

## Senate Bill No. 1863

### CHAPTER 407

An act to amend Section 12640.09 of the Insurance Code, relating to insurance.

[Approved by Governor August 17, 1996. Filed with Secretary of State August 19, 1996.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1863, Johnson. Mortgage insurance.

Existing law requires a mortgage guaranty insurer to limit its coverage for insurance against nonpayment of a first lien or charge on real estate to a maximum of a net of 25% at risk of the entire indebtedness to the insured, or in lieu thereof, to elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

Existing law also requires a mortgage guaranty insurer to limit its coverage for insurance against nonpayment on a junior lien to a maximum of a net of 25% of risk of the combined indebtedness of all existing mortgage loan amounts secured by all liens or charges on the real estate, or in lieu thereof, to elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

This bill would require a mortgage guaranty insurer to limit its coverage for insurance against nonpayment in each of the above situations to no more than a net of 30% of risk, as specified.

This bill would also authorize the Insurance Commissioner to adopt regulations to increase the maximum coverage limitation of a mortgage guaranty insurer to an amount not to exceed a net of 35% of risk of the entire indebtedness, if Freddie Mac or Fannie Mae increases the required amount of mortgage guaranty insurance.

The bill would provide that these provisions do not apply to the California Housing Loan Insurance Fund or to any program it may develop in conjunction with any federal or federally sponsored mortgage lender or insurer.

Existing law authorizes mortgage guaranty insurance or reinsurance to be ceded by contract if the assuming insurer is either a mortgage guaranty insurer that meets certain requirements, or a nonaffiliated insurer or reinsurer that meets certain requirements.

This bill would, with respect to the provisions that permit ceding insurance to a nonaffiliated insurer or reinsurer, instead permit an assuming insurer or a reinsurer to be under common control with the ceding mortgage guaranty insurer but not owned in whole or in part by the ceding insurer or another mortgage guaranty insurer.

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

SECTION 1. Section 12640.09 of the Insurance Code is amended to read:

12640.09. (a) A mortgage guaranty insurer shall limit its coverage for the class of insurance defined in paragraphs (1) and (3) of subdivision (a) of Section 12640.02 to no more than a net of 30 percent at risk of the entire indebtedness to the insured or, in lieu thereof, a mortgage guaranty insurer may elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

(b) (1) A mortgage guaranty insurer shall limit its coverage for the class of insurance defined in paragraph (2) of subdivision (a) of Section 12640.02, to no more than a net of 30 percent of risk of the combined indebtedness of all existing mortgage loan amounts secured by all liens or charges on the real estate. In lieu thereof, a mortgage guaranty insurer may elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

(2) Notwithstanding paragraph (1), a mortgage guaranty insurer may elect to insure a portfolio of loans secured by instruments constituting junior liens on real estate, provided that the total amount at risk in any one portfolio shall not at any time exceed 20 percent of the original principal amount of mortgage loans secured by junior liens.

(3) If the borrower is required to pay the cost of insurance written under paragraphs (1) or (2), the lender shall disclose in writing to the borrower that the borrower is not a party to or a beneficiary of the mortgage guaranty insurance policy.

(4) Notwithstanding subdivision (a) and paragraph (1) of subdivision (b), if Freddie Mac or Fannie Mae increases the required amount of mortgage guaranty insurance, the commissioner may adopt regulations to increase the maximum coverage limitation of a mortgage guaranty insurer to an amount not to exceed a net of 35 percent of risk of the entire indebtedness.

(c) Notwithstanding subdivision (a) or (b), a mortgage guaranty insurer may extend its coverage for the class of insurance defined in paragraphs (1), (2), and (3) of subdivision (a) of Section 12640.02 beyond the limits established by subdivisions (a) and (b) of this section, provided the excess is insured by a contract of reinsurance.

(d) (1) Notwithstanding any provision of law to the contrary, mortgage guaranty insurance or reinsurance may be ceded by contract, provided that the assuming insurer is either of the following:

(A) A mortgage guaranty insurer, which may be under common control with the ceding mortgage guaranty insurer, but which does not own, and is not owned by, in whole or in part, directly or indirectly, the ceding mortgage guaranty insurer.



(B) An insurer or reinsurer, that may be under common control with the ceding mortgage guaranty insurer, but that is not owned by, in whole or in part, directly or indirectly, the ceding mortgage guaranty insurer or another mortgage guaranty insurer, that writes any type or types of insurance or reinsurance and that meets the following requirements:

(i) Has paid-in capital and paid-in surplus totaling at least thirty-five million dollars (\$35,000,000).

(ii) Derives, on an annual basis, at least 50 percent of its premium income from reinsurance; or, alternatively, derives at least twenty-five million dollars (\$25,000,000) of premium income per year from reinsurance.

(iii) Establishes and maintains its share of the reserve liabilities required by Section 12640.16 if licensed in this state, or establishes, maintains, and funds in accordance with Section 922.4 or Section 922.5, its share of the reserve liabilities required by Section 12640.16 if not licensed in this state.

(iv) Establishes and maintains its share of an amount equal to the greater of either the reserve liabilities required by Section 12640.04 or the policyholders surplus required by Section 12640.05 in a segregated trust which meets the requirements of Section 12640.091.

(2) Nothing herein contained shall be deemed to permit the assuming insurer or reinsurer to directly write mortgage guaranty insurance.

(3) Any assuming insurer or reinsurer and the ceding mortgage guaranty insurer shall establish and maintain in the aggregate the reserves required by Sections 12640.04 and 12640.16.

(e) This section shall not apply to the California Housing Loan Insurance Fund or to any program it may develop in conjunction with any federal or federally sponsored mortgage lender or insurer.

