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Insurance

University of the Pacific; McGeorge School of Law

Insurance

Insurance; malpractice coverage

Insurance Code §11580.01 (new).
AB 1234 (Wilson); STATS 1974, Ch 513

Chapter 513 adds section 11580.01 to the Insurance Code to require that any medical or legal malpractice insurance policy which limits its liability to claims first made during the period the policy is in force must recite prominently in its heading that it is an application or proposal for a claims-made policy, and that each such policy contain a notice substantially to the effect that:

> NOTICE
>
> Except to such extent that may otherwise be provided herein, the coverage of this policy is limited generally to liability for only those claims that are first made against the insured while the policy is in force. Please review the policy carefully and discuss the coverage thereunder with your insurance agent or broker.

Section 11580.01 specifically applies only to those policies issued or renewed after the effective date of the act.

Chapter 513 should have no effect on the majority of malpractice policies presently being issued by the major insurers in the field since these generally cover claims arising from acts or omissions occurring during the term of the policy, regardless of when the claim arising out of such act or omission is made. What chapter 513 does do is call to the insured's attention any policy which would not provide coverage for an act or omission occurring during the policy period but against which a claim is not made until after the policy has lapsed.

Insurance; compulsory financial responsibility

Insurance Code §§11580.1, 11580.2, 11580.4, 11580.9 (amended); Vehicle Code Chapter 1 (commencing with §16000) (repealed); Chapter 1 (commencing with §16000), §1808 (new); §§14904, 16251, 16370, 16377, 16430, 16434 (amended).
SB 1471 (Bradley); STATS 1974, Ch 1409

Support: Association of California Insurance Companies; American Insurance Association; National Association of Independent Insurers; California Department of Motor Vehicles; California Department of Insurance
Opposition: California Rural Legal Assistance

Requires all licensed drivers to meet certain financial responsibility standards; sets minimum automobile liability insurance levels; permits disclosure of specified information from accident reports; makes records of the Department of Motor Vehicles open for public inspection, except for certain medical and legal reports; requires suspension of driving privileges for up to one year for failure to comply with specified requirements of financial responsibility; provides for hearing prior to suspension; makes operation of a motor vehicle on highways without financial responsibility an infraction punishable by fine.

Chapter 1 (commencing with §16000) of the Vehicle Code has been repealed and added to require all California licensed drivers to meet certain financial responsibility limits. Section 16000 increases from $200 to $250 the amount of property damage required before an accident report is compulsory, and exempts from the report requirements any motor vehicles owned, leased, or under the direction of the United States, State of California, or any municipality. The new section 16004 makes it compulsory for the Department of Motor Vehicles to suspend for a maximum of one year the driving privilege of any person willfully failing, refusing, or neglecting to make an accident report as required by section 16000, but provides that upon receipt of a report or evidence that the failure to comply was not willful, the Department may reinstate the privilege. Sections 16001, 16002, 16003, and 16005 received minor technical changes.

Article 2 (commencing with §16020) requires that every driver and owner of a motor vehicle maintain some form of financial responsibility. Under section 16021, this financial responsibility may be established in one of three ways: self-insurance; maintenance of a liability insurance policy, bond or cash deposit complying with section 16056 of the Vehicle Code; or by showing that the vehicle is owned or operated by the United States, the State of California, or a municipality. Section 16022 mandates that an owner or operator failing to comply with section 16020 must, within 60 days, file proof of financial responsibility, and such proof must be maintained with the Department for three years. Additionally under section 16022, where an employee drives a vehicle owned, operated, or leased by his employer, the em-

ployer must comply with section 16020 or file proof of financial responsibility with the Department. Section 16023 provides for the levying of a fine not to exceed $100 for each infraction of the requirements of section 16020, and permits the court to impose a probation requiring the violator to file proof of responsibility with the Department of Motor Vehicles for the duration of the probation.

Article 3 (commencing with §16050) establishes several means by which the driver or employer may prove financial responsibility. Section 16050 specifically requires every driver involved in an accident which must be reported to the Department to establish that one of the forms of financial responsibility in article 3 applies to him. Sections 16051 through 16056 list the technical, procedural details of reporting to and satisfying the Department that the driver is in compliance with the requirements of the act, and also cover the definition and requirements of a self-insurer. The minimum limits of a policy or bond are set by section 16056 at $15,000 for bodily injury or death to one person or $30,000 for injury or death of more than one person, and a minimum of $5,000 for property damage. Additionally, under section 16056(b) all companies issuing a bond or policy must be authorized to do business in the state, and upon receipt of a notice from the Department of Motor Vehicles that an accident has occurred such companies must respond within the time the Department specifies as to whether or not the insured's policy or bond complies with the provisions of article 3.

Article 4 (commencing with §16070) provides for suspension of driving privileges for those failing to comply with the financial responsibility requirements. Sections 16070 through 16075, as added to the code, establish procedural details with respect to suspensions, burden of proof, and revision of records where the initial information received by the Department is incorrect. Section 16073 specifically permits a driver who drives a vehicle owned by another for compensation to keep his license for that purpose so that he can keep his job. Under section 16075 the Department must send notice of the suspension 20 days prior to the effective date of the suspension, and allow the driver a hearing if he requests one. Issues appropriate at such a hearing include the determination of whether the accident has resulted in less than $250 in property damage, bodily injury, or death, and whether the driver or owner has established the requisite proof of financial responsibility.

Vehicle Code Section 16251 is amended to increase from $200 to $250 the amount of *property* damage required before a cause of action

exists in the event of an accident involving a motor vehicle. A cause of action based on *any bodily* injury still exists. Section 16370 is amended to eliminate the right of a driver to avoid a suspension for failing to pay a judgment within 30 days. Formerly, the driver could avoid such suspension by making a security deposit sufficient to cover the judgment with the Department. Under section 16377, a judgment is considered satisfied, for purposes of avoiding suspension, when at least $15,000 has been credited to a party injured or killed by the motorist, or $30,000 if more than one party was injured or killed, and when at least $5,000 has been paid in the case of property damage. If the debtor is unable to locate the creditor, deposit of the minimum sums with the Department "satisfies" the debt.

Section 1808 is added to the Vehicle Code to make all records of the Department of Motor Vehicles relating to vehicle registration, license applications, abstracts of convictions, and accident reports available for public inspection, except those physical or mental health records made confidential by Vehicle Code Section 1808.5.

The amendments of Insurance Code Sections 11580.1, 11580.2, and 11580.9 are technical changes renumbering various references to Vehicle Code sections whose numbers have been changed by the new version of chapter 1. Section 11580.4 of the Insurance Code is amended to permit admission into evidence proof of failure to comply with the financial responsibility requirements of the Vehicle Code as a rebuttable presumption that the defendant was an uninsured motorist.

COMMENT

Under the prior Security Following Accident Law, every driver involved in an accident resulting in more than $200 in damages, bodily injury, or death was required to report the accident to the Department of Motor Vehicles, and either deposit sufficient security, show evidence of insurance coverage, or otherwise demonstrate adequate financial security. Failure to do so permitted the Department, at its option, to suspend the driving privilege for up to one year. By contrast, the new legislation mandates compulsory one year suspension in most situations.

In 1972 the California Supreme Court ruled in *Rios v. Cozens* [7 Cal. 3d 792, 499 P.2d 979, 103 Cal. Rptr. 299 (1972)] that before the Department could suspend the license of a motorist a hearing must be held in which the licensee is given an opportunity to review the reports and evidence upon which the suspension would be based, and

be permitted to present reports and testimony to establish his claim of nonculpability. The *Rios* decision was based upon the United States Supreme Court case of *Bell v. Burson* [402 U.S. 535 (1971)], which held that a driver could not constitutionally be deprived of his license without a hearing when the driver was an uninsured motorist unable to provide adequate security as required by Georgia law. Following *Rios*, over 20,000 persons have requested such hearings, and the Department of Motor Vehicles, unable to conduct adequate hearings due to a lack of funds and manpower, stayed all proceedings on revocation until the legislature either changed the law or provided the funds.

The new version of Vehicle Code Chapter 1 (commencing with §16000) requires a hearing prior to suspension, but section 16075(b) only requires that the hearing determine whether or not the requisite injury or property damage has occurred, and that the driver did or did not have the necessary form of financial responsibility. Whether or not this is a sufficient response to the driver's right to establish a claim of nonculpability, as required by the court, seems questionable. Section 1808 of the Vehicle Code, which makes most of the relevant records public, appears to be a response to the requirement that the driver see the evidence upon which the suspension will be based, and appears to be sufficient to satisfy the *Rios* standard on that point. The new legislation specifically did not appropriate any funds for the implementation of this program, and it remains to be seen whether the Department will be adequately budgeted to support the staff required to put the provisions of this act into effective operation.

See Generally:
1) Comment, *Financial Responsibility Laws In Constitutional Perspective*, 61 CAL. L. REV. 1072 (1973).

Insurance; termination of automobile insurance

Insurance Code §§651, 652, 653, 663 (repealed); §§651, 663 (new); §§660, 668.5 (amended).
AB 318 (Ralph); STATS 1974, Ch 982

Chapter 982 has been enacted for purposes of reorganizing and clarifying chapters 9 (commencing with §650) and 10 (commencing with §660) of the Insurance Code, which concern rescissions, cancellations, and failures to renew automobile liability insurance policies. Section 663 now requires an insurer to offer for renewal a liability insurance policy if he has not previously given 20 days notice that the policy will not be renewed. However, renewal of the policy will be contin-

gent upon payment by the insured of the premium stated in the offer to renew. Prior to chapter 982 the insurer was required to renew, rather than *offer* to renew, any policy for which the proper notice was not given. The notice requirements are inapplicable where the reason for the insurer's failure to renew is nonpayment of policy premiums by the insured, or where the insurer has within 20 days of the policy's expiration notified the insured of such expiration. While a willful failure to comply with the requirements of this section constitutes a misdemeanor [CAL. INS. CODE §669], the policy will nevertheless terminate on the effective date of any replacement or succeeding policy obtained by the insured.

Insurance; premium refunds

Insurance Code §481 (amended).
AB 2993 (Burton); STATS 1974, Ch 919
Support: California Labor Federation, AFL/CIO

Insurance Code Section 481 establishes the amount of premium refund to which an insured is entitled upon cancellation or rescission of a policy. However, the criteria enumerated are effective only if the insurance contract is silent on the matter of refunds. Thus, except where prohibited by statute, the insurer is permitted to include in the contract provisions allowing the retention of all premiums upon the occurrence of any stated contingency, including cancellation or rescission of the policy.

Chapter 919 amends section 481 to prohibit the inclusion of provisions in any individual's motor vehicle liability or homeowner's multiple peril policy which would make the policy premiums fully earned upon the occurrence of any contingency other than the policy expiration. Thus, although the insurance contract can still provide for a refund schedule other than that presented in section 481, it must, in the case of one of the specified policies, provide for at least some refund.

Insurance; direct payments to contractors

Insurance Code Article 5 (commencing with §570) (new).
SB 1366 (Robbins); STATS 1974, Ch 288

Chapter 288 adds article 5 (commencing with §570) to the Insurance Code. Section 570 requires an insurer who issues, amends, or renews, on or after January 1, 1975, a policy covering repair or reconstruction work on commercial, industrial, or residential real property

and appurtenances thereon, to make payment directly to the contractor performing covered work and not to the property owner if certain conditions are fulfilled. The property owner of record must, in a writing signed by him and transmitted to the insurer, state that (1) the work completed is satisfactory to him; (2) the insurer, upon direct payment to the contractor, is released from liability; and (3) the writing was not completed or signed by him until after all work was completed. In addition, the property owners of record, the named insured, and any loss payee must consent in writing to such direct payment and release of liability. The work must be certified as conforming to all applicable building, electrical, and construction codes, and must be performed by a duly licensed contractor. Further, each subcontractor and materialman must execute and record a statement releasing any and all claims against the property, including mechanics' liens, for work performed or materials furnished. The insurer is entitled to receive from the property owner or contractor proof satisfactory to the insurer of such execution and filing prior to making any payment.

COMMENT

Proponents of this legislation claim that there have been occasions where insurance companies have settled claims with property owners for repairs of damaged premises and the property owners have then failed to forward the insurance proceeds to the contractor who performed the repairs. While chapter 288 may enhance the chances that the general contractor and subcontractors will be compensated, the problem has not been entirely alleviated because the direct payments authorized by this legislation must first be approved by the property owner. Further legislation may be necessary to clarify the precise parameters of this bill since the present wording of the bill is ambiguous as to whether direct payments may be made to general contractors only or to subcontractors and materialmen as well. The legislative intent is apparently to authorize direct payment to the general contractor only.

Insurance; Medi-Cal notice requirements

Welfare and Institutions Code §14117 (amended).
SB 2180 (Stull); STATS 1974, Ch 784
Support: State Department of Health

Welfare and Institutions Code Section 14117 permits the Director of Benefit Payments of the California Medical Assistance Program to pro-

ceed against a third party tortfeasor to recover the reasonable value of services provided to an injured Medi-Cal recipient. Section 14117 also requires that when the injured party sues the third party tortfeasor, he must give notice to the Director of such suit, any settlement, and all other notices required by chapter 5 (commencing with §3850) of the Labor Code (pertaining to recovery under Workmen's Compensation Laws). Chapter 784 amends section 14117 to impose upon the attorney employed to initiate the action a legal duty to give such notice. If no attorney is employed, the beneficiary, his guardian, personal representative, estate, or survivors must give notice. Prior to amendment, section 14117 required the Director, should he initiate proceedings against the third party tortfeasor, to notify the injured party of the action. As amended, section 14117 requires the Director to notify the injured party *in writing* within 30 days of the initiation of his suit. The notice must advise the party of his right to obtain a private attorney and of the Director's right to recover the reasonable value of the benefits so provided.

COMMENT

Section 14117 was amended in response to *Brian v. Christensen* [35 Cal. App. 3d 377, 110 Cal. Rptr. 688 (1973)], which held that the duty to notify the Director of the institution of proceedings was solely that of the injured party, his guardian, personal representative, estate, or survivors. Because no duty was found to exist in the attorney, the Director was unable to recover from him the amount paid by Medi-Cal to the injured beneficiary where, because of lack of notice, the Director was unable to file a lien on the settlement proceeds. Implicit in the holding was dicta to the effect that if the attorney had the duty to notify the Director and failed to do so, he could be made liable to the Director for the amount paid in benefits to the Medi-Cal recipient.

See Generally:

1) CAL. LABOR CODE §3850 *et seq.* (workmen's compensation procedure for the recovery of benefits from a third party tortfeasor, which procedure is also applicable to Medi-Cal).