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Insurance

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Insurance

Insurance; premiums—unreasonable benefits and payment

Insurance Code §§10270.97, 10293, 10506, 12923 (amended).
AB 564 (McAlister); STATS. 1981, Ch 752
Support: Department of Finance

Under prior law, the Insurance Commissioner¹ (hereinafter referred to as the Commissioner) was required to withdraw approval of an individual hospital, medical, or surgical insurance policy upon notice and hearing if, after consideration of all relevant factors, the Commissioner found that the benefits provided under the policy were unreasonable² in relation to the premium³ charged.⁴ Chapter 752 applies this same requirement of reasonableness to the withdrawal of approval by the Commissioner of an individual and mass-marketed disability⁵ insurance policies.⁶

Chapter 752 defines mass-marketed policy as any group or blanket disability insurance offered by direct response solicitation⁷ made through a sponsoring organization or the mails or other mass communications media and under which the insured pays all, or substantially all, of the cost of the insurance.⁸

1. See CAL. INS. CODE §20.

2. See 10 CAL. ADM. CODE §2222.12 (standards of reasonability).

3. See CAL. INS. CODE §§480-489.

4. See CAL. STATS. 1969, c. 1569, §1, at 3188.

5. See CAL. INS. CODE §106 (definition of disability).

6. *Id.* §10293.

7. *Id.* §10293(c)(2) (Direct response solicitation is any offer by an insurer to persons in California, made directly or through a third party, to effect health insurance coverage that enables the individual to apply or enroll for the insurance on the basis of the offer. It does not include solicitation for insurance through an employer benefit plan as defined in the Retirement Income Security Act of 1974, Pub. L. No. 93-406, §3, or through the individual's creditor for credit health insurance.).

8. See *id.* §10293(c)(1).

Insurance; unemployment insurance eligibility

Unemployment Insurance Code §§135, 605, 1255.3, 1266, 1274.3,
1274.8, 4003, 4553, 4555 (amended).
AB 12 (McAlister); STATS. 1981, Ch 1134

The California Employment Development Department (hereinafter referred to as the Department) participates in a cooperative unemployment insurance program with the federal government under the Social Security Act.¹ Unemployment compensation benefits are paid from the State Unemployment Fund, which consists of contributions collected from private employers² and money credited to the State's account in the Federal Unemployment Trust Fund.³ To qualify for federal funds, the unemployment insurance law of California must comply with certain federal requirements and be approved by the U.S. Secretary of Labor.⁴ In addition, federal law provides that government entities must be entitled to pay into the State Unemployment Fund as employers⁵ thus enabling public employees to become eligible for unemployment benefits.⁶

Prior to the enactment of Chapter 1134, government employees of other states or political subdivisions who performed services in California were covered under the unemployment insurance law of California.⁷ This resulted in an inconsistent application of the law because out-of-state public entities refused to pay employer contributions assessed against them by the Department on the grounds that they were already assessed by their home states.⁸ Chapter 1134 redefines "employers" who are "public entities" to exclude employees of other states or political subdivisions from coverage under the California unemployment insurance program.⁹

As originally enacted, the federal Trade Act of 1974 provided for the payment of trade adjustment allowances to workers who have been separated from their employment by foreign competition.¹⁰ Payments would commence immediately upon certification by the Secretary of Labor that a group of workers was in need of federal assistance.¹¹ Existing California law withholds unemployment insurance benefits from individuals who are entitled to receive training or retraining benefits

1. See 42 U.S.C. §§501-503 (1976 & Supp. III 1979); CAL. UNEMP. INS. CODE §451. See generally *California Human Resources Dept. v. Java*, 402 U.S. 121 (1971).

2. See CAL. UNEMP. INS. CODE §§976-982.

3. See 42 U.S.C. §§501-503, 1101-1105 (1976 & Supp. III 1979).

4. See *id.* §502; 29 U.S.C. §49d(b) (1976 & Supp. III 1979).

5. See 26 U.S.C. §§3304(a)(6)(A), 3309(a) (Supp. III 1979).

6. See CAL. UNEMP. INS. CODE §605(a).

7. See CAL. STATS. 1978, c. 397, §1, at 1253 (amending CAL. UNEMP. INS. CODE §135).

8. Memorandum from Gilbert Martinez, Legislative Analyst for Employment Development Department, to Sal Bianco, Consultant for Assembly Finance, Insurance, and Commerce Committee (May 18, 1981) (copy on file at the *Pacific Law Journal*).

9. Compare CAL. UNEMP. INS. CODE §§135(a)(3), 605(b) with CAL. STATS. 1978, c. 397, §§1, 1.3, at 1253-54.

10. See Trade Act of 1974, PUB. L. NO. 93-618, §222, 88 STAT. 2019 (1975).

11. See *id.* §231, at 2020.

through any federal assistance program.¹² Under the federal Omnibus Budget Reconciliation Act of 1981, the receipt of weekly Trade Act benefits is subject to the condition that recipients must first exhaust their rights to any unemployment insurance.¹³ If the Secretary of Labor determines, however, that suitable employment opportunities for a group of workers have become scarce as a result of foreign competition, the Secretary may approve retraining of those individuals.¹⁴ Upon approval, the workers are entitled to have the costs of training paid on their behalf directly to the persons providing the training by the Secretary.¹⁵ Chapter 1134 amends the California Unemployment Insurance Code to create an exception that will permit unemployed individuals receiving training assistance under the federal Trade Act of 1974 to collect unemployment compensation benefits.¹⁶

12. CAL. UNEMP. INS. CODE §1274.8.

13. 19 U.S.C. §§2291(a)(3)(B), 2292(a) (1976 & Supp. III 1979) (as amended by the Omnibus Budget Reconciliation Act of 1981, PUB. L. No. 97-35 §§2503, 2504, 94 STAT. — (1981)).

14. *Id.* §2296(a)(1) (as amended by PUB. L. No. 97-35 §2506, 94 STAT. — (1981)).

15. *Id.* §2296(a)(1)(E) (as amended by PUB. L. No. 97-35 §2506, 94 STAT. — (1981)).

16. *See* CAL. UNEMP. INS. CODE §§1266, 1274.3(a), 1274.8.

Insurance; Insurance Information and Privacy Protection Act

Civil Code §56.29 (new); Insurance Code §§791.04, 791.13, 791.21 (new and repealed); §§791.01, 791.02, 791.03, 791.05, 791.06, 791.07, 791.08, 791.09, 791.10, 791.12, 791.15, 791.17, 791.20, 791.23, 791.26, (amended).

AB 268 (McAlister); STATS. 1981, Ch 106

(Effective: June 29, 1981)

SB 1091 (Robbins); STATS. 1981, Ch 121

(Effective: June 30, 1981)

Support: Business, Transportation and Housing Agency

The Insurance Information and Privacy Protection Act¹ was enacted in 1980 to balance the need for information by those conducting the business of insurance with the need of the public for fairness in insurance information practices.² Chapter 106 and 121 adopt several amendments recommended by the National Association of Insurance Commissioners in the Insurance Information and Privacy Protection

1. *See* CAL. INS. CODE §§791-791.26.

2. *See id.* §791. *See generally* 12 PAC. L.J., REVIEW OF SELECTED 1980 CALIFORNIA LEGISLATION 495 (1981).

Model Act.³

Under existing law, an insurance institution⁴ or agent⁵ is required to give notice to all applicants⁶ or policyholders in connection with insurance transactions describing information practices.⁷ Written applications for insurance policy reinstatement or insurance benefits all require different notice regulations.⁸ In an apparent attempt to stop excessive burdens on the insurer and prevent delay in claim payments,⁹ Chapter 106 allows the insurer to substitute the prior notice requirement with an abbreviated form of notice informing the applicant or policyholder¹⁰ that (1) personal information¹¹ may be collected from persons¹² other than the individual proposed for coverage,¹³ (2) under certain circumstances,¹⁴ personal or privileged information¹⁵ subsequently collected by the insurance institution or agent may be disclosed to third parties without authorization,¹⁶ (3) a right of access and correction exists with respect to all personal information collected,¹⁷ and (4) written notice conforming to the full notice requirements must be furnished to the applicant or policyholder upon request.¹⁸

Existing law regulates the authorization for disclosure of personal or privileged information about an individual that has been collected or received in connection with an insurance transaction by an agent or insurance-support organization.¹⁹ Among other requirements,²⁰ the applicant or insured must give written authorization.²¹ The disclosure form must be written in plain language,²² dated,²³ and specify the na-

3. See NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS PRIVACY PROTECTION TASK FORCE, 1 PROCEEDINGS OF THE NAIC 258-59, 267-315 (1981).

4. See CAL. INS. CODE §791.02(j) (definition of insurance institution).

5. See *id.* §791.02(c) (definition of agent).

6. See *id.* §791.02(d) (definition of applicant).

7. See CAL. STATS. 1980, c. 1214, §2, at — (amending CAL. INS. CODE §791.04).

8. See CAL. INS. CODE §791.04(a)(1), (2), (3).

9. See Vinyard, Bassett, & Moran, "Breaking Away": Implementing the Privacy Commission's Insurance Recommendations, 16 FORUM 593-95 (1981).

10. See CAL. INS. CODE §791.02(f) (definition of policyholder).

11. See *id.* §791.02(s) (definition of personal information includes an individual's name, address, and medical information but does not include privileged information).

12. See *id.* §791.02(r) (definition of person).

13. *Id.* §791.04(c)(1).

14. See *id.* §791.13 (circumstances under which information may be disclosed).

15. See *id.* §791.02(u) (definition of privileged information).

16. *Id.* §791.04(c)(2).

17. *Id.* §791.04(c)(3).

18. *Id.* §791.04(c)(4). See also *id.* §791.04(a)(1)-(3) (specifying when notice must be given).

19. See CAL. STATS. 1980, c. 1214, §1, at — (amending CAL. INS. CODE §791.06). See also CAL. INS. CODE §791.02(1) (definition of insurance-support organization).

20. See CAL. INS. CODE §791.06(b)-(i).

21. See *id.* §791.06(a).

22. *Id.*

23. *Id.* §791.06(b).

ture of the information authorized to be disclosed.²⁴ Under prior law, the authorization was required to specify the *types* of persons to whom the individual will allow the information to be disclosed.²⁵ Chapter 106 requires that the authorization form *name* the insurance institution or agent and identify by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed.²⁶ The authorization granting permission to release personal or privileged information is valid only for a specified time period.²⁷ Under Chapter 106, the time period limiting the validity of an authorization form relating to an application for an insurance policy, a policy reinstatement, or a request for a change in policy benefits is not to exceed one year or thirty months depending on the type of insurance coverage.²⁸

Existing law allows the insurance institution, agent, or insurance-support organization to disclose personal or privileged information under specified circumstances.²⁹ Currently, personal or privileged information may be released to a medical professional³⁰ for the purpose of informing the individual of a medical problem that may not be known to exist.³¹ Chapter 106 also allows for the release of personal or privileged information to a medical professional or medical-care institution³² to verify insurance coverage or benefits,³³ or to conduct an operation or services audit provided the disclosure of the information is reasonably necessary to accomplish these purposes.³⁴

In a related measure, Chapter 106 amends the circumstance under which liability can be imposed arising from an illegal disclosure by an

24. *Id.* §791.06(d).

25. *See* CAL. STATS. 1980, c. 1214, §1, at — (amending CAL. INS. CODE §791.06).

26. *See* CAL. INS. CODE §791.06(e).

27. *See* CAL. STATS. 1980, c. 1214, §1, at —.

28. CAL. INS. CODE §791.06(g) (not to exceed 30 months from the date the authorization is signed if the application or request involves life, health, or disability insurance or one year from the date the authorization is signed if the application or request involves property or casualty insurance).

29. *See id.* §791.13 (personal or privileged information may be disclosed with written authorization, if the disclosure is reasonably necessary, to another insurance institution, agent, insurance-support organization or self-insurer to (1) detect deceit, or (2) to perform its function in connection with an insurance transaction involving the individual, an insurance regulatory authority, pursuant to law, in response to a facially valid administrative or judicial order, conducting actuarial or research studies, marketing of a product or service, for audit of the institution or agent, consumer reporting agency, group policyholder, professional peer review organization, governmental authority).

30. *See id.* §791.02(p) (definition of medical professional is amended to include chiropractor, pharmacist, and speech therapist).

31. *Id.* §791.13(d).

32. *See id.* §791.02(o) (definition of medical care institution).

33. *Id.* §791.13(d)(1).

34. *Id.* §791.13(d)(3).

insurance institution, agent, or insurance-support organization.³⁵ While existing law provides for appropriate relief in a court of competent jurisdiction for wrongful disclosure of information, Chapter 106 allows a monetary award not to exceed the actual damages for disclosure in violation of the Insurance Information and Privacy Act.³⁶ Prior to the enactment of Chapter 106, imposition of liability was precluded against any person for disclosing or receiving personal or privileged information in good faith.³⁷ Liability was imposed for a disclosure of information in a negligent manner, or when the information was known to be false or a disclosure with malice or willful intent to injure any person.³⁸ The good faith requirement did not appear to grant immunity from liability³⁹ to an insurance institution, insurer, or insurance-support organization who disclosed information in adherence with the procedural requirements of the Insurance Information and Privacy Act.⁴⁰ Chapter 106 reduces the scope of the immunity by expressly barring a cause of action in the nature of defamation, invasion of privacy, or negligence that may arise against any person for disclosing personal or privileged information in accordance with the Insurance Information and Privacy Protection Act.⁴¹ There continues to be no immunity, however, for furnishing false information with malice or willful intent to injure any person.⁴²

Additionally, Chapter 121 revises the definition of an adverse underwriting decision.⁴³ For the purposes of property or casualty insurance coverage, the definition of adverse underwriting decision now includes (1) placement of a risk by an insurance institution or agent with a residual market mechanism⁴⁴ or an unauthorized insurer,⁴⁵ (2) charging a higher rate on the basis of information that is different from that provided by the applicant or policyholder,⁴⁶ or (3) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished.⁴⁷ In the case of an adverse under-

35. *Id.* §791.20.

36. *See id.* §791.20. *See also id.* §791.20(d) (action must be brought within two years from the date the alleged violation is or should have been discovered).

37. *See* CAL. STATS. 1980, c. 1214, §1, at —. (amending CAL. INS. CODE §791.21).

38. *Id.*

39. *See* Vinyard, Bassett & Moran, "Breaking Away": *Implementing the Privacy Commission's Insurance Recommendations*, 16 FORUM 591-95 (1981).

40. *See* CAL. INS. CODE §791.21.

41. *Id.*

42. *Id.*

43. *Compare id.* §791.01(a) with CAL. STATS. 1980, c. 1214, §2, at —.

44. *See* CAL. INS. CODE §791.02(w) (definition of residual market mechanism).

45. *Id.* §791.02(a)(1)(D)(i).

46. *Id.*

47. *Id.* §791.02(a)(1)(D)(ii).

writing decision, existing law requires the insurance institution or agent either to notify the applicant or policyholder of the specific reason or reasons for the decision or to advise the person of the right to request this information.⁴⁸ The applicant also may request specific items of personal and privileged information that support the reasons for the adverse underwriting decision within ninety business days.⁴⁹ Under prior law the insurance institution or agent responsible for the decision could withhold privileged information if the applicant, policyholder, or individual proposed for coverage was suspected of fraud, material misrepresentation, or material nondisclosure.⁵⁰ Chapter 106 now requires that there also be a reasonable suspicion based upon specific information available for review by the Insurance Commissioner.⁵¹

In conclusion, Chapter 106 and 121 change the standards established for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents, or insurance-support organizations.⁵² More importantly, Chapter 106 revises provisions dealing with disclosure of personal or privileged information, modifies the legal and equitable remedies available under the Act, and simplifies procedural notice requirements.⁵³

48. *Id.* §791.10(a)(1).

49. *Id.* §791.10(b).

50. *See* CAL. STATS. 1980, c. 1214, §1, at — (amending CAL. INS. CODE §791.10(a)).

51. CAL. INS. CODE §791.10(b)(2)(A).

52. *See generally* NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS PRIVACY PROTECTION TASK FORCE, 1 PROCEEDINGS OF THE NAIC 258-59, 267-315 (1981).

53. *See generally* CAL. INS. CODE §§791.01-791.10, 791.12, 791.13, 791.15, 791.20, 791.21, 791.26.

