AB-2395 California Life and Health Insurance Guarantee Association. (2017-2018)

Date Published: 09/21/2018 09:00 PM

Assembly Bill No. 2395

CHAPTER 651

An act to amend Sections 1067.07 and 1067.11 of the Insurance Code, relating to insurance.

[Approved by Governor September 21, 2018. Filed with Secretary of State September 21, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2395, Calderon. California Life and Health Insurance Guarantee Association.

Existing law, the California Life and Health Insurance Guarantee Association Act, protects specified persons against failure in the performance of contractual obligations because of the impairment or insolvency of a member insurer that issued a life or health insurance policy or specified annuity contract. Existing law provides that the California Life and Health Insurance Guarantee Association may, in its discretion and subject to specified limitations, guarantee, assume, or reinsure the policies of an impaired insurer, as defined. Existing law authorizes the association's board of directors to request that the Insurance Commissioner order an examination of a member insurer that may be impaired or insolvent, and requires the commissioner to begin the examination within 30 days of a request.

This bill would authorize the association to file for an actuarially justified rate or premium increase for a policy or contract for which the association provides coverage pursuant to the act, if specified requirements are met. The bill would require an insurer with long-term care insurance contracts covering more than 10,000 lives to file annual disclosure reports with the Insurance Commissioner and the Department of Insurance's office of principle-based reserving, as specified.

Existing law requires the board of directors of the association to assess the member insurers for the purpose of providing funds necessary to carry out the powers and duties of the association.

This bill would require the association to annually provide a financial report to the commissioner and the chairs of the Senate Insurance Committee and the Assembly Insurance Committee that includes the maximum amount of coverage that the association may provide based on the assessments.

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

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

SECTION 1. Section 1067.07 of the Insurance Code is amended to read:

1067.07. (a) If a member insurer is an impaired insurer, the association may, in its discretion, and subject to the conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner, do any of the following:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer.

(2) Provide moneys, pledges, loans, notes, guarantees, or other means to effectuate paragraph (1) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1).

(b) If a member insurer is an insolvent insurer, the association shall, in its discretion, either do those things described in paragraph (1) or in paragraph (2):

(1) (A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(C) Provide moneys, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties.

(2) Provide benefits and coverages in accordance with the following provisions:

(A) With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(i) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies and contracts.

(ii) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under the policies or contracts or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies or contracts.

(B) Make diligent efforts to provide all known insureds or annuitants, for nongroup policies and contracts, or group policy owners with respect to group policies and contracts, 30 days' notice of the termination, pursuant to subparagraph (A), of the benefits provided.

(C) With respect to nongroup life and health insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with subparagraph (D), if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in a provision of the policy or annuity or had a right only to make changes in premium by class.

(D) (i) In providing the substitute coverage required under subparagraph (C), the association may offer either to reissue the terminated coverage or to issue an alternative policy and shall consider obtaining coverage for a medically uninsurable person.

(ii) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for a waiting period or exclusion that would not have applied under the terminated policy.

(iii) The association may reinsure an alternative or reissued policy.

(E) (i) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(ii) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect the changes in the health of the insured after the original policy was last underwritten.

(iii) An alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(F) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(G) The association's obligations with respect to coverage under a policy of the impaired or insolvent insurer or under a reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association.

(H) When proceeding under this paragraph with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subparagraph (C) of paragraph (2) of subdivision (b) of Section 1067.02.

(c) Nonpayment of premiums within 31 days after the date required under the terms of a guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the association's obligations under the policy or coverage under this article with respect to that policy or coverage, except with respect to the claims incurred or a net cash surrender value that may be due in accordance with this article.

(d) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of that order.

(e) The protection provided by this article shall not apply if a guarantee protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(f) In carrying out its duties under subdivision (b), the association may, subject to approval by a court of competent jurisdiction, do either of the following:

(1) Impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement, if the association finds that the amounts that can be assessed under this article are less than the amounts needed to assure full and prompt performance of the association's duties under this article, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of the permanent policy or contract liens, to be in the public interest.

(2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to the contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(g) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state shall be promptly paid to the association. The association shall be entitled to retain a portion of an amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association less the amount retained pursuant to this subdivision. An amount so paid to the association and retained by it shall be treated as a distribution of estate assets pursuant to applicable state receivership law dealing with early access disbursements.

(h) If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subdivision (b), the commissioner shall have the powers and duties of the association under this article with respect to the insolvent insurer.

(i) The association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

(j) The association shall have standing to appear or intervene before a court or agency engaged in an adjudication in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this article or with jurisdiction over a person or property against which the association may have rights through subrogation or otherwise. Standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to,

proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a person or property against which the association may have rights through subrogation or otherwise.

(k) (1) A person receiving benefits under this article shall be deemed to have assigned the rights under, and causes of action against a person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of those rights and cause of action by a payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this article upon that person.

(2) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this article.

(3) In addition to paragraphs (1) and (2), the association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contracts, including, without limitation, in the case of a structured settlement annuity, the rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this article, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting a person responsible solely by reason of serving as an assignee in respect of a qualified assignment under Section 130 of the Internal Revenue Code.

(4) If the preceding provisions of this subdivision are invalid or ineffective with respect to a person or claim, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion thereof, covered by the association.

(5) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in the preceding paragraphs of this subdivision, the person shall pay to the association the portion of the recovery attributable to the policies, or portion thereof, covered by the association.

(l) In addition to the rights and powers elsewhere in this article, the association may do any of the following:

(1) Enter into contracts necessary or proper to carry out the provisions and purposes of this article.

(2) Sue or be sued, including taking the legal actions necessary or proper to recover unpaid assessments under Section 1067.08 and to settle claims or potential claims against it.

(3) Borrow money to effect the purposes of this article. Notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(4) Employ or retain an executive director and other persons to handle the financial transactions of the association, and to perform other functions necessary or proper under this article, provided that the executive director shall be subject to the approval of the commissioner.

(5) Take legal action necessary or appropriate to avoid or recover payment of improper claims.

(6) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this article.

(7) Organize itself as a corporation or in another legal form permitted by the laws of the state.

(8) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this article with respect to the person, and the person shall promptly comply with the request.

(9) File for an actuarially justified rate or premium increase for a policy or contract, in accordance with the terms and conditions of the policy or contract, for which the association provides coverage pursuant to this act, unless prohibited by law.

(10) Take other necessary or appropriate action to discharge its duties and obligations under this article or to exercise its powers under this article.

(m) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

(n) There shall be no liability on the part of and no cause of action shall arise against the association or against a transferee from the association in connection with the transfer by reinsurance or otherwise of all or any part of an impaired or insolvent insurer's business by reason of an action taken or a failure to take an action by the impaired or insolvent insurer at any time.

(o) With respect to covered policies for which the association becomes obligated after an entry of an order or liquidation or rehabilitation, the association may elect to succeed to the rights of the insolvent insurer arising after the date of the order of liquidation or rehabilitation under a contract of reinsurance to which the insolvent insurer was a party, to the extent that the contract provides coverage for losses occurring after the date of the order of liquidation or rehabilitation. As a condition to making this election, the association must pay all unpaid premiums due under the contract for coverage relating to periods before and after the date of the order of liquidation or rehabilitation.

(p) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this article in an economical and efficient manner.

(q) If the association has arranged or offered to provide the benefits of this article to a covered person under a plan or arrangement that fulfills the association's obligations under this article, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(r) The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this article.

(s) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subdivision (a) or (b), the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with all of the following provisions:

(1) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value.

(2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.

(3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

SEC. 2. Section 1067.11 of the Insurance Code is amended to read:

1067.11. To aid in the detection and prevention of insurer insolvencies or impairments:

(a) It shall be the duty of the commissioner to do the following:

(1) To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when he or she takes any of the following actions against a member insurer:

(A) Revocation of license.

(B) Suspension of license.

(C) Makes a formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners or creditors.

The notice shall be mailed to all commissioners within 30 days following the action taken or the date on which the action occurs.

(2) To report to the board of directors, the Legislature, and the Governor when he or she has taken any of the actions set forth in paragraph (1) or has received a report from any other commissioner indicating that any action has been taken in another state. The report to the board of directors, the Legislature, and the Governor shall contain all significant details of the action taken on the report received from another commissioner.

(3) To report to the board of directors when he or she has reasonable cause to believe from an examination, whether completed or in process, of a member company that the company may be an impaired or insolvent insurer.

(4) To furnish to the board of directors the NAIC Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the

information contained therein shall be kept confidential by the board of directors until that time as it is made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his or her duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(c) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of a member insurer or germane to the solvency of any company seeking to do insurance business in this state. Those reports and recommendations shall not be considered public documents.

(d) The board of directors shall, upon majority vote, notify the commissioner of any information indicating a member insurer may be an impaired or insolvent insurer.

(e) The board of directors may, upon majority vote, request that the commissioner order an examination of a member insurer that the board in good faith believes may be an impaired or insolvent insurer. Within 30 days of the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by persons that the commissioner designates. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subdivision (a).

The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public.

(f) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(g) Reports, information, and recommendations from the board to the commissioner and from the commissioner to the board under this section shall be treated as confidential and shall not be considered public documents except as otherwise specifically provided in this section or by specific action of the board or commissioner.

(h) For valuation years ending in 2019 and later, an insurer with long-term care insurance contracts in force covering more than 10,000 lives as of the valuation date shall file disclosure reports with the commissioner and the department’s office of principle-based reserving. The reports shall be in compliance with the long-term care insurance-specific requirements developed in Actuarial Guideline 51 to be incorporated in the National Association of Insurance Commissioners’ Valuation Manual. The reports shall be submitted no later than April 1 for the previous calendar year.

(i) On or before April 1, 2019, and on or before each April 1 thereafter, the association shall provide an annual financial report to the commissioner and the chairs of the Senate Insurance Committee and the Assembly Insurance Committee. The report shall include the maximum amount of coverage the association can provide pursuant to subparagraph (A) of paragraph (1) of subdivision (e) of Section 1067.08. The report shall cover the previous calendar year.