



1-1-1983

Insurance

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Insurance*, 14 PAC. L. J. 661 (1983).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol14/iss2/26>

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Insurance

Insurance; unemployment insurance—fraud prevention and federal conformity

Unemployment Insurance Code §§1255.7, 2114, 2115 (new); §§1342, 2112, 4001, 4003, 4552 (amended); Welfare & Institutions Code §11350.5 (amended).

AB 2856 (Lancaster); STATS. 1982, Ch 1072

Support: Department of Finance; Department of Social Services; Employment Development Department

(Effective September 15, 1982)

AB 3153 (McAlister); STATS. 1982, Ch 999

Support: Department of Finance; Employment Development Department

Chapters 999 and 1072 make several changes pertaining to unemployment insurance.¹ In an effort to prevent unemployment insurance fraud,² Chapter 999 provides felony penalties in the following situations: (1) when an employer, in order to subsidize a payroll and with an intent to defraud, makes false reports regarding an employee's earnings or work status, and the employee claims benefits as a result of the false reports;³ and (2) when any person, with an intent to defraud,⁴ registers or reports a fictitious employer or employee, along with fictitious wages, for the purpose of claiming unemployment insurance or unemployment disability benefits over \$400.⁵ Specifically, Chapter 999 declares that misdemeanor penalties are inadequate to prevent these types of unemployment insurance fraud,⁶ and imposes imprisonment in the county jail for not more than one year, or in the state prison, a fine of not more than \$5000, or both, for committing one of the above mentioned violations.⁷

1. See CAL. UNEMP. INS. CODE §§1255.7, 2114, 2115, 4001, 4003, 4552; CAL. WELF. & INST. CODE §11350.5.

2. See CAL. STATS. 1982, c. 999 §1, at —. See generally *People v. Ruster*, 16 Cal. 3d 690, 548 P.2d 353, 129 Cal. Rptr. 153 (1976).

3. See CAL. STATS. 1982, c. 999, §1 at —; CAL. UNEMP. INS. CODE §2115.

4. See CAL. UNEMP. INS. CODE §2114. See generally *Wilson v. State Per. Bd.*, 39 Cal. App. 3d 318, 114 Cal. Rptr. 134 (1974); *People v. Lustman*, 13 Cal. App. 3d 278, 91 Cal. Rptr. 548 (1970), cert. denied 405 U.S. 932 (1971).

5. See CAL. STATS. 1982, c. 999, §1, at —; CAL. UNEMP. INS. CODE §2114.

6. See CAL. STATS. 1982, c. 999, §1, at —.

7. See CAL. UNEMP. INS. CODE §§2114, 2115.

Chapter 1072 makes changes in unemployment insurance in order to comply with recently enacted federal regulations.⁸ Under prior law, unemployment insurance benefits⁹ were exempt from attachment and garnishment.¹⁰ Chapter 1072 authorizes the Employment Development Department,¹¹ upon notice of obligations due by the Department of Social Services,¹² to deduct a claimant's child support obligations¹³ from the claimant's unemployment compensation benefits.¹⁴ Chapter 1072 also requires all amounts deducted to be forwarded to the Department of Social Services as satisfaction of the claimant's obligations¹⁵ and that the Department of Social Services reimburse the Employment Development Department for its administrative costs.¹⁶

In order to compensate for the added wage loss suffered by individuals because of extended unemployment,¹⁷ existing law provides for a federal-state extended benefit program under which unemployment insurance claimants who have exhausted their regular entitlements may receive additional benefits during periods of high unemployment.¹⁸ Chapter 1072 now authorizes payment of these additional benefits for one week when insured unemployment compensation for that week and the immediately preceding 12 weeks equals or exceeds either a flat 6 percent rate,¹⁹ or a 5 percent rate that is 120 percent higher than the average of the comparable 13-week period of the previous two years.²⁰ In addition, Chapter 1072 provides for a determination of the rate of insured unemployment for the 13-week period,²¹ and for a cessation of

8. See 42 U.S.C. §§659-61. Compare *id.* with CAL. UNEMP. INS. CODE §§1255.7, 1342, 4001, 4003, 4552 and CAL. WELF. & INST. CODE §11350.5. See generally *Diaz v. Diaz*, 568 F. 2d 1061 (4th Cir. 1977); Annot., 44 A.L.R. Fed. 494 (1979).

9. See CAL. UNEMP. INS. CODE §128 (definition of benefits).

10. See *id.* §988.

11. See *id.* §133.

12. *Id.* §1255.7(a); see also CAL. WELF. & INST. CODE §11350.5(a) (whenever a child support judgment has been rendered by a court against a support judgment debtor, the district attorney may file with the State Department of Social Services certification of the support judgment or order verifying that there is or has been an order for support with sums overdue).

13. CAL. UNEMP. INS. CODE §1255.7(g) (definition of child support). See generally Annot., 98 A.L.R. 3d 1146 (1980).

14. CAL. UNEMP. INS. CODE §1255.7(b); see also CAL. WELF. & INST. CODE §350.5.

15. See CAL. UNEMP. INS. CODE §1255.7(d); see also CAL. WELF. & INST. CODE §11350.5(b) (the amount withheld will be equal to 25 percent of each weekly unemployment compensation payment; the amount may be reduced, however, through a written agreement between the judgment debtor and the district attorney's office, or through an order of the court).

16. CAL. UNEMP. INS. CODE §1255.7(f).

17. See *id.* §§100, 3501, 4001. See generally *id.* §§3501-4751.

18. See *id.* §§4001-04, 4551-58, 4601, 4651-56, 4701-02, 4751; see also 26 U.S.C. §3304 (1976 & Supp. IV 1980); 54 OP. ATT'Y GEN. 22, 23 (1971).

19. See CAL. UNEMP. INS. CODE §4003(b)(2).

20. *Id.* §4003(b)(1); see also *id.* §4003(e) (requiring compliance with federal law).

21. *Id.* §4003(d) (the rate of insured unemployment is determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of the period).

additional benefits based on a lowering of the rate.²² Finally, existing law requires a recipient of federal-state extended benefits to meet several eligibility requirements.²³ Chapter 1072 creates an additional eligibility requirement which provides that the recipient have employment earnings that exceed 40 times the recipient's most recent weekly benefit amount.²⁴

22. *Id.* §4003(c)(1), (2) (benefits cease whenever the rate of insured unemployment for that week and the immediately preceding 12-week period is less than either 120 percent of the previous two years' comparable 13-week period, or 12 percent).

23. *See id.* §4552(e) (an unemployed individual is eligible to receive federal-state extended benefits only if: 1) an extended compensation account has been established for him or her, 2) the week is within an extended benefit period and his or her eligibility period, 3) he or she meets further eligibility requirements specified by this chapter, and 4) he or she is not subject to disqualification). *See also id.* §§1251, 1253.3.

24. *See id.* §4552(e). *Compare id.* with CAL. STATS. 1981, c. 10, §1, at — (amending CAL. UNEMP. INS. CODE §4552).

Insurance; mortgage guaranty insurance

Insurance Code §12640.025 (repealed); §12640.095 (new); §§12640.02, 12640.09, 12640.10 (amended).
 SB 1656 (Robbins); STATS. 1982, Ch 1084
 Support: Department of Corporations; Department of Finance;
 Mortgage Insurance Companies of America

Chapter 1084 expands the scope of mortgage guaranty insurance to include notes secured by junior liens,¹ extends mortgage guaranty insurance to loans secured by notes that are not amortized,² and broadens mortgage guaranty reinsurance provisions.³ Under existing law, private mortgage guaranty insurance is available to insure authorized real estate security.⁴ Prior to the enactment of Chapter 1084, authorized real estate security was defined as an amortized note, bond, or other evidence of indebtedness secured by a mortgage or other instrument that constitutes a *first* lien or charge on real estate.⁵ Chapter 1084 expands the scope of mortgage guaranty insurance by redefining "authorized real estate security" to include a note, bond, or other evidence of

1. *Compare* CAL. INS. CODE §12640.02(b)(2) with CAL. STATS. 1978, c. 425, §1, at 1325 (amending CAL. INS. CODE §12640.02(b)(2)).

2. *Compare* CAL. INS. CODE §12640.02(b) with CAL. STATS. 1978, c. 425, §1, at 1325, 1326 (amending CAL. INS. CODE §12640.02(b)).

3. *Compare* CAL. INS. CODE §12640.095 with CAL. STATS. 1980, c. 640, §1, at 1801, 1802 (amending CAL. INS. CODE §12640.09).

4. *See* CAL. INS. CODE §12640.02. *See generally* G. OSBORNE, G. NELSON & D. WHITMAN, REAL ESTATE FINANCE LAW §11.2 (2d ed. 1979).

5. CAL. STATS. 1978, c. 425, §1, at 1325, 1326 (amending CAL. INS. CODE §12640.02(b)).

indebtedness secured by a mortgage or other instrument that constitutes a first lien or charge on real estate, or a *junior lien* or charge on real estate.⁶ The expansion of mortgage guaranty insurance to junior liens, however, is limited to real estate that has been improved by a residential building, a condominium unit or a building designed for occupancy by not more than four families.⁷ In addition, Chapter 1084 eliminates the requirement that all notes of indebtedness be amortized.⁸ By authorizing mortgage guaranty insurance for notes that have not been amortized, Chapter 1084 extends mortgage guaranty insurance to alternative mortgage instruments.⁹

By reallocating the risk of nonpayment to the insurer, mortgage guaranty insurance provides direct benefits to the lender and indirect and substantial benefits to the borrower.¹⁰ Often the high risk, high loan-to-value ratio loan would not be available without mortgage guaranty insurance.¹¹ The maximum loan-to-value ratio allowed by existing law on a *first* lien or charge on real estate is 95 percent.¹² Chapter 1084 allows no more than a combined 90 percent loan-to-value ratio on an instrument constituting a *junior* lien or charge on real estate.¹³ Existing law limits mortgage guaranty insurance coverage to 25 percent of the entire indebtedness.¹⁴ In the event of default, however, the insurer may elect to pay the entire indebtedness and acquire title to the real estate.¹⁵ Chapter 1084 extends these provisions to notes secured by junior liens.¹⁶

Chapter 1084 also extends existing reinsurance¹⁷ provisions to insurers of notes secured by junior liens.¹⁸ In addition, Chapter 1084 authorizes insurers of notes secured by junior liens to reinsure with other mortgage guaranty insurers.¹⁹ Prior law provided that an insurer transacting any class of insurance other than mortgage guaranty insurance

6. Compare CAL. INS. CODE §12640.02(b) with CAL. STATS. 1978, c. 425, §1, at 1325, 1326.

7. CAL. INS. CODE §12640.02(a)(2).

8. Compare *id.* §12640.02(b) with CAL. STATS. 1978, c. 425, §1, at 1325, 1326.

9. See CALIFORNIA CONTINUING EDUCATION OF THE BAR, CALIFORNIA REAL PROPERTY SALES TRANSACTIONS §§6.47-6.50; see also 10 CAL. ADMIN. CODE §§178.1, 178.4.

10. D. Browne, *The Private Mortgage Insurance Industry, the Thrift Industry and the Secondary Mortgage Market: Their Interrelationships*, 12 AKRON L. REV. 631 (1979) (lenders are more willing to make loans, borrowers are able to purchase more expensive homes).

11. *Id.* at 632.

12. CAL. INS. CODE §12640.02(b).

13. *Id.* (the ratio is to be calculated at the time the junior lien is made).

14. *Id.* §12640.09(a), (b).

15. *Id.*

16. Compare *id.* with CAL. STATS. 1980, c. 640, §1, at 1801, 1802 (amending CAL. INS. CODE §12640.09).

17. CAL. INS. CODE §620 (definition of reinsurance).

18. *Id.* §12640.095.

19. *Id.*

could not transact mortgage guaranty insurance.²⁰ Chapter 1084 allows an insurer, authorized to transact the business of credit insurance in California, to also insure notes secured by junior liens if the insurer has received the written permission of the commissioner.²¹

Chapter 1084 requires an insurer of notes secured by junior liens to maintain segregated accounts if it transacts any other class of insurance.²² Chapter 1084 requires the segregated accounts to contain paid-in capital of at least one million dollars and paid-in surplus of at least one million dollars.²³ This account must also contain the contingency reserve²⁴ and loss reserve²⁵ amounts required by existing law.²⁶ Although Chapter 1084 requires that the income and assets attributable to the segregated account continuously remain identifiable with that account, Chapter 1084 does not require that the assets be kept physically separate from the other assets of the insurer, unless the commissioner so orders.²⁷ The income, gains and losses from assets attributable to the segregated account must be credited to or charged against the account.²⁸ Chapter 1084 further provides that assets attributable to the segregated account cannot be charged with any liabilities arising out of any other business of the insurer.²⁹ Chapter 1084 also provides that the segregated account will be deemed an insurer for purposes of any proceedings in cases of insolvency and delinquency.³⁰ Finally, Chapter 1084 provides that the assets allocated to the segregated account are the property of the insurer and that the insurer cannot hold itself out to be a trustee of the assets.³¹

20. CAL. STATS. 1980, c. 640, §1, at 1801, 1802.

21. CAL. INS. CODE §12640.10(a).

22. *Id.* §12640.10(c).

23. *Id.* §§12640.03, 12640.10(c).

24. *Id.* §12640.04 (an amount equal to 50% of remaining premiums).

25. *Id.* §12640.16 (a reserve for claims reported and unpaid and claims incurred but not reported).

26. *Id.* §12640.10(c)(1).

27. *Id.* §12640.10(c)(2).

28. *Id.*

29. *Id.* §12640.10(c)(3).

30. *Id.* §12640.10(c)(4).

31. *Id.* §12640.10(c)(5).

