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Insurance

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Insurance

Insurance; life insurers—compensation of officers and employees

Insurance Code §§ 10434, 10435 (amended).

AB 3542 (Lancaster); 1986 STAT. Ch. 1139

Sponsor: Association of California Life Insurance Companies

Under prior law, the Insurance Commissioner was required to revoke the certificate of authority¹ of any life insurer that directly or indirectly compensated specified directors, officers, or employees,² when compensation was contingent on the issuance³ or renewal of life or disability insurance.⁴ Chapter 1139 authorizes, but does not require, the Insurance Commissioner to revoke or refuse to issue an insurer's certificate of authority for providing such compensation.⁵ Moreover, pursuant to Chapter 1139, an insurer may compensate certain officers⁶ based upon aggregate amounts of insurance issued by the insurer, or issued and in force, during any specified period.⁷

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1. CAL. INS. CODE § 700 (a certificate of authority must be obtained from the Insurance Commissioner before a person may be admitted to transact any class of insurance in California). See *id.* § 717 (applicant qualifications for a certificate of authority).

2. See *id.* § 10434(b) (list of specified insurance directors, officers, and employees).

3. *Id.* § 10434(a) (includes an application for issuance).

4. See 1935 Cal. Stat. ch. 145, at 652 (enacting CAL. INS. CODE § 10435).

5. CAL. INS. CODE § 10435.

6. *Id.* § 10434(c) (applies to officers not directly responsible for recommending, underwriting, rating, or otherwise approving the acceptability of insurance risks).

7. *Id.*

Insurance; motor vehicle insurance fraud

Insurance Code § 556 (amended);
Penal Code §§ 803, 13835.2 (amended).
AB 710 (M. Waters); 1986 STAT. Ch. 1324

Existing law prohibits any person from knowingly presenting or causing to be presented any false or fraudulent claims for the payment of a loss under an insurance contract.¹ In addition, existing law prohibits the filing of multiple claims for a single loss or injury with an intent to defraud the insurer,² or preparing, making, or subscribing any writing with the intent to present or use the writing in support of a fraudulent claim.³ Under Chapter 1324, any person who knowingly causes or participates in a vehicular accident for the purpose of filing a fraudulent claim has committed an unlawful act.⁴

Existing law provides that prosecution for any offense punishable by state imprisonment must be commenced within three years after the offense is committed.⁵ Chapter 1324 specifies that the three-year statute of limitations for prosecuting insurance fraud does not begin to run until the commission of the insurance fraud is discovered.⁶

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1. CAL. INS. CODE § 556(a)(1).
 2. *Id.* § 556(a)(2) (including presenting multiple claims to more than one insurer).
 3. *Id.* § 556(a)(4).
 4. *Id.* § 556(a)(3). *See id.* § 556(b) (persons guilty of insurance fraud under this section are subject to state imprisonment for two, three, or four years, a fine of up to \$10,000, or both).
 5. CAL. PENAL CODE § 801.
 6. *Id.* § 803(c)(7). *See also id.* § 803(c) (exceptions to the general statute of limitations running from the time the offense is committed).

Insurance; motor vehicle liability coverage—premium rates

Insurance Code § 491 (new).
SB 1763 (Ayala); 1986 STAT. Ch. 470
Sponsor: Author

Existing law requires a motor vehicle¹ liability insurer² to notify

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1. CAL. VEH. CODE § 415 (definition of motor vehicle); CAL. INS. CODE § 383.6 (scope of the phrase motor vehicle).
 2. CAL. INS. CODE § 23 (definition of insurer). *See* CAL. VEH. CODE § 16450 (definition

an insured³ of the manner in which the insurer's rating plan provides for premium increases based on accidents or convictions.⁴ Chapter 470 prohibits an insurer's rating plan from increasing premiums based on an accident in which the insured is not in any manner at fault, as determined by either the accident report⁵ or the insurer.⁶ In addition, Chapter 470 requires that if the insurer determines the insured is at fault, in spite of a specific finding in the accident report to the contrary, the insurer must conduct an investigation of the accident before reaching a conclusion as to fault.⁷

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of motor vehicle liability policy); CAL. INS. CODE §§ 108 (definition of liability insurance), 116 (definition of automobile insurance).

3. CAL. INS. CODE § 23 (definition of insured).

4. *Id.* § 489. Insurers must give notice of their rating plan provisions when issuing a new policy. *Id.* When making an offer to renew an existing policy, insurers must, at least 20 days prior to renewing the policy, inform the insured of the right to notice of any increase in the premium due to accidents or specified convictions. *Id.* § 489(a).

5. The driver of any motor vehicle involved in an accident resulting in property damage to any one person in excess of \$500, or in bodily injury or death of any person, must report the accident to the Department of Motor Vehicles within 10 days. CAL. VEH. CODE § 16000. A peace officer is prohibited from determining the fault of the reporting person in any counter report of a property damage accident if (1) the accident caused property damage, but not personal injury to any person; (2) the report is prepared at an office of the California Highway Patrol or local police agency; and (3) the report is written or recorded by, or with the assistance of, a peace officer. *Id.* § 20015. The Department of Motor Vehicles must maintain convenient records or make suitable notations so that an individual record of each license showing the convictions of the licensee and all traffic accidents in which the individual was involved is readily ascertainable, except for those records where, in the opinion of the reporting officer, another individual was at fault. *Id.* § 1806. *See also id.* § 1808 (abstracts of accident reports where, in the opinion of the reporting officer, another individual was at fault, are not open to public inspection).

6. CAL. INS. CODE § 491. *See also id.* §§ 488 (insurers are prohibited from increasing an automobile insurance premium on the basis of an insured's conviction for traffic violations committed while operating an employer's vehicle as a part of the insured's employment duties); 488.5 (insurers are prohibited from increasing an automobile insurance premium of a peace officer, a member of the California Highway Patrol, or a firefighter involved in an accident while operating an authorized emergency vehicle, during hours of employment, in the performance of duty).

7. *Id.* § 491.

Insurance; nonrenewal notice

Insurance Code §§ 675.5, 676.5, 678.1 (new); § 676 (amended).

AB 3875 (W. Brown); 1986 STAT. Ch. 1321

Sponsor: Author

Support: Department of Insurance; California Labor Federation;
AFL-CIO

Existing law requires insurers to give notice of their intention not to renew personal and noncommercial insurance policies.¹ Chapter 1321, known as the Robbins-Brown Insurance Consumer Reform Act of 1986² (the Act), sets forth the notice requirements to be followed by an insurer who intends not to renew a commercial insurance policy.³ General types of commercial insurance affected by the Act include personal and property liability insurance, when the loss, damage, or injury insured against occurs as a result of conducting a commercial or industrial enterprise.⁴

The Act provides that no insurer may refuse to renew a commercial policy unless written notice, indicating the reasons for nonrenewal, is delivered or mailed to the insured and producer of record at least 45 days, but not more than 120 days,⁵ before the end of the policy

1. Compare CAL. INS. CODE § 660 (notice requirements for nonrenewal of motor vehicle liability insurance) and *id.* § 675 (notice requirements for personal types of insurance, including residential property coverage) with *id.* § 675.5 (specifying types of commercial insurance affected by notice provisions).

2. 1986 Cal. Stat. ch. 1321, sec. 8, at _____(naming the provisions of chapter 1321).

3. CAL. INS. CODE §§ 675.5, 676, 676.5, 678.1. The Act applies to commercial insurance policies which are effective or renewed on or after January 1, 1987. *Id.* § 675.5(a). Commercial insurance is defined to include the following types of policies: Commercial multiperil, commercial property, commercial liability, commercial special multiperil, commercial comprehensive multiperil, errors and omissions liability, and professional liability. *Id.* § 675.5(b). Commercial insurance is an indemnity agreement, in the form of an insurance bond of policy, whereby parties to commercial contracts are guaranteed to a designed extent against loss by reason of a breach of contractual obligations on the part of the other contracting party. BLACK'S LAW DICTIONARY 721 (5th ed. 1979). CAL. INS. CODE §§ 22 (definition of insurance); 380 (definition of policy).

4. CAL. INS. CODE § 675.5(b)(1)-(3). The Act does not apply to policies covering personally owned motor vehicles that are used in the conduct of a commercial or industrial enterprise. *Id.* § 675.5(b)(2). Commercial or industrial enterprise includes a business operated for profit, a professional practice, a nonprofit organization, or a governmental entity. *Id.* § 675.5(c). The Act does not apply to any of the following types of insurance: (1) worker's compensation; (2) insurance provided pursuant to the California FAIR plan or the California automobile assigned risk plan; (3) disability insurance; (4) automobile and property insurance covered by §§ 660 and 675 of the Insurance code, respectively; (5) ocean marine insurance; (6) fidelity and surety insurance; (7) surplus line insurance; (8) reinsurance; (9) policies, other than professional liability insurance for malpractice, errors, or omissions, that are subject to retrospective rating plans; or (10) nuclear liability and property insurance. *Id.* § 675.5(d)(1)-(11).

5. *Cf. id.* §§ 663 (notice of nonrenewal for a motor vehicle liability insurance policy must be mailed or delivered at least 20 days in advance of the policy's expiration); 678 (notice

period.⁶ If an insurer's aggregate premium is less than \$10,000, however, notice must be delivered at least 60 days, and not more than 120 days, before the end of the policy term.⁷ In either case, if notice requirements are not met, the policy continues uninterrupted until sixty days after notice was given.⁸

The Act further provides that notice of nonrenewal is not required⁹ where a policy is renewed or transferred, without a change in terms, conditions, or rate, by or between insurers belonging to the same insurance group.¹⁰ In addition, if a policy has been extended for ninety days or less, and proper nonrenewal notice is given prior to a policy extension,¹¹ no additional notice is required.¹² If the insured has obtained, or agreed in writing to obtain, replacement coverage, within sixty days of the policy's end, notice of nonrenewal is not required.¹³ Additional situations exempting the notice requirement include the following: When a policy term does not exceed sixty days and the insurer notifies the insured that renewal is not available when the policy is issued;¹⁴ when the insured requests that the policy's terms, conditions, or risks be changed within sixty days prior to the end of the policy period;¹⁵ and when the insured, in compliance with the requisite notice provisions, offers to renew the policy under changed terms, conditions, or rate.¹⁶

Finally, the Act specifies that all commercial insurance policies are to be considered as having one-year terms.¹⁷ A policy may only be considered as having a term of less than one year if the risk insured

of nonrenewal for personal types of insurance policies must be mailed or delivered at least 45 days in advance of the policy's expiration).

6. *Id.* § 678.1. As applied, nonrenewal means either (1) the insurer intends not to renew the policy; or (2) the insurer intends to condition renewal upon reduction of limits, elimination of coverages, increase in deductibles, or increase of more than 25% in the premium rate. *Id.* § 678.1(c).

7. *Id.* § 678.1(c). The procedure for sending notice by mail is governed by Civil Procedure Code § 1013(a). *Id.* § 678.1(b). *See also id.* § 679.5 (proof of mailing as proof of notice).

8. *Id.* § 678.1(d).

9. *Id.* § 678.1(e).

10. *Id.* § 678.1(e)(1).

11. *See supra* note 5 and accompanying text.

12. CAL. INS. CODE § 678.1(e)(2).

13. *Id.* § 678.1(e)(3).

14. *Id.* § 678.1(e)(4).

15. *Id.* § 678.1(e)(5).

16. *Id.* § 678.1(e)(6).

17. *Id.* § 676.5(b). Policies with no fixed expiration and policies with terms of less than one year are considered to have one-year terms. Policies with terms of more than one year are considered as if written for successive terms of one year. *Id.*

against does not continue for the entire term, or if the insured requests a term of less than one year.¹⁸

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18. *Id.* § 676.5(c).

Insurance; unemployment

Unemployment Insurance Code §§ 606.5, 1127.5 (new); § 1222 (amended).

AB 2733 (Bane); 1986 STAT. Ch. 793

Sponsor: CMD Transport Inc.

Support: Employment Development Department

Existing law specifies which employers and employees are subject to the unemployment insurance system.¹ Chapter 793 incorporates into this determination the common law rules relating to employer-employee relationships.² For temporary services employers and leasing employers, however, the employer-employee relationship is determined, for purposes of unemployment insurance law, according to the provisions of Chapter 793.³

Chapter 793 defines a temporary services employer and a leasing employer as an employing unit that supplies workers to clients, and that administers matters relating to payroll, hiring, termination, and work assignments.⁴ When an entity contracts to supply a worker to a client, but is not deemed a temporary services employer or leasing

1. CAL. UNEMP. INS. CODE §§ 601 (definition of employment); 675 (definition of employer); 621 (definition of employee). Unemployment insurance is the compulsory setting aside of funds to be used to provide benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment. *Id.* § 100.

2. *Id.* § 606.5(a). See generally RESTATEMENT (SECOND) OF AGENCY §§ 15-25 (1958) (discussing the elements of an agency relationship). See also *Empire Star Mines Co. v. California Employment Comm'n*, 28 Cal. 2d 33, 43, 168 P.2d 686, 692 (1946). In *Empire Star*, the court explained the common law test for determining the existence of an employer-employee relationship:

In determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the result desired. If the employer has the authority to exercise complete control, whether or not that right is exercised with respect to all details, an employer-employee relationship exists.

Id.

3. CAL. UNEMP. INS. CODE § 606.5(b).

4. *Id.* Temporary services employers and leasing employers perform the following specific functions: (1) negotiate with clients regarding time, place, type of work, working conditions,

employer, the client is considered the employer.⁵ An entity that is not a temporary services or leasing employer, but which pays wages to the worker, will be considered an agent of the employer.⁶ In situations where an employee is loaned from one employer to another employer, and the control and direction over the employee is exchanged, the employer who pays the employee for service is considered the employer, for purposes of unemployment insurance.⁷ When both employers pay the employee, the employer to whom the employee was loaned is considered to be the employer.⁸

Furthermore, Chapter 793 authorizes the Director of Employment Development to make determinations regarding whether an entity reporting employee wages⁹ is the correct employer.¹⁰ If the director determines that an entity is not the correct employer, the director must notify¹¹ the reporting entity and the correct employer of that determination.¹² A noticed entity or individual may petition for review of the determination within thirty days of notice.¹³

While a petition is pending review, the responsibility for reporting employee wages rests with the entity that appeals.¹⁴ After final determination that a correct employer has not reported employee wages, such employer may be assessed for underpayment of employer contributions.¹⁵ Assessments are not permitted, however, for periods prior to the effective date of Chapter 793, unless the correct employer committed fraud.¹⁶ Upon a determination that the correct employer has failed to report employee wages, the incorrect employer is permitted to file a claim for overpayment of employee contributions, unless an assessment is issued based on fraud.¹⁷

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quality, and price of services; (2) determine assignments and reassignments of workers, even though workers can refuse specific assignments; (3) retain the authority to assign or reassign workers to other clients when a worker is unacceptable for a specific client; (4) assign or reassign workers to perform services for clients; (5) set pay rates, whether or not through negotiation; (6) pay workers from their own accounts; and (7) hire and terminate workers. *Id.*

5. *Id.* § 606.5(c).

6. *Id.* See also RESTATEMENT (SECOND) OF AGENCY § 1 (1959) (definition of agent).

7. CAL. UNEMP. INS. CODE § 606.5(d).

8. *Id.*

9. See *id.* § 1088 (procedure for reporting wages).

10. *Id.* § 1127.5(a).

11. See *id.* § 1206 (service of notice).

12. *Id.* § 1127.5(b)(1), (2).

13. *Id.* § 1127.5(b)(2).

14. *Id.* § 1127.5(c).

15. *Id.* § 1127.5(d)(1). See *id.* § 1126 (assessment and penalty for failure to make returns).

16. *Id.* § 1127.5(d)(1).

17. *Id.* § 1127.5(d)(2).

