

1-1-1985

Insurance

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Insurance*, 17 PAC. L. J. 747 (1986).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol17/iss2/26>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Insurance

Insurance; Information and Privacy Act

Insurance Code §§791.08, 791.10 (amended).
AB 1964 (Klehs); 1985 STAT. Ch 1132

The Insurance Information and Privacy Act¹ [hereinafter the Act] was enacted in 1980 to balance the need of the insurance industry for information with the need of the public for fairness in insurance information practices.² Pursuant to the Act, any individual³ may submit to an insurance institution,⁴ agent, or support organization⁵ a written request for access to recorded personal information⁶ about the individual.⁷ If the information requested included medical record information supplied by a medical care institution⁸ or a medical professional,⁹ prior law allowed the insurance institution, agent, or support organization to decide whether to disclose the information directly to the individual or, upon notice to the individual, to supply the information to a medical professional designated by the individual and licensed to provide medical care with respect to the condition discussed in the information.¹⁰ Chapter 1132 provides that if the individual requests information supplied by a medical care institution or a medical professional, the insurance institution, agent, or support organization must disclose the information directly to the individual, or to a medical professional designated by the individual and licensed to provide

1. See CAL. INS. CODE §§791-791.26.

2. See *id.* §791 (purpose); see generally, Review of Selected 1980 California Legislation, 12 Pac. L.J. 495 (1981) (analysis of Insurance Information and Privacy Act); Review of Selected 1981 California Legislation, 13 Pac. L.J. 727 (1982) (analysis of amendments to the Insurance Information and Privacy Act).

3. CAL. INS. CODE §791.02(i) (definition of individual).

4. *Id.* §791.02(k) (definition of insurance institution).

5. *Id.* §791.02(l) (definition of insurance-support organization).

6. *Id.* §791.02(s) (definition of personal information).

7. *Id.* §791.08(a). The written request must be accompanied by proper identification and reasonably describe the information. *Id.*

8. *Id.* §791.02(o) (definition of medical care institution).

9. *Id.* §791.02(p) (definition of medical professional).

10. 1980 Cal. Stat. c. 1214, §1, at 4103 (enacting CAL. INS. CODE §791.08(c)).

medical care with respect to the condition discussed in the information, whichever the individual prefers.¹¹ Chapter 1132 creates an exception for mental health record information, providing that mental health record information may be supplied directly to the individual only upon approval of a qualified professional person with treatment responsibility for the condition discussed therein.¹²

11. CAL. INS. CODE. §791.08(c).

12. *Id.*

Insurance; disclosure of medical information

Civil Code §56.105 (new).

SB 1229 (Keene); 1985 STAT. Ch 484

Support: The Doctors Company

Under existing law, a provider of health care¹ may not disclose medical information² regarding a patient³ without authorization,⁴ except in specific instances.⁵ Chapter 484 provides that a potential plaintiff in an action for medical malpractice⁶ who, before filing a complaint, makes a demand for settlement or offer of compromise, must include with the demand or offer an authorization for disclosure of pertinent medical information.⁷ Additionally, Chapter 484 requires notice⁸ of

1. CAL. CIV. CODE §56.05(d) (definition of provider of health care).

2. *Id.* §56.05(b) (definition of medical information).

3. *Id.* §56.05(c) (definition of patient).

4. *Id.* §56.05(a) (definition of authorization).

5. *Id.* §56.10 (specified exceptions to the necessity of obtaining authorization for disclosure of medical information).

6. The medical malpractice action must be one arising out of the professional negligence of a physician or surgeon holding a valid certificate issued under Sections 2000 to 2529.5 of the Business and Professions Code. *Id.* §56.105.

7. *Id.* Authorization to disclose medical information must be made to persons or organizations insuring, responsible for, or defending against the professional liability of a physician or surgeon. *Id.* Chapter 484 specifically indicates that nothing within the chapter waives or limits any applicable privileges within the Evidence Code, except for the disclosure of medical information subject to the authorization of the patient. In addition, Chapter 484 does not authorize a representative of any person from whom settlement has been demanded to communicate in violation of the physician-patient privilege with a treating physician except for the medical information request. *Id.* See also CAL. EVID. CODE §917 (physician-patient communication privilege).

8. CAL. EVID. CODE §56.105. The notice must describe the subject matter and dates of requested materials and authorize the patient or legal representative of the patient to receive,

any request for medical information, pursuant to the authorization, to be delivered to the patient or the legal representative of the patient.⁹

upon request, copies of the information. *Id.*

9. *Id.*

Insurance; liability coverage

Insurance Code §§488, 11580.06, 11580.2, 11580.26, 11583 (amended).

SB 839 (Deddeh); 1985 STAT. Ch 792

Support: Association of California Insurance Companies; Department of Insurance

Existing law regulates the ability of an insurer¹ to increase the premium of an automobile insurance policy.² Under existing law, an insurer may not increase the policy premium in response to any conviction of the insured for a traffic violation that was committed while operating a motor vehicle³ for compensation during the hours of employment, except under certain circumstances.⁴ Chapter 792 limits application of this provision to insured individuals whose specific employment duties include driving a motor vehicle owned by the employer.⁵

Additionally, existing law provides that for purposes of uninsured motorist coverage, an insured motor vehicle may be either (1) the vehicle described in the underlying insurance policy, (2) a temporary substitute automobile for which liability coverage is provided in the

1. CAL. INS. CODE §23 (definition of insurer).

2. *Id.* §488.

3. *Id.* §11580.06(a) (definition of motor vehicle).

4. *Id.* §488. Section 488 does not apply to any insured or applicant for insurance convicted of the following: (1) homicide or assault arising out of the operation of a motor vehicle for compensation during the hours of employment; or (2) a violation of the following sections or subsections of the Vehicle Code while operating a motor vehicle for compensation: 14601(a), 14601.1(a), 14601.2(a), 20001, 20002, 20008(a), 23103, 23104, 23152, 23153. In addition, section 488 does not apply to a person insured under the California assigned risk plan. *Id.*

5. CAL. INS. CODE §488. Chapter 792 also applies to individuals that have personal authority from the Public Utilities Commission to operate as a highway carrier and are the registered owners or lease operators of a vehicle that is used as a highway carrier. *Id.*

policy, (3) a newly acquired automobile for which liability coverage is provided in the policy if the vehicle is used by the named insured, or (4) any other automobile not owned by a resident of the same household.⁶ Chapter 792 expands the definition of insured motor vehicle to include any automobile not owned by or furnished for the regular use of the named insured.⁷

Existing law provides that a loss payable under uninsured motorist coverage may be reduced by the amount the insured is entitled to recover from any other person insured under the liability policy that includes the uninsured motorist coverage.⁸ Under Chapter 792, losses may be reduced by amounts tendered to the insured as advance payment on behalf of any other person insured under the underlying liability insurance policy.⁹ Additionally, existing law provides that an advance or partial payment of damages to the insured must be accompanied by notification of the applicable statute of limitations to the cause of action.¹⁰ Under Chapter 792, notification of the applicable statute of limitations is not required if the recipient of the advance payment is represented by an attorney.¹¹

6. *Id.* §11580.2(b).

7. *Id.*

8. *Id.* §11580.2(h)(2). Losses also may be reduced by the amount paid and the present value of all amounts payable under a workers' compensation law, exclusive of nonoccupational disability benefits, to that person, that person's executor, administrator, heirs, or legal representatives. *Id.* §11580.2(h)(1).

9. *Id.* §11580.2(h)(2).

10. *Id.* §11583. *See* Llanera v. M & S Pipe Supply Co., 92 Cal. App. 3d 332, 336, 154 Cal. Rptr. 704, 706 (1979) (full payment of property damages while a claim for personal injury damages is pending, or vice versa, is considered advance payment or partial payment).

11. CAL. INS. CODE §11583.

Insurance; mortgage guaranty insurance policy

Insurance Code §12640.11 (amended).

SB 955 (Robbins); 1985 STAT. Ch 1476

Support: Mortgage Insurance Companies of America; Department of Insurance

Under existing law, a mortgage guaranty insurer¹ may impose reasonable requirements upon a lender regarding the terms of a note,

1. CAL. INS. CODE §12640.02(a) (definition of mortgage guaranty insurance).

bond, or other indebtedness that is secured by a mortgage or deed of trust.² Chapter 1476 provides that a misrepresentation, incorrect, or incomplete statement in the negotiations or application for a mortgage guaranty insurance policy will not prevent the right to recover under the policy.³ Chapter 1476, however, provides that if the misrepresentation, incorrect, or incomplete statement is either fraudulent,⁴ material,⁵ or if the insurer in good faith would not have issued the policy⁶ had the true facts been known, the statement may prevent any recovery under the mortgage guaranty insurance policy.⁷

2. *Id.* §12640.11(a).

3. *Id.* §12640.11(b). Chapter 1476 also provides that all statements and descriptions in the application and all related documents are to be considered representations and not warranties. *Id.*

4. *Id.* (made with actual intent to deceive).

5. *Id.* (materially affects either the acceptance of the risk or the hazard assumed by the insurer).

6. *Id.* In addition, if the insurer would not have issued the policy or extended coverage in as large an amount or at the premium rate applied for or if the insurer would not have provided coverage for the hazard resulting in a loss if the true facts had been known, the statements made by the applicant may act to prevent any recovery as well. *Id.*

7. *Id.*

Insurance; investments

Insurance Code §§1194.8, 1194.85 (amended).

SB 420 (Robbins); 1985 STAT. Ch 1513

Support: Association of California Life Insurance Companies;
Department of Insurance

Existing law allows domestic¹ insurers² to make excess funds investments³ in certain real estate and real estate leases.⁴ Chapter 1513 allows specified domestic life insurers⁵ to invest in specified limited

1. CAL. INS. CODE §26 (definition of domestic).

2. *Id.* §23 (definition of insurer).

3. *Id.* §1190 (definition of excess funds investments).

4. *Id.* §1194.8(a). The investments permitted by existing law apply to investments by domestic insurers with admitted assets of not less than \$25 million. Domestic insurers other than life, title, mortgage, or mortgage guaranty insurers, having admitted assets of less than \$25 million but not less than \$10 million may qualify to make such investments, for twelve months, with prior approval of the Insurance Commissioner. *Id.*

5. Specified domestic life insurers refers to domestic life insurers with admitted assets of not less than \$100 million. *Id.* §1194.8(c). *Id.* §101 (definition of life insurance).

partnerships,⁶ general partnerships, or in certain real estate trusts.⁷ Chapter 1513, however, limits the amount of excess funds investments that may be made by a domestic life insurer.⁸ Additionally, Chapter 1513 provides that if a domestic insurer requests the Commissioner's⁹ approval to make investments, the insurer must pay the Department¹⁰ for the actual expenses incurred by the Department in making a determination on the request.¹¹

6. *Id.* §1194.8(c). The limited partnerships must be publicly traded partnerships or limited partnerships in which the life insurer is the general partner. *Id.* See *id.* (definition of publicly traded).

7. *Id.* Real estate trusts refers to investments the life insurer has made in shares of beneficial interests in trusts, in which substantially all the assets are real estate, real estate leases, or improvements in real estate for business or residential purposes. *Id.* See *id.* (definition of business or residential purposes).

8. *Id.* §1194.8(d). Under existing law investments made pursuant to Civil Code §§1194.8(a), (c) may not exceed 10 percent of the insurer's admitted assets unless the insurer has prior written approval of the Commissioner. *Id.* Chapter 1513 provides that unless the life insurer has prior written approval of the Commissioner, the investments made pursuant to Civil Code §1194.8(c) are also limited as follows: (1) investments in a general partnership or a nonpublicly traded trust may not exceed three percent of the admitted assets of the insurer; (2) investments in general or limited partnerships, or in shares of beneficial interests in trusts may not exceed 10 percent of the admitted assets of the insurer; and (3) investments in a single partnership or shares of beneficial interest in a single trust may not exceed one percent of the admitted assets of the insurer or 10 percent of the aggregate of the capital paid up and unassigned surplus of the insurer, whichever is larger. The percentage, dollar value of assets, capital paid up, and unassigned surplus is to be determined by the last preceding annual statement of affairs of the insurer, made as of the last preceding December 31st, that was filed with the Commissioner. *Id.* §1194.8(c).

9. *Id.* §20 (definition of Commissioner).

10. *Id.* §21 (definition of Department).

11. *Id.* §1194.85 (expenses may not exceed \$500).