

ASSEMBLY BILL

No. 2413

Introduced by Assembly Member Feuer

February 24, 2012

An act to amend Section 1033 of the Insurance Code, relating to insurers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2413, as introduced, Feuer. Insurers: insolvency: claims.

Existing law sets forth the priorities for the payment of certain claims from the assets of insolvent insurers, including claims made by California Insurance Guarantee Association and the California Life and Health Insurance Guarantee Association, but excluding certain categories of claims, including those that are not covered claims for the purposes of payment by those associations.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
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 amended
2 to read:
3 1033. (a) Claims allowed in a proceeding ~~under~~ *pursuant to*
4 this article shall be given preference in the following order:
5 (1) Expense of administration.
6 (2) All claims of the California Insurance Guarantee Association
7 or the California Life and Health Insurance Guarantee Association,

1 and associations or entities performing a similar function in other
2 states, together with claims for refund of unearned premiums and
3 all claims under insurance and annuity policies or contracts,
4 including funding agreements, of an insolvent insurer that are not
5 covered claims.

6 The following claims are excluded from this priority:

7 (A) Any obligations of the insolvent insurer arising out of any
8 reinsurance contracts, as well as obligations incurred after the
9 expiration date of the policy or after the insurance policy has been
10 replaced by the insured or canceled at the insured’s request, or
11 after the policy has been canceled by the California Insurance
12 Guarantee Association, the California Life and Health Insurance
13 Guarantee Association, or another association or entity performing
14 a similar function in another state.

15 (B) Any obligations to insurers, insurance pools, or underwriting
16 associations, and their claims for contribution, indemnity, or
17 subrogation, equitable or otherwise, except as otherwise provided
18 in this chapter.

19 (C) Any amount awarded as punitive or exemplary damages,
20 and any damages in excess of the liability limits of the policies or
21 contracts that represent damages for contractual bad faith.

22 (D) Any amount that is a surplus deposit of a subscriber as
23 defined in Section 1374.1.

24 (E) Any judgments against ~~or~~, obligations, or liabilities of the
25 insolvent insurer otherwise arising from alleged or proven torts,
26 and any default, collusive, or stipulated judgment against either
27 the insured or the person subject to proceedings under this article,
28 as well as any judgment taken in violation of Section 1020. Nothing
29 in this subparagraph shall prohibit the commissioner from
30 considering the underlying claims as a claim entitled to priority
31 under this section, provided that the claimant shall provide to the
32 commissioner a written election that the judgment shall in all things
33 be disregarded in determining the liability for and valuation of the
34 underlying claim.

35 (F) Any loss adjustment expenses, including adjustment fees
36 and expenses, attorneys’ fees and expenses, court costs, interest,
37 bond premiums, expert witness fees, and other claims of a similar
38 nature incurred prior to the appointment of a liquidator.

39 (G) Claims arising from any self-insured program of the insurer,
40 including employee life, health ~~and~~, annuity plans, and self-funded

1 employee benefit plans, however denominated, as well as claims
2 arising from a multiple employer welfare arrangement as defined
3 in Section 514 of the federal Employee Retirement Income Security
4 Act of 1974, as amended, a minimum premium group insurance
5 plan, a stop-loss group insurance plan, or an administrative
6 services-only plan.

7 (H) Any portion of a policy or contract to the extent that it
8 provides experience rating credits or refunds, dividends, or for the
9 payment of fees or allowances to any person, including the
10 policyholder or contractholder, in connection with the service to
11 or administration of the policy or contract.

12 (I) Any annuity issued by a charitable organization for which
13 the person subject to these proceedings did not have or utilize a
14 certificate of authority to issue the policy or contract.

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

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

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

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

19 (7) Claims of creditors not included in paragraphs (1) to (6),
20 inclusive.

21 (8) Certificates of contribution, surplus notes, or similar
22 obligations, and premium refunds on assessable policies.

23 (9) The interests of shareholders or other owners in any residual
24 value in the estate.

25 (b) (1) Every claim allowed under a separate account policy,
26 contract, or agreement providing, in effect, that the assets allocated
27 to the separate account are not chargeable with liabilities arising
28 out of any other business of the insurer, shall be satisfied out of
29 the assets properly allocated to and maintained in the separate
30 account, excluding amounts allocated or transferred to the separate
31 account by the insurer pursuant to subdivision (b) of Section 10506,
32 equal to the reserves maintained in the separate account for the
33 policies, contracts, or agreements. No liabilities of the insurer
34 arising out of any other business of the insurer shall be satisfied
35 from assets properly allocated to and maintained in a separate
36 account except (A) from amounts allocated or transferred to the
37 separate account pursuant to subdivision (b) of Section 10506, and
38 (B) from any assets allocated to the separate account that exceed
39 the reserves under the separate account policies, contracts, or
40 agreements. For the purposes of this subdivision, "separate account

1 policies, contracts, or agreements” means any policies, contracts,
2 or agreements that provide for separate accounts as contemplated
3 by Section 10506, 10506.3, 10506.4, or 10541. Any valid and
4 allowed claim for contractual benefits that cannot be satisfied out
5 of the assets properly allocated to and maintained in a separate
6 account for obligations authorized by subdivision (a) of Section
7 10506.3 shall be included as a claim against the general account
8 within paragraph (2) of subdivision (a). Any valid and allowed
9 claim against the general account for contractual benefits under
10 an obligation authorized by Section 10506.4 shall be included as
11 a claim within paragraph (2) of subdivision (a).

12 (2) Notwithstanding any other provision of law, to the extent
13 that any assets of a life insurer, other than those assets properly
14 allocated to, and maintained in, a separate account, have been used
15 to fund or pay any expenses, taxes, or policyholder benefits that
16 are attributable to a separate account policy, contract, or agreement
17 that should have been paid by a separate account prior to the
18 commencement of delinquency proceedings, then upon the
19 commencement of delinquency proceedings, the separate accounts
20 that benefited from this payment or funding shall first be used to
21 repay or reimburse the company’s general assets or account for
22 any unreimbursed net sums due at the commencement of
23 delinquency proceedings prior to the application of the separate
24 account assets to the satisfaction of liabilities of the corresponding
25 separate account policies, contracts, and agreements.

26 (c) Upon the issuance of an order appointing a conservator or
27 liquidator for any person under either Section 1011 or 1016 or
28 both these sections, the lien of taxes due to the State of California
29 imposed by Article 4 (commencing with Section 12491) of Chapter
30 4 of Part 7 of Division 2 of the Revenue and Taxation Code shall
31 become subordinate to the reasonable administrative expenses of
32 the proceeding under the order.

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

37 (1) “Funding agreements” means those agreements authorized
38 to be delivered or issued pursuant to Section 10541.

39 (2) “Annuity” means only those annuity contracts, including
40 period-certain annuities issued by a life insurer, that require for

1 their lawful issuance a certificate of authority from the
2 commissioner, and excludes without limitation all instruments for
3 which the commissioner's certificate of authority is not required,
4 such as promissory notes, installment loans, negotiable instruments,
5 mortgages, and debentures.

6 (3) Reinsurance contracts shall not be included as insurance or
7 annuity policies or contracts, or funding agreements. However,
8 any insurance or annuity policy or contract, including any funding
9 agreement, that is assumed by an insurer under an assumption
10 reinsurance agreement pursuant to a plan of liquidation,
11 rehabilitation, or reorganization shall, unless the plan provided
12 otherwise, be deemed to retain the issue date of the original
13 insurance or annuity policy or contract, or funding agreement that
14 is assumed.

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

23 (f) No payment shall be made to any creditor in paragraphs (8)
24 or (9) of subdivision (a), unless all claims in paragraphs (3) to (7),
25 inclusive, of subdivision (a) have been paid in full, together with
26 interest at the legal rate of the date of the order commencing the
27 proceeding or the date on which the claim became liquidated,
28 whichever date is later. In proceedings involving life insurance
29 companies, no payment shall be made for any claim in paragraph
30 (7), (8), or (9) of subdivision (a) unless and until all claims in
31 paragraph (1) of subdivision (a) have been paid in full, together
32 with interest at the legal rate, all claims in paragraph (2) of
33 subdivision (a) have been paid the full value of the policy or
34 contract upon which the claim is based, as of the time of
35 distribution to claimants, and all claims in paragraphs (3) to (6),
36 inclusive, of subdivision (a) have been paid in full, together with
37 interest at the legal rate from the date of the order commencing
38 the proceeding. Notwithstanding the provisions of this subdivision,
39 no payment of interest shall be made to any insurance guaranty

- 1 association that receives early access disbursements from the estate
- 2 pursuant to Section 1035.5.

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