
2 loan indebtedness on the collateral property to determine the
3 percent coverage.

4 (B) Divide the entire loan indebtedness on the property by the
5 value of the collateral property at the date of insurance to determine
6 loan-to-value percent.

7 (C) The face amount of insured mortgage shall mean the entire
8 loan indebtedness on the property.

9 (D) Equity shall mean the complement of the loan-to-value
10 percent.

11 (2) If the policy provides coverage on a group of loans subject
12 to an aggregate loss limit, the policyholders surplus shall be
13 calculated according to subdivision (c) after the percent of coverage
14 and the loan-to-value ratios have been determined in accordance
15 with paragraph (1).

16 (f) If a policy of mortgage guaranty insurance provides for
17 coverage on leases, the policyholders surplus shall be four dollars
18 (\$4) for each one hundred dollars (\$100) of the insured amount of
19 the lease.

20 (g) (1) If a mortgage guaranty insurer will not have the amount
21 of policyholders surplus required by this section, it shall cease
22 transacting new business until such time that its policyholders
23 surplus is in compliance with this section. At least 60 days prior
24 to the time the policyholders surplus is estimated to fall below the
25 amount required by this section, the insurer shall notify the
26 commissioner and may request a waiver of the requirements of
27 this subdivision. If the commissioner fails to issue an order in
28 response to the waiver request within 60 days after the insurer
29 requests a waiver, the insurer may continue transacting new
30 business in California until the commissioner issues an order. The
31 commissioner may retain consultants, including accountants,
32 actuaries, or other experts, to assist the commissioner in the review
33 of the information reasonably necessary to evaluate the waiver
34 request made pursuant to this subdivision, and the insurer shall
35 bear the commissioner's cost of retaining those consultants. The
36 insurer shall reimburse the commissioner for the cost of a hearing
37 held pursuant to this subdivision unless the insurer has expressly
38 waived the right to a hearing. Nothing in this subdivision is
39 intended to limit the commissioner's authority under any other
40 provision of this code.

1 (2) *An insurer who notifies the commissioner within 10 business*
2 *days following the effective date of this section that its*
3 *policyholders surplus is estimated to fall below the amount*
4 *required by this section shall be deemed to have complied with*
5 *the 60-day notice required by subdivision (1).*

6 *SEC. 2. This act is an urgency statute necessary for the*
7 *immediate preservation of the public peace, health, or safety within*
8 *the meaning of Article IV of the Constitution and shall go into*
9 *immediate effect. The facts constituting the necessity are:*

10 *In order to provide the Insurance Commissioner with flexibility*
11 *in regulating mortgage insurers and to maintain an active*
12 *mortgage insurance market to support residential housing sales,*
13 *it is necessary that this act take effect immediately.*