

## Senate Bill No. 2093

### CHAPTER 899

An act to amend Sections 12376 and 12377 of, and to repeal and add Article 1 (commencing with Section 11690) of Chapter 3 of Part 3 of Division 2 of, the Insurance Code, relating to insurance.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 2093, Speier. Insolvency.

(1) Existing law provides for the regulation of insurers by the Insurance Commissioner. Existing law provides that every insurer desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance shall maintain on file with the commissioner a bond, or a cash deposit in lieu of a bond, in favor of the commissioner as trustee for the beneficiaries of awards of compensation against the insurer, to the extent of that reinsurance. Existing law sets forth various requirements with respect to these provisions.

This bill would repeal these provisions and enact new provisions regulating insurers desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance.

(2) Existing law provides for the regulation of title insurers and underwritten title companies by the Insurance Commissioner. Existing law provides that if an underwritten title company is placed into bankruptcy, receivership, or conservatorship by the commissioner and there is a shortage in a subescrow or escrow account, each title insurer operating under an underwriting agreement with the underwritten title company during the previous 6 months shall be liable for a proportionate share of the shortage.

This bill would also require an affected title insurer to be liable for a proportionate share of certain costs and expenses of the commissioner in administering the insolvency and in advancing funds from the Insurance Fund to temporarily cover a subescrow or escrow account shortage, which advances the bill would authorize. The bill would provide that a title insurer has a preferred claim for reimbursement of these payments from assets of the insolvent entity. The bill would enact other related provisions.



(3) This bill would make the operation of its provisions contingent upon the enactment of AB 2007.

*The people of the State of California do enact as follows:*

SECTION 1. Article 1 (commencing with Section 11690) of Chapter 3 of Part 3 of Division 2 of the Insurance Code is repealed.

SEC. 2. Article 1 (commencing with Section 11690) is added to Chapter 3 of Part 3 of Division 2 of the Insurance Code, to read:

Article 1. Deposits by Workers' Compensation Insurers

11690. For purposes of this article:

(a) "Compensable workers' compensation claim" means a claim where the claimant is entitled to benefits under the workers' compensation law of the state.

(b) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving that insurer, where there has not been a court order finding the insurer insolvent.

(c) "Receiver" means liquidator, rehabilitator, or conservator, as appropriate.

11691. (a) In order to provide protection to the workers of this state in the event that the insurers issuing workers' compensation insurance to employers fail to pay compensable workers' compensation claims, when due, except in the case of the State Compensation Insurance Fund, every insurer desiring admission to transact workers' compensation insurance, or workers' compensation reinsurance business, or desiring to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance shall, as a prerequisite to admission, or ability to reinsure the injury, disablement, or death portion of policies of workers' compensation insurance under the class of disability insurance, deposit cash instruments or approved interest-bearing securities or approved stocks readily convertible into cash, investment certificates, or share accounts issued by a savings and loan association doing business in this state and insured by the Federal Deposit Insurance Corporation, certificates of deposit or savings deposits in a bank licensed to do business in this state, or approved letters of credit that perform in material respects as any other security allowable as a form of deposit for purposes of a workers' compensation deposit and that meet the standard set forth in Section 922.5, or approved securities registered with a qualified depository located in a reciprocal state as defined in Section 1104.9, with that



deposit to be in an amount and subject to any exceptions as set forth in this article. The deposit shall be made from time to time as demanded by the commissioner and may be made with the Treasurer, or a bank or savings and loan association authorized to engage in the trust business pursuant to Division 1 (commencing with Section 99) or Division 2 (commencing with Section 5000) of the Financial Code, or a trust company. A deposit of securities registered with a qualified depository located in a reciprocal state as defined in Section 1104.9 may only be made in a bank or savings and loan association authorized to engage in the trust business pursuant to Division 1 (commencing with Section 99) or Division 2 (commencing with Section 5000) of the Financial Code, or a trust company, licensed to do business and located in this state that is a qualified custodian as defined in paragraph (1) of subdivision (a) of Section 1104.9 and that maintains deposits of at least seven hundred fifty million dollars (\$750,000,000). The deposit shall be made subject to the approval of the commissioner under those rules and regulations that he or she shall promulgate. The deposit shall be maintained at a deposit value specified by the commissioner, but in any event no less than one hundred thousand dollars (\$100,000), nor less than the reserves required of the insurer to be maintained under any of the provisions of Article 1 (commencing with Section 11550) of Chapter 1 of Part 3 of Division 2, relating to loss reserves on workers' compensation business of the insurer in this state, nor less than the sum of the amounts specified in subdivision (a) of Section 11693, whichever is greater. The deposit shall be for the purpose of paying compensable workers' compensation claims under policies issued by the insurer or reinsured by the admitted reinsurer and expenses as provided in Section 11698.02, in the event the insurer or reinsurer fails to pay those claims when they come due.

(b) Each insurer or reinsurer desiring to have the ability to reinsure the injury, disablement, or death portions of policies of workers' compensation under the class of disability insurance shall provide prior notice to the commissioner, in the manner and form prescribed by the commissioner of its intent to reinsure that insurance. In the event of late notice, a late filing fee shall be imposed on the reinsurer pursuant to Section 924 for failure to notify the commissioner of its intent to reinsure workers' compensation insurance.

(c) If the deposit required by this section is not made with the Treasurer, then the depositor shall execute a trust agreement in a form approved by the commissioner between the insurer, the institution in which the deposit is made or, where applicable, the qualified custodian of the deposit, and the commissioner, that grants to the commissioner the authority to withdraw the deposit as set forth in Sections 11691.2, 11696, 11698, and 11698.3. The insurer shall also execute and deliver in



duplicate to the commissioner a power of attorney in favor of the commissioner for the purposes specified herein, supported by a resolution of the depositor's board of directors. The power of attorney and director's resolution shall be on forms approved by the commissioner, shall provide that the power of attorney cannot be revoked or withdrawn without the consent of the commissioner, and shall be acknowledged as required by law.

(d) The commissioner shall require payment of one hundred eighteen dollars (\$118) in advance as a fee for the initial filing of a trust agreement with a bank, savings and loan association, or trust company on deposits made pursuant to subdivision (a). An additional fee of one hundred eighteen dollars (\$118) shall be payable for each amendment, supplement, or other change to the deposit agreement. In addition, the commissioner shall require the payment of fifty-eight dollars (\$58) in advance for receiving and processing deposit schedules pursuant to this section. An additional fee of twenty-nine dollars (\$29) shall be payable for each withdrawal, substitution, or any other change in the deposit.

(e) Any workers' compensation insurer that deposits cash or cash equivalents pursuant to this section shall be entitled to a prompt refund of those deposits in excess of the amount determined by the commissioner pursuant to subdivision (a). The commissioner shall cause to be refunded any deposits determined by the commissioner to be in excess of the amount required by subdivision (a) within 30 days of that determination. In the alternative, an insurer may use any excess deposit funds to offset a demand by the commissioner to increase its deposit due to the failure of a reinsurer to make a deposit pursuant to this section.

(f) (1) As of January 1, 2003, an admitted insurer reinsuring business covered in this article (hereafter referred to as reinsurer) shall identify to the commissioner, in a form prescribed by the commissioner, amounts deposited for credit in the name of each ceding insurer.

(2) Beginning January 1, 2005, all reinsurance agreements covering claims and obligations under business covered by this article, and allowable for purposes of granting a ceding carrier a deposit credit, shall include a provision granting the commissioner, in the event of a delinquency proceeding, receivership, or insolvency of a ceding insurer, any sums from a reinsurer's deposit that are necessary for the commissioner to pay those reinsured claims and obligations, or to ensure their payment by the California Insurance Guarantee Association, deemed by the commissioner due under the reinsurance agreement, upon failure of the reinsurer for any reason to make payments under the policy of reinsurance. The commissioner shall give 30 days' notice prior to drawing upon these funds of an intent to do so. Notwithstanding the commissioner's right to draw on these funds, the reinsurer shall



otherwise retain its right to determine the validity of those claims and obligations and to contest their payment under the reinsurance agreement. Prior to a reinsurer's deposit being drawn upon, in whole or in part, by the department, the department shall provide a reinsurer with an explanation of procedures that a reinsurer may use to explain to the department why the use of the reinsurer's deposit may not be appropriate under the reinsurance agreement.

(3) No reinsurer entering into a contract identified in paragraph (2), beginning on or after January 1, 2005, may cede claims or obligations assumed from a ceding insurer unless the deposit securing the ceded claims or obligations is governed by paragraph (2) or, upon approval of the commissioner, would secure the ceded claims or obligations in all material respects and in the same manner as a deposit identified in paragraph (2) above.

(4) All sums received from the reinsurer by the commissioner for those claims paid by the California Insurance Guarantee Association shall be held separate and apart from and not included in the general assets of the insolvent insurer, and shall be transferred to the California Insurance Guarantee Association upon receipt by the commissioner. In the event of a final judgment or settlement adverse to the drawing of funds by the commissioner pursuant to paragraph (2) or (3), the California Insurance Guarantee Association shall repay funds it obtained to pay covered claims and shall, if necessary, either levy a surcharge as needed or seek legislative approval to levy the surcharge if the California Insurance Guarantee Association is already levying the maximum surcharge permissible under law.

(g) If a reinsurer has not maintained deposits as required by subdivision (a) in amounts equal to the amounts of deposit credits claimed by its ceding insurers, the commissioner, after notifying the reinsurer and its ceding insurers of the deposit shortfall and allowing 15 days from the date of the notice for the deposit shortfall to be corrected, may disallow all or a portion of the reserve credits claimed by the ceding insurers. A ceding insurer disallowed a reserve credit pursuant to this provision shall immediately make the deposit required by this section.

11691.1. The fees for filing a schedule of securities with the Treasurer, and making a deposit of the same, and for each withdrawal, substitution, or any other change in the securities comprising this deposit with the Treasurer, shall be paid to the commissioner for the costs of review and approval of deposits, and shall be the same as are prescribed by Article 11 (commencing with Section 939) of Chapter 1 of Part 2 of Division 1.

All other reasonable charges made by the Treasurer for servicing securities deposited with him or her shall be paid to the Treasurer by the



insurer that has deposited the security, and shall not be charged to the commissioner.

11691.2. The deposit required pursuant to Section 11691 shall be security for the payment of the insurer's obligations on worker's compensation insurance transacted in this state. The deposit shall not be withdrawn except upon the written order of the commissioner to use the proceeds thereof in payment of compensable worker's compensation claims and expenses as provided in Section 11698.02, or as otherwise provided in this article, but shall be forthwith payable to the commissioner or at the direction of the commissioner by the Treasurer or the bank, savings and loan association, or trust company approved by the commissioner upon that order. No deposit so placed with a bank, savings and loan association, or trust company shall be subject to any lien or claim asserted by it or be subject to any disposition obligation, demand, liability, cause of action, judgment, or other claim, or cost or expense attendant thereon, other than as is permitted by the commissioner. Notwithstanding any other provisions of this code, the deposit shall be retained by the Treasurer or the bank, savings and loan association, or trust company approved by the commissioner and only released in accordance with the provisions of this article or pursuant to regulations or a written order of the commissioner.

11691.3. The commissioner shall establish a list of all insurers or reinsurers authorized to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance. An insurer or reinsurer shall be authorized to reinsure the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance if it has complied with Section 11691. The commissioner shall publish a master list of those insurers or reinsurers at least semiannually. Any insurer or reinsurer providing the notification and deposit required by Section 11691, shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. The list and addenda required by this section shall be published so that they are readily accessible to insurers and producers. The list and addenda required by this section shall also contain a notice that if an insurer enters into a contract of reinsurance with an insurer or reinsurer reinsuring the injury, disablement, or death portions of policies of workers' compensation insurance under the class of disability insurance that is not authorized pursuant to this section, the ceding insurer may not be able to claim that reinsurance for reserve credit.

11692. A certificate of authority to transact workers' compensation insurance in this state shall not be issued nor renewed to any insurer until the deposit required pursuant to Section 11691 is approved by the



commissioner. The commissioner shall notify the Division of Workers' Compensation of the Department of Industrial Relations concerning the approval of every deposit made pursuant to this article.

11692.5. On and after the effective date of this article, the commissioner shall collect a late filing fee from any admitted insurer or reinsurer that fails to deposit the securities when required by this code in the following amount:

(a) If the deposit shortfall is outstanding for less than 31 days, 0.5 percent of the deposit shortfall, but in no event not less than six hundred dollars (\$600).

(b) If the deposit shortfall is outstanding for more than 30 days but less than 61 days, an additional late filing fee in the amount of 1 percent of the deposit shortfall, but in no event not less than one thousand two hundred dollars (\$1,200) shall be due.

(c) An additional late filing fee of 1.5 percent of the deposit shortfall for every 30-day period thereafter, or fraction thereof, that the amount is outstanding, but in no event shall the total late filing fee be less than three thousand dollars (\$3,000). The late filing fees provided herein are in addition to all other rights and remedies granted the commissioner by this article.

11693. The deposit required pursuant to Section 11691 shall be made or adjusted on or prior to April 1 of each year in an amount as follows:

(a) Not less than the sum of the following amounts computed, less credits and deductions allowable with respect to reinsurance in admitted insurers, as provided under Section 11691, as of the close of the last preceding December 31 or as of any calendar quarter end as directed by the commissioner pursuant to Section 11694 in respect to workers' compensation insurance written subject to the workers' compensation laws of this state:

(1) The aggregate of the present values at 6 percent interest, or at the rate of the company's investment yield as determined by the NAIC Insurance Regulatory Information System Ratio Number 5 for Property and Casualty Companies, whichever is lower, of the determined and estimated future payments upon compensation claims not included in paragraph (2), including in those claims both benefits and loss expenses.

(2) The aggregate of the amounts computed as follows:

For each of the preceding three years, 65 percent of the earned compensation premiums for that year less all loss and loss expense payments made upon claims incurred in the corresponding year from that 65 percent; except that the amount for each year shall not be less than the present value at 6 percent interest of the determined and the estimated



unpaid claims incurred in that year, including both benefits and loss expenses.

(b) Not less than one hundred thousand dollars (\$100,000).

(c) If the aggregate amount computed under subdivision (a) exceeds fifty thousand dollars (\$50,000), not more than double the aggregate amount.

11694. After the first annual statement to the commissioner covering business of the insurer for a full year in this state, the deposit required pursuant to Section 11691 shall be computed from the figures shown in the last preceding report of business as of December 31, filed with the commissioner, and shall be reported to the commissioner on or before March 1 of each year in a form prescribed by the commissioner. Notwithstanding anything to the contrary in this article, should the commissioner determine that there has been a material change in the insurer's ultimate liability for future payments upon compensable workers' compensation claims in this state, at the commissioner's discretion, the amount of the deposit shall then be fixed by the commissioner at the amount that he or she deems sufficient to secure the payment of the insurer's ultimate obligations on its workers' compensation insurance transacted in this state, and upon notification from the commissioner the insurer shall immediately but in no event less than 30 days after notification, increase the deposit as directed.

11695. Where an admitted insurer has voluntarily ceased to do in this state the business for which a deposit is required pursuant to Section 11691, the deposit shall be fixed by the commissioner at the amount that he or she deems sufficient for the protection of the beneficiaries of the policies of that insurer.

11696. In the event an insurer not in a delinquency proceeding fails to pay any compensable workers' compensation claim against it, or fails to pay, to the extent of its liability as a reinsurer, any compensable workers' compensation claim covered by a policy wholly or partly reinsured by it, the commissioner shall use the proceeds of the deposit required pursuant to Section 11691 to pay all those compensable workers' compensation claims and related expenses as described in Section 11698.02.

11697. The payment of a workers' compensation claim by the commissioner shall constitute a satisfaction of the claim to the extent of the payment made. In the event any judgment is entered on the claim, the commissioner shall file a proportionate satisfaction thereof in the office of the clerk of the court wherein the judgment is entered.

11698. (a) In the event any one of the eventualities described in paragraph (1), (2), (3), or (4), transpires, the commissioner shall immediately take control or possession of the deposit required pursuant



to Section 11691 and may use the deposit to pay or procure the payment of those compensable workers' compensation claims against the insurer, and those expenses described in Section 11698.02. The proceeds of the deposit shall in that event inure to the commissioner as a trust to be held separate and apart from all other assets of the insurer held by the commissioner. They shall be used only for the purposes set forth and in accordance with the procedures established in this article. Once it is determined that there are no remaining undischarged liabilities for compensable workers' compensation claims or it is actuarially demonstrated that the deposit exceeds those liabilities, the commissioner shall transfer the remaining amount of the deposit to the general assets of the estate.

(1) If the commissioner is named conservator of that insurer pursuant to Article 14 (commencing with Section 1011) of Chapter 1 of Part 2 of Division 1.

(2) The proper court has appointed the commissioner ancillary receiver of the insurer or reinsurer.

(3) A delinquency proceeding has been instituted by the proper court against the insurer or reinsurer.

(4) If it appears to the commissioner that any of the conditions set forth in Section 1011 exist or that irreparable loss and injury to the property and business of the insurer or reinsurer has occurred or may occur unless the commissioner acts immediately without notice and before applying to the court for any order.

(b) If the commissioner has proceeded under subdivision (a) or Section 11696 or 11698.3 and a deposit of securities registered with a qualified depository located in a reciprocal state and in the custody of a qualified custodian pursuant to Section 1104.9 cannot be released to the commissioner according to the terms of the agreement entered into pursuant to Section 11691 or the requirements of Section 11691.2 because of a delinquency proceeding initiated in the reciprocal state in which the qualified depository is located, or, if the deposit of securities registered with a qualified depository has been executed upon at any time by any creditor of an insurer and that execution has been affirmed by a written opinion of a court of competent federal appellate jurisdiction, the commissioner may, after a public hearing and upon a finding that deposits of securities registered with that depository do not allow the commissioner to discharge his or her responsibilities as set forth in this chapter, require workers' compensation insurers authorized to transact insurance in this state to cease and desist making any further deposits authorized by Section 11691 in approved securities registered with that depository. For the purposes of this subdivision, the term



“delinquency proceeding” shall have the same meaning as contained in subdivision (b) of Section 1064.1.

11698.01. When the commissioner is authorized to proceed under Section 11698 he or she may do either of the following:

(a) Subject to Sections 11698.2, 11698.21, and 11698.22, enter into reinsurance and assumption agreements with one or more admitted solvent workers’ compensation insurers by the terms of which liability for all those obligations is reinsured and assumed by such insurer.

(b) Use the deposit required pursuant to Section 11691 to pay or procure payment of the insurer’s compensable workers’ compensation claims and those expenses authorized in Section 11698.02.

11698.02. The proceeds of the deposit required pursuant to Section 11691 shall be used solely to pay compensable workers’ compensation claims under the insured or reinsured policies, allocated claims expense necessary to pay those claims, and the expenses connected with all proceedings or actions permitted or required by this article in furtherance of the payment of those claims, or should the commissioner pursuant to subdivision (a) of Section 11698.01 enter into reinsurance and assumption agreements with one or more reinsurers, the proceeds of the deposit shall be used to reimburse those reinsurers.

11698.1. From time to time and in any event at or prior to the time of the filing of his or her petition for discharge as receiver, the commissioner shall do the following:

(a) File with the Workers’ Compensation Appeals Board an accounting of all trust funds received and used from the proceeds of the deposit required pursuant to Section 11691.

(b) File with the court an accounting of all funds received and used as expenses from the general funds of the insurer.

11698.2. If the commissioner enters into a reinsurance and assumption agreement as provided in subdivision (a) of Section 11698.01, that agreement shall provide for all of the following:

(a) The reinsurance and assumption of all those obligations by the reinsuring and assuming insurers.

(b) If there is more than one reinsurer the proportion of all those obligations assumed by each reinsurer and a method for the actual processing and payment of those obligations by the reinsurers or their representatives.

(c) The reimbursement of the reinsuring and assuming insurers from the deposit of the insurer in the delinquency proceeding. The provision shall conform with Section 11698.21 and shall not be effective unless approved by the Workers’ Compensation Appeals Board.

(d) The amounts, if any, to be paid the reinsurers from the general funds of the insurer. If the agreement provides that amounts from the



general funds of the insurer are to be paid to the reinsurers, those payments shall be approved by the court where the delinquency proceedings are pending.

(e) Any other matters as are necessary and proper to achieve the purposes of the reinsurance and assumption agreement.

11698.21. (a) The reimbursement provision referred to in subdivision (c) of Section 11698.2 shall provide for the transfer of the securities in the deposit to the deposits of the reinsurers. Thereafter, except as provided in subdivision (b), the deposit of the reinsuring and assuming insurers shall be security for the payment of all of those obligations assumed by the agreement as well as those obligations on workers' compensation insurance transacted in this state by the reinsurer, provided, however, that in determining the amount which shall remain on deposit as security for those obligations that are reinsured and assumed, the method prescribed by paragraph (1) of subdivision (a) of Section 11693 shall be used without any limitation as to time. In providing for the transfer of the securities the agreement may provide for their direct transfer to the deposit account of the reinsurers, or, if the securities deposited are in denominations or units as to make the equitable transfer to more than one reinsurer impossible, it may provide either for a formula under which the transfers may be made and differences in value reconciled by payments or credits among the reinsurers or for the sale of those securities by the commissioner and the reinvestment of the proceeds in other securities in amounts that can be so equitably transferred.

(b) The agreement shall provide that if it appears that the market value of the securities on deposit will exceed the obligations assumed by the reinsurers, the commissioner may withhold the transfer of a portion of the deposit and may after a two-year period enter into a final settlement with the reinsurers with respect thereto at which time any excess in that deposit shall be transferred to the general assets of the insurer in the delinquency proceeding.

11698.22. The commissioner shall not enter into an agreement with an insurer if its reinsurance and assumption of liability will impair its solvency or render its further transaction of business hazardous under subdivision (d) of Section 1011.

11698.3. (a) If the insurer is a member insurer of the California Insurance Guarantee Association (the association) and has been the subject of an order of liquidation or receivership with a finding of insolvency which has been entered by a court of competent jurisdiction the association then becomes obligated to pay compensable workers' compensation claims arising under the insurer's policies, which are otherwise "covered claims" as defined in Article 14.2 (commencing



with Section 1063) of Chapter 1 of Part 2 of Division 2. The commissioner shall immediately take control or possession of the deposit required pursuant to Section 11691 and shall transfer the deposit to the association.

(b) The association shall use the proceeds of the deposit and any interest earned thereon, for the payment of compensable workers' compensation claims arising under the insolvent insurer's policies and which are otherwise covered claims, as defined in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 2, and all expenses related thereto.

(c) The association shall make a full report and accounting of the disposition of the deposit on or in the form and at the times as the commissioner shall request, including a report of all interest income earned on the deposit.

(d) At the time all of the insolvent insurer's California workers' compensation claims liabilities are discharged, or at the time it is actuarially determined that the remaining proceeds, and any interest earned thereon, exceed those liabilities, the association shall return the surplus to the insolvent insurer's estate.

11699. Unless the deposit required pursuant to Section 11691 is withdrawn by the commissioner pursuant to the authority granted him or her by this article, it, or any remainder thereof, may be repaid to the insurer either upon satisfactory showing to the commissioner that every liability to pay compensable workers' compensation claims has been assumed and reinsured with a solvent admitted insurer or fully paid and discharged. In the event the insurer remains admitted for workers' compensation insurance, or desires to reinsure the injury, disablement, or death portions of policies of workers' compensation under the class of disability insurance, then it must maintain at least the minimum deposit required by Section 11691.

11700. The deposit required pursuant to Section 11691, unless withdrawn by the commissioner, shall be used only for the payment of compensable workers' compensation claims and expenses as provided in Section 11698.02 as long as there remains unpaid any claim or any part thereof.

11701. The commissioner may revoke the certificate of authority to transact workers' compensation insurance or to reinsure the injury, disablement, or death portions of policies of workers' compensation under the class of disability insurance in this state of any insurer failing to comply with the requirements of this article. The power vested in the commissioner by this section is additional to any and all other powers and remedies vested in the commissioner by law. Failure to make the



deposit required by this article within the required time shall be deemed to constitute a condition of hazard as set forth in Section 1011.

11702. The provisions of this article shall not apply to workers' compensation insurance covering those persons defined as employees by subdivision (d) of Section 3351 of the Labor Code.

11703. An insurer desiring to write workers' compensation insurance shall maintain or provide occupational safety and health loss control consultation services certified by the Director of Industrial Relations pursuant to Section 6354.5 of the Labor Code.

SEC. 3. Section 12376 of the Insurance Code is amended to read:

12376. (a) If an underwritten title company is placed into bankruptcy, receivership, or conservation by the commissioner, each title insurer operating under an underwriting agreement with the underwritten title company during the six months prior to the earliest of the conservation, bankruptcy, or receivership shall be liable for its proportionate share of the commissioner's costs and any escrow and subescrow account shortages as determined by the calculations set forth in subdivisions (b) and (c).

(b) If, during the six months prior to the earliest of the establishment of a conservation, bankruptcy, or receivership under subdivision (a), the underwritten title company was authorized by underwriting agreements to issue title policies for more than one title insurer, the liability of each title insurer is determined by multiplying the amount of the total escrow and subescrow shortages, as well as the costs, and expenses, as set forth in subdivision (c), by that title insurer's percentage of the underwritten title company's net premiums for policies issued by each title insurer during the 12-month period preceding the earliest of the establishment of the conservation, bankruptcy, or receivership, with each title insurer's liability pursuant to this subdivision to be referred to as its proportionate share.

(c) When determining the total proportionate liability of each title insurer, the commissioner shall include the following:

(1) The commissioner's costs and expenses of seizing and taking control of the underwritten title company's offices, operations, and assets.

(2) The commissioner's costs and expenses of handling, adjusting, and closing all subescrow and escrow accounts, including the costs and expenses of determining whether shortages exist in any subescrow and escrow accounts.

(3) Other costs and expenses incurred by the commissioner in connection with borrowing from the Insurance Fund pursuant to subdivision (g) and foregone earnings or interest of the Insurance Fund resulting from the borrowing.



As used in this subdivision, “commissioner’s costs and expenses” includes the costs and expenses of all agents and contractors retained by the commissioner in performing functions set forth in this subdivision, and “subescrow” and “escrow” means title subescrows and escrows. These calculations shall result in 100 percent of the shortage, costs, and expenses being proportionately allocated to each title insurer authorized to issue title policies in the last six months preceding the underwritten title company being placed into bankruptcy, receivership, or conservation.

(d) (1) The commissioner shall make an initial estimate of the total shortage in the escrow and subescrow accounts and the commissioner’s costs and expenses as provided in subdivision (c) and shall provide this estimate in writing to each title insurer determined to have liability under this section as soon as practicable. The initial estimate shall be substantiated by a summary of the accounting information pertinent to the commissioner’s estimate of the escrow and subescrow shortfalls and the commissioner’s costs and expenses.

(2) The commissioner shall make further estimates, as necessary, of the total shortage in the escrow and subescrow accounts and the commissioner’s costs and expenses as provided in subdivision (c) and shall provide the estimates in writing to each title insurer determined to have liability under this section. These estimates shall be substantiated by a detailed summary of pertinent accounting information.

(3) After receiving an estimate pursuant to paragraphs (1) and (2), each title insurer having liability under this section shall, within 30 days after written notification, deposit its proportionate share of the shortage, costs, and expenses into an escrow account established by the commissioner for the purpose of reimbursement to subescrow or escrow accountholders, reimbursement to the commissioner in the event that the commissioner advances or has advanced payments to subescrow or escrow accountholders, or payment or reimbursement of the commissioner’s costs and expenses pursuant to subdivision (c). If a title insurer fails to make a payment required by this subdivision within the 30-day period, the title insurer shall pay a penalty calculated at the rate of 10 percent per annum on the unpaid amount until the payment is received by the commissioner.

(e) Nothing in this section relieves a person of liability under any other provision of law that he or she may have for a shortage as set forth in subdivision (a). A title insurer, on becoming liable for a shortage as set forth in this section, is entitled to enforce every available remedy, or bring any cause of action that would have been available to a person compensated by the title insurer.



(f) A title insurer shall be entitled to make a claim for reimbursement for subescrow or escrow shortages paid to subescrow or escrow accountholders and for payments of its proportionate share pursuant to subdivision (c). Those claims shall be given the same preference as those claims referenced in paragraph (2) of subdivision (a) of Section 1033.

(g) A title insurer shall be entitled to make a claim for reimbursement for payment of its proportionate share of the commissioner's costs and expenses paid pursuant to subdivision (c). Those claims shall be given the same preference as those claims referenced in paragraph (2) of subdivision (a) of Section 1033. The commissioner shall return to each title insurer its proportional share of any funds remaining in the escrow account after all liabilities in subdivision (a) have been satisfied.

(h) In order to minimize potential losses and negative impacts on consumers having money in escrow accounts held by an underwritten title company taken into conservation, bankruptcy, or receivership by the commissioner, the commissioner shall hire all necessary escrow consultants or other experts necessary to achieve this goal.

(i) The commissioner may borrow from the Insurance Fund to cover shortages in subescrow or escrow accounts and to pay costs and expenses set forth in subdivision (c).

SEC. 4. Section 12377 of the Insurance Code is amended to read:

12377. (a) All escrow funds received by an underwritten title company that are subject to Section 12413.5 shall not be considered part of the estate of the underwritten title company for purposes of liquidation, receivership, bankruptcy, or conservation pursuant to Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1.

(b) Where an underwritten title company is placed into conservation, receivership, or bankruptcy and the escrow accounts held by the company are found to have shortages, the department, conservator, liquidator, receiver, or bankruptcy trustee shall do everything reasonably possible to trace these moneys to other depository accounts or assets.

(c) Any real or personal property traceable to shortages in the escrow accounts shall not be considered part of the estate available to other claimants under Section 1033. Those assets shall be liquidated and paid in the following order: (1) if the commissioner has paid or advanced funds to subescrow or escrow accountholders from sources other than the escrow established pursuant to subdivision (c) of Section 12376, they shall be paid to the commissioner to the extent that the commissioner has not been repaid by title insurers having liability under Section 12376, (2) they shall be deposited into an escrow established pursuant to subdivision (c) of Section 12376, and (3) they shall be directly reimbursed to the title insurer or insurers that have reimbursed



escrow depositors under Section 12376. In no event shall a title insurer be reimbursed an amount in excess of its liability as determined in Section 12376.

SEC. 5. Sections 1, 2, 3, and 4 of this act shall become operative only if Assembly Bill 2007 is enacted and becomes effective on or before January 1, 2003.

