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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.*)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 3. Reciprocal Insurers [1280 - 1560.19] (*Chapter 3 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 6. Assessment of Insurers [1390 - 1402] (*Heading of Article 6 amended by Stats. 1955, Ch. 935.*)

1390. The provisions of this article shall apply only to exchanges writing liability, common carrier liability, or workers' compensation insurance, except that any exchange may apply for and receive the certificate provided for by Section 1401.

(Amended by Stats. 2018, Ch. 231, Sec. 8. (AB 2045) Effective January 1, 2019.)

1391. Whenever an exchange subject to this article, is not possessed of admitted assets sufficient to discharge all liabilities and to maintain the required surplus, the attorney may make an assessment for the amount, subject to the limits provided by this article, needed to make up the deficiency. If the attorney fails to make the assessment within 30 days after the commissioner orders him to do so, the commissioner may make the assessment. If liquidation of such an exchange is ordered, the assessment may be levied for such an amount, subject to limits provided by this article, as the commissioner determines to be necessary to discharge all liabilities of the exchange, including the reasonable cost of liquidation.

(Amended by Stats. 1969, Ch. 1347.)

1392. Except as provided by Sections 1397, 1398, 1400 and 1401, every subscriber of an exchange subject to this article shall be liable to pay, and shall pay, his proportionate part of any such assessment, in accordance with law and his contract covering any such deficiency assessment (a) if he is notified by either the attorney or the commissioner of intention to levy such assessment within one year after the expiration or cancellation of his policy, or, (b) if an order appointing a conservator or liquidator of such exchange is entered, within one year after such expiration or cancellation.

The period to be covered by the assessment shall be the period of one year immediately preceding (a) the date of notification by either the attorney or the commissioner of the intention to levy such assessment, or, (b) the date of entry of an order appointing a conservator or liquidator of such exchange, as the case may require.

(Amended by Stats. 1941, Ch. 270.)

1393. Each such subscriber's share of the deficiency for which an assessment is made pursuant to this article, shall be determined by applying to the premium earned on the member's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period, upon all policies subject to such assessment. For the purpose of this section, premium earned is to be calculated upon the basis of the amount of the consideration for which the policy is issued, without the deduction of attorney-in-fact fees, policy fees, or other charges, excepting charges which do not recur upon the renewal or extension of the policy.

(Amended by Stats. 1939, Ch. 934.)

1394. Subscribers liable to assessment under this article shall pay the same without offsetting any claim for unearned premiums or losses payable to or for the account of the subscriber.

(Enacted by Stats. 1935, Ch. 145.)

1395. Assessments under this article shall be made upon the members liable to assessment therefor, in proportion to their several liabilities.

(Enacted by Stats. 1935, Ch. 145.)

1396. Notice of all such proposed assessments shall be filed with the commissioner and the assessments shall not take effect until approved by him after such investigation as he deems necessary.

(Enacted by Stats. 1935, Ch. 145.)

1397. Assessments under this article, whether levied by the attorney, or the commissioner in the liquidation of such an exchange or otherwise, shall be of no greater amount than specified in the power of attorney.

(Enacted by Stats. 1935, Ch. 145.)

1398. The power of attorney of an exchange subject to this article may limit the contingent liability of the subscriber for assessment, but such contingent liability shall not be less than an amount equal to and in addition to the amount of the premium deposit provided in the policy.

(Enacted by Stats. 1935, Ch. 145.)

1399. Each subscriber to an exchange subject to this article may maintain with the exchange, in addition to the premium deposit provided in the policy, a further deposit to be held as the surplus deposit of such subscriber.

(Amended by Stats. 1937, Ch. 727.)

1400. Each such subscriber maintaining a surplus deposit equal to, and in addition to, the amount of the total current annual premium deposit provided in his policy, shall have no liability for assessment during the period such surplus deposit is so maintained.

(Enacted by Stats. 1935, Ch. 145.)

1401. If an exchange has a surplus of admitted assets over all liabilities in a sum equal to $1\frac{1}{2}$ times the minimum paid-in capital required of incorporated insurers issuing policies on a reserve basis and doing the same classes of insurance, then the Insurance Commissioner, upon written request, shall issue his certificate stating such fact. Subscribers at an exchange so certified shall have no liability for assessment on policies issued while such certificate remains in effect. Whenever the commissioner finds such fact does not exist, he shall revoke and require the surrender of his certificate. Upon revocation of such certificate no policy shall thereafter be issued nor be permitted to remain in force beyond the date fixed for the next payment of premium without written endorsement thereon providing for assessment liability in accordance with the terms of this chapter.

(Amended by Stats. 1981, Ch. 1131, Sec. 9. Operative July 1, 1982, by Sec. 29 of Ch. 1401.)

1401.5. (a) When the commissioner finds after a public hearing that a reciprocal or interinsurance exchange has at all times during any consecutive five-year period terminating on December 31, 1964, or on the last day of any subsequent calendar year, as shown by its annual statements, as filed or as adjusted by the commissioner, as the case may be, maintained a surplus of admitted assets over all liabilities of at least three million dollars (\$3,000,000) the commissioner may make an order that the reciprocal or interinsurance exchange need not obtain the certificate provided in Section 1401 and that its subscribers shall thereafter in perpetuity have no liability for assessment on policies issued or renewed at any time after that order becomes final or may, if the reciprocal desires not to become nonassessable, issue a certificate of capability to reinsure. To request the order, the reciprocal or interinsurance exchange shall file a petition with the commissioner, on a form prescribed by the commissioner. The filing fee for the petition shall be five hundred sixty-seven dollars (\$567). The commissioner shall give notice of the hearing in the insurance press and in any other ways as he or she deems advisable and to the extent he or she deems advisable. That order is subject to the provisions of Section 12940 and any person with sufficient relevant interest shall be authorized to bring any permitted action thereunder.

(b) When the order of the commissioner becomes final any domestic reciprocal or interinsurance exchange obtaining that order shall no longer be subject to or entitled to the benefits of: subdivision (c) of Section 1307, subdivision (b) of Section 1374, and Article 6 (commencing with Section 1390) of this chapter.

(c) At the time all reciprocal or interinsurance exchanges conducting insurance business in this state are by law governed for all purposes as to required minimum surplus (including that for admission, amendment of certificate of authority, and solvency) by the same standards for minimum paid-in capital and surplus as are then applicable to capital stock insurers, any domestic reciprocal or interinsurance exchange may obtain the order provided in subdivision (a), subject to the provisions in subdivision (a) by showing that it has maintained the minimum paid-in capital and surplus requirement applicable to capital stock insurers for at least five consecutive years in lieu of the three million dollars (\$3,000,000) surplus prescribed in subdivision (a).

(d) If the power of attorney or any policy of any domestic reciprocal or interinsurance exchange obtaining the order provided by subdivision (a) contains language directly or indirectly creating a liability for assessment, in respect to policies issued prior to or issued after the order becomes final that power of attorney and all those policies shall be deemed in law to have been amended to delete and repeal any and all of those assessment provisions as of the date that the order becomes final without any further action

on the part of the reciprocal or interinsurance exchange, its subscribers, its attorney-in-fact, or the body exercising the subscriber's rights.

(Amended by Stats. 2017, Ch. 534, Sec. 30. (AB 1699) Effective January 1, 2018.)

1402. All funds of such exchange and the proceeds of the contingent liability of its subscribers shall be available for the payment of any liability of the exchange.

(Enacted by Stats. 1935, Ch. 145.)