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**SB-430 California Insurance Guarantee Association: covered claims.** (2017-2018)

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**Senate Bill No. 430**

**CHAPTER 268**

An act to amend Section 1063.2 of the Insurance Code, relating to insurance.

[ Approved by Governor September 23, 2017. Filed with Secretary of State September 23, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 430, Committee on Insurance. California Insurance Guarantee Association: covered claims.

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. CIGA is required to 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. CIGA is authorized to fulfill its duties 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 CIGA and to the liquidator, under which payments on covered claims would be made by the liquidator using funds provided by CIGA.

This bill would also authorize CIGA, with the Insurance Commissioner's express approval, to reinsure with, or transfer liabilities to, a California admitted and authorized reinsurer or other reinsurer approved by the Insurance Commissioner in order to limit or eliminate adverse development, to stabilize or limit the need for assessments, or to reduce its potential ultimate liability for covered claims, provided certain conditions are met. The bill would require CIGA to undertake the payment and discharge of covered claims directly or through an authorized 3rd-party administrator. The bill would require any reinsurance agreement or transfer of liabilities to be paid using CIGA's available funds, and would make any recoveries from a reinsurance agreement property of CIGA, to be paid to CIGA's account from which the payment for reinsurance or transfer of liabilities was made.

Vote: majority Appropriation: no Fiscal Committee: yes 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. Alternatively, the association may, with the express approval of the commissioner, reinsure with, or transfer liabilities to, a California admitted and authorized reinsurer or other reinsurer approved by the commissioner to limit or eliminate adverse development, to stabilize or limit the need for assessments, or to reduce its potential ultimate liability for covered claims, provided the association retains the ultimate

responsibility to the policyholder or beneficiary for payment of claims covered by the reinsurance agreement. Any reinsurance agreement or transfer of liabilities shall be paid for using the association's available funds from one of its accounts and shall not be charged to administrative expense or allocated to any liquidation estate. The payment and discharge of covered claims shall be undertaken by the association, either directly or through an authorized third-party administrator. Any recoveries from a reinsurance agreement or transfer of liabilities shall solely be the property of the association, shall not inure to the benefit of any liquidation estate, and shall be paid to the association account from which the payment for the reinsurance or transfer of liabilities was made.

(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.