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AB-2710 Insurance: California Insurance Guarantee Association: premium charges. (2015-2016)

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Assembly Bill No. 2710

CHAPTER 137

An act to amend Section 1063.2 of, to amend, renumber, and add Sections 1063.5 and 1063.14 of, and to repeal Sections 1063.45 and 1063.135 of, the Insurance Code, relating to insurance.

[Approved by Governor August 17, 2016. Filed with Secretary of State August 17, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2710, Cooley. Insurance: California Insurance Guarantee Association: premium charges.

(1) Existing law creates the California Insurance Guarantee Association (CIGA) and requires all insurers admitted to transact specified insurance lines in this state to become members. Each time an insurer becomes insolvent, to the extent necessary to secure funds for payment of covered claims of that insolvent insurer and also for payment of reasonable costs of adjusting the claims, CIGA is required to collect premium payments from its member insurers sufficient to discharge its obligations, as specified.

This bill, among other things, would no longer require an insurer to become insolvent in order for CIGA to collect premium payments from the member insurers and would require CIGA to collect premiums in order to secure funds for the payment of its administrative expenses.

(2) Under existing law, CIGA is required to be a party in interest in all proceedings involving a covered claim, and has the same rights as the insolvent insurer would have had if not in liquidation, but CIGA has no cause of action against the insureds of the insolvent insurer for any sums it has paid out, except as provided.

This bill would provide that the above-stated provision denying CIGA a cause of action against insureds does not limit CIGA's right to pursue unpaid reimbursements owed by an employer pursuant to a workers' compensation insurance policy with a deductible if the employer was obligated to reimburse the insurer for benefits payments and related expenses paid by the insurer or CIGA from a special deposit or from other CIGA funds pursuant to the terms of the policy and related agreements.

(3) Existing law requires that the rate of premium charged be a uniform percentage of net direct written premium, as defined, in the preceding calendar year applicable to specific categories of insurance. The rate of premium charges to each member insurer in the appropriate categories are initially based on the written premium of each insurer as shown in the latest year's annual financial statement on file with the Insurance Commissioner and are later adjusted, as provided. Existing law authorizes CIGA to refund any credit due in a specific category of insurance to a member insurer as a result of the adjusted premium calculation, as provided.

This bill would instead require CIGA, with regard to premium charges paid prior to January 1, 2017, to refund to a member insurer any credit due in a specific category as a result of the adjusted premium calculation.

This bill, with regard to premium charges paid on or after January 1, 2017, would delete the requirements that the rate of premium charges be initially based on the written premium of each insurer, that the premium charges be adjusted later as provided, and that the member insurer be eligible for a refund of any credit due to that member insurer as a result of the adjusted premium calculation, and would instead require that the rate of premium charges to each member insurer in the appropriate categories be based on the net direct written premium of each insurer as shown in the latest year's annual financial statement on file with the commissioner. The bill would also make conforming changes.

(4) Existing law authorizes CIGA to exempt or defer a member insurer from paying the premium charge if the payment would cause the member insurer's financial statement to reflect an amount of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Deferred premium charges are required to be paid when the payment will not reduce capital or surplus below required minimums. These payments are credited against future premium charges to those companies receiving larger premium charges by virtue of the deferment.

This bill would delete the requirement that the payments be credited against future premium charges to those companies receiving larger premium charges by virtue of the deferment.

(5) Existing law requires CIGA's plan of operations to contain provisions requiring each member insurer to recoup the premium charge paid to CIGA from its insureds over a reasonable length of time by way of a reasonably calculated surcharge on insurance policies to which the provisions of CIGA apply.

This bill would instead require each member insurer to recoup the premium charge from its insureds in the year following the charge. The bill, with regard to premium charges paid on or after January 1, 2017, among other things, would require the member insurer to file a report in accordance with the provisions of the plan of operation indicating the amount of surcharges it has collected, and would prohibit a member insurer electing to omit collecting surcharges from any of its insureds from being entitled to any reimbursement from CIGA, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1063.2 of the Insurance Code is amended to read:

1063.2. (a) The association shall pay and discharge covered claims, and in connection therewith, pay for or furnish loss adjustment services and defenses of claimants when required by policy provisions. It may do so either directly by itself or through a servicing facility or through a contract for reinsurance and assumption of liabilities by one or more member insurers or through a contract with the liquidator, upon terms satisfactory to the association and to the liquidator, under which payments on covered claims would be made by the liquidator using funds provided by the association.

(b) (1) The association shall be a party in interest in all proceedings involving a covered claim, and shall have the same rights as the insolvent insurer would have had if not in liquidation, including, but not limited to, the right to all of the following:

(A) Appear, defend, and appeal a claim in a court of competent jurisdiction.

(B) Receive notice of, investigate, adjust, compromise, settle, and pay a covered claim.

(C) Investigate, handle, and deny a noncovered claim.

(2) The association shall have no cause of action against the insureds of the insolvent insurer for any sums it has paid out, except as provided by this article.

(3) Nothing in paragraph (2) limits the association's right to pursue unpaid reimbursements owed by an employer pursuant to a workers' compensation insurance policy with a deductible if the employer was obligated to reimburse the insurer for benefits payments and related expenses paid by the insurer or the association from a special deposit or from other association funds pursuant to the terms of the policy and related agreements.

(c) (1) If damages against uninsured motorists are recoverable by the claimant from his or her own insurer, the applicable limits of the uninsured motorist coverage shall be a credit against a covered claim payable under this article. Any person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, he or she shall seek recovery first from the association of the permanent location of the property, and if it is a workers' compensation claim, he or she shall seek recovery first from the association of the residence of the claimant. Any recovery under this article shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent. A member insurer may recover in subrogation from the association only one-half of any amount paid by that insurer under uninsured

motorist coverage for bodily injury or wrongful death (and nothing for a payment for anything else), in those cases where the injured person insured by such an insurer has proceeded under his or her uninsured motorist coverage on the ground that the tortfeasor is uninsured as a result of the insolvency of his or her liability insurer (an insolvent insurer as defined in this article), provided that the member insurer shall waive all rights of subrogation against the tortfeasor. Any amount paid a claimant in excess of the amount authorized by this section may be recovered by action, or other proceeding, brought by the association.

(2) Any claimant having collision coverage on a loss that is covered by the insolvent company's liability policy shall first proceed against his or her collision carrier. Neither that claimant nor the collision carrier, if it is a member of the association, shall have the right to sue or continue a suit against the insured of the insolvent insurance company for that collision damage.

(d) The association shall have the right to recover from any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this article the amount of any covered claim and allocated claims expense paid on behalf of that person pursuant to this article.

(e) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program that is also a covered claim, shall be required to first exhaust his or her right under the program. Any amount payable on a covered claim shall be reduced by the amount of any recovery under the program.

(f) "Covered claims" for unearned premium by lenders under insurance premium finance agreements as defined in Section 673 shall be computed as of the earliest cancellation date of the policy pursuant to Section 673.

(g) "Covered claims" shall not include any judgments against or obligations or liabilities of the insolvent insurer or the commissioner, as liquidator, or otherwise resulting from alleged or proven torts, nor shall any default judgment or stipulated judgment against the insolvent insurer, or against the insured of the insolvent insurer, be binding against the association.

(h) "Covered claims" shall not include any loss adjustment expenses, including adjustment fees and expenses, attorney's fees and expenses, court costs, interest, and bond premiums, incurred prior to the appointment of a liquidator.

SEC. 2. Section 1063.5 of the Insurance Code is amended and renumbered, to immediately precede Section 1063.5 of the Insurance Code, to read:

1063.45. (a) (1) To the extent necessary to secure funds for the association for payment of administrative expenses of the association and covered claims of insolvent insurers and also for payment of reasonable costs of adjusting the claims, the association shall collect premium payments from its member insurers sufficient to discharge its obligations.

(2) The association shall allocate its claim payments and costs, incurred or estimated to be incurred, to one or more of the following categories:

(A) Workers' compensation claims.

(B) Homeowners' claims and automobile claims, including all of the following:

(i) Automobile material damage.

(ii) Automobile liability (both personal injury and death and property damage).

(iii) Medical payments.

(iv) Uninsured motorist claims.

(C) Claims other than workers' compensation, homeowners, and automobile, as defined above.

(3) Separate premium payments shall be required for each category.

(4) The premium payments for each category shall be used to pay the claims and costs allocated to that category.

(b) (1) The rate of premium charged shall be a uniform percentage of net direct written premium in the preceding calendar year applicable to that category.

(2) The rate of premium charges to each member insurer in the appropriate categories shall initially be based on the written premium of each insurer as shown in the latest year's annual financial statement on file with the commissioner.

(3) The initial premium shall be adjusted by applying the same rate of premium charge as initially used to each insurer's written premium as shown on the annual statement for the second year following the year on which the initial premium charge was based.

(4) (A) The difference between the initial premium charge and the adjusted premium charge shall be charged or credited to each member insurer by the association as soon as practical after the filing of the annual statements of the member insurers with the commissioner for the year on which the adjusted premium is based.

(B) Any credit due in a specific category to a member insurer as a result of the adjusted premium calculation shall be refunded to the member insurer.

(c) (1) For purposes of this section, "net direct written premiums" means the amount of gross premiums, less return premiums, received in that calendar year upon business done in this state, other than premiums received for reinsurance.

(2) In cases of a dispute as to the amount of the net direct written premium between the association and one of its member insurers, the written decision of the commissioner shall be final.

(d) (1) The premium charged to any member insurer for any of the three categories or a category established by the association shall not be more than 2 percent of the net direct premium written in that category in this state by that member insurer per year, starting on January 1, 2003, until December 31, 2007, and thereafter shall be 1 percent per year, until January 1, 2015.

(2) Commencing January 1, 2015, the premium charged to any member insurer for any of the three categories or a category established by the association shall not be more than 2 percent of the net direct written premium unless there are bonds outstanding that were issued pursuant to Article 14.25 (commencing with Section 1063.50) or Article 14.26 (commencing with Section 1063.70).

(3) If bonds issued pursuant to either article are outstanding, the premium charged to a member insurer for the category for which the bond proceeds are being used to pay claims and expenses shall not be more than 1 percent of the net direct written premium for that category.

(e) (1) The association may exempt or defer, in whole or in part, the premium charge of any member insurer, if the premium charge would cause the member insurer's financial statement to reflect an amount of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment, no dividends shall be paid to shareholders or policyholders by the company whose premium charge was deferred.

(2) Deferred premium charges shall be paid when the payment will not reduce capital or surplus below required minimums.

(f) After all covered claims of the insolvent insurer and expenses of administration have been paid, any unused premiums and any reimbursements or claims dividends from the liquidator remaining in any category shall be retained by the association and applied to reduce future premium charges in the appropriate category.

(g) The commissioner may suspend or revoke the certificate of authority to transact business in this state of a member insurer that fails to pay a premium when due and after demand has been made.

(h) Interest at a rate equal to the current federal reserve discount rate plus $2\frac{1}{2}$ percent per annum shall be added to the premium of any member insurer that fails to submit the premium requested by the association within 30 days after the mailing request. However, in no event shall the interest rate exceed the legal maximum.

(i) This section shall apply only to premium charges paid prior to January 1, 2017.

(j) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 3. Section 1063.5 is added to the Insurance Code, to read:

1063.5. (a) (1) To the extent necessary to secure funds for the association for payment of the administrative expenses of the association, covered claims of insolvent insurers, and for payment of reasonable costs of adjusting the claims, the association shall collect premium payments from its member insurers sufficient to discharge its obligations.

(2) The association shall allocate its claim payments and costs, incurred or estimated to be incurred, to one or more of the following categories:

(A) Workers' compensation claims.

(B) Homeowners' claims and automobile claims, including all of the following:

(i) Automobile material damage.

(ii) Automobile liability (both personal injury and death and property damage).

(iii) Medical payments.

(iv) Uninsured motorist claims.

(C) Claims other than workers' compensation, homeowners', and automobile, as defined above.

(3) Separate premium payments shall be required for each category.

(4) The premium payments for each category shall be used to pay the claims and costs allocated to that category.

(b) (1) The rate of premium charged shall be a uniform percentage of net direct written premium in the preceding calendar year applicable to that category.

(2) The rate of premium charges to each member insurer in the appropriate categories shall be based on the net direct written premium of each member insurer as shown in the latest year's annual financial statement on file with the commissioner.

(c) (1) For purposes of this section, "net direct written premiums" means the amount of gross premiums, less return premiums, received in that calendar year upon business done in this state, other than premiums received for reinsurance.

(2) In cases of a dispute as to the amount of the net direct written premium between the association and one of its member insurers, the written decision of the commissioner shall be final.

(d) In charging premiums to member insurers, the association shall adjust, if necessary, the net direct written premiums shown on a member insurer's annual statement by excluding any premiums written for any lines of insurance or types of coverage not covered by this article under paragraph (3) of subdivision (c) of Section 1063.1.

(e) (1) The premium charged to any member insurer for any of the three categories or a category established by the association shall not be more than 2 percent of the net direct written premium unless there are bonds outstanding that were issued pursuant to Article 14.25 (commencing with Section 1063.50) or Article 14.26 (commencing with Section 1063.70).

(2) If bonds issued pursuant to either article are outstanding, the premium charged to a member insurer for the category for which the bond proceeds are being used to pay claims and expenses shall not be more than 1 percent of the net direct written premium for that category.

(f) (1) The association may exempt or defer, in whole or in part, the premium charge of any member insurer, if the premium charge would cause the member insurer's financial statement to reflect an amount of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment, no dividends shall be paid to shareholders or policyholders by the company whose premium charge was deferred.

(2) Deferred premium charges shall be paid when the payment will not reduce capital or surplus below required minimums.

(g) After all covered claims of insolvent insurers and expenses of administration have been paid, any unused premiums and any reimbursements or claims dividends from liquidators remaining in any category shall be retained by the association and applied to reduce future premium charges in the appropriate category.

(h) The commissioner may suspend or revoke the certificate of authority to transact business in this state of a member insurer that fails to pay a premium when due and after demand has been made.

(i) Interest at a rate equal to the current federal reserve discount rate plus $2\frac{1}{2}$ percent per annum shall be added to the premium of any member insurer that fails to submit the premium requested by the association within 30 days after the mailing request. However, in no event shall the interest rate exceed the legal maximum.

(j) This section shall apply only to premium charges paid on or after January 1, 2017.

SEC. 4. Section 1063.14 of the Insurance Code is amended and renumbered, to immediately precede Section 1063.14 of the Insurance Code, to read:

1063.135. (a) The plan of operation adopted pursuant to subdivision (c) of Section 1063 shall contain provisions whereby each member insurer is required to recoup in the year following the premium charge a sum reasonably calculated to recoup the premium charge paid by the member insurer under this article by way of a surcharge on premiums charged for insurance policies to which this article applies. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax or agents' commission.

(b) The amount of any surcharge shall be separately stated on either a billing or policy declaration sent to an insured. The association shall determine the rate of the surcharge and the collection period for each category and these shall be mandatory for

all member insurers of the association who write business in those categories. Member insurers who collect surcharges in excess of premiums paid pursuant to Section 1063.45 for an insolvent insurer shall remit the excess to the association as an additional premium within 30 days after the association has determined the amount of the excess recoupment and given notice to the member insurer of that amount. The excess shall be applied to reduce future premium charges in the appropriate category.

(c) The plan of operation may permit a member insurer to omit collection of the surcharge from its insureds when the expense of collecting the surcharge would exceed the amount of the surcharge. However, nothing in this section shall relieve the member insurer of its obligation to recoup the amount of surcharge otherwise collectible.

(d) This section shall apply only to premium charges paid prior to January 1, 2017.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 5. Section 1063.14 is added to the Insurance Code, to read:

1063.14. (a) (1) The plan of operation adopted pursuant to subdivision (c) of Section 1063 shall contain provisions whereby each member insurer is required to recoup in the year following the premium charge a sum calculated to recoup the premium charge paid by the member insurer under this article by way of a surcharge on premiums charged for insurance policies to which this article applies.

(2) Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax or agents' commission.

(b) (1) The amount of any surcharge shall be separately stated on either a billing or policy declaration sent to an insured. The association shall determine the rate of the surcharge and the collection period for each category, and these shall be mandatory for all member insurers of the association who write business in those categories.

(2) Each member insurer shall file a report in accordance with the provisions of the plan of operation indicating the amount of surcharges it has collected.

(A) Member insurers who collect surcharges in excess of premium charges paid in the preceding year pursuant to Section 1063.5 shall remit the excess to the association as an additional premium within 30 days after the association has determined the amount of the excess recoupment and given notice to the member insurer of that amount. The excess shall be applied to reduce future premium charges in the appropriate category.

(B) Member insurers who report surcharge collections that are less than what they paid in the preceding year's premium charge shall receive reimbursement from the association for the shortfall in surcharge collection.

(c) (1) The plan of operation may permit a member insurer to omit collection of the surcharge from its insureds when the expense of collecting the surcharge would exceed the amount of the surcharge.

(2) A member insurer electing to omit collecting surcharges from any of its insureds shall not be entitled to any reimbursement from the association pursuant to subdivision (b).

(3) However, nothing in this section shall relieve the member insurer of its obligation to recoup the amount of surcharge otherwise collectible.

(d) This section shall apply only to premium charges paid on or after January 1, 2017.