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**SB-1192 Firefighters', police officers', or peace officers' benefit and relief associations.** (2019-2020)

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**Senate Bill No. 1192**

**CHAPTER 365**

An act to amend Section 11400 of, and to add Sections 11401.5, 11401.6, and 11401.7 to, the Insurance Code, relating to insurance.

[ Approved by Governor September 30, 2020. Filed with Secretary of State September 30, 2020. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1192, Bradford. Firefighters', police officers', or peace officers' benefit and relief associations.

Existing law generally provides for the regulation of insurers by the Department of Insurance pursuant to laws set forth in the Insurance Code. Existing law authorizes the Insurance Commissioner to make certain examinations, investigations, and prosecutions and, upon making a determination of the existence of certain conduct, conditions, or grounds, to issue orders reasonably necessary to correct, eliminate, or remedy the conduct, conditions, or grounds.

Existing law exempts from the requirements set forth in the Insurance Code firefighters', police officers', and peace officers' benefit and relief associations that comply with specified criteria, including, among other things, a requirement that the membership consist solely of certain state or local peace or law enforcement officers, members of police or fire departments, and emergency medical personnel employed by fire departments, as specified. Existing law prohibits an association from operating or doing business in the state without a certificate of authority.

This bill would specify that the laws governing those associations apply only to the extent not preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA). The bill would require an association that holds a certificate of authority and that issues long-term disability or long-term care policies or contracts to submit to the commissioner the opinion of a qualified actuary no later than July 1, 2021, as to whether the reserves and related actuarial items that support the policies or contracts issued are expected to be adequate to satisfy contractual provisions, are based on reasonable assumptions, and are based on specified actuarial standards. The bill would, after the filing of the initial opinion, require those associations to file a new opinion no more than 4 years after the date of its last opinion on file with the commissioner. The bill would require an association seeking a certificate of authority to file an opinion that establishes that it would have adequate resources to provide benefits as required to satisfy its proposed contractual obligations. The bill would prohibit disclosure, as specified, of the information submitted by a company pursuant to these provisions and in the possession or control of the department. The bill would require an association that self-funds all or part of its benefits to include a specified disclosure in all contracts that are not regulated by the department and in certificates evidencing coverage under those contracts. The bill would also require an association that holds a certificate of authority and that issues long-term disability or long-term care policies or contracts to, upon written request from a member, make available to that member the contract for benefits, certificate evidencing coverage, or other plan document that describes the benefits being provided to that member, within 30 days of the request.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the

need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

### **SECTION 1.** Section 11400 of the Insurance Code is amended to read:

**11400.** Firemen's, policemen's or peace officers' benefit and relief associations now existing, or that may be formed hereafter for the purpose of aiding their members or dependents of their members in case of sickness, accident, distress, or death, shall be subject to this chapter, to the extent not preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA). An association that operates strictly in accordance with this chapter shall not be subject to any other provision of this code or to any law of this state relating to insurance, whether now existing or hereafter enacted, except when expressly designated in that law.

### **SEC. 2.** Section 11401.5 is added to the Insurance Code, to read:

**11401.5.** (a) (1) Each association that holds a certificate of authority pursuant to this chapter and that issues long-term disability or long-term care policies or contracts shall submit to the commissioner the opinion of a qualified actuary as to whether the reserves and related actuarial items that support the policies or contracts issued pursuant to this chapter, including policies and contracts issued by entities established by these associations that provide benefits described in this chapter, are expected to be adequate to satisfy contractual provisions, are based on reasonable assumptions, and are based on actuarial standards of practice published by the American Academy of Actuaries and the Actuarial Standards Board. An association that holds a certificate of authority pursuant to this chapter shall file its opinion no later than July 1, 2021, and that opinion shall have been completed no earlier than December 31, 2019. Thereafter, an association shall submit a new actuary opinion to the Commissioner within no more than four years from the date of its last opinion on file with the Commissioner.

(2) An association is considered to have issued a long-term care or disability policy or contract if it self-funds all or part of the resulting obligation. An association that markets long-term policies or contracts issued by an insurer that is admitted by the department to offer insurance products in the state is exempt from this reporting requirement.

(3) An association seeking a certificate of authority pursuant to this chapter shall file an opinion, to the extent feasible, that establishes that it would have adequate resources to provide benefits described in this chapter as required to satisfy its proposed contractual obligations.

(b) The opinion required by subdivision (a) shall include supporting memoranda from the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts, when considered in light of the assets held by the association with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, shall make adequate provision for the association's obligations under the policies and contracts, including, but not limited to, the benefits and any administrative and operating expenses associated with the policies and contracts.

(c) The opinion required by subdivision (a) shall be governed by the following provisions:

(1) It shall include supporting memoranda consistent with actuarial standards of practice published by the American Academy of Actuaries and the Actuarial Standards Board.

(2) If the association fails to provide an opinion and supporting memoranda to the commissioner that meets the requirements of this section, the commissioner shall notify the association of the deficiencies in the filing, and shall make a specific request that identifies the issues that should be addressed in an amended filing. The requests shall be consistent with actuarial standards of practice published by the American Academy of Actuaries and the Actuarial Standards Board.

(d) Documents, materials, or other information, including the opinion with supporting memoranda, submitted pursuant to this section that are in the possession or control of the Department of Insurance and that are obtained by, created by, or disclosed to the commissioner or any other person pursuant to this section, are recognized by this state as being proprietary and to contain trade secrets. Those documents, materials, or other information shall be confidential by law and privileged, shall not be subject to disclosure by the commissioner pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall not be subject to subpoena or discovery from the commissioner or admissible into evidence, in a private civil action if obtained from the commissioner. The commissioner shall not otherwise make those documents, materials, or other information public without the prior written consent of the association.

### **SEC. 3.** Section 11401.6 is added to the Insurance Code, to read:

**11401.6.** An association that self-funds all or part of the benefits provided under this chapter shall include the following language, or other language approved by the commissioner, in all contracts that are not regulated by the department, and in certificates evidencing coverage under those contracts, in capital letters and in a minimum of 12-point type:

“ALL OR A PORTION OF THE BENEFITS PROVIDED BY THIS CONTRACT ARE NOT SUBJECT TO REGULATION BY THE CALIFORNIA DEPARTMENT OF INSURANCE, AND THE CONTRACT IS NOT GUARANTEED BY THE CALIFORNIA LIFE AND HEALTH INSURANCE GUARANTEE ASSOCIATION.”

**SEC. 4.** Section 11401.7 is added to the Insurance Code, to read:

**11401.7.** Each association that holds a certificate of authority pursuant to this chapter and that issues long-term disability or long-term care policies or contracts shall, upon written request from a member, make available to that member the contract for benefits, certificate evidencing coverage thereunder, or other plan document that describes the benefits being provided to that member, within 30 days of the request.

**SEC. 5.** The Legislature finds and declares that Section 2 of this act, which adds Section 11401.5 to the Insurance Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect proprietary information, it is necessary to enact legislation that limits the public's right of access to insurance holding company information that is provided pursuant to Section 11401.5 of the Insurance Code.