



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

The Core Legislative History of

California
Statutes of 1989, Chapter 725
Senate Bill 1363 – Robbins

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Authentication of the Records and Table of Contents

Core Legislative History Research Report Regarding:
California Statutes of 1989, Chapter 725, SB 1363 – Robbins

I, Lisa Hampton, declare that this report includes:

- *Historical documents surrounding the adoption of the above enactment.* These documents were obtained by the staff of Legislative Research, Incorporated and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

Legislative Research, Incorporated was established in 1983 (formerly Legislative Research Institute), and is a firm which specializes in the historical research surrounding the adoption, amendment and/or repeal of California statutes, regulations and constitutional provisions pursuant to California Code of Civil Procedure § 1859 which states in pertinent part: "In the construction of a statute the intention of the Legislature ... is to be pursued, if possible" Legislative Research, Incorporated has been cited by name as the source of records relied upon by the court in *Redlands Community Hospital v. New England Mutual Life Insurance Co*, 23 Cal. App.4th 899 at 906 (1994).

- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed June 12, 2009, in Sacramento, California.

Lisa Hampton, Research Director

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General Enactment History

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Introduced by Senator Robbins

March 9, 1989

An act to amend Sections 790.04 and 790.07 of, and to add Section 790.035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1363, as introduced, Robbins. Insurance: unfair practices.

Under existing law, if a person engaged in the business of insurance violates certain statutory provisions declaring certain acts to be unfair and deceptive acts and practices, the Insurance Commissioner may issue an order to show cause, and hold a hearing to determine whether the commissioner should order the person to cease and desist. Under existing law, a person engaged in the business of insurance is liable for a penalty not to exceed \$5,000 for a violation of the order, except that the penalty may not exceed \$55,000 for a willful violation.

This bill would also provide that a person engaged in the business of insurance who violates those provisions relating to unfair and deceptive acts is liable for a penalty of up to \$5,000 per day, or \$55,000 per day for a willful violation. The penalty would be assessed by the commissioner in connection with the cease and desist order.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 790.035 is added to the Insurance
2 Code, to read:

3 790.035. (a) Any person who engages in any unfair
4 method of competition of any unfair or deceptive act or
5 practice defined in Section 790.03 is liable to the state for
6 a civil penalty not to exceed five thousand dollars
7 (\$5,000) for each day in which the person engaged in that
8 act or practice, or, if the act or practice was willful, a civil
9 penalty not to exceed fifty-five thousand dollars (\$55,000)
10 for each day in which the person engaged in that act or
11 practice.

12 (b) The penalty imposed by this section shall be
13 imposed by and determined by the commissioner as
14 provided by Section 790.05. The penalty imposed by this
15 section shall continue to accrue until a cease and desist
16 order issued under Section 790.05 becomes final.

17 SEC. 2. Section 790.05 of the Insurance Code is
18 amended to read:

19 790.05. Whenever the commissioner shall have reason
20 to believe that ~~any~~ such person has been engaged or is
21 engaging in this ~~State~~ *state* in any unfair method of
22 competition or any unfair or deceptive act or practice
23 defined in Section 790.03, and that a proceeding by ~~him~~
24 *the commissioner* in respect thereto would be to the
25 interest of the public, he *or she* shall issue and serve upon
26 ~~such~~ *that* person an order to show cause containing a
27 statement of the charges in that respect, *a statement of*
28 *that person's potential liability under Section 790.035*, and
29 a notice of a hearing thereon to be held at a time and
30 place fixed therein, which shall not be less than 30 days
31 after the service thereof, for the purpose of determining
32 whether the commissioner should issue an order to ~~such~~
33 *that* person to, *pay the penalty imposed by Section*
34 *790.035, and to cease and desist such those* methods, acts,
35 or practices or any of them.

36 If the charges or any of them are found to be justified
37 the commissioner shall issue and cause to be served upon
38 ~~such~~ *that* person an order requiring ~~such~~ *that* person to

1 *pay the penalty imposed by Section 790.035 and to cease*
2 *and desist from engaging in ~~such~~ those methods, acts, or*
3 *practices as have been found to be unfair or deceptive.*

4 ~~Such~~ *The hearing shall be conducted in accordance*
5 *with the Administrative Procedure Act, Chapter 5*
6 *(commencing at Section 11500) of Part 1 ; of Division 3 ;*
7 *of Title 2 of the Government Code, and the commissioner*
8 *shall have all the powers granted therein.*

9 ~~Such~~ *The person shall be entitled to have ~~such~~ the*
10 *proceedings and ~~such~~ the order reviewed by means of*
11 *any remedy provided by Section 12940 of this code or by*
12 *said Administrative Procedure Act.*

13 SEC. 3. Section 790.07 of the Insurance Code is
14 amended to read:

15 790.07. Whenever the commissioner shall have reason
16 to believe that any person has violated a cease and desist
17 order issued pursuant to Section 790.05 or a court order
18 issued pursuant to Section 790.06, after the order has
19 become final, and while the order is still in effect, *or has*
20 *failed to pay a penalty imposed under Section 790.05*, the
21 commissioner may, after a hearing at which it is
22 determined that the violation was committed, order that
23 person to forfeit and pay to the State of California a sum
24 not to exceed five thousand dollars (\$5,000) *plus any*
25 *penalty due under Section 790.05*, which may be
26 recovered in a civil action, except that, if the violation is
27 found to be willful, the amount of the penalty may be a
28 sum not to exceed fifty-five thousand dollars (\$55,000)
29 *plus the penalty due under Section 790.05.*

30 For any subsequent violation of the cease and desist
31 order or of the court order *or the order to pay the*
32 *penalty*, while ~~any such~~ *the order is still in effect*, the
33 commissioner may, after hearing, suspend or revoke the
34 license or certificate of that person for a period not
35 exceeding one year; provided, however, no such
36 proceeding shall be based upon the subsequent violation
37 unless the same was committed or continued after the
38 date on which the order imposing the penalty pursuant
39 to the preceding paragraph became final.

40 The hearings provided by this section shall be

1 conducted in accordance with the Administrative
2 Procedure Act, and the commissioner shall have all the
3 powers granted therein.

4 The person shall be entitled to have the proceedings
5 and the order of the commissioner therein reviewed by
6 means of any remedy provided by Section 12940 of this
7 code or by said Administrative Procedure Act.

8 SEC. 4. This act is an urgency statute necessary for
9 the immediate preservation of the public peace, health,
10 or safety within the meaning of Article IV of the
11 Constitution and shall go into immediate effect. The facts
12 constituting the necessity are:

13 In order to effectively protect consumers from
14 deceptive insurance practices and to ensure marketplace
15 stability it is necessary for this act to take effect
16 immediately.

O

AMENDED IN SENATE MAY 9, 1989

SENATE BILL

No. 1363

Introduced by Senator Robbins

March 9, 1989

An act to amend Sections ~~790.04~~ 790.05 and 790.07 of, and to add Section 790.035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1363, as amended, Robbins. Insurance: unfair practices.

Under existing law, if a person engaged in the business of insurance violates certain statutory provisions declaring certain acts to be unfair and deceptive acts and practices, the Insurance Commissioner may issue an order to show cause, and hold a hearing to determine whether the commissioner should order the person to cease and desist. Under existing law, a person engaged in the business of insurance is liable for a penalty not to exceed \$5,000 for a violation of the order, except that the penalty may not exceed \$55,000 for a willful violation.

This bill would also provide that a person engaged in the business of insurance who violates those provisions relating to unfair and deceptive acts is liable for a penalty of up to ~~\$5,000 per day~~ \$1,000 for each act, or ~~\$55,000 per day~~ \$5,000 for a willful violation for each act. The penalty would be assessed by the commissioner in connection with the cease and desist order. *A failure to pay the penalty would constitute a violation of the cease and desist order.*

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 790.035 is added to the Insurance
2 Code, to read:

3 790.035. (a) Any person who engages in any unfair
4 method of competition of any unfair or deceptive act or
5 practice defined in Section 790.03 is liable to the state for
6 a civil penalty not to exceed ~~five one thousand dollars~~
7 ~~(\$5,000) for each day in which the person engaged in that~~
8 ~~act or practice, or, if the act or practice was willful, a civil~~
9 ~~penalty not to exceed fifty/five thousand dollars (\$55,000)~~
10 ~~for each day in which the person engaged in that act or~~
11 ~~practice. (\$1,000) for each act, or, if the act or practice~~
12 ~~was willful, a civil penalty not to exceed five thousand~~
13 ~~dollars (\$5,000) for each act.~~

14 (b) The penalty imposed by this section shall be
15 imposed by and determined by the commissioner as
16 provided by Section 790.05. The penalty imposed by this
17 section shall continue to accrue until a cease and desist
18 order issued under Section 790.05 becomes final.

19 SEC. 2. Section 790.05 of the Insurance Code is
20 amended to read:

21 790.05. Whenever the commissioner shall have reason
22 to believe that such person has been engaged or is
23 engaging in this state in any unfair method of
24 competition or any unfair or deceptive act or practice
25 defined in Section 790.03, and that a proceeding by the
26 commissioner in respect thereto would be to the interest
27 of the public, he or she shall issue and serve upon that
28 person an order to show cause containing a statement of
29 the charges in that respect, a statement of that person's
30 potential liability under Section 790.035, and a notice of
31 a hearing thereon to be held at a time and place fixed
32 therein, which shall not be less than 30 days after the
33 service thereof, for the purpose of determining whether
34 the commissioner should issue an order to that person to,
35 pay the penalty imposed by Section 790.035, and to cease
36 and desist those methods, acts, or practices or any of

1 them.

2 If the charges or any of them are found to be justified
3 the commissioner shall issue and cause to be served upon
4 that person an order requiring that person to pay the
5 penalty imposed by Section 790.035 and to cease and
6 desist from engaging in those methods, acts, or practices
7 found to be unfair or deceptive.

8 The hearing shall be conducted in accordance with the
9 Administrative Procedure Act, Chapter 5 (commencing
10 at Section 11500) of Part 1 of Division 3 of Title 2 of the
11 Government Code, and the commissioner shall have all
12 the powers granted therein.

13 The person shall be entitled to have the proceedings
14 and the order reviewed by means of any remedy
15 provided by Section 12940 of this code or by ~~said the~~
16 Administrative Procedure Act.

17 SEC. 3. Section 790.07 of the Insurance Code is
18 amended to read:

19 790.07. Whenever the commissioner shall have reason
20 to believe that any person has violated a cease and desist
21 order issued pursuant to Section 790.05 or a court order
22 issued pursuant to Section 790.06, after the order has
23 become final, and while the order is still in effect, ~~or has~~
24 ~~failed to pay a penalty imposed under Section 790.05,~~ the
25 *the* commissioner may, after a hearing at which it is
26 determined that the violation was committed, order that
27 person to forfeit and pay to the State of California a sum
28 not to exceed five thousand dollars (\$5,000) plus any
29 penalty due under Section 790.05, which may be
30 recovered in a civil action, except that, if the violation is
31 found to be willful, the amount of the penalty may be a
32 sum not to exceed fifty-five thousand dollars (\$55,000)
33 plus the penalty due under Section 790.05.

34 *For the purposes of this section, the failure to pay any*
35 *penalty imposed pursuant to Section 790.035 which has*
36 *become final shall constitute a violation of the cease and*
37 *desist order.*

38 For any subsequent violation of the cease and desist
39 order or of the court order or the order to pay the
40 penalty, while the order is still in effect, the

1 commissioner may, after hearing, suspend or revoke the
2 license or certificate of that person for a period not
3 exceeding one year; provided, however, no such
4 proceeding shall be based upon the subsequent violation
5 unless the same was committed or continued after the
6 date on which the order imposing the penalty pursuant
7 to the preceding paragraph became final.

8 The hearings provided by this section shall be
9 conducted in accordance with the Administrative
10 Procedure Act, and the commissioner shall have all the
11 powers granted therein.

12 The person shall be entitled to have the proceedings
13 and the order of the commissioner therein reviewed by
14 means of any remedy provided by Section 12940 of this
15 code or by said or by the Administrative Procedure Act.

16 SEC. 4. This act is an urgency statute necessary for
17 the immediate preservation of the public peace, health,
18 or safety within the meaning of Article IV of the
19 Constitution and shall go into immediate effect. The facts
20 constituting the necessity are:

21 In order to effectively protect consumers from
22 deceptive insurance practices and to ensure marketplace
23 stability it is necessary for this act to take effect
24 immediately.

AMENDED IN ASSEMBLY JUNE 20, 1989

AMENDED IN SENATE MAY 9, 1989

SENATE BILL

No. 1363

Introduced by Senator Robbins

March 9, 1989

An act to amend Sections 790.05 and 790.07 of, and to add Section 790.035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

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This bill would also provide that a person engaged in the business of insurance who violates those provisions relating to unfair and deceptive acts is liable for a penalty of up to \$1,000 for each act, or \$5,000 for a willful violation for each act. The penalty would be assessed by the commissioner in connection with the cease and desist order. A failure to pay the penalty would constitute a violation of the cease and desist order.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 790.035 is added to the Insurance
2 Code, to read:

3 790.035. (a) Any person who engages in any unfair
4 method of competition ~~of~~ or any unfair or deceptive act
5 or practice defined in Section 790.03 is liable to the state
6 for a civil penalty not to exceed one thousand dollars
7 (\$1,000) for each act, or, if the act or practice was willful,
8 a civil penalty not to exceed five thousand dollars
9 (\$5,000) for each act.

10 (b) The penalty imposed by this section shall be
11 imposed by and determined by the commissioner as
12 provided by Section 790.05. The penalty imposed by this
13 section shall continue to accrue until a cease and desist
14 order issued under Section 790.05 becomes ~~final~~ *effective*
15 *and appealable by means of any remedy provided by*
16 *Section 12940 or by Chapter 5 (commencing with Section*
17 *11500) of Part 1 of Division 3 of Title 2 of the Government*
18 *Code.*

19 SEC. 2. Section 790.05 of the Insurance Code is
20 amended to read:

21 790.05. Whenever the commissioner shall have reason
22 to believe that such person has been engaged or is
23 engaging in this state in any unfair method of
24 competition or any unfair or deceptive act or practice
25 defined in Section 790.03, and that a proceeding by the
26 commissioner in respect thereto would be to the interest
27 of the public, he or she shall issue and serve upon that
28 person an order to show cause containing a statement of
29 the charges in that respect, a statement of that person's
30 potential liability under Section 790.035, and a notice of
31 a hearing thereon to be held at a time and place fixed
32 therein, which shall not be less than 30 days after the
33 service thereof, for the purpose of determining whether
34 the commissioner should issue an order to that person to,
35 pay the penalty imposed by Section 790.035, and to cease

1 and desist those methods, acts, or practices or any of
2 them.

3 If the charges or any of them are found to be justified
4 the commissioner shall issue and cause to be served upon
5 that person an order requiring that person to pay the
6 penalty imposed by Section 790.035 and to cease and
7 desist from engaging in those methods, acts, or practices
8 found to be unfair or deceptive.

9 The hearing shall be conducted in accordance with the
10 Administrative Procedure Act, Chapter 5 (commencing
11 at Section 11500) of Part 1 of Division 3 of Title 2 of the
12 Government Code, and the commissioner shall have all
13 the powers granted therein.

14 The person shall be entitled to have the proceedings
15 and the order reviewed by means of any remedy
16 provided by Section 12940 of this code or by the
17 Administrative Procedure Act.

18 SEC. 3. Section 790.07 of the Insurance Code is
19 amended to read:

20 790.07. Whenever the commissioner shall have reason
21 to believe that any person has violated a cease and desist
22 order issued pursuant to Section 790.05 or a court order
23 issued pursuant to Section 790.06, after the order has
24 become final, and while the order is still in effect, the
25 commissioner may, after a hearing at which it is
26 determined that the violation was committed, order that
27 person to forfeit and pay to the State of California a sum
28 not to exceed five thousand dollars (\$5,000) plus any
29 penalty due under Section 790.05, which may be
30 recovered in a civil action, except that, if the violation is
31 found to be willful, the amount of the penalty may be a
32 sum not to exceed fifty-five thousand dollars (\$55,000)
33 plus the penalty due under Section 790.05.

34 For the purposes of this section, the failure to pay any
35 penalty imposed pursuant to Section 790.035 which has
36 become final shall constitute a violation of the cease and
37 desist order.

38 For any subsequent violation of the cease and desist
39 order or of the court order or the order to pay the
40 penalty, while the order is still in effect, the

1 commissioner may, after hearing, suspend or revoke the
2 license or certificate of that person for a period not
3 exceeding one year; provided, however, no such
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6 date on which the order imposing the penalty pursuant
7 to the preceding paragraph became final.

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18 or safety within the meaning of Article IV of the
19 Constitution and shall go into immediate effect. The facts
20 constituting the necessity are:

21 In order to effectively protect consumers from
22 deceptive insurance practices and to ensure marketplace
23 stability it is necessary for this act to take effect
24 immediately.

AMENDED IN ASSEMBLY JULY 6, 1989
AMENDED IN ASSEMBLY JUNE 20, 1989
AMENDED IN SENATE MAY 9, 1989

SENATE BILL

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Introduced by Senator Robbins

March 9, 1989

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The bill would declare that it is to take effect immediately

as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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7 for each act, or, if the act or practice was willful, a civil
8 penalty not to exceed five thousand dollars (\$5,000) for
9 each act.

10 (b) The penalty imposed by this section shall be
11 imposed by and determined by the commissioner as
12 provided by Section 790.05. ~~The penalty imposed by this~~
13 ~~section shall continue to accrue until a cease and desist~~
14 ~~order issued under Section 790.05 becomes effective and~~
15 ~~appealable by means of any remedy provided by Section~~
16 ~~12940 or by Chapter 5 (commencing with Section 11500)~~
17 ~~of Part 1 of Division 3 of Title 2 of the Government Code.~~
18 *provided by Section 790.05. The penalty imposed by this*
19 *section is appealable by means of any remedy provided*
20 *by Section 12940 or by Chapter 5 (commencing with*
21 *Section 11500) of Part 1 of Division 3 of Title 2 of the*
22 *Government Code.*

23 SEC. 2. Section 790.05 of the Insurance Code is
24 amended to read:

25 790.05. Whenever the commissioner shall have reason
26 to believe that such person has been engaged or is
27 engaging in this state in any unfair method of
28 competition or any unfair or deceptive act or practice
29 defined in Section 790.03, and that a proceeding by the
30 commissioner in respect thereto would be to the interest
31 of the public, he or she shall issue and serve upon that
32 person an order to show cause containing a statement of
33 the charges in that respect, a statement of that person's
34 potential liability under Section 790.035, and a notice of

1 a hearing thereon to be held at a time and place fixed
2 therein, which shall not be less than 30 days after the
3 service thereof, for the purpose of determining whether
4 the commissioner should issue an order to that person to,
5 pay the penalty imposed by Section 790.035, and to cease
6 and desist those methods, acts, or practices or any of
7 them.

8 If the charges or any of them are found to be justified
9 the commissioner shall issue and cause to be served upon
10 that person an order requiring that person to pay the
11 penalty imposed by Section 790.035 and to cease and
12 desist from engaging in those methods, acts, or practices
13 found to be unfair or deceptive.

14 The hearing shall be conducted in accordance with the
15 Administrative Procedure Act, Chapter 5 (commencing
16 at Section 11500) of Part 1 of Division 3 of Title 2 of the
17 Government Code, and the commissioner shall have all
18 the powers granted therein.

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20 and the order reviewed by means of any remedy
21 provided by Section 12940 of this code or by the
22 Administrative Procedure Act.

23 SEC. 3. Section 790.07 of the Insurance Code is
24 amended to read:

25 790.07. Whenever the commissioner shall have reason
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27 order issued pursuant to Section 790.05 or a court order
28 issued pursuant to Section 790.06, after the order has
29 become final, and while the order is still in effect, the
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31 determined that the violation was committed, order that
32 person to forfeit and pay to the State of California a sum
33 not to exceed five thousand dollars (\$5,000) plus any
34 penalty due under Section 790.05, which may be
35 recovered in a civil action, except that, if the violation is
36 found to be willful, the amount of the penalty may be a
37 sum not to exceed fifty-five thousand dollars (\$55,000)
38 plus the penalty due under Section 790.05.

39 For the purposes of this section, the failure to pay any
40 penalty imposed pursuant to Section 790.035 which has

1 become final shall constitute a violation of the cease and
2 desist order.

3 For any subsequent violation of the cease and desist
4 order or of the court order or the order to pay the
5 penalty, while the order is still in effect, the
6 commissioner may, after hearing, suspend or revoke the
7 license or certificate of that person for a period not
8 exceeding one year; provided, however, no such
9 proceeding shall be based upon the subsequent violation
10 unless the same was committed or continued after the
11 date on which the order imposing the penalty pursuant
12 to the preceding paragraph became final.

13 The hearings provided by this section shall be
14 conducted in accordance with the Administrative
15 Procedure Act, and the commissioner shall have all the
16 powers granted therein.

17 The person shall be entitled to have the proceedings
18 and the order of the commissioner therein reviewed by
19 means of any remedy provided by Section 12940 or by the
20 Administrative Procedure Act.

21 SEC. 4. This act is an urgency statute necessary for
22 the immediate preservation of the public peace, health,
23 or safety within the meaning of Article IV of the
24 Constitution and shall go into immediate effect. The facts
25 constituting the necessity are:

26 In order to effectively protect consumers from
27 deceptive insurance practices and to ensure marketplace
28 stability it is necessary for this act to take effect
29 immediately.

O

AMENDED IN ASSEMBLY JULY 17, 1989
AMENDED IN ASSEMBLY JULY 6, 1989
AMENDED IN ASSEMBLY JUNE 20, 1989
AMENDED IN SENATE MAY 9, 1989

SENATE BILL

No. 1363

Introduced by Senator Robbins

March 9, 1989

An act to amend Sections 790.05 and 790.07 of, and to add Section 790.035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1363, as amended, Robbins. Insurance: unfair practices.

Under existing law, if a person engaged in the business of insurance violates certain statutory provisions declaring certain acts to be unfair and deceptive acts and practices, the Insurance Commissioner may issue an order to show cause, and hold a hearing to determine whether the commissioner should order the person to cease and desist. Under existing law, a person engaged in the business of insurance is liable for a penalty not to exceed \$5,000 for a violation of the order, except that the penalty may not exceed \$55,000 for a willful violation.

This bill would also provide that a person engaged in the business of insurance who violates those provisions relating to unfair and deceptive acts is liable for a penalty of up to ~~\$1,000~~ \$5,000 for each act, or ~~\$5,000~~ \$10,000 for a willful violation for each act. The penalty would be assessed by the commissioner in connection with the cease and desist order. A failure to pay

the penalty would constitute a violation of the cease and desist order.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 790.035 is added to the Insurance
2 Code, to read:

3 790.035. (a) Any person who engages in any unfair
4 method of competition or any unfair or deceptive act or
5 practice defined in Section 790.03 is liable to the state for
6 ~~a civil penalty not to exceed one thousand dollars (\$1,000)~~
7 *a civil penalty to be fixed by the commissioner, not to*
8 *exceed five thousand dollars (\$5,000)* for each act, or, if
9 the act or practice was willful, a civil penalty not to
10 exceed ~~five thousand dollars (\$5,000)~~ *ten thousand*
11 *dollars (\$10,000)* for each act.

12 (b) The penalty imposed by this section shall be
13 imposed by and determined by the commissioner as
14 provided by Section 790.05. The penalty imposed by this
15 section is appealable by means of any remedy provided
16 by Section 12940 or by Chapter 5 (commencing with
17 Section 11500) of Part 1 of Division 3 of Title 2 of the
18 Government Code.

19 SEC. 2. Section 790.05 of the Insurance Code is
20 amended to read:

21 790.05. Whenever the commissioner shall have reason
22 to believe that such person has been engaged or is
23 engaging in this state in any unfair method of
24 competition or any unfair or deceptive act or practice
25 defined in Section 790.03, and that a proceeding by the
26 commissioner in respect thereto would be to the interest
27 of the public, he or she shall issue and serve upon that
28 person an order to show cause containing a statement of
29 the charges in that respect, a statement of that person's
30 potential liability under Section 790.035; and a notice of
31 a hearing thereon to be held at a time and place fixed

1 therein, which shall not be less than 30 days after the
2 service thereof, for the purpose of determining whether
3 the commissioner should issue an order to that person to,
4 pay the penalty imposed by Section 790.035, and to cease
5 and desist those methods, acts, or practices or any of
6 them.

7 If the charges or any of them are found to be justified
8 the commissioner shall issue and cause to be served upon
9 that person an order requiring that person to pay the
10 penalty imposed by Section 790.035 and to cease and
11 desist from engaging in those methods, acts, or practices
12 found to be unfair or deceptive.

13 The hearing shall be conducted in accordance with the
14 Administrative Procedure Act, Chapter 5 (commencing
15 at Section 11500) of Part 1 of Division 3 of Title 2 of the
16 Government Code, and the commissioner shall have all
17 the powers granted therein.

18 The person shall be entitled to have the proceedings
19 and the order reviewed by means of any remedy
20 provided by Section 12940 of this code or by the
21 Administrative Procedure Act.

22 SEC. 3. Section 790.07 of the Insurance Code is
23 amended to read:

24 790.07. Whenever the commissioner shall have reason
25 to believe that any person has violated a cease and desist
26 order issued pursuant to Section 790.05 or a court order
27 issued pursuant to Section 790.06, after the order has
28 become final, and while the order is still in effect, the
29 commissioner may, after a hearing at which it is
30 determined that the violation was committed, order that
31 person to forfeit and pay to the State of California a sum
32 not to exceed five thousand dollars (\$5,000) plus any
33 penalty due under Section 790.05, which may be
34 recovered in a civil action, except that, if the violation is
35 found to be willful, the amount of the penalty may be a
36 sum not to exceed fifty-five thousand dollars (\$55,000)
37 plus the penalty due under Section 790.05.

38 For the purposes of this section, the failure to pay any
39 penalty imposed pursuant to Section 790.035 which has
40 become final shall constitute a violation of the cease and

1 desist order.

2 For any subsequent violation of the cease and desist
3 order or of the court order or the order to pay the
4 penalty, while the order is still in effect, the
5 commissioner may, after hearing, suspend or revoke the
6 license or certificate of that person for a period not
7 exceeding one year; provided, however, no such
8 proceeding shall be based upon the subsequent violation
9 unless the same was committed or continued after the
10 date on which the order imposing the penalty pursuant
11 to the preceding paragraph became final.

12 The hearings provided by this section shall be
13 conducted in accordance with the Administrative
14 Procedure Act, and the commissioner shall have all the
15 powers granted therein.

16 The person shall be entitled to have the proceedings
17 and the order of the commissioner therein reviewed by
18 means of any remedy provided by Section 12940 or by the
19 Administrative Procedure Act.

20 SEC. 4. This act is an urgency statute necessary for
21 the immediate preservation of the public peace, health,
22 or safety within the meaning of Article IV of the
23 Constitution and shall go into immediate effect. The facts
24 constituting the necessity are:

25 In order to effectively protect consumers from
26 deceptive insurance practices and to ensure marketplace
27 stability it is necessary for this act to take effect
28 immediately.

AMENDED IN ASSEMBLY SEPTEMBER 11, 1989

AMENDED IN ASSEMBLY JULY 17, 1989

AMENDED IN ASSEMBLY JULY 6, 1989

AMENDED IN ASSEMBLY JUNE 20, 1989

AMENDED IN SENATE MAY 9, 1989

SENATE BILL

No. 1363

Introduced by Senator Robbins

March 9, 1989

An act to amend Sections 790.05 and 790.07 of, and to add Section 790.035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1363, as amended, Robbins. Insurance: unfair practices.

Under existing law, if a person engaged in the business of insurance violates certain statutory provisions declaring certain acts to be unfair and deceptive acts and practices, the Insurance Commissioner may issue an order to show cause, and hold a hearing to determine whether the commissioner should order the person to cease and desist. Under existing law, a person engaged in the business of insurance is liable for a penalty not to exceed \$5,000 for a violation of the order, except that the penalty may not exceed \$55,000 for a willful violation.

This bill would also provide that a person engaged in the business of insurance who violates those provisions relating to unfair and deceptive acts is liable for a penalty of up to \$5,000 for each act, or \$10,000 for a willful violation for each act. The penalty would be assessed by the commissioner in connection

with the cease and desist order. A failure to pay the penalty would constitute a violation of the cease and desist order.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 790.035 is added to the Insurance
2 Code, to read:

3 790.035. (a) Any person who engages in any unfair
4 method of competition or any unfair or deceptive act or
5 practice defined in Section 790.03 is liable to the state for
6 a civil penalty to be fixed by the commissioner, not to
7 exceed five thousand dollars (\$5,000) for each act, or, if
8 the act or practice was willful, a civil penalty not to
9 exceed ten thousand dollars (\$10,000) for each act. *The*
10 *commissioner shall have the discretion to establish what*
11 *constitutes an act. However, when the issuance,*
12 *amendment, or servicing of a policy or endorsement is*
13 *inadvertent, all of those acts shall be a single act for the*
14 *purpose of this section.*

15 (b) The penalty imposed by this section shall be
16 imposed by and determined by the commissioner as
17 provided by Section 790.05. The penalty imposed by this
18 section is appealable by means of any remedy provided
19 by Section 12940 or by Chapter 5 (commencing with
20 Section 11500) of Part 1 of Division 3 of Title 2 of the
21 Government Code.

22 SEC. 2. Section 790.05 of the Insurance Code is
23 amended to read:

24 790.05. Whenever the commissioner shall have reason
25 to believe that such person has been engaged or is
26 engaging in this state in any unfair method of
27 competition or any unfair or deceptive act or practice
28 defined in Section 790.03, and that a proceeding by the
29 commissioner in respect thereto would be to the interest
30 of the public, he or she shall issue and serve upon that
31 person an order to show cause containing a statement of

1 the charges in that respect, a statement of that person's
2 potential liability under Section 790.035, and a notice of
3 a hearing thereon to be held at a time and place fixed
4 therein, which shall not be less than 30 days after the
5 service thereof, for the purpose of determining whether
6 the commissioner should issue an order to that person to,
7 pay the penalty imposed by Section 790.035, and to cease
8 and desist those methods, acts, or practices or any of
9 them.

10 If the charges or any of them are found to be justified
11 the commissioner shall issue and cause to be served upon
12 that person an order requiring that person to pay the
13 penalty imposed by Section 790.035 and to cease and
14 desist from engaging in those methods, acts, or practices
15 found to be unfair or deceptive.

16 The hearing shall be conducted in accordance with the
17 Administrative Procedure Act, Chapter 5 (commencing
18 at Section 11500) of Part 1 of Division 3 of Title 2 of the
19 Government Code, and the commissioner shall have all
20 the powers granted therein.

21 The person shall be entitled to have the proceedings
22 and the order reviewed by means of any remedy
23 provided by Section 12940 of this code or by the
24 Administrative Procedure Act.

25 SEC. 3. Section 790.07 of the Insurance Code is
26 amended to read:

27 790.07. Whenever the commissioner shall have reason
28 to believe that any person has violated a cease and desist
29 order issued pursuant to Section 790.05 or a court order
30 issued pursuant to Section 790.06, after the order has
31 become final, and while the order is still in effect, the
32 commissioner may, after a hearing at which it is
33 determined that the violation was committed, order that
34 person to forfeit and pay to the State of California a sum
35 not to exceed five thousand dollars (\$5,000) plus any
36 penalty due under Section 790.05, which may be
37 recovered in a civil action, except that, if the violation is
38 found to be willful, the amount of the penalty may be a
39 sum not to exceed fifty-five thousand dollars (\$55,000)
40 plus the penalty due under Section 790.05.

1 For the purposes of this section, the failure to pay any
2 penalty imposed pursuant to Section 790.035 which has
3 become final shall constitute a violation of the cease and
4 desist order.

5 For any subsequent violation of the cease and desist
6 order or of the court order or the order to pay the
7 penalty, while the order is still in effect, the
8 commissioner may, after hearing, suspend or revoke the
9 license or certificate of that person for a period not
10 exceeding one year; provided, however, no such
11 proceeding shall be based upon the subsequent violation
12 unless the same was committed or continued after the
13 date on which the order imposing the penalty pursuant
14 to the preceding paragraph became final.

15 The hearings provided by this section shall be
16 conducted in accordance with the Administrative
17 Procedure Act, and the commissioner shall have all the
18 powers granted therein.

19 The person shall be entitled to have the proceedings
20 and the order of the commissioner therein reviewed by
21 means of any remedy provided by Section 12940 or by the
22 Administrative Procedure Act.

23 SEC. 4. This act is an urgency statute necessary for
24 the immediate preservation of the public peace, health,
25 or safety within the meaning of Article IV of the
26 Constitution and shall go into immediate effect. The facts
27 constituting the necessity are:

28 In order to effectively protect consumers from
29 deceptive insurance practices and to ensure marketplace
30 stability it is necessary for this act to take effect
31 immediately.

Volume 2

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1989

Constitution of 1879 as Amended

General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

1989-90 Regular Session



Compiled by
BION M. GREGORY
Legislative Counsel

limited to, services furnished in connection with the repair, alteration, or improvement of residential premises, or services furnished in connection with the sale or repair of goods as defined in Section 1802.1, and courses of instruction, regardless of the purpose for which they are taken, but does not include the services of attorneys, real estate brokers and salesmen, securities dealers or investment counselors, physicians, optometrists, or dentists, nor financial services offered by banks, savings institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, which are not connected with the sale of goods or services, as defined herein, nor the sale of insurance which is not connected with the sale of goods or services as defined herein, nor services in connection with the sale or installation of mobilehomes or of goods sold with a mobilehome if either are sold or installed under a contract subject to Section 18036.5 of the Health and Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with and approved by the federal government or any official, department, division, commission, or agency of the United States or of the State of California.

(e) "Business day" means any calendar day except Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

SEC. 6. This act is declaratory of existing law with respect to contracts made at seminars held at locations other than appropriate trade premises, as defined in subdivision (b) of Section 1689.5 of the Civil Code.

CHAPTER 725

An act to amend Sections 790.05 and 790.07 of, and to add Section 790.035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1989 Filed with
Secretary of State September 25, 1989]

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

SECTION 1. Section 790.035 is added to the Insurance Code, to read:

790.035. (a) Any person who engages in any unfair method of competition or any unfair or deceptive act or practice defined in Section 790.03 is liable to the state for a civil penalty to be fixed by the commissioner, not to exceed five thousand dollars (\$5,000) for each act, or, if the act or practice was willful, a civil penalty not to

exceed ten thousand dollars (\$10,000) for each act. The commissioner shall have the discretion to establish what constitutes an act. However, when the issuance, amendment, or servicing of a policy or endorsement is inadvertent, all of those acts shall be a single act for the purpose of this section.

(b) The penalty imposed by this section shall be imposed by and determined by the commissioner as provided by Section 790.05. The penalty imposed by this section is appealable by means of any remedy provided by Section 12940 or by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 790.05 of the Insurance Code is amended to read:

790.05. Whenever the commissioner shall have reason to believe that such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in Section 790.03, and that a proceeding by the commissioner in respect thereto would be to the interest of the public, he or she shall issue and serve upon that person an order to show cause containing a statement of the charges in that respect, a statement of that person's potential liability under Section 790.035, and a notice of a hearing thereon to be held at a time and place fixed therein, which shall not be less than 30 days after the service thereof, for the purpose of determining whether the commissioner should issue an order to that person to, pay the penalty imposed by Section 790.035, and to cease and desist those methods, acts, or practices or any of them.

If the charges or any of them are found to be justified the commissioner shall issue and cause to be served upon that person an order requiring that person to pay the penalty imposed by Section 790.035 and to cease and desist from engaging in those methods, acts, or practices found to be unfair or deceptive.

The hearing shall be conducted in accordance with the Administrative Procedure Act, Chapter 5 (commencing at Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein.

The person shall be entitled to have the proceedings and the order reviewed by means of any remedy provided by Section 12940 of this code or by the Administrative Procedure Act.

SEC. 3. Section 790.07 of the Insurance Code is amended to read:

790.07. Whenever the commissioner shall have reason to believe that any person has violated a cease and desist order issued pursuant to Section 790.05 or a court order issued pursuant to Section 790.06, after the order has become final, and while the order is still in effect, the commissioner may, after a hearing at which it is determined that the violation was committed, order that person to forfeit and pay to the State of California a sum not to exceed five thousand dollars (\$5,000) plus any penalty due under Section 790.05, which may be recovered in a civil action, except that, if the violation is found to be willful, the amount of the penalty may be a sum not to exceed

fifty-five thousand dollars (\$55,000) plus the penalty due under Section 790.05.

For the purposes of this section, the failure to pay any penalty imposed pursuant to Section 790.035 which has become final shall constitute a violation of the cease and desist order.

For any subsequent violation of the cease and desist order or of the court order or the order to pay the penalty, while the order is still in effect, the commissioner may, after hearing, suspend or revoke the license or certificate of that person for a period not exceeding one year; provided, however, no such proceeding shall be based upon the subsequent violation unless the same was committed or continued after the date on which the order imposing the penalty pursuant to the preceding paragraph became final.

The hearings provided by this section shall be conducted in accordance with the Administrative Procedure Act, and the commissioner shall have all the powers granted therein.

The person shall be entitled to have the proceedings and the order of the commissioner therein reviewed by means of any remedy provided by Section 12940 or by the Administrative Procedure Act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectively protect consumers from deceptive insurance practices and to ensure marketplace stability it is necessary for this act to take effect immediately.

CHAPTER 726

An act to amend Sections 1858.1, 1858.3, and 1859.1 of, and to add Section 1858.07 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1989 Filed with
Secretary of State September 25, 1989]

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

SECTION 1. Section 1858.07 is added to the Insurance Code, to read:

1858.07. (a) Any person who uses any rate, rating plan, or rating system in violation of this chapter is liable to the state for a civil penalty not to exceed five thousand dollars (\$5,000) for each act, or, if the act or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000) for each act. The commissioner shall have the discretion to establish what constitutes an act. However, when the issuance, amendment, or servicing of a policy or endorsement is inadvertent, all of those acts shall be a single act for the purpose of

VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1989-90 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTION TAKEN IN THIS SESSION ON ALL SENATE BILLS
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS
AND SENATE RESOLUTIONS

CONVENED DECEMBER 5, 1988
ADJOURNED SINE DIE NOVEMBER 30, 1990

DAYS IN SESSION 269
CALENDAR DAYS 726

LT. GOVERNOR
President of the Senate

SENATOR DAVID ROBERTI
President pro Tempore

Compiled Under the Direction of
DARRYL R. WHITE
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

S.B. No. 1363—Robbins.

An act to amend Sections 790 05 and 790 07 of, and to add Section 790 035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately

1989

- Mar 9—Introduced Read first time To Com on RLS for assignment To print
- Mar 14—From print May be acted upon on or after April 13
- Mar 30—To Com on INS, CL & CORPS
- April 3—Set for hearing April 19
- April 17—Hearing postponed by committee Set for hearing May 3
- May 8—From committee Do pass as amended, but first amend, and re-refer to Com on APPR (Ayes 5 Noes 2 Page 1128)
- May 9—Read second time Amended Re-referred to Com on APPR
- May 17—Set for hearing May 25
- May 23—From committee Be placed on second reading file pursuant to Senate Rule 28 8
- May 24—Read second time To third reading
- June 1—Read third time Urgency clause adopted Passed (Ayes 33 Noes 1 Page 1755) To Assembly
- June 5—In Assembly Read first time Held at Desk
- June 8—To Com on FIN & INS
- June 20—From committee with author's amendments Read second time Amended Re-referred to committee
- July 6—From committee with author's amendments Read second time Amended Re-referred to committee
- July 13—From committee Do pass as amended, but first amend, and re-refer to Com on W & M (Ayes 16 Noes 1)
- July 17—Read second time Amended Re-referred to Com on W & M
- Aug 24—From committee Do pass (Ayes 17 Noes 1)
- Aug 28—Read second time To third reading
- Sept 1—Placed on inactive file pursuant to Assembly Rule 78
- Sept 7—From inactive file to third reading file
- Sept 11—Read third time Amended To third reading
- Sept 12—Read third time Urgency clause adopted Passed (Ayes 69, Noes 2 Page 4675) To Senate
- Sept 13—In Senate To unfinished business
- Sept 14—Senate concurs in Assembly amendments (Ayes 29 Noes 1 Page 3978) To enrollment
- Sept 19—Enrolled To Governor at 3 p m
- Sept 24—Approved by Governor
- Sept 25—Chaptered by Secretary of State Chapter 725, Statutes of 1989

CALIFORNIA LEGISLATURE
1989-90 REGULAR SESSION

SUMMARY DIGEST

of

Statutes Enacted and Resolutions (Including Proposed
Constitutional Amendments) Adopted in 1989

and

1989 Statutory Record



DARRYL R. WHITE
Secretary of the Senate

R. BRIAN KIDNEY
Chief Clerk of the Assembly

Compiled by
BION M. GREGORY
Legislative Counsel

of the seller to which the notice is to be mailed and the date the buyer signed the agreement or offer to purchase. Under existing law, the agreement or offer to purchase must be accompanied by a completed form in duplicate captioned "Notice of Cancellation" containing a specified written statement.

This bill would provide similar provisions with respect to seminar sales solicitation contracts, as defined. The bill would state that it is declaratory of existing law with respect to contracts made at seminars held at locations other than appropriate trade premises, as defined.

Ch 725 (SB 1363) *Robbins Insurance, unfair practices*

Under existing law, if a person engaged in the business of insurance violates certain statutory provisions declaring certain acts to be unfair and deceptive acts and practices, the Insurance Commissioner may issue an order to show cause, and hold a hearing to determine whether the commissioner should order the person to cease and desist. Under existing law, a person engaged in the business of insurance is liable for a penalty not to exceed \$5,000 for a violation of the order, except that the penalty may not exceed \$55,000 for a willful violation.

This bill would also provide that a person engaged in the business of insurance who violates those provisions relating to unfair and deceptive acts is liable for a penalty of up to \$5,000 for each act, or \$10,000 for a willful violation for each act. The penalty would be assessed by the commissioner in connection with the cease and desist order. A failure to pay the penalty would constitute a violation of the cease and desist order.

The bill would declare that it is to take effect immediately as an urgency statute.

Ch. 726 (SB 1364) *Robbins Insurance rates*

Under existing law, if an insurer violates certain statutory provisions regulating rates, the Insurance Commissioner may hold a hearing to determine whether a violation exists. If, after a hearing the commissioner determines that any rate, rating plan, or rating system is in violation of law, the commissioner may issue an order specifying in what respects a violation exists, and stating when the further use of the rate or rating system is prohibited. Under existing law, a person is liable for a penalty not to exceed \$10,000 per day for a violation of the order, except that the penalty may not exceed in the aggregate \$100,000.

This bill would also provide that a person who uses any rate, rating, plan, or rating system, in violation of specified provisions is liable for a penalty of up to \$5,000 for each act, or \$10,000 for each act for a willful violation. The penalty would be assessed by the commissioner in connection with the issuance of the order. The bill would make related changes.

The bill would declare that it is to take effect immediately as an urgency statute.

Ch 727 (SB 1365) *Robbins Insurance*

Under existing law, no insurer issuing policies of designated classes of commercial liability insurance or residential property insurance may cease to offer any particular line of coverage without prior notification to the Insurance Commissioner. Existing law also requires an insurer to notify the Department of Insurance at least 60 days prior to the date it intends to withdraw, wholly or substantially, from a line of commercial liability insurance, residential property insurance, or prescribed motor vehicle insurance when coverage is provided by a separate rider or endorsement for an activity for which the insured receives compensation, a stipend, or remuneration of any kind for the activity and then only to the extent of the coverage. For that purpose, intent to substantially withdraw means an intent to nonrenew in excess of 50% of policyholders.

This bill would add certain forms of automobile insurance, and insurance issued to an individual or individuals covering risks not arising from a business or commercial activity, to those types of insurance for which the insurer is required to give 60 days' notice of intent to wholly or substantially withdraw.

The bill would declare that it is to take effect immediately as an urgency statute.



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

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Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

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CHIEF DEPUTIES

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JERRY L. BASSETT
STANLEY M. LOURIMORE
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DAVID D. ALVES
JOHN A. CORZINE
C. DAVID DICKERSON
ROBERT CULLEN DUFFY
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
TRACY O. POWELL II
MARGUERITE ROTH
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-3057

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES, CA 90012
(213) 620-2550
TELECOPIER: 916-324-6311

Legislative Counsel of California

BION M. GREGORY

September 26, 1989
Sacramento, California

Honorable George Deukmejian
Governor of California
Sacramento, CA 95814

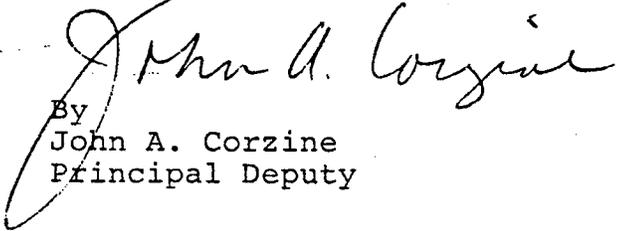
Senate Bill No. 1363

Dear Governor Deukmejian:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Robbins and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel


By
John A. Corzine
Principal Deputy

JAC:wld

Two copies to Honorable Alan Robbins,
pursuant to Joint Rule 34.

GERALD ROSS ADAMS
MARTIN L. ANDERSON
PAUL ANTILLA
DANA S. APPLING
CHARLES C. ASBILL
JOE J. AYALA
RANEENE P. BELISLE
DIANE F. BOYER
AMELIA I. BUDD
EILEEN J. BUXTON
HENRY J. CONTRERAS
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DEBRA J. ZIDICH
CHRISTOPHER ZIRKLE
DEPUTIES

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Robbins

September 11, 1989

SB 1363

ANALYSIS

A. Specific Findings (Continued)

This bill would provide that an insurer who violates statutory provisions relating to unfair practices or deceptive acts before an order is issued by the Commissioner is liable for a penalty of up to \$5,000 for each act or combination of inadvertent acts, or \$10,000 for each act for a willful violation. The penalty would be assessed by the Commissioner in connection with the hearing on the order.

This bill is intended to discourage insurance companies from violating existing unfair practices and deceptive acts statutes.

B. Fiscal Analysis

This bill would not increase State agency expenditures but has the potential for increasing General Fund revenue from fines and penalties. However, neither the number of violations that may occur nor the number that would result in a fine or a penalty can be predicted at this time.

FR:0637F

ENROLLED BILL REPORT

Business, Transportation and Housing Agency

DEPARTMENT INSURANCE	AUTHOR ROBBINS	BILL NUMBER SB 1363
SUBJECT SUMMARY		SB 1363

SB 1363 imposes a penalty for committing an unfair or deceptive practice.

SPONSOR *insurance*

This is the author's own bill. The contact person is Sal Bianco at 5-0825.

IMPACT ASSESSMENT

This bill imposes a penalty upon any person engaging in an unfair method of competition, or any unfair, deceptive, or other specified act. The fine is not to exceed \$5,000.00 for each act or \$10,000.00 for each willful act. The commissioner has discretion to define the act, except if the issuance, amendment or servicing of a policy is inadvertent, all of those acts shall be considered a single act for the purpose of the penalty.

The penalty shall be determined and imposed as part of the hearing on the charges that the person has engaged in an illegal act. The penalty may be appealed according to specified procedures.

Under current law, a monetary penalty may be imposed only if a person violates a cease and desist order issued by the commissioner upon a determination that charges against the person are justified.

ARGUMENTS PRO

Under current law, the commissioner has no power to impose a penalty until an insurer violates a cease and desist order, thus there is no meaningful deterrent against a violation of the Unfair Practices Act itself.

This bill is consistent with the spirit of Moradi - Shalal because it provides an incentive for insurers to refrain from unfair acts.

According to the author's office, the bill is supported by:

- Sacramento Urban League
- California Conference of Machinists
- Congress of California Seniors
- FAIR (Fair Automobile Insurance Rates)
- California Commission on Aging

RECOMMENDATION SIGN

DEPARTMENT <i>Kevin Gillespie</i>	DATE	AGENCY <i>Anne Edwards</i>	DATE <i>9/20/89</i>
--------------------------------------	------	-------------------------------	------------------------

ARGUMENTS CON

There is no known opposition.

RECOMMENDATION

The department recommends that the Governor SIGN SB 1363.

Expert: Roxani Gillespie
ATSS: 8-597-9624

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UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 1363
	Author:	Robbins (D)
	Amended:	9/11/89 in Assembly
	Vote Required:	2/3 - Urgency

Committee Votes:

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.:	SB 1363	
DATE OF HEARING:	9-3-89	
SENATORS:	AYE	NO
Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Deddeh	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Doolittle	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cecil Green	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Keene	<input type="checkbox"/>	<input type="checkbox"/>
McCorquodale	<input type="checkbox"/>	<input type="checkbox"/>
Montoya	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Nielsen (VC)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Robbins (CH)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TOTAL:	3	2

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Senate Floor Vote: Page 1755, 6/1/89

Senate Bill 1363—An act to amend Sections 790.05 and 790.07 of, and to add Section 790.035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

Bill read third time and presented by Senator Robbins.

Roll Call

The roll was called and the bill was passed by the following vote:
AYES (33)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Campbell, Craven, Davis, Deddeh, Dills, Garamendi, Cecil Green, Bill Greene, Leroy Greene, Hart, Keene, Kopp, Lockyer, Marks, McCorquodale, Mello, Montoya, Morgan, Petris, Presley, Robbins, Roberti, Rosenthal, Russell, Stirling, Torres, Vuich, and Watson.

NOES (1)—Senator Doolittle.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote: NOT AVAILABLE

SUBJECT: Insurance: unfair practices penalties

SOURCE: Author

DIGEST: This bill provides that a person engaged in the business of insurance who violates provisions relating to unfair and deceptive acts is liable for a penalty of up to \$5,000 for each act, or \$10,000 for a willful violation for each act. The penalty would be assessed by the Insurance Commissioner in connection with the cease and desist order. A failure to pay the penalty would constitute a violation of the cease and desist order. (See analysis below for specifics.)

Assembly Amendment:

- Increases the penalty from \$1,000 to \$5,000 for each act that is violated and \$5,000 for \$10,000 for a willful violation for each act.
- Clarifies that the penalties are appealable by means of any remedy provided by existing law.
- The Insurance Commissioner shall have the discretion to establish what constitutes an act under this bill. However, when the issuance, amendment, or servicing of a policy or endorsement is inadvertent, all of those acts shall be a single act for the purposes of this section.

ANALYSIS: Article 6.5 of the Insurance Code (commencing with Section 790), regulates insurance practices that constitute unfair methods of competition or unfair and deceptive acts or practices. If the Insurance Commissioner believes

an insurer is violating the outlawed practices, she may issue a Cease and Desist Order after an initial hearing. If that practice is not discontinued, the Commissioner may petition the court through the Attorney General for an appropriate order and assess a fine of up to \$5,000 or \$50,000 if the violation is proven to be willful.

Under Section 790.03, insurance companies are prohibited from engaging in such practices as:

1. Making misleading or false claims in advertising or presentations;
2. Making false claims regarding the practices or solvency of a competitor, or using boycotts, intimidation or other unreasonable restraints of trade;
3. Keeping false books;
4. Discriminating in the rates charged individuals in the same class of insurance;
5. Making claims the insurer is guaranteed or insured against insolvency; and
6. Committing a pattern of certain undesirable, specified practices in settling claims. (These claims settlement practices are contained in Section 790.03(h) that was the subject of review in both the Royal Globe and the Moradi-Shalal decisions.)

Last year, SB 1012 (Robbins) increased the amount of penalties from \$50 to \$5,000 for a violation of a cease and desist order or, if a willful violation, from \$500 to \$50,000.

SB 1363 establishes a procedure for assessing monetary penalties for violations of the unfair or deceptive practices as defined in Insurance Code Section 790.03 as follows:

1. Any insurer that violates the unfair or deceptive practices sections is subject to a fine not to exceed \$5,000 each illegal act or practice or, if the act or practice is willful, a fine not to exceed \$10,000 for each act.
2. The Commissioner serves an order to show cause and a notice of hearing, along with a statement of the potential monetary fine. The hearing on the legality of these practices must take place within 30 days of serving the order on the insurer.
3. After the hearing, if the charges are upheld by the Commissioner, the Commissioner is required to issue a cease-and-desist order requiring the insurer to stop the practices found unfair or deceptive and pay the amount of the fine.
4. If the insurer fails to pay the penalty or violates the cease-and-desist order, the Commissioner may assess an additional \$5,000 fine, or if the violation is found to be willful, an additional \$55,000, in addition to licensee revocation procedures.

Prior legislation: SB 1012 (Robbins) - Chapter 953, Statutes of 1987.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

The bill could result in unknown revenue to the General Fund from penalties imposed on persons in the insurance business found to engage in unfair or deceptive acts.

SUPPORT: (Verified 9/13/89)

Sacramento Urban League
California Conference of Machinists
Congress of California Seniors
FAIR (Fair Automobile Insurance Rates)
California Commission on Aging

ARGUMENTS IN SUPPORT: According to the author's office, SB 1363 is addressing three major deficiencies in the law:

1. Inconsistent with Proposition 103 regulatory structure: In light of the regulatory changes made effective by the passage of Proposition 103, the Commissioner is left without tools to induce compliance because she cannot mete out civil or criminal penalties until the insurer violates the cease-and-desist order. The timing of the fine doesn't allow it to be used as a deterrent, but it does work to reward those that profit from illegal acts.

Neither in the various codes governing regulation of businesses and professions nor in regulations for any industry governing itself such as that of securities representatives and brokers, could another system of penalties similar to that in Article 6.5 be found.

2. Proportionate fines: With the present limitation of \$5,000 maximum or, if found a willful violation, a \$55,000 maximum fine, there is no flexibility to design an assessment to reflect the actual severity of the violation. The range of assessments provided for in SB 1363 would allow the Commissioner to differentiate between serious and lesser violations.
3. No incentive to act lawfully: With the repeal of the Royal Globe decision (that allowed third parties to file suit against an insurer believed to be delaying payment of claims), and the present structure of not fining for the illegal act but the violation of a cease-and-desist order, there is little incentive for insurance companies to refrain from unfair or deceptive practices. California Chief Justice Lucas in his majority opinion in Moradi-Shalal v. Fireman's Fund Insurance Companies, the case that overturned Royal Globe, states:

"We caution, however, that our decision is not an invitation to the insurance industry to commit the unfair practices proscribed by the Insurance Code. We urge the Insurance Commissioner and the courts to continue to enforce the laws forbidding such practices to the full extent consistent with our opinion."

This bill is consistent with the spirit of Moradi-Shalal by giving adequate power to the Commissioner to dissuade insurers from unfair practices, and by providing an incentive to the insurance industry to refrain from such practices. Under present law, the economic advantage of postponing settlements on a wide scale basis, for example, is not offset by any economic sanction.

SB 1363 is a companion bill to SB 1364 which deals with McBride-Grunsky rate violations.

DLW:jk 9/13/89 Senate Floor Analyses



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

Author's File Materials

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FLOOR STATEMENT ON SB 1363

SB 1363 ALLOWS THE INSURANCE COMMISSIONER FOR THE FIRST TIME TO ASSESS MONETARY PENALTIES AGAINST INSURERS WHEN THEY CONDUCT UNLAWFUL CLAIMS SETTLEMENT PRACTICES. INSURANCE COMPANIES THAT HAVE BEEN GIVING THEIR POLICYHOLDERS OR OTHER CLAIMANTS THE STALL TREATMENT WILL NOW BE SUBJECT TO FINES IF THE COMMISSIONER FINDS THEIR ACTIVITIES UNLAWFUL.

UNDER CURRENT LAW, INSURERS CANNOT BE FINED FOR PRACTICES DETERMINED BY THE COMMISSIONER TO BE UNFAIR AND DECEPTIVE UNLESS THE PRACTICES CONTINUE AFTER A CEASE AND DESIST ORDER HAS BEEN ISSUED. AB 1363 WILL ALLOW THE COMMISSIONER TO IMPOSE PENALTIES FOR THE INITIAL ACTS.

THE BILL IMPOSES PENALTIES OF UP TO \$5,000 FOR EACH VIOLATION OF THE UNFAIR PRACTICES ACT, AND OF UP TO \$10,000 IF THE VIOLATION IS WILLFUL. THE INSURANCE COMMISSIONER IS GIVEN THE DISCRETION TO ESTABLISH WHAT CONSTITUTES AN ACT FOR THE PURPOSE ASSESSING THE MONETARY PENALTIES. ADDITIONALLY, IF VIOLATIONS ARE INADVERTENT THE VIOLATIONS ARE CONSIDERED TO BE A SINGLE ACT RATHER THAN MULTIPLE ACTS. THE PENALTIES ARE APPEALABLE BY INSURANCE COMPANIES THROUGH ADMINISTRATIVE HEARINGS OR BY MEANS OF JUDICIAL REVIEW.

THIS BILL IS PARTICULARLY IMPORTANT SINCE THE SUPREME COURT OVERTURNED THE ROYAL GLOBE DECISION. UNDER CURRENT LAW THERE EXISTS NO EFFECTIVE DETERRENCE AGAINST AN INSURER WHO CHOOSES TO

IGNORE THE UNFAIR CLAIMS SETTLEMENT PRACTICES ACT.

THE FINES ASSESSED AS A RESULT OF THIS BILL ARE IN ADDITION TO FINES THAT THE INSURANCE COMMISSIONER MAY ASSESS IF AN INSURER CONTINUES TO VIOLATE THE UNFAIR PRACTICES ACT.

THE BILL IS SUPPORTED BY CONSUMER GROUPS AND THERE IS NO OPPOSITION.

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ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE
Patrick Johnston, Chairman

BACKGROUND INFORMATION REQUEST

Measure: SB 1363
Author: Senator Robbins

1. Origin of the bill:

a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
author

b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.
no

c. Has there been an interim committee report on the bill? If so, please identify the report.
no

2. What is the problem or deficiency in the present law which the bill seeks to remedy?

Under present law, insurance companies committing unfair or deceptive practices cannot be fined unless they continue the practice after the Insurance Commissioner issues a cease-and-desist order. This bill will make the insurance companies liable for the initial act.

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

A copy of the Senate ICC analysis is attached.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared.

An amendment requested by the Insurance Department is planned, considered technical by the author.*

6. List the witnesses you plan to have testify.

Not known at this time.

RETURN THIS FORM TO: ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE
Phone 445-9160

Questions should be directed to Leah Cartabruno at 5-0825.

* amended bill attached.

ASSEMBLY COMMITTEE STATEMENT

SB 1363 (Robbins)

Mr. Chairman and Members:

My SB 1363 will impose a fine on insurers of \$1,000 for each violation of the Unfair Practices code, or \$5,000 for each infraction if violation is willful. The insurer will receive the assessment at the same time the Insurance Commissioner issues the initial cease-and-desist order.

If the insurer does not pay the fine when the cease-and-desist order becomes final, it is subject to further penalties.

With the provisions of this bill, it will be the first time that an insurer can be held liable for its initial violation. This constitutes the toughest first-strike penalty in the nation.

The insurers themselves have agreed with my approach. I ask for your "aye" vote.

Legislative Analyst
August 14, 1989

ANALYSIS OF SENATE BILL NO. 1363 (Robbins)
As Amended in Assembly July 17, 1989
1989-90 Session

Fiscal Effect:

Cost: None.

Revenue: Unknown potential revenue to the General Fund to the extent additional civil penalties are imposed on persons in the insurance business who engaged in unfair or deceptive acts.

Analysis:

This bill provides that persons in the insurance business who engage in unfair or deceptive acts are liable for civil penalties of up to \$5,000 per act, or up to \$10,000 per willful act, which leads to a cease and desist order issued by the Insurance Commissioner.

Under current law, the Commissioner may hold hearings and order persons in the insurance business to cease and desist from engaging in unfair or deceptive acts. A person violating such a cease and desist order is liable for civil penalties of up to \$5,000 per act, or up to \$55,000 per willful act, for a violation of that order.

The penalties authorized by this measure would be imposed by the Commissioner for the initial act or acts giving rise to such a cease and desist order. Failure to pay penalties imposed under this measure would be a violation of the cease and desist order.

Fiscal Effect

The bill could result in unknown revenue to the General Fund from penalties imposed on persons in the insurance business found to engage in unfair or deceptive acts.

84:81/s8

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Association of California Insurance Companies

915 L Street, Suite 1160 • Sacramento, CA 95814 • (916) 442-4581 • Telecopier (916) 444-3872

EDWARD LEVY
GENERAL MANAGER

GEORGE W. TYE
EXECUTIVE MANAGER

DELIA M. CHILGREN
COUNSEL

DAVID E. FOUNTAIN
DIRECTOR OF PUBLIC INFORMATION

MEMORANDUM

April 28, 1989

TO: Members, Senate Insurance, Claims and Corporations
Committee

FROM: The Association of California Insurance Companies

RE: SENATE BILL 1363 (ROBBINS) - OPPOSE

On behalf of the Association of California Insurance Companies, we request your "NO" vote on Senate Bill 1363 (Robbins).

Senate Bill 1363 would impose a penalty of \$5,000 per day (\$55,000 per day if violations found willful) on any insurer found to have engaged in an unfair method of competition or an unfair or deceptive act of practices as defined in sections 79.03. Senate Bill 1363 prescribes a hearing process in which such a penalty would be imposed. Additional penalties would be imposed if an insurer failed to pay such a penalty.

In our view, current administrative procedures and sanctions are adequate. The new penalty provision is somewhat problematic, however, since it imposes a significant penalty for each day of an alleged violation. How, for example, would a delay in a single claims payment be handled - would the insurer be charged \$5,000 for each day of the delay? The result in such a case would be too harsh.

The changes in the administrative procedure for determining whether or not an insurer has violated the law is similarly confusing. The new provisions would require that the insurer respond to an order to show cause not only with a specific response to the statement made in the charges but also by indicating its "potential" liability - a matter which it does not determine.

We would be happy to work with the author, his staff, and all other interested parties in developing more realistic parameters for the imposition of penalties for unfair and deceptive



Association of
California
Insurance
Companies

EDWARD LEVY
GENERAL MANAGER

GEORGE W. TYE
EXECUTIVE MANAGER

DELIA M. CHILGREN
COUNSEL

DAVID E. FOUNTAIN
DIRECTOR OF PUBLIC INFORMATION

April 28, 1989

Honorable Alan Robbins
State Capitol
Room 5114
Sacramento, CA 95814

RE: SENATE BILL 1363

Dear Senator Robbins:

The Association of California Insurance Companies regret to advise your that it must take an opposed position with respect to your Senate Bill 1363.

Senate Bill 1363 would impose a penalty of \$5,000 per day (\$55,000 per day if violations found willful) on any insurer found to have engaged in an unfair method of competition or an unfair or deceptive act of practices as defined in sections 79.03. Senate Bill 1363 prescribes a hearing process in which such a penalty would be imposed. Additional penalties would be imposed if an insurer failed to pay such a penalty.

In our view, current administrative procedures and sanctions are adequate. The new penalty provision is somewhat problematic, however, since it imposes a significant penalty for each day of an alleged violation. How, for example, would a delay in a single claims payment be handled - would the insurer be charged \$5,000 for each day of the delay? The result in such a case would be too harsh.

The changes in the administrative procedure for determining whether or not an insurer has violated the law is similarly confusing. The new provisions would require that the insurer respond to an order to show cause not only with a specific response to the statement made in the charges but also by indicating its "potential" liability - a matter which it does not determine.

We would be happy to work with you, your staff, and all other interested parties in developing more realistic parameters for the imposition of penalties for unfair and deceptive practices by insurers. However, the bill in its current form imposes penalties and imposes burdens that are both confusing and unfair.

For these reasons, we must oppose your Senate Bill 1363.

Sincerely,

Delia M. Chilgren
Delia M. Chilgren

DMC:dkl

NEWS

FOR IMMEDIATE RELEASE
September 28, 1989

CONTACT: Jim Cathcart

From Senator ALAN ROBBINS

INSURANCE COMPANIES TO FACE STIFFER PENALTIES FOR ILLEGAL ACTS

Insurance Companies face new penalties for illegal acts today because two bills authored by Senator Alan Robbins (D-Van Nuys) were signed into law.

"Up until now," Robbins explained, "an insurance company that violated either the law governing rate setting or unfair practices was not fined for those violations unless the company had been specifically directed in writing to stop violating the law, and refused. It was a free first bite!"

The two bills, SB 1363 and SB 1364 change all that. Not only is an insurance company culpable for it's initial violation, the penalty is steep.

For unfair practices, fines are set at \$5,000 per violation, going up to \$10,000 if the Insurance Commissioner finds the violation is willful. Use of illegal rating practices also carries a \$5,000 fine per violation and \$10,000 if it is willful.

These fines are in addition to the present fines: \$5,000 if an insurance company doesn't obey a "cease and desist" order for an unfair practice, and a \$10,000 a day fine, with a limit of \$100,000, if a company persists in using a system to set rates that is found illegal.

#



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

Senate Policy Committee Materials

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SENATOR ALAN ROBBINS, CHAIRMAN

URGENCY

SENATE BILL NO. 1363 (Robbins) As Introduced March 9, 1989
Insurance Code

Source: Author

Prior Legislation: SB 1012 (Robbins) Chapter 953, Statutes of 1987

Support: Sacramento Urban League.

California Conference of Machinists

Congress of California Seniors

FAIR (Fair Automobile Insurance Rates)

California Commission on Aging

Opposition: Association of California Insurance Companies

SUBJECT

Increases penalties that may be assessed against insurers by the Insurance Commissioner for illegal acts under the Unfair Practices code sections.

DIGEST

1] **Description:** SB 1363 establishes a procedure for assessing monetary penalties for violations of the unfair or deceptive practices as defined in Insurance Code Section 790.03 as follows:

1. Any insurer that violates the unfair or deceptive practices sections is subject to a fine not to exceed \$5,000 each day the insurer engaged in that illegal act or practice or, if the act or practice is willful, a fine not to exceed \$55,000 for each day.
2. The Commissioner serves an order to show cause and a notice of hearing, along with a statement of the potential monetary fine. The hearing on the legality of these practices must take place within 30 days of serving the order on the insurer.
3. After the hearing, if the charges are upheld by the Commissioner, the Commissioner is required to issue a cease-and-desist order requiring the insurer to stop the practices found unfair or deceptive and pay the amount of the fine.
4. If the insurer fails to pay the penalty or violates the cease-and-desist order, the Commissioner may assess an additional \$5,000 fine, or if the violation is found to be willful, an additional \$55,000, in addition to licensee revocation procedures.

2] **Background:** Article 6.5 of the Insurance Code (commencing with Section 790), regulates insurance practices that constitute unfair methods of competition or unfair and deceptive acts or practices. If the Insurance Commissioner believes an insurer is violating the outlawed practices, she may issue a Cease and Desist Order after an initial hearing. If that practice is not discontinued, the Commissioner may petition the court

Senate Insurance, Claims and Corporations

Senate Bill No. 1363

Page 2

through the Attorney General for an appropriate order and assess a fine of up to \$5,000 or \$50,000 if the violation is proven to be willful.

Under Section 790.03, insurance companies are prohibited from engaging in such practices as:

1. Making misleading or false claims in advertising or presentations;
2. Making false claims regarding the practices or solvency of a competitor, or using boycotts, intimidation or other unreasonable restraints of trade;
3. Keeping false books;
4. Discriminating in the rates charged individuals in the same class of insurance;
5. Making claims the insurer is guaranteed or insured against insolvency; and
6. Committing a pattern of certain undesirable, specified practices in settling claims. (These claims settlement practices are contained in Section 790.03(h) that was the subject of review in both the Royal Globe and the Moradi-Shalal decisions.)

Last year, SB 1012 (Robbins) increased the amount of penalties from \$50 to \$5,000 for a violation of a cease and desist order or, if a willful violation, from \$500 to \$50,000.

FISCAL EFFECT Fiscal Committee: Yes

STAFF COMMENTS

The author is addressing three major deficiencies in the law:

1. **Inconsistent with Proposition 103 regulatory structure:** In light of the regulatory changes made effective by the passage of Proposition 103, the Commissioner is left without tools to induce compliance because she cannot mete out civil or criminal penalties until the insurer violates the cease-and-desist order. The timing of the fine doesn't allow it to be used as a deterrent, but it does work to reward those that profit from illegal acts.

Neither in the various codes governing regulation of businesses and professions nor in regulations for any industry governing itself such as that of securities representatives and brokers, could another system of penalties similar to that in Article 6.5 be found.

2. **Proportionate fines:** With the present limitation of \$5,000 maximum or, if found a willful violation, a \$55,000 maximum fine, there is no flexibility to design an assessment to reflect the actual severity of the

Senate Insurance, Claims and Corporations

Senate Bill No. 1363

Page 3

violation. The range of assessments provided for in SB 1363 would allow the Commissioner to differentiate between serious and lesser violations.

3. **No incentive to act lawfully:** With the repeal of the Royal Globe decision (that allowed third parties to file suit against an insurer believed to be delaying payment of claims), and the present structure of not fining for the illegal act but the violation of a cease-and-desist order, there is little incentive for insurance companies to refrain from unfair or deceptive practices. California Chief Justice Lucas in his majority opinion in Moradi-Shalal v. Fireman's Fund Insurance Companies, the case that overturned Royal Globe, states:

"We caution, however, that our decision is not an invitation to the insurance industry to commit the unfair practices proscribed by the Insurance Code. We urge the Insurance Commissioner and the courts to continue to enforce the laws forbidding such practices to the full extent consistent with our opinion."

This bill is consistent with the spirit of Moradi-Shalal by giving adequate power to the Commissioner to dissuade insurers from unfair practices, and by providing an incentive to the insurance industry to refrain from such practices. Under present law, the economic advantage of postponing settlements on a wide scale basis, for example, is not offset by any economic sanction.

4. In its letter of opposition, the Association of California Insurance Companies (ACIC) objects to the fines being assessed on a basis of each day of violation. ACIC reasons that: "Alleged violations of these particular sections are not cut-and-dried matters." To impose per day penalties when it is not clear that a violation has taken place until "... several months after the alleged violation has taken place" is "... draconian in nature," according to the ACIC letter.

5. SB 1363 is a companion bill to SB 1364 which deals with McBride-Grunsky rate violations.

NOTE: Amendments in committee change the fines applicable to unfair practices violations to be \$1,000 per violation or, if willful, \$5,000 per violation. Failure to pay an assessed fine, issued to the insurer with the initial cease-and-desist order, is considered a violation of that order and penalized as such.

LEAH CARTABRUNO
Consultant

SENATE BILL NO. 1363

05/03/89

SENATE THIRD READING

SB 1363 (Robbins) - As Amended: July 17, 1989

SENATE VOTE: 33-1

ASSEMBLY ACTIONS:

COMMITTEE FIN. & INS. VOTE 16-1 COMMITTEE W. & M. VOTE 17-1

Ayes: Johnston, Bader, Bane, Chacon, Ayes: Vasconcellos, Baker, Burton,
 Epple, Farr, Floyd, Katz, Clute, Felando, Friedman,
 Lancaster, Lewis, Margolin, Hannigan, Jones, Killea,
 Moore, O'Connell, Sher, Statham, Mojonnier, Nolan, O'Connell,
 Wright Roos, Roybal-Allard, Speier,
 M. Waters, Wright

Nays: D. Brown

Nays: D. Brown

DIGEST

Urgency statute. 2/3 vote required.

Existing law provides that:

- 1) The Insurance Commissioner, if he or she has reason to believe that a person subject to his or her jurisdiction is engaged in an unfair method of competition or any unfair or deceptive act, may initiate a hearing to determine whether a cease and desist order should be issued.
- 2) If such a cease and desist order has been issued and is violated, the commissioner may, after a hearing, impose a fine of \$5,000 for such a violation, unless the violation is willful. In the latter circumstance the penalty may not exceed \$55,000.

This bill:

- 1) Provides that persons engaging in unfair methods of competition or unfair or deceptive acts are liable to the state for a civil penalty, to be fixed by the commissioner, not to exceed \$5,000 for each act. If the act is willful, the maximum penalty is \$10,000. These penalties are made appealable.

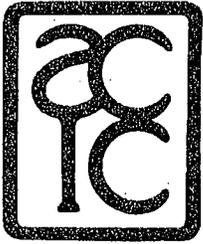
- continued -

- 2) Revises the procedure for cease and desist order hearings to a) notify parties of their potential liability, b) provide for a determination of whether penalties pursuant to this bill are appropriate, and c) to permit the issuance of orders to pay the penalty.
- 3) Authorizes, after an additional hearing, penalties for violations of cease and desist orders or orders to pay penalties of a) \$5,000 plus any prior penalties which remain unpaid or b) \$55,000 plus unpaid penalties in the case of willful violations.

FISCAL EFFECT

Minor revenue increases to the Department of Insurance based upon the expanded penalty authority contained in this bill.

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Association of
California
Insurance
Companies

EDWARD LEVY
GENERAL MANAGER

GEORGE W. TYE
EXECUTIVE MANAGER

DELIA M. CHILGREN
COUNSEL

DAVID E. FOUNTAIN
DIRECTOR OF PUBLIC INFORMATION

April 28, 1989

Honorable Alan Robbins
State Capitol
Room 5114
Sacramento, CA 95814

RE: SENATE BILL 1363

Dear Senator Robbins:

The Association of California Insurance Companies regret to advise your that it must take an opposed position with respect to your Senate Bill 1363.

Senate Bill 1363 would impose a penalty of \$5,000 per day (\$55,000 per day if violations found willful) on any insurer found to have engaged in an unfair method of competition or an unfair or deceptive act of practices as defined in sections 79.03. Senate Bill 1363 prescribes a hearing process in which such a penalty would be imposed. Additional penalties would be imposed if an insurer failed to pay such a penalty.

In our view, current administrative procedures and sanctions are adequate. The new penalty provision is somewhat problematic, however, since it imposes a significant penalty for each day of an alleged violation. How, for example, would a delay in a single claims payment be handled - would the insurer be charged \$5,000 for each day of the delay? The result in such a case would be too harsh.

The changes in the administrative procedure for determining whether or not an insurer has violated the law is similarly confusing. The new provisions would require that the insurer respond to an order to show cause not only with a specific response to the statement made in the charges but also by indicating its "potential" liability - a matter which it does not determine.

We would be happy to work with you, your staff, and all other interested parties in developing more realistic parameters for the imposition of penalties for unfair and deceptive practices by insurers. However, the bill in its current form imposes penalties and imposes burdens that are both confusing and unfair.

For these reasons, we must oppose your Senate Bill 1363.

Sincerely,

Delia M. Chilgren
Delia M. Chilgren

DMC:dkl

UNFAIR CLAIM PRACTICES: INSURANCE DEPARTMENT'S ENFORCEMENT ROLE

The Insurance Department will proceed vigorously against unfair claims practices based on information received from individual complaints by policyholders or liability claimants, market conduct examinations, or any other reliable sources.

The department will investigate thoroughly all specific allegations. If the investigation, which may include a full market conduct examination at the insurer's expense, reveals credible evidence that Section 790.03 (h) has been violated, the department will act promptly to resolve the complaint and abate violations by resort to any and all means available under law and appropriate to the circumstances. These measures could range from the informal complaint resolution procedures authorized by CIC Section 12921.3 to formal enforcement proceedings. The Supreme Court's opinion in Moradi-Shalal "leaves available the imposition of substantial administrative sanctions by the Insurance Commissioner" under Section 790.03-790.09. (250 Cal.Rptr., p. 126.) These sanctions include issuance of cease and desist orders to enjoin violations of Section 790.03. (See Section 790.05.) Willful violation of such orders can result in a maximum fine of \$55,000; repeated violations may result in suspension of the insurer's license for up to a year. (Section 790.07.)

Further, Section 790.08 specifies that the powers vested in the Commissioner by the Unfair Practices Act are additional to her other powers. Consequently, the department possesses a side array of alternate remedies under other statutes for use in proper cases, including fines (CIC Section 704.7), suspension or even revocation of a certificate of authority (see CIC Section 704), conservation actions (CIC Section 1011 (e)), and administrative injunctions (CIC Sections 1065.1 - 1065.7, incorporating all grounds for instituting conservation proceedings).

We should recognize that third-party complaints differ from first-party policyholder complaints. An insurer's obligation to its policyholder is governed by the terms of the insurance contract. The department can evaluate that obligation by reviewing the policy terms and the policyholder's evidence of loss. The insurer's obligation to a third-party claimant, by contrast, depends also on the existence and extent of liability, as well as the legal measure of damages.

This department lacks authority to adjudicate questions of liability and damages. The acts and practices prohibited by Section 790.03 (h) involve either conduct unrelated to determination of those aspects or situations where they are clear. When liability or damages are at issue, the department must defer to judges and juries authorized by law to decide those questions. However, if determining liability or damages is not essential to evaluate an insurer's conduct, the department should proceed as previously described. Examples of third-party complaints which could prompt department action include, without limitation, instances in which an insurer assumed liability but has never paid the claim; where liability is obvious but no settlement was offered or negotiated; where the insurer unreasonably offered far less than the documented damages within the policy limits; where the insurer failed to send correspondence acknowledging receipt of a third-party claim; and where liability was obvious but an insurer made repeated demands for the same or additional information to the point of harassment.

The department's action in regard to complaints should serve to demonstrate its determination to enforce Section 799.03 to the full extent permitted by law, so that insurers will review and revise their claims practices accordingly, if necessary. Moreover, although the primary focus herein, like the Moradi-Shalal decision, has been subpart (h) of Section 790.03, the policies and procedures described herein will apply as well to all other pertinent subparts of Section 790.-03. Section 790.03 is not an exhaustive listing of unfair methods of competition or, unfair and deceptive acts or practices. Section 790.05 affords the commissioner authority to investigate conduct not included in Section 790.03, and to determine that it constitutes unfair competition or is unfair or deceptive.

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

910 K STREET, SUITE 300

SACRAMENTO, CA 95814



May 15, 1989

Honorable Milton Marks
State Senate
State Capitol, Room 5035
Sacramento, California, 95814

Subject: Senate Bill No. 1329

Dear Senator Marks:

This is to advise you that the Department of Insurance OPPOSES Senate Bill No. 1329, which reinstates the holding of Royal Globe Insurance Company v. Superior Court 23 Cal. 3d 880, 153 Cal. Rptr. 842.

The California Supreme Court in the original Royal Globe Insurance Company vs. Superior Court generally held that subdivision (h) of Section 790.03 of the Insurance Code, and Section 790.09 of the Insurance Code, created a private cause of action by insureds or third party claimants against insurers engaging in unfair claims settlement practices.

In 1988, the Supreme Court overruled the holding of the Royal Globe case in Moradi-Shalal v. Fireman's Fund. This bill would restore the holding in the original Royal Globe case.

In overruling Royal Globe, the court in the Moradi-Shalal case pointed to the penalties which may be imposed upon insurers by the insurance commissioner, including the issuance of a cease and desist order to enjoin further violations, a maximum fine for willful violation of the cease and desist order, and the suspension of an insurer's certificate of authority for repeated violations.

The Supreme Court noted that courts "retain jurisdiction to impose civil damages or other remedies against insurers in appropriate common law actions based on such traditional theories as fraud, infliction of emotional distress, and (as to the insured) either breach of contract or breach of the implied covenant of good faith and fair dealing."

May 15, 1989

page two

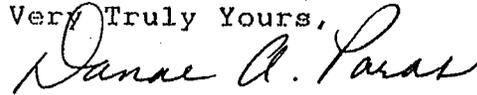
The Moradi Shalal case was decided in 1988. We know of no public outcry for the reinstatement of Royal Globe, and believe that it is premature to reinstate the holding in that case. However, it would be appropriate to strengthen the procedures and penalty provisions in the law.

The department has developed guidelines for administrative enforcement under current law and has provided additional training for its attorneys in keeping with the court's recent ruling.

For the above reasons, the Department of Insurance OPPOSES SB 1329.

Please do not hesitate to contact me should you have any questions concerning the department's position.

Very Truly Yours,



DANAE PARAS

Legislative Counsel

cc: Senate Insurance Claims and Corporations Committee

DP/gf

AMENDMENTS TO SENATE BILL NO. 1363

Amendment 1

On page 2, strike out lines 6 to 11 inclusive and insert:

a civil penalty not to exceed one thousand dollars (\$1,000) for each act, or, if the act or practice was willful, a civil penalty not to exceed five thousand dollars (\$5,000).

Amendment 2

On page 3, line 19, strike out the words "or has" and strike out line 20 and insert:

the

Amendment 3

On page 3, between lines 29 and 30 insert:

For the purposes of this section, the failure to pay any penalty imposed pursuant to Section 790.03 which has become final shall constitute a violation of a cease and desist order under this section.



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

Senate Fiscal Committee Materials

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SENATE BILL NO. 1363 (Robbins) As Introduced March 9, 1989
Insurance Code

Source: Author

Prior Legislation: SB 1012 (Robbins) Chapter 953, Statutes of 1987

Support: Sacramento Urban League
California Conference of Machinists
Congress of California Seniors
FAIR (Fair Automobile Insurance Rates)
California Commission on Aging

Opposition: Association of California Insurance Companies

SUBJECT

Increases penalties that may be assessed against insurers by the Insurance Commissioner for illegal acts under the Unfair Practices code sections.

DIGEST

1] Description: SB 1363 establishes a procedure for assessing monetary penalties for violations of the unfair or deceptive practices as defined in Insurance Code Section 790.03 as follows:

1. Any insurer that violates the unfair or deceptive practices sections is subject to a fine not to exceed \$5,000 each day the insurer engaged in that illegal act or practice or, if the act or practice is willful, a fine not to exceed \$55,000 for each day.
2. The Commissioner serves an order to show cause and a notice of hearing, along with a statement of the potential monetary fine. The hearing on the legality of these practices must take place within 30 days of serving the order on the insurer.
3. After the hearing, if the charges are upheld by the Commissioner, the Commissioner is required to issue a cease-and-desist order requiring the insurer to stop the practices found unfair or deceptive and pay the amount of the fine.
4. If the insurer fails to pay the penalty or violates the cease-and-desist order, the Commissioner may assess an additional \$5,000 fine, or if the violation is found to be willful, an additional \$55,000, in addition to licensee revocation procedures.

2] Background: Article 6.5 of the Insurance Code (commencing with Section 790), regulates insurance practices that constitute unfair methods of competition or unfair and deceptive acts or practices. If the Insurance Commissioner believes an insurer is violating the outlawed practices, she

may issue a Cease and Desist Order after an initial hearing. If that practice is not discontinued, the Commissioner may petition the court through the Attorney General for an appropriate order and assess a fine of up to \$5,000 or \$50,000 if the violation is proven to be willful.

Under Section 79C.03, insurance companies are prohibited from engaging in such practices as:

1. Making misleading or false claims in advertising or presentations;
2. Making false claims regarding the practices or solvency of a competitor, or using boycotts, intimidation or other unreasonable restraints of trade;
3. Keeping false books;
4. Discriminating in the rates charged individuals in the same class of insurance;
5. Making claims the insurer is guaranteed or insured against insolvency; and
6. Committing a pattern of certain undesirable, specified practices in settling claims. (These claims settlement practices are contained in Section 790.03(h) that was the subject of review in both the Royal Globe and the Moradi-Shalal decisions.)

Last year, SB 1012 (Robbins) increased the amount of penalties from \$50 to \$5,000 for a violation of a cease and desist order or, if a willful violation, from \$500 to \$50,000.

FISCAL EFFECT Fiscal Committee: Yes

STAFF COMMENTS

The author is addressing three major deficiencies in the law:

1. **Inconsistent with Proposition 103 regulatory structure:** In light of the regulatory changes made effective by the passage of Proposition 103, the Commissioner is left without tools to induce compliance because she cannot mete out civil or criminal penalties until the insurer violates the cease-and-desist order. The timing of the fine doesn't allow it to be used as a deterrent, but it does work to reward those that profit from illegal acts.

Neither in the various codes governing regulation of businesses and professions nor in regulations for any industry governing itself such as that of securities representatives and brokers, could another system of penalties similar to that in Article 6.5 be found.

2. **Proportionate fines:** With the present limitation of \$5,000 maximum or, if found a willful violation, a \$55,000 maximum fine, there is no flexibility to design an assessment to reflect the actual severity of the violation. The range of assessments provided for in SB 1363 would allow the Commissioner to differentiate between serious and lesser violations.

3. **No incentive to act lawfully:** With the repeal of the Royal Globe decision (that allowed third parties to file suit against an insurer believed to be delaying payment of claims), and the present structure of not fining for the illegal act but the violation of a cease-and-desist order, there is little incentive for insurance companies to refrain from unfair or deceptive practices. California Chief Justice Lucas in his majority opinion in Moradi-Shalal v. Fireman's Fund Insurance Companies, the case that overturned Royal Globe, states:

"We caution, however, that our decision is not an invitation to the insurance industry to commit the unfair practices proscribed by the Insurance Code. We urge the Insurance Commissioner and the courts to continue to enforce the laws forbidding such practices to the full extent consistent with our opinion."

This bill is consistent with the spirit of Moradi-Shalal by giving adequate power to the Commissioner to dissuade insurers from unfair practices, and by providing an incentive to the insurance industry to refrain from such practices. Under present law, the economic advantage of postponing settlements on a wide scale basis, for example, is not offset by any economic sanction.

4. In its letter of opposition, the Association of California Insurance Companies (ACIC) objects to the fines being assessed on a basis of each day of violation. ACIC reasons that: "Alleged violations of these particular sections are not cut-and-dried matters." To impose per day penalties when it is not clear that a violation has taken place until "... several months after the alleged violation has taken place" is "... draconian in nature," according to the ACIC letter.

5. SB 1363 is a companion bill to SB 1364 which deals with McBride-Grunsky rate violations.

LEAH CARTABRUNO
Consultant

SENATE BILL NO. 1363

05/03/89

Honorable Alan Robbins
 Member of the Senate
 State Capitol, Room 5114
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Robbins	BILL NUMBER SB 1363
SPONSORED BY	RELATED BILLS	AMENDMENT DATE May 9, 1989

BILL SUMMARY

INSURER PENALTIES FOR UNFAIR PRACTICES

This bill would authorize the Insurance Commissioner to assess specified fines for violations of existing law relating to unfair practices and deceptive acts.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1988-89	FC 1989-90	FC 1990-91	
2290 - Insurance	SO	-----See Fiscal Analysis-----			

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Existing law provides that if an insurer violates certain statutory provisions relating to unfair practices and deceptive acts, the Insurance Commissioner may hold a hearing to determine whether a violation exists. If, after a hearing, the Commissioner determines that any act or practice by an insurer is in violation of law, the Commissioner may issue an order requiring the insurer to cease and desist. Under existing law, an insurer is not liable for a penalty unless it violates the order issued by the Commissioner.

This bill would provide that an insurer that violates statutory provisions relating to unfair practices or deceptive acts before an order is issued by the Commissioner is liable for a penalty of up to \$1,000 for each act, or \$5,000 for each act for a willful violation. The penalty would be assessed by the Commissioner in connection with the hearing on the order.

This bill is intended to discourage insurance companies from violating existing unfair practices and deceptive acts statutes.

B. Fiscal Analysis

This bill would not increase state agency expenditures but has the potential for increasing General Fund revenue from fines and penalties. However, neither the number of violations that may occur nor the number that would result in a fine or a penalty can be predicted at this time.

POSITION: Neutral	Department Director	Date
Principal Analyst (743) E. Juliusson	Date	Program Budget Manager (700) Wallis L. Clark
<i>E. Juliusson</i> 5/22/89		<i>Wallis L. Clark</i> 5/22/89
FR1p/0162F		Governor's Office Position noted Position approved Position disapproved by: _____ date: _____



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

Office of Senate Floor Analyses Materials

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THIRD READING

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 1363
	Author:	Robbins (D)
	Amended:	5/9/89
	Vote Required:	2/3 - Urgency

Committee Votes:

Senate Floor Vote:

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.:	SB 1363	
DATE OF HEARING:	5-3-89	
SENATORS:	AYE	NO
Davis	✓	
Deddeh	✓	
Doolittle		✓
Cecil Green	✓	
Keene		
McCorquodale		
Montoya	✓	
Nielsen (VC)		✓
Robbins (Ch)	✓	
TOTAL:	5	2

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Assembly Floor Vote:

SUBJECT: Insurance: unfair practices penalties

SOURCE: Author

DIGEST: This bill provides that a person engaged in the business of insurance who violates provisions relating to unfair and deceptive acts is liable for a penalty of up to \$1,000 for each act, or \$5,000 for a willful violation for each act. The penalty would be assessed by the Insurance Commissioner in connection with the cease and desist order. A failure to pay the penalty would constitute a violation of the cease and desist order. (See analysis below for specifics.)

ANALYSIS: Article 6.5 of the Insurance Code (commencing with Section 790), regulates insurance practices that constitute unfair methods of competition or unfair and deceptive acts or practices. If the Insurance Commissioner believes an insurer is violating the outlawed practices, she may issue a Cease and Desist Order after an initial hearing. If that practice is not discontinued, the Commissioner may petition the court through the Attorney General for an appropriate order and assess a fine of up to \$5,000 or \$50,000 if the violation is proven to be willful.

Under Section 790.03, insurance companies are prohibited from engaging in such practices as:

1. Making misleading or false claims in advertising or presentations;
2. Making false claims regarding the practices or solvency of a competitor, or using boycotts, intimidation or other unreasonable restraints of trade;

CONTINUED

3. Keeping false books;
4. Discriminating in the rates charged individuals in the same class of insurance;
5. Making claims the insurer is guaranteed or insured against insolvency; and
6. Committing a pattern of certain undesirable, specified practices in settling claims. (These claims settlement practices are contained in Section 790.03(h) that was the subject of review in both the Royal Globe and the Moradi-Shalal decisions.)

Last year, SB 1012 (Robbins) increased the amount of penalties from \$50 to \$5,000 for a violation of a cease and desist order or, if a willful violation, from \$500 to \$50,000.

SB 1363 establishes a procedure for assessing monetary penalties for violations of the unfair or deceptive practices as defined in Insurance Code Section 790.03 as follows:

1. Any insurer that violates the unfair or deceptive practices sections is subject to a fine not to exceed \$1,000 each illegal act or practice or, if the act or practice is willful, a fine not to exceed \$5,000 for each act.
2. The Commissioner serves an order to show cause and a notice of hearing, along with a statement of the potential monetary fine. The hearing on the legality of these practices must take place within 30 days of serving the order on the insurer.
3. After the hearing, if the charges are upheld by the Commissioner, the Commissioner is required to issue a cease-and-desist order requiring the insurer to stop the practices found unfair or deceptive and pay the amount of the fine.
4. If the insurer fails to pay the penalty or violates the cease-and-desist order, the Commissioner may assess an additional \$5,000 fine, or if the violation is found to be willful, an additional \$55,000, in addition to licensee revocation procedures.

Prior legislation: SB 1012 (Robbins) - Chapter 953, Statutes of 1987.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

SUPPORT: (Verified 5/24/89)

Sacramento Urban League
California Conference of Machinists
Congress of California Seniors
FAIR (Fair Automobile Insurance Rates)
California Commission on Aging

CONTINUED

ARGUMENTS IN SUPPORT: According to the author's office, SB 1363 is addressing three major deficiencies in the law:

1. Inconsistent with Proposition 103 regulatory structure: In light of the regulatory changes made effective by the passage of Proposition 103, the Commissioner is left without tools to induce compliance because she cannot mete out civil or criminal penalties until the insurer violates the cease-and-desist order. The timing of the fine doesn't allow it to be used as a deterrent, but it does work to reward those that profit from illegal acts.

Neither in the various codes governing regulation of businesses and professions nor in regulations for any industry governing itself such as that of securities representatives and brokers, could another system of penalties similar to that in Article 6.5 be found.

2. Proportionate fines: With the present limitation of \$5,000 maximum or, if found a willful violation, a \$55,000 maximum fine, there is no flexibility to design an assessment to reflect the actual severity of the violation. The range of assessments provided for in SB 1363 would allow the Commissioner to differentiate between serious and lesser violations.
3. No incentive to act lawfully: With the repeal of the Royal Globe decision (that allowed third parties to file suit against an insurer believed to be delaying payment of claims), and the present structure of not fining for the illegal act but the violation of a cease-and-desist order, there is little incentive for insurance companies to refrain from unfair or deceptive practices. California Chief Justice Lucas in his majority opinion in Moradi-Shalal v. Fireman's Fund Insurance Companies, the case that overturned Royal Globe, states:

"We caution, however, that our decision is not an invitation to the insurance industry to commit the unfair practices proscribed by the Insurance Code. We urge the Insurance Commissioner and the courts to continue to enforce the laws forbidding such practices to the full extent consistent with our opinion."

This bill is consistent with the spirit of Moradi-Shalal by giving adequate power to the Commissioner to dissuade insurers from unfair practices, and by providing an incentive to the insurance industry to refrain from such practices. Under present law, the economic advantage of postponing settlements on a wide scale basis, for example, is not offset by any economic sanction.

SB 1363 is a companion bill to SB 1364, which deals with McBride-Grunsky rate violations.

DLW:jk 5/24/89 Senate Floor Analyses

UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No.	SB 1363
	Author:	Robbins (D)
	Amended:	9/11/89 in Assembly
	Vote Required:	2/3 - Urgency

Committee Votes:

Senate Floor Vote: Page 1755, 6/1/89

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.:	SB 1363	
DATE OF HEARING:	5-3-89	
SENATORS:	AYE	NO
Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Deddeh	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Doolittle	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cecil Green	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Keene	<input type="checkbox"/>	<input type="checkbox"/>
McCorquodale	<input type="checkbox"/>	<input type="checkbox"/>
Montoya	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Nielsen (VC)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Robbins (Ch)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TOTAL:	5	2

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

Senate Bill 1363—An act to amend Sections 790.05 and 790.07 of, and to add Section 790.035 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

Bill read third time and presented by Senator Robbins.

Roll Call

The roll was called and the bill was passed by the following vote:
AYES (33)—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Campbell, Craven, Davis, Deddeh, Dills, Garamendi, Cecil Green, Bill Greene, Leroy Greene, Hart, Keene, Kopp, Lockyer, Marks, McCorquodale, Mello, Montoya, Morgan, Petris, Presley, Robbins, Roberti, Rosenthal, Russell, Stirling, Torres, Vuich, and Watson.

NOES (1)—Senator Doolittle.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote: 69-2, P. 4675, 9/12/89

SUBJECT: Insurance: unfair practices penalties

SOURCE: Author

DIGEST: This bill provides that a person engaged in the business of insurance who violates provisions relating to unfair and deceptive acts is liable for a penalty of up to \$5,000 for each act, or \$10,000 for a willful violation for each act. The penalty would be assessed by the Insurance Commissioner in connection with the cease and desist order. A failure to pay the penalty would constitute a violation of the cease and desist order. (See analysis below for specifics.)

Assembly Amendment:

- Increases the penalty from \$1,000 to \$5,000 for each act that is violated and \$5,000 for \$10,000 for a willful violation for each act.
- Clarifies that the penalties are appealable by means of any remedy provided by existing law.
- The Insurance Commissioner shall have the discretion to establish what constitutes an act under this bill. However, when the issuance, amendment, or servicing of a policy or endorsement is inadvertent, all of those acts shall be a single act for the purposes of this section.

ANALYSIS: Article 6.5 of the Insurance Code (commencing with Section 790), regulates insurance practices that constitute unfair methods of competition or unfair and deceptive acts or practices. If the Insurance Commissioner believes

an insurer is violating the outlawed practices, she may issue a Cease and Desist Order after an initial hearing. If that practice is not discontinued, the Commissioner may petition the court through the Attorney General for an appropriate order and assess a fine of up to \$5,000 or \$50,000 if the violation is proven to be willful.

Under Section 790.03, insurance companies are prohibited from engaging in such practices as:

1. Making misleading or false claims in advertising or presentations;
2. Making false claims regarding the practices or solvency of a competitor, or using boycotts, intimidation or other unreasonable restraints of trade;
3. Keeping false books;
4. Discriminating in the rates charged individuals in the same class of insurance;
5. Making claims the insurer is guaranteed or insured against insolvency; and
6. Committing a pattern of certain undesirable, specified practices in settling claims. (These claims settlement practices are contained in Section 790.03(h) that was the subject of review in both the Royal Globe and the Moradi-Shalal decisions.)

Last year, SB 1012 (Robbins) increased the amount of penalties from \$50 to \$5,000 for a violation of a cease and desist order or, if a willful violation, from \$500 to \$50,000.

SB 1363 establishes a procedure for assessing monetary penalties for violations of the unfair or deceptive practices as defined in Insurance Code Section 790.03 as follows:

1. Any insurer that violates the unfair or deceptive practices sections is subject to a fine not to exceed \$5,000 each illegal act or practice or, if the act or practice is willful, a fine not to exceed \$10,000 for each act.
2. The Commissioner serves an order to show cause and a notice of hearing, along with a statement of the potential monetary fine. The hearing on the legality of these practices must take place within 30 days of serving the order on the insurer.
3. After the hearing, if the charges are upheld by the Commissioner, the Commissioner is required to issue a cease-and-desist order requiring the insurer to stop the practices found unfair or deceptive and pay the amount of the fine.
4. If the insurer fails to pay the penalty or violates the cease-and-desist order, the Commissioner may assess an additional \$5,000 fine, or if the violation is found to be willful, an additional \$55,000, in addition to licensee revocation procedures.

CONTINUED

Prior legislation: SB 1012 (Robbins) - Chapter 953, Statutes of 1987.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

The bill could result in unknown revenue to the General Fund from penalties imposed on persons in the insurance business found to engage in unfair or deceptive acts.

SUPPORT: (Verified 9/13/89)

Sacramento Urban League
California Conference of Machinists
Congress of California Seniors
FAIR (Fair Automobile Insurance Rates)
California Commission on Aging

ARGUMENTS IN SUPPORT: According to the author's office, SB 1363 is addressing three major deficiencies in the law:

1. Inconsistent with Proposition 103 regulatory structure: In light of the regulatory changes made effective by the passage of Proposition 103, the Commissioner is left without tools to induce compliance because she cannot mete out civil or criminal penalties until the insurer violates the cease-and-desist order. The timing of the fine doesn't allow it to be used as a deterrent, but it does work to reward those that profit from illegal acts.

Neither in the various codes governing regulation of businesses and professions nor in regulations for any industry governing itself such as that of securities representatives and brokers, could another system of penalties similar to that in Article 6.5 be found.

2. Proportionate fines: With the present limitation of \$5,000 maximum or, if found a willful violation, a \$55,000 maximum fine, there is no flexibility to design an assessment to reflect the actual severity of the violation. The range of assessments provided for in SB 1363 would allow the Commissioner to differentiate between serious and lesser violations.
3. No incentive to act lawfully: With the repeal of the Royal Globe decision (that allowed third parties to file suit against an insurer believed to be delaying payment of claims), and the present structure of not fining for the illegal act but the violation of a cease-and-desist order, there is little incentive for insurance companies to refrain from unfair or deceptive practices. California Chief Justice Lucas in his majority opinion in Moradi-Shalal v. Fireman's Fund Insurance Companies, the case that overturned Royal Globe, states:

"We caution, however, that our decision is not an invitation to the insurance industry to commit the unfair practices proscribed by the Insurance Code. We urge the Insurance Commissioner and the courts to continue to enforce the laws forbidding such practices to the full extent consistent with our opinion."

CONTINUED

This bill is consistent with the spirit of Moradi-Shalal by giving adequate power to the Commissioner to dissuade insurers from unfair practices, and by providing an incentive to the insurance industry to refrain from such practices. Under present law, the economic advantage of postponing settlements on a wide scale basis, for example, is not offset by any economic sanction.

SB 1363 is a companion bill to SB 1364 which deals with McBride-Grunsky rate violations.

ASSEMBLY FLOOR VOTE:

SENATE BILL NO. 1363 (Robbins)—An act to amend Sections 790.05 and 790.07 of the Insurance Code, and to add Section 790.035 to the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

Bill read third time, and presented by Assembly Member Bane.

The question being on the passage of the bill.

Bill passed by the following vote:

AYES—69

- | | | | |
|----------|----------|-----------|----------------|
| Allen | Elder | Johnston | Pringle |
| Aréias | Epple | Jones | Quackenbush |
| Bader | Farr | Katz | Roos |
| Baker | Felando | Kelley | Roybal-Allard |
| Bane | Ferguson | Klehs | Seastrand |
| Bates | Filante | Lancaster | Speier |
| Bentley | Floyd | Lempert | Statham |
| Bronzan | Frazee | Leslie | Tanner |
| Calderon | Friedman | Lewis | Vasconcellos |
| Campbell | Hannigan | Margolin | Waters, Maxine |
| Chacon | Hansen | Mojonnier | Waters, Norman |
| Chandler | Harris | Moore | Woodruff |
| Clute | Harvey | Mountjoy | Wright |
| Connelly | Hauser | Murray | Wyman |
| Cortese | Hayden | Nolan | Mr. Speaker |
| Costa | Hill | O'Connell | |
| Eastin | Hughes | Peace | |
| Eaves | Isenberg | Polanco | |

NOES—2

- | | |
|---------------|------------|
| Brown, Dennis | McClintock |
|---------------|------------|

Bill ordered transmitted to the Senate.



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
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Assembly Policy Committee Materials

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ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE

Patrick Johnston, Chairman

BACKGROUND INFORMATION REQUEST

Measure: SB 1363
Author : Senator Robbins

1. Origin of the bill:

a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
author

b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.
no

c. Has there been an interim committee report on the bill? If so, please identify the report.
no

2. What is the problem or deficiency in the present law which the bill seeks to remedy?

Under present law, insurance companies committing unfair or deceptive practices cannot be fined unless they continue the practice after the Insurance Commissioner issues a cease-and-desist order. This bill will make the insurance companies liable for the initial act.

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

A copy of the Senate ICC analysis is attached.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared.

An amendment requested by the Insurance Department is planned, considered technical by the author.*

5. List the witnesses you plan to have testify.

Not known at this time.

RETURN THIS FORM TO: ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE
Phone 445-9160

Questions should be directed to Leah Cartabruno at 5-0825.

* amended bill attached.

SENATOR ALAN ROBBINS, CHAIRMAN

URGENCY

SENATE BILL NO. 1363 (Robbins) As Introduced March 9, 1989
Insurance Code

Source: Author

Prior Legislation: SB 1012 (Robbins) Chapter 953, Statutes of 1987

Support: Sacramento Urban League
California Conference of Machinists
Congress of California Seniors
FAIR (Fair Automobile Insurance Rates)
California Commission on Aging

Opposition: Association of California Insurance Companies

SUBJECT

Increases penalties that may be assessed against insurers by the Insurance Commissioner for illegal acts under the Unfair Practices code sections.

DIGEST

1] Description: SB 1363 establishes a procedure for assessing monetary penalties for violations of the unfair or deceptive practices as defined in Insurance Code Section 790.03 as follows:

1. Any insurer that violates the unfair or deceptive practices sections is subject to a fine not to exceed \$5,000 each day the insurer engaged in that illegal act or practice or, if the act or practice is willful, a fine not to exceed \$55,000 for each day.
2. The Commissioner serves an order to show cause and a notice of hearing, along with a statement of the potential monetary fine. The hearing on the legality of these practices must take place within 30 days of serving the order on the insurer.
3. After the hearing, if the charges are upheld by the Commissioner, the Commissioner is required to issue a cease-and-desist order requiring the insurer to stop the practices found unfair or deceptive and pay the amount of the fine.
4. If the insurer fails to pay the penalty or violates the cease-and-desist order, the Commissioner may assess an additional \$5,000 fine, or if the violation is found to be willful, an additional \$55,000, in addition to licensee revocation procedures.

2] Background: Article 6.5 of the Insurance Code (commencing with Section 790), regulates insurance practices that constitute unfair methods of competition or unfair and deceptive acts or practices. If the Insurance Commissioner believes an insurer is violating the outlawed practices, she

may issue a Cease and Desist Order after an initial hearing. If that practice is not discontinued, the Commissioner may petition the court through the Attorney General for an appropriate order and assess a fine of up to \$5,000 or \$50,000 if the violation is proven to be willful.

Under Section 790.03, insurance companies are prohibited from engaging in such practices as:

1. Making misleading or false claims in advertising or presentations;
2. Making false claims regarding the practices or solvency of a competitor, or using boycotts, intimidation or other unreasonable restraints of trade;
3. Keeping false books;
4. Discriminating in the rates charged individuals in the same class of insurance;
5. Making claims the insurer is guaranteed or insured against insolvency; and
6. Committing a pattern of certain undesirable, specified practices in settling claims. (These claims settlement practices are contained in Section 790.03(h) that was the subject of review in both the Royal Globe and the Moradi-Shalal decisions.)

Last year, SB 1012 (Robbins) increased the amount of penalties from \$50 to \$5,000 for a violation of a cease and desist order or, if a willful violation, from \$500 to \$50,000.

FISCAL EFFECT Fiscal Committee: Yes

STAFF COMMENTS

The author is addressing three major deficiencies in the law:

1. **Inconsistent with Proposition 103 regulatory structure:** In light of the regulatory changes made effective by the passage of Proposition 103, the Commissioner is left without tools to induce compliance because she cannot mete out civil or criminal penalties until the insurer violates the cease-and-desist order. The timing of the fine doesn't allow it to be used as a deterrent, but it does work to reward those that profit from illegal acts.

Neither in the various codes governing regulation of businesses and professions nor in regulations for any industry governing itself such as that of securities representatives and brokers, could another system of penalties similar to that in Article 6.5 be found.

Senate Insurance, Claims and Corporations

Senate Bill No. 1363

Page 3

2. **Proportionate fines:** With the present limitation of \$5,000 maximum or, if found a willful violation, a \$55,000 maximum fine, there is no flexibility to design an assessment to reflect the actual severity of the violation. The range of assessments provided for in SB 1363 would allow the Commissioner to differentiate between serious and lesser violations.

3. **No incentive to act lawfully:** With the repeal of the Royal Globe decision (that allowed third parties to file suit against an insurer believed to be delaying payment of claims), and the present structure of not fining for the illegal act but the violation of a cease-and-desist order, there is little incentive for insurance companies to refrain from unfair or deceptive practices. California Chief Justice Lucas in his majority opinion in Moradi-Shalal v. Fireman's Fund Insurance Companies, the case that overturned Royal Globe, states:

"We caution, however, that our decision is not an invitation to the insurance industry to commit the unfair practices proscribed by the Insurance Code. We urge the Insurance Commissioner and the courts to continue to enforce the laws forbidding such practices to the full extent consistent with our opinion."

This bill is consistent with the spirit of Moradi-Shalal by giving adequate power to the Commissioner to dissuade insurers from unfair practices, and by providing an incentive to the insurance industry to refrain from such practices. Under present law, the economic advantage of postponing settlements on a wide scale basis, for example, is not offset by any economic sanction.

4. In its letter of opposition, the Association of California Insurance Companies (ACIC) objects to the fines being assessed on a basis of each day of violation. ACIC reasons that: "Alleged violations of these particular sections are not cut-and-dried matters." To impose per day penalties when it is not clear that a violation has taken place until "... several months after the alleged violation has taken place" is "... draconian in nature," according to the ACIC letter.

5. SB 1363 is a companion bill to SB 1364 which deals with McBride-Grunsky rate violations.

LEAH CARTABRUNO
Consultant

SENATE BILL NO. 1363

05/03/89

BILL ANALYSIS SB 1363 08/30/89 L.A.O.

RECORD 14697

SB 1363--contd

-1-

Legislative Analyst
August 14, 1989ANALYSIS OF SENATE BILL NO. 1363 (Robbins)
As Amended in Assembly July 17, 1989
1989-90 Session

Fiscal Effect:

Cost: None.Revenue: Unknown potential revenue to the General Fund to the extent additional civil penalties are imposed on persons in the insurance business who engaged in unfair or deceptive acts.

Analysis:

This bill provides that persons in the insurance business who engage in unfair or deceptive acts are liable for civil penalties of up to \$5,000 per act, or up to \$10,000 per willful act, which leads to a cease and desist order issued by the Insurance Commissioner.

Under current law, the Commissioner may hold hearings and order persons in the insurance business to cease and desist from engaging in unfair or deceptive acts. A person violating such a cease and desist order is liable for civil penalties of up to \$5,000 per act, or up to \$55,000 per willful act, for a violation of that order.

The penalties authorized by this measure would be imposed by the Commissioner for the initial act or acts giving rise to such a cease and desist order. Failure to pay penalties imposed under this measure would be a violation of the cease and desist order.

SB 1363--contd

-2-

Fiscal Effect

The bill could result in unknown revenue to the General Fund from penalties imposed on persons in the insurance business found to engage in unfair or

deceptive acts.

84:81/s8

BILL ANALYSIS SB 1363 09/11/89 SEN. F. A.
UNFINISHED BUSINESS

RECORD 17505

SB 1363

Robbins (D)

9/11/89 in Assembly

2/3 - Urgency

Page 1755, 6/1/89

9/12/89

69-2, P. 4675,

SUBJECT: Insurance: unfair practices penalties

SOURCE: Author

DIGEST: This bill provides that a person engaged in the business of insurance who violates provisions relating to unfair and deceptive acts is liable for a penalty of up to \$5,000 for each act, or \$10,000 for a willful violation for each act. The penalty would be assessed by the Insurance Commissioner in connection with the cease and desist order. A failure to pay

the penalty would constitute a violation of the cease and desist order. (See analysis below for specifics.)

Assembly Amendment:

1. Increases the penalty from \$1,000 to \$5,000 for each act that is violated and \$5,000 for \$10,000 for a willful violation for each act.
2. Clarifies that the penalties are appealable by means of any remedy

provided
by existing law.

3. The Insurance Commissioner shall have the discretion to establish what constitutes an act under this bill. However, when the issuance; amendment, or servicing of a policy or endorsement is inadvertent, all of those acts shall be a single act for the purposes of this section.

ANALYSIS: Article 6.5 of the Insurance Code (commencing with Section 790), regulates insurance practices that constitute unfair methods of competition or unfair and deceptive acts or practices. If the Insurance

CONTINUED
SB 1363
Page 2

Commissioner believes an insurer is violating the outlawed practices, she may issue a Cease and Desist Order after an initial hearing. If that practice is not discontinued, the Commissioner may petition the court through the Attorney General for an appropriate order and assess a fine of up to \$5,000 or \$50,000 if the violation is proven to be willful.

Under Section 790.03, insurance companies are prohibited from engaging in such practices as:

1. Making misleading or false claims in advertising or presentations;
2. Making false claims regarding the practices or solvency of a competitor, or using boycotts, intimidation or other unreasonable restraints of trade;
3. Keeping false books;
4. Discriminating in the rates charged individuals in the same class of insurance;
5. Making claims the insurer is guaranteed or insured against insolvency; and
6. Committing a pattern of certain undesirable, specified practices in settling claims. (These claims settlement practices are contained in Section 790.03(h) that was the subject of review in both the Royal Globe and the Moradi-Shalal decisions.)

Last year, SB 1012 (Robbins) increased the amount of penalties from \$50 to \$5,000 for a violation of a cease and desist order or, if a willful violation,

from \$500 to \$50,000.

SB 1363 establishes a procedure for assessing monetary penalties for violations of the unfair or deceptive practices as defined in Insurance Code Section 790.03 as follows:

1. Any insurer that violates the unfair or deceptive practices sections is subject to a fine not to exceed \$5,000 each illegal act or practice or, if the act or practice is willful, a fine not to exceed \$10,000 for each act.
2. The Commissioner serves an order to show cause and a notice of hearing, along with a statement of the potential monetary fine. The hearing on the legality of these practices must take place within 30 days of serving the order on the insurer.
3. After the hearing, if the charges are upheld by the Commissioner, the Commissioner is required to issue a cease-and-desist order requiring the insurer to stop the practices found unfair or deceptive and pay the amount of the fine.
4. If the insurer fails to pay the penalty or violates the cease-and-desist order, the Commissioner may assess an additional \$5,000 fine, or if the violation is found to be willful, an additional \$55,000, in addition to licensee revocation procedures.

CONTINUED
SB 1363
 Page 3

Prior legislation: SB 1012 (Robbins) - Chapter 953, Statutes of 1987.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

The bill could result in unknown revenue to the General Fund from penalties imposed on persons in the insurance business found to engage in unfair or deceptive acts.

SUPPORT: (Verified 9/13/89)

Sacramento Urban League
 California Conference of Machinists
 Congress of California Seniors

FAIR (Fair Automobile Insurance Rates)
California Commission on Aging

ARGUMENTS IN SUPPORT: According to the author's office, SB 1363 is addressing three major deficiencies in the law:

1. Inconsistent with Proposition 103 regulatory structure: In light of the regulatory changes made effective by the passage of Proposition 103, the Commissioner is left without tools to induce compliance because she cannot mete out civil or criminal penalties until the insurer violates the cease-and-desist order. The timing of the fine doesn't allow it to be used

as a deterrent, but it does work to reward those that profit from illegal acts.

Neither in the various codes governing regulation of businesses and professions nor in regulations for any industry governing itself such as that of securities representatives and brokers, could another system of penalties similar to that in Article 6.5 be found.

2. Proportionate fines: With the present limitation of \$5,000 maximum or, if found a willful violation, a \$55,000 maximum fine, there is no flexibility to design an assessment to reflect the actual severity of the violation. The range of assessments provided for in SB 1363 would allow the Commissioner to differentiate between serious and lesser violations.

3. No incentive to act lawfully: With the repeal of the Royal Globe decision (that allowed third parties to file suit against an insurer believed to be delaying payment of claims), and the present structure of not fining for the illegal act but the violation of a cease-and-desist order, there is little

incentive for insurance companies to refrain from unfair or deceptive practices. California Chief Justice Lucas in his majority opinion in Moradi-Shalal v. Fireman's Fund Insurance Companies, the case that overturned Royal Globe, states:

"We caution, however, that our decision is not an invitation to the insurance industry to commit the unfair practices proscribed by the Insurance Code. We urge the Insurance Commissioner and the courts to continue to enforce the laws forbidding such practices to the full extent consistent with our opinion."

CONTINUED
SB 1363
Page 4

This bill is consistent with the spirit of Moradi-Shalal by giving adequate power to the Commissioner to dissuade insurers from unfair practices, and by providing an incentive to the insurance industry to refrain from such practices.

Under present law, the economic advantage of postponing settlements on a wide scale basis, for example, is not offset by any economic sanction.

SB 1363 is a companion bill to SB 1364 which deals with McBride-Grunsky rate violations.

ASSEMBLY FLOOR VOTE:

DLW:jk 9/13/89 Senate Floor Analyses

BILL ANALYSIS SB 1363 05/09/89 SEN. F. A.
THIRD READING

RECORD 6035

SB 1363

Robbins (D)

5/9/89

2/3 - Urgency

SUBJECT: Insurance: unfair practices penalties

SOURCE: Author

DIGEST: This bill provides that a person engaged in the business of insurance who violates provisions relating to unfair and deceptive acts is liable for a penalty of up to \$1,000 for each act, or \$5,000 for a willful violation for each act. The penalty would be assessed by the Insurance Commissioner in connection with the cease and desist order. A failure to pay the penalty would constitute a violation of the cease and desist order. (See analysis below for specifics.)

ANALYSIS: Article 6.5 of the Insurance Code (commencing with Section 790), regulates insurance practices that constitute unfair methods of competition or unfair and deceptive acts or practices. If the Insurance Commissioner believes an insurer is violating the outlawed practices, she may issue a Cease and Desist Order after an initial hearing. If that practice is not discontinued, the Commissioner may petition the court through the Attorney General for an appropriate order and assess a fine of up to \$5,000 or \$50,000

if
the violation is proven to be willful.

Under Section 790.03, insurance companies are prohibited from engaging in such practices as:

1. Making misleading or false claims in advertising or presentations;
2. Making false claims regarding the practices or solvency of a competitor,
or
using boycotts, intimidation or other unreasonable restraints of trade;

CONTINUED
SB 1363
Page 2

3. Keeping false books;
4. Discriminating in the rates charged individuals in the same class of insurance;
5. Making claims the insurer is guaranteed or insured against insolvency; and
5. Committing a pattern of certain undesirable, specified practices in settling claims. (These claims settlement practices are contained in Section 790.03(h) that was the subject of review in both the Royal Globe and the Moradi-Shalal decisions.)

Last year, SB 1012 (Robbins) increased the amount of penalties from \$50 to \$5,000 for a violation of a cease and desist order or, if a willful violation, from \$500 to \$50,000.

SB 1363 establishes a procedure for assessing monetary penalties for violations of the unfair or deceptive practices as defined in Insurance Code Section 790.03 as follows:

1. Any insurer that violates the unfair or deceptive practices sections is subject to a fine not to exceed \$1,000 each illegal act or practice or, if the act or practice is willful, a fine not to exceed \$5,000 for each act.
2. The Commissioner serves an order to show cause and a notice of hearing, along with a statement of the potential monetary fine. The hearing on the legality of these practices must take place within 30 days of serving the order on the insurer.

3. After the hearing, if the charges are upheld by the Commissioner, the Commissioner is required to issue a cease-and-desist order requiring the insurer to stop the practices found unfair or deceptive and pay the amount of the fine.
4. If the insurer fails to pay the penalty or violates the cease-and-desist order, the Commissioner may assess an additional \$5,000 fine, or if the violation is found to be willful, an additional \$55,000, in addition to licensee revocation procedures.

Prior legislation: SB 1012 (Robbins) - Chapter 953, Statutes of 1987.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: No

SUPPORT: (Verified 5/24/89)

Sacramento Urban League
California Conference of Machinists

Congress of California Seniors
FAIR (Fair Automobile Insurance Rates)
California Commission on Aging

CONTINUED
SB 1363
Page 3

ARGUMENTS IN SUPPORT: According to the author's office, SB 1363 is addressing three major deficiencies in the law:

1. Inconsistent with Proposition 103 regulatory structure: In light of the regulatory changes made effective by the passage of Proposition 103, the Commissioner is left without tools to induce compliance because she cannot mete out civil or criminal penalties until the insurer violates the cease-and-desist order. The timing of the fine doesn't allow it to be used

as a deterrent, but it does work to reward those that profit from illegal acts.

Neither in the various codes governing regulation of businesses and professions nor in regulations for any industry governing itself such as that of securities representatives and brokers, could another system of penalties similar to that in Article 6.5 be found.

2. Proportionate fines: With the present limitation of \$5,000 maximum or, if found a willful violation, a \$55,000 maximum fine, there is no flexibility to design an assessment to reflect the actual severity of the violation. The range of assessments provided for in SB 1363 would allow the Commissioner to differentiate between serious and lesser violations.

3. No incentive to act lawfully: With the repeal of the Royal Globe decision

(that allowed third parties to file suit against an insurer believed to be delaying payment of claims), and the present structure of not fining for

the illegal act but the violation of a cease-and-desist order, there is little

incentive for insurance companies to refrain from unfair or deceptive practices. California Chief Justice Lucas in his majority opinion in Moradi-Shalal v. Fireman's Fund Insurance Companies, the case that overturned Royal Globe, states:

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extent

consistent with our opinion."

This bill is consistent with the spirit of Moradi-Shalal by giving adequate power to the Commissioner to dissuade insurers from unfair practices, and by providing an incentive to the insurance industry to refrain from such practices.

Under present law, the economic advantage of postponing settlements on a wide scale basis, for example, is not offset by any economic sanction.

SB 1363 is a companion bill to SB 1364 which deals with McBride-Grunsky rate violations.

DLW:jk 5/24/89 Senate Floor Analyses

+X

SENATE THIRD READING

SB 1363 (Robbins) - As Amended: September 11, 1989

SENATE VOTE: 33-1

ASSEMBLY ACTIONS:

COMMITTEE FIN. & INS. VOTE 16-1 COMMITTEE W. & M. VOTE 17-1

Ayes: Johnston, Bader, Bane, Chacon, Epple, Farr, Floyd, Katz, Lancaster, Lewis, Margolin, Moore, O'Connell, Sher, Statham, Wright

Ayes: Vasconcellos, Baker, Burton, Clute, Felando, Friedman, Hannigan, Jones, Killea, Mojonier, Nolan, O'Connell, Roos, Roybal-Allard, Speier, M. Waters, Wright

Nays: D. Brown

Nays: D. Brown

DIGEST

Urgency statute. 2/3 vote required.

Existing law:

- 1) Provides that the Insurance Commissioner, if he or she has reason to believe that a person subject to his or her jurisdiction is engaged in an unfair method of competition or any unfair or deceptive act, may initiate a hearing to determine whether a cease and desist order should be issued.
- 2) If such a cease and desist order has been issued and is violated, the commissioner may, after a hearing, impose a fine of \$5,000 for such a violation, unless the violation is willful. In the latter circumstance the penalty may not exceed \$55,000.

This bill:

- 1) Provides that persons engaging in unfair methods of competition or unfair or deceptive acts are liable to the state for a civil penalty, to be fixed by the commissioner, not to exceed \$5,000 for each act. If the act is willful, the maximum penalty is \$10,000. These penalties are made appealable.

- continued -

The commissioner is given discretion to establish what constitutes an act but when the issuance, amendment, or servicing of a policy is inadvertant, all of those acts shall constitute a single act.

- 2) Revises the procedure for cease and desist order hearings to a) notify parties of their potential liability, b) provide for a determination of whether penalties pursuant to this bill are appropriate, and c) to permit the issuance of orders to pay the penalty.
- 3) Authorizes, after an additional hearing, penalties for violations of cease and desist orders or orders to pay penalties of a) \$5,000 plus any prior penalties which remain unpaid or b) \$55,000 plus unpaid penalties in the case of willful violations.

FISCAL EFFECT

Minor revenue increases to the Department of Insurance based upon the expanded penalty authority contained in this bill.

SENATE THIRD READING

SB 1363 (Robbins) - As Amended: July 17, 1989

SENATE VOTE: 33-1

ASSEMBLY ACTIONS:

COMMITTEE FIN. & INS. VOTE 16-1 COMMITTEE W. & M. VOTE 17-1

<p>Ayes: Johnston, Bader, Bane, Chacon, Epple, Farr, Floyd, Katz, Lancaster, Lewis, Margolin, Moore, O'Connell, Sher, Statham, Wright</p>	<p>Ayes: Vasconcellos, Baker, Burton, Clute, Felando, Friedman, Hannigan, Jones, Killea, Mojonnier, Nolan, O'Connell, Roos, Roybal-Allard, Speier, M. Waters, Wright</p>
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Nays: D. Brown

Nays: D. Brown

DIGEST

Urgency statute. 2/3 vote required.

Existing law provides that:

- 1) The Insurance Commissioner, if he or she has reason to believe that a person subject to his or her jurisdiction is engaged in an unfair method of competition or any unfair or deceptive act, may initiate a hearing to determine whether a cease and desist order should be issued.
- 2) If such a cease and desist order has been issued and is violated, the commissioner may, after a hearing, impose a fine of \$5,000 for such a violation, unless the violation is willful. In the latter circumstance the penalty may not exceed \$55,000.

This bill:

- 1) Provides that persons engaging in unfair methods of competition or unfair or deceptive acts are liable to the state for a civil penalty, to be fixed by the commissioner, not to exceed \$5,000 for each act. If the act is willful, the maximum penalty is \$10,000. These penalties are made appealable.

- continued -

- 2) Revises the procedure for cease and desist order hearings to a) notify parties of their potential liability, b) provide for a determination of whether penalties pursuant to this bill are appropriate, and c) to permit the issuance of orders to pay the penalty.
- 3) Authorizes, after an additional hearing, penalties for violations of cease and desist orders or orders to pay penalties of a) \$5,000 plus any prior penalties which remain unpaid or b) \$55,000 plus unpaid penalties in the case of willful violations.

FISCAL EFFECT

Minor revenue increases to the Department of Insurance based upon the expanded penalty authority contained in this bill.

Date of Hearing: July 11, 1989

ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE
Patrick Johnston, Chair

SB 1363 (Robbins) - As Amended: July 6, 1989

SENATE ACTIONS:

COMMITTEE INS., CL. & CORPS. VOTE 5-2 COMMITTEE APPR. VOTE SEN. RULE 28.8

FLOOR VOTE 33-1

SUBJECT: Penalties against insurance licensees for engaging in unfair methods of competition or unfair and deceptive acts or practices.

DIGEST

Urgency statute. 2/3 vote required.

Existing law provides that the Insurance Commissioner, if she has reason to believe that a person subject to her jurisdiction is engaged in an unfair method of competition or any unfair or deceptive act, may initiate a hearing to determine whether a cease and desist order should be issued. The provisions on Unfair Practices in current law, which are extensive, enumerate a wide array of conduct which constitutes unfair methods of competition or unfair and deceptive acts or practices in the business of insurance. If the charges concerning such conduct are justified, such an order may be issued, subject to review.

Furthermore, if such a cease and desist order has been issued and is violated, the Commissioner may, after a hearing, impose a fine of \$5,000 for such a violation, unless the violation is willful. In the latter circumstance the penalty may not exceed \$55,000.

This bill:

- 1) Provides that any person engaging in any unfair method of competition or any unfair or deceptive act or practice is liable to the state for a civil penalty not to exceed \$1,000 for each act. If the act is willful, the penalty is \$5,000. These penalties are made appealable by means of judicial review under the Insurance Code or pursuant to provisions of the Government Code relating to administrative adjudication.

- continued -

- 2) Revises the procedure and requirements for hearings pertaining to cease and desist orders to a) notify the party of their potential liability pursuant to the above provision, to b) include within the scope of the hearing a determination of whether imposition of penalties pursuant to the above provision is appropriate in addition to the cease and desist order, and c) providing for the issuance of an order to pay the penalty.
- 3) Authorizes, after an additional hearing, penalties for violations of cease and desist orders or orders to pay penalties of a) \$5,000 plus any prior penalties which remain unpaid or b) \$55,000 plus unpaid penalties in the case of willful violations.

FISCAL EFFECT

Minor revenue increases to the Department of Insurance based upon the expanded penalty authority contained in this bill.

COMMENTS

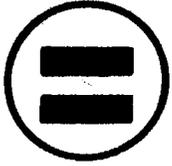
Under current law, insurers cannot be fined for practices determined by the Commissioner to be unfair and deceptive unless the practices continue after a cease and desist order has been issued. This measure will allow the Commissioner to impose charges for the initial acts which prompt regulator action. The author expresses the belief that such authority will serve as a more effective and flexible regulatory tool than restricting penalties to violations of cease and desist orders only.

SPONSOR: Author

SUPPORT: None Received

OPPOSITION: None Received

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SACRAMENTO URBAN LEAGUE, INC.

3501 BROADWAY SACRAMENTO, CALIFORNIA 95817 (916) 739-0627

GEORGE DEAN
President

April 17, 1989

The Honorable Alan Robbins, Chairman
Insurance, Claims and Corporations
State Capitol, Room 5122
Sacramento, Ca 95814

Dear Senator Robbins:

The Sacramento Urban League and it's members would like to go on record as supporting your SB 44 - 810 - 1360 - 1361 - 1363 - 1364 and 1365. These measures would be a first step towards protecting California insurance holders. As discussions are held with Consumer Groups, the State Department of Insurance and others, regarding the lowering of insurance rates, it is important that we correct the flaws in the insurance system which presently exist. Your Bills are a step towards the needed corrections.

Regarding SB 1362, I am concerned with this measure. As insurance companies are allowed the advantage of farming out assigned risk insurance holders, it is imperative that we require these insurance companies to notify the policy holder, in writing, of this procedure. Imagine the confusion, if a person thought that he/she were covered by one insurance company and find out that they are actually covered by another carrier. This can cause unnecessary stress to a policy holder at a time when their stress level is already high.

I suggest that we require the primary insurance company to notify the policy holder in writing no later than 10 working days after the policy has been farmed out to a third party. This information, which should include the company's name and contact person, would allow the policy holder to find out who is handling their policy before they need to know this information; usually after an accident or other unforeseen problem occurs.

Again, I commend your efforts and look forward to continued communications on this and other consumer related insurance issues.

Sincerely,

George H. Dean, President
Sacramento Urban League



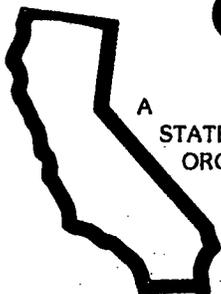
Member Agency

File

Congress of California Seniors, Inc.

1010 ELEVENTH STREET, SUITE 204 • SACRAMENTO, CA 95814

Phone (916) 442-4474



A
STATEWIDE
ORGANIZATION

April 18, 1989

Senator Alan Robbins
State Capitol
Sacramento, CA 95814

Dear Senator Robbins:

The Congress of California Seniors, a organization that represents senior citizens throughout the state of California wishes to lend our support for your package of insurance legislation (SB 44, SB 810, SB 1360, SB 1361, SB 1362, SB 1363, SB 1364 and SB 1365).

Thank you for your efforts on behalf of the consumers in our State. If we can be of service, do not hesitate to let us know.

Sincerely,

Carl Jones

Carl Jones
Legislative Director

CJ:rb

COPY

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

July 10, 1989

Honorable Alan Robbins

S.B. 1363 - Conflict

The above measure, introduced by you, which is now set for hearing in the Assembly Finance and Insurance Committee

appears to be in conflict with the following other measure(s):

S.B. 1092 - Robbins

ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY GIVE RISE TO A SERIOUS LEGAL PROBLEM WHICH PROBABLY CAN BE AVOIDED BY APPROPRIATE AMENDMENTS.

WE URGE YOU TO CONSULT OUR OFFICE IN THIS REGARD AT YOUR EARLIEST CONVENIENCE.

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

cc: Committee
named above
Each lead author
concerned

FINANCE AND INSURANCE

Date of Hearing: 07/11/89

BILL NO.	SB 1361	SB 1363	SB 1364					
ACTION VOTED ON	Do pass as amended and re-refer to the Com on W. & M	Do pass as amended and re-refer to the Com on W. & M	Do pass as amended and re-refer to the Com on W. & M					
	Aye	No	Aye	No	Aye	No	Aye	No
Johnston(Chair)	X		X		X			
Lader		X	X		X			
Lane	X		X		X			
Lironzan	X		Ab.		Ab.			
Lennis Brown		X		X		X		
Lhacon	X		X		X			
Lpple	X		X		X			
Larr	X		X		X			
Lloyd	X		X		X			
Latz	X		X		X			
Lancaster	N.V.		X		X			
Lewis		X	X		X			
Largolin	Ab.		X		X			
Lore	X		X		X			
Lolan		X	Ab.		X			
LConnell	X		X		X			
Leastrand	Ab.		Ab.		Ab.			
Lher	X		X		X			
Latham		X	X		X			
Lright		X	X		X			
	Ayes: 11		Ayes: 16		Ayes: 17		Ayes: 0	
	Noes: 6		Noes: 1		Noes: 1		Noes: 0	

N.V. - Not voting

Ab. - Absent

RECEIVED: _____

_____, Chairman



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Assembly Fiscal Committee Materials

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Date of Hearing: July 11, 1989

ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE
Patrick Johnston, Chair

SB 1363 (Robbins) - As Amended: July 6, 1989

SENATE ACTIONS:

COMMITTEE INS., CL. & CORPS. VOTE 5-2 COMMITTEE APPR. VOTE SEN. RULE 28.8

FLOOR VOTE 33-1

SUBJECT: Penalties against insurance licensees for engaging in unfair methods of competition or unfair and deceptive acts or practices.

DIGEST

Urgency statute. 2/3 vote required.

Existing law provides that the Insurance Commissioner, if she has reason to believe that a person subject to her jurisdiction is engaged in an unfair method of competition or any unfair or deceptive act, may initiate a hearing to determine whether a cease and desist order should be issued. The provisions on Unfair Practices in current law, which are extensive, enumerate a wide array of conduct which constitutes unfair methods of competition or unfair and deceptive acts or practices in the business of insurance. If the charges concerning such conduct are justified, such an order may be issued, subject to review.

Furthermore, if such a cease and desist order has been issued and is violated, the Commissioner may, after a hearing, impose a fine of \$5,000 for such a violation, unless the violation is willful. In the latter circumstance the penalty may not exceed \$55,000.

This bill:

- 1) Provides that any person engaging in any unfair method of competition or any unfair or deceptive act or practice is liable to the state for a civil penalty not to exceed \$1,000 for each act. If the act is willful, the penalty is \$5,000. These penalties are made appealable by means of judicial review under the Insurance Code or pursuant to provisions of the Government Code relating to administrative adjudication.

- continued -

- 2) Revises the procedure and requirements for hearings pertaining to cease and desist orders to a) notify the party of their potential liability pursuant to the above provision, to b) include within the scope of the hearing a determination of whether imposition of penalties pursuant to the above provision is appropriate in addition to the cease and desist order, and c) providing for the issuance of an order to pay the penalty.
- 3) Authorizes, after an additional hearing, penalties for violations of cease and desist orders or orders to pay penalties of a) \$5,000 plus any prior penalties which remain unpaid or b) \$55,000 plus unpaid penalties in the case of willful violations.

FISCAL EFFECT

Minor revenue increases to the Department of Insurance based upon the expanded penalty authority contained in this bill.

COMMENTS

Under current law, insurers cannot be fined for practices determined by the Commissioner to be unfair and deceptive unless the practices continue after a cease and desist order has been issued. This measure will allow the Commissioner to impose charges for the initial acts which prompt regulator action. The author expresses the belief that such authority will serve as a more effective and flexible regulatory tool than restricting penalties to violations of cease and desist orders only.

SPONSOR: Author
SUPPORT: None Received
OPPOSITION: None Received

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Robbins

Amended: 07/17/89

Bill No.: SB 1363

Policy Committee: Finance and Insurance

Vote: 16-01

Urgency: Yes

Hearing Date: 08/23/89

State Mandated Local Program: No

Staff Comments By:

Disclaimed:

Michael Reyna *MR*

Summary

This bill, an urgency measure, authorizes the Insurance Commissioner to impose civil penalties on those persons in the Insurance business who engage in unfair or deceptive acts or practice.

Under current law, the Commissioner can impose civil penalties only if the person has violated an order to cease and desist from engaging in such activities. The new authority would be in addition to, rather than in lieu of, the Commissioner's existing authority.

Fiscal

Unknown, probably minor (less than \$50,000 annually), revenue to the General Fund from additional civil penalties.

MR

Recommendation

Do pass. *(Handwritten initials)*

MR

Legislative Analyst
August 14, 1989

ANALYSIS OF SENATE BILL NO. 1363 (Robbins)
As Amended in Assembly July 17, 1989
1989-90 Session

Fiscal Effect:

Cost: None.

Revenue: Unknown potential revenue to the General Fund to the extent additional civil penalties are imposed on persons in the insurance business who engaged in unfair or deceptive acts.

Analysis:

This bill provides that persons in the insurance business who engage in unfair or deceptive acts are liable for civil penalties of up to \$5,000 per act, or up to \$10,000 per willful act, which leads to a cease and desist order issued by the Insurance Commissioner.

Under current law, the Commissioner may hold hearings and order persons in the insurance business to cease and desist from engaging in unfair or deceptive acts. A person violating such a cease and desist order is liable for civil penalties of up to \$5,000 per act, or up to \$55,000 per willful act, for a violation of that order.

The penalties authorized by this measure would be imposed by the Commissioner for the initial act or acts giving rise to such a cease and desist order. Failure to pay penalties imposed under this measure would be a violation of the cease and desist order.

Fiscal Effect

The bill could result in unknown revenue to the General Fund from penalties imposed on persons in the insurance business found to engage in unfair or deceptive acts.

84:81/s8



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Legislative Analyst
August 14, 1989

ANALYSIS OF SENATE BILL NO. 1363 (Robbins)
As Amended in Assembly July 17, 1989
1989-90 Session

Fiscal Effect:

Cost: None.

Revenue: Unknown potential revenue to the General Fund to the extent additional civil penalties are imposed on persons in the insurance business who engaged in unfair or deceptive acts.



Analysis:

This bill provides that persons in the insurance business who engage in unfair or deceptive acts are liable for civil penalties of up to \$5,000 per act, or up to \$10,000 per willful act, which leads to a cease and desist order issued by the Insurance Commissioner.

Under current law, the Commissioner may hold hearings and order persons in the insurance business to cease and desist from engaging in unfair or deceptive acts. A person violating such a cease and desist order is liable for civil penalties of up to \$5,000 per act, or up to \$55,000 per willful act, for a violation of that order.

The penalties authorized by this measure would be imposed by the Commissioner for the initial act or acts giving rise to such a cease and desist order. Failure to pay penalties imposed under this measure would be a violation of the cease and desist order.

Fiscal Effect

The bill could result in unknown revenue to the General Fund from penalties imposed on persons in the insurance business found to engage in unfair or deceptive acts.

84:81/s8

SB 1363 (Robbins)
Analyzed: 8/23/89

ASSEMBLY WAYS AND MEANS COMMITTEE
REPUBLICAN ANALYSIS

SB 1363 (Robbins) -- SB 1363. INSURANCE: UNFAIR PRACTICES
Version: 7/17/89 Vice Chairman: Bill Baker
Recommendation: None Vote: 2/3 (Prop 103)

Summary: Provides that any insurer which the Department of Insurance finds to be engaging in unfair methods, practices or deceptive acts is liable for a civil penalty not to exceed \$5,000 for each act (\$10,000 if willful). Fiscal effect: Unknown potential revenue to the General Fund to the extent additional civil penalties are imposed on persons in the insurance business who engaged in unfair or deceptive acts.

Supported by: none known. Opposed by: none known.
Governor's position: not known.

Comments: Takes away the so-called free, first bite from insurers. Current law provides for greater penalties for these types of violations (\$5,000/\$55,000), but the fines cannot be assessed until after the department issues a cease-and-desist order which the insurer must subsequently ignore. Under that framework, the first violation goes without penalty. The lesser but more quickly assessed fine called for in this bill supposedly makes the regulatory threat more credible.

Senate Republican Floor Vote -- 6/1/89
(33-1) Ayes: Bergeson, Beverly, Campbell, Craven, Davis,
Morgan, Russell, Stirling
Noes: Doolittle
N.V.: Leonard, Maddy, Nielsen, Rogers, Royce,
Seymour

Assembly Republican Committee vote
Finance and Insurance -- 7/11/89
(16-1) Ayes: All Republicans except
Noes: D. Brown
Abs.: Nolan, Seastrand
Consultants: Peter Conlin/Ellen Moratti

Peter

SB 1363 (Robbins)
Analyzed: 07/11/89
8/23

ASSEMBLY WAYS AND MEANS COMMITTEE
REPUBLICAN ANALYSIS

SB 1363 (Robbins) -- SB 1363 INSURANCE: UNFAIR PRACTICES
Version: 6/20/89 *7/17/89* Vice-Chairman: Bill Baker
Recommendation: None Vote: 2/3 (Prop 103)

Summary: Provides that any insurer which the Department of Insurance finds to be engaging in unfair methods, practices or deceptive acts is liable for a civil penalty not to exceed \$1,000 for each act (\$5000 if willful). Fiscal effect: ~~no~~ *5* appropriation *10,000*

Supported by: none known. Opposed by: none known.
Governor's position: not known.

Comments: Takes away the so-called free, first bite from insurers. Current law provides for greater penalties for these types of violations (\$5000/\$55,000), but the fines can not be assessed until after the department issues a cease-and-desist order which the insurer must subsequently ignore. Under that framework, the first violation goes without penalty. The lesser but more quickly assessed fine called for in this bill supposedly makes the regulatory threat more credible. But the added risk which a \$1000 fine poses to an insurance company violating the law doesn't appear to be all that substantial. This bill will deliver little tangible benefit.

Senate Republican Floor Vote -- 6/1/89
(33-1) Ayes: Bergeson, Beverly, Campbell, Craven, Davis, Morgan, Russell, Stirling
Noes: Doolittle
N.V.: Leonard, Maddy, Nielsen, Rogers, Royce, Seymour

Assembly Republican Committee vote
Finance and Insurance -- 7/11/89

9
Ayes:
Noes:
Abs.: *N*
N.V.:

Consultants: Peter Conlin/*EM*

DPA 10-1
All Reps Aye except:
No. D. Brown
SB 1363
Ab. Nolan
Seastand

Date of Hearing: July 11, 1989

ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE
Patrick Johnston, Chair

SB 1363 (Robbins) - As Amended: July 6, 1989

SENATE ACTIONS:

COMMITTEE INS., CL. & CORPS. VOTE 5-2 COMMITTEE APPR. VOTE SEN. RULE 28.8

FLOOR VOTE 33-1

SUBJECT: Penalties against insurance licensees for engaging in unfair methods of competition or unfair and deceptive acts or practices.

DIGEST

Urgency statute. 2/3 vote required.

Existing law provides that the Insurance Commissioner, if she has reason to believe that a person subject to her jurisdiction is engaged in an unfair method of competition or any unfair or deceptive act, may initiate a hearing to determine whether a cease and desist order should be issued. The provisions on Unfair Practices in current law, which are extensive, enumerate a wide array of conduct which constitutes unfair methods of competition or unfair and deceptive acts or practices in the business of insurance. If the charges concerning such conduct are justified, such an order may be issued, subject to review.

Furthermore, if such a cease and desist order has been issued and is violated, the Commissioner may, after a hearing, impose a fine of \$5,000 for such a violation, unless the violation is willful. In the latter circumstance the penalty may not exceed \$55,000.

This bill:

- 1) Provides that any person engaging in any unfair method of competition or any unfair or deceptive act or practice is liable to the state for a civil penalty not to exceed \$1,000 for each act. If the act is willful, the penalty is \$5,000. These penalties are made appealable by means of judicial review under the Insurance Code or pursuant to provisions of the Government Code relating to administrative adjudication.

- continued -

- 2) Revises the procedure and requirements for hearings pertaining to cease and desist orders to a) notify the party of their potential liability pursuant to the above provision, to b) include within the scope of the hearing a determination of whether imposition of penalties pursuant to the above provision is appropriate in addition to the cease and desist order, and c) providing for the issuance of an order to pay the penalty.
- 3) Authorizes, after an additional hearing, penalties for violations of cease and desist orders or orders to pay penalties of a) \$5,000 plus any prior penalties which remain unpaid or b) \$55,000 plus unpaid penalties in the case of willful violations.

FISCAL EFFECT

Minor revenue increases to the Department of Insurance based upon the expanded penalty authority contained in this bill.

COMMENTS

Under current law, insurers cannot be fined for practices determined by the Commissioner to be unfair and deceptive unless the practices continue after a cease and desist order has been issued. This measure will allow the Commissioner to impose charges for the initial acts which prompt regulator action. The author expresses the belief that such authority will serve as a more effective and flexible regulatory tool than restricting penalties to violations of cease and desist orders only.

SPONSOR: Author

SUPPORT: None Received

OPPOSITION: None Received

Honorable Alan Robbins
 Member of the Senate
 State Capitol, Room 5114
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Robbins	BILL NUMBER SB 1363
SPONSORED BY	RELATED BILLS	AMENDMENT DATE July 17, 1989

BILL SUMMARY

INSURER PENALTIES FOR UNFAIR PRACTICES

This bill would authorize the Insurance Commissioner to assess specified fines for violations of existing law relating to unfair practices and deceptive acts.

Urgency measure.

SUMMARY OF CHANGES

This version of the bill makes the following minor changes from the previous analysis of the May 9, 1989 version of the bill.

The June 20 amendments clarify that the penalties under this act will continue to accrue until a cease and desist order becomes effective and appealable pursuant to Government Code Section 11500, or Insurance Code Section 12940. The July 17 amendment increases the fines.

FISCAL SUMMARY--STATE LEVEL		(Fiscal Impact by Fiscal Year)			Code Fund
Code/Department Agency or Revenue Type	SO LA CO RV	FC 1989-90	FC 1990-91	FC 1991-92	
2290 - Insurance	SO	-----See Fiscal Analysis-----			

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Existing law provides that if an insurer allegedly violates certain statutory provisions relating to unfair practices and deceptive acts, the Insurance Commissioner may hold a hearing to determine whether a violation exists. If, after a hearing, the Commissioner determines that any act or practice by an insurer is in violation of law, the Commissioner may issue an order requiring the insurer to cease and desist. Under existing law, an insurer is not liable for a penalty unless it violates the order issued by the Commissioner.

This bill would provide that an insurer who violates statutory provisions relating to unfair practices or deceptive acts before an order is issued by the Commissioner is liable for a penalty of up to \$5,000 for each act, or \$10,000 for each act for a willful violation. The penalty would be assessed by the Commissioner in connection with the hearing on the order.

(Continued)

POSITION: Neutral	Department Director	Date
Principal Analyst (743) E. Juliusson	Program Budget Manager (700) Wallis L. Clark	Date
Governor's Office		
Position noted		
Position approved		
Position disapproved		
by:		date:

FR: 0162F *Robert Dean 7/20/89* *A.W. Matthei 20/89*

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Robbins

July 17, 1989

SB 1363

ANALYSIS

A. Specific Findings (Continued)

This bill is intended to discourage insurance companies from violating existing unfair practices and deceptive acts statutes.

B. Fiscal Analysis

This bill would not increase State agency expenditures but has the potential for increasing General Fund revenue from fines and penalties. However, neither the number of violations that may occur nor the number that would result in a fine or a penalty can be predicted at this time.

FR:0162F

Honorable Alan Robbins
 Member of the Senate
 State Capitol, Room 5114
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Robbins	BILL NUMBER SB 1363
-----------------------	-------------------	------------------------

SPONSORED BY	RELATED BILLS	AMENDMENT DATE May 9, 1989
--------------	---------------	-------------------------------

BILL SUMMARY

INSURER PENALTIES FOR UNFAIR PRACTICES

This bill would authorize the Insurance Commissioner to assess specified fines for violations of existing law relating to unfair practices and deceptive acts.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands)			Code Fund
		FC 1988-89	FC 1989-90	FC 1990-91	
2290 - Insurance	SO	-----See Fiscal Analysis-----			

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Existing law provides that if an insurer violates certain statutory provisions relating to unfair practices and deceptive acts, the Insurance Commissioner may hold a hearing to determine whether a violation exists. If, after a hearing, the Commissioner determines that any act or practice by an insurer is in violation of law, the Commissioner may issue an order requiring the insurer to cease and desist. Under existing law, an insurer is not liable for a penalty unless it violates the order issued by the Commissioner.

This bill would provide that an insurer that violates statutory provisions relating to unfair practices or deceptive acts before an order is issued by the Commissioner is liable for a penalty of up to \$1,000 for each act, or \$5,000 for each act for a willful violation. The penalty would be assessed by the Commissioner in connection with the hearing on the order.

This bill is intended to discourage insurance companies from violating existing unfair practices and deceptive acts statutes.

B. Fiscal Analysis

This bill would not increase state agency expenditures but has the potential for increasing General Fund revenue from fines and penalties. However, neither the number of violations that may occur nor the number that would result in a fine or a penalty can be predicted at this time.

POSITION: Neutral	Department Director	Date
----------------------	---------------------	------

Principal Analyst (743) E. Juliusson <i>E. Juliusson</i> 5/22/89	Date	Program Budget Manager (700) Wallis L. Clark <i>W. L. Clark</i> 5/22/89	Date	Governor's Office Position noted Position approved Position disapproved by: _____ date: _____
FR1p/0162F				



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Assembly Floor Analysis Materials

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SENATE THIRD READING

SB 1363 (Robbins) - As Amended: September 11, 1989

SENATE VOTE: 33-1

ASSEMBLY ACTIONS:

COMMITTEE FIN. & INS. VOTE 16-1 COMMITTEE W. & M. VOTE 17-1

Ayes: Johnston, Bader, Bane, Chacon, Epple, Farr, Floyd, Katz, Lancaster, Lewis, Margolin, Moore, O'Connell, Sher, Statham, Wright

Ayes: Vasconcellos, Baker, Burton, Clute, Felando, Friedman, Hannigan, Jones, Killea, Mojonier, Nolan, O'Connell, Roos, Roybal-Allard, Speier, M. Waters, Wright

Nays: D. Brown

Nays: D. Brown

DIGEST

Urgency statute. 2/3 vote required.

Existing law:

- 1) Provides that the Insurance Commissioner, if he or she has reason to believe that a person subject to his or her jurisdiction is engaged in an unfair method of competition or any unfair or deceptive act, may initiate a hearing to determine whether a cease and desist order should be issued.
- 2) If such a cease and desist order has been issued and is violated, the commissioner may, after a hearing, impose a fine of \$5,000 for such a violation, unless the violation is willful. In the latter circumstance the penalty may not exceed \$55,000.

This bill:

- 1) Provides that persons engaging in unfair methods of competition or unfair or deceptive acts are liable to the state for a civil penalty, to be fixed by the commissioner, not to exceed \$5,000 for each act. If the act is willful, the maximum penalty is \$10,000. These penalties are made appealable.

- continued -

The commissioner is given discretion to establish what constitutes an act but when the issuance, amendment, or servicing of a policy is inadvertant, all of those acts shall constitute a single act.

- 2) Revises the procedure for cease and desist order hearings to a) notify parties of their potential liability, b) provide for a determination of whether penalties pursuant to this bill are appropriate, and c) to permit the issuance of orders to pay the penalty.
- 3) Authorizes, after an additional hearing, penalties for violations of cease and desist orders or orders to pay penalties of a) \$5,000 plus any prior penalties which remain unpaid or b) \$55,000 plus unpaid penalties in the case of willful violations.

FISCAL EFFECT

Minor revenue increases to the Department of Insurance based upon the expanded penalty authority contained in this bill.



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Assembly Republican Caucus Materials

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SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE

SENATE BILL NO. 1363

SENATOR ALAN ROBBINS, CHAIRMAN

URGENCY

SENATE BILL NO. 1363 (Robbins) As Introduced March 9, 1989
Insurance Code

Source: Author

Prior Legislation: SB 1012 (Robbins) Chapter 953, Statutes of 1987

Support: Sacramento Urban League
California Conference of Machinists
Congress of California Seniors
FAIR (Fair Automobile Insurance Rates)
California Commission on Aging

Opposition: Association of California Insurance Companies

SUBJECT

Increases penalties that may be assessed against insurers by the Insurance Commissioner for illegal acts under the Unfair Practices code sections.

DIGEST

1] Description: SB 1363 establishes a procedure for assessing monetary penalties for violations of the unfair or deceptive practices as defined in Insurance Code Section 790.03 as follows:

1. Any insurer that violates the unfair or deceptive practices sections is subject to a fine not to exceed \$5,000 each day the insurer engaged in that illegal act or practice or, if the act or practice is willful, a fine not to exceed \$55,000 for each day.
2. The Commissioner serves an order to show cause and a notice of hearing, along with a statement of the potential monetary fine. The hearing on the legality of these practices must take place within 30 days of serving the order on the insurer.
3. After the hearing, if the charges are upheld by the Commissioner, the Commissioner is required to issue a cease-and-desist order requiring the insurer to stop the practices found unfair or deceptive and pay the amount of the fine.
4. If the insurer fails to pay the penalty or violates the cease-and-desist order, the Commissioner may assess an additional \$5,000 fine, or if the violation is found to be willful, an additional \$55,000, in addition to licensee revocation procedures.

2] Background: Article 6.5 of the Insurance Code (commencing with Section 790), regulates insurance practices that constitute unfair methods of competition or unfair and deceptive acts or practices. If the Insurance Commissioner believes an insurer is violating the outlawed practices, she

may issue a Cease and Desist Order after an initial hearing. If that practice is not discontinued, the Commissioner may petition the court through the Attorney General for an appropriate order and assess a fine of up to \$5,000 or \$50,000 if the violation is proven to be willful.

Under Section 79C.03, insurance companies are prohibited from engaging in such practices as:

1. Making misleading or false claims in advertising or presentations;
2. Making false claims regarding the practices or solvency of a competitor, or using boycotts, intimidation or other unreasonable restraints of trade;
3. Keeping false books;
4. Discriminating in the rates charged individuals in the same class of insurance;
5. Making claims the insurer is guaranteed or insured against insolvency; and
6. Committing a pattern of certain undesirable, specified practices in settling claims. (These claims settlement practices are contained in Section 790.03(h) that was the subject of review in both the Royal Globe and the Moradi-Shalal decisions.)

Last year, SB 1012 (Robbins) increased the amount of penalties from \$50 to \$5,000 for a violation of a cease and desist order or, if a willful violation, from \$500 to \$50,000.

FISCAL EFFECT Fiscal Committee: Yes

STAFF COMMENTS

The author is addressing three major deficiencies in the law:

1. **Inconsistent with Proposition 103 regulatory structure:** In light of the regulatory changes made effective by the passage of Proposition 103, the Commissioner is left without tools to induce compliance because she cannot mete out civil or criminal penalties until the insurer violates the cease-and-desist order. The timing of the fine doesn't allow it to be used as a deterrent, but it does work to reward those that profit from illegal acts.

Neither in the various codes governing regulation of businesses and professions nor in regulations for any industry governing itself such as that of securities representatives and brokers, could another system of penalties similar to that in Article 6.5 be found.

2. **Proportionate fines:** With the present limitation of \$5,000 maximum or, if found a willful violation, a \$55,000 maximum fine, there is no flexibility to design an assessment to reflect the actual severity of the violation. The range of assessments provided for in SB 1363 would allow the Commissioner to differentiate between serious and lesser violations.

3. **No incentive to act lawfully:** With the repeal of the Royal Globe decision (that allowed third parties to file suit against an insurer believed to be delaying payment of claims), and the present structure of not fining for the illegal act but the violation of a cease-and-desist order, there is little incentive for insurance companies to refrain from unfair or deceptive practices. California Chief Justice Lucas in his majority opinion in Moradi-Shalal v. Fireman's Fund Insurance Companies, the case that overturned Royal Globe, states:

"We caution, however, that our decision is not an invitation to the insurance industry to commit the unfair practices proscribed by the Insurance Code. We urge the Insurance Commissioner and the courts to continue to enforce the laws forbidding such practices to the full extent consistent with our opinion."

This bill is consistent with the spirit of Moradi-Shalal by giving adequate power to the Commissioner to dissuade insurers from unfair practices, and by providing an incentive to the insurance industry to refrain from such practices. Under present law, the economic advantage of postponing settlements on a wide scale basis, for example, is not offset by any economic sanction.

4. In its letter of opposition, the Association of California Insurance Companies (ACIC) objects to the fines being assessed on a basis of each day of violation. ACIC reasons that: "Alleged violations of these particular sections are not cut-and-dried matters." To impose per day penalties when it is not clear that a violation has taken place until "... several months after the alleged violation has taken place" is "... draconian in nature," according to the ACIC letter.

5. SB 1363 is a companion bill to SB 1364 which deals with McBride-Grunsky rate violations.

LEAH CARTABRUNO
Consultant

SENATE BILL NO. 1363

05/03/89

Date of Hearing: July 11, 1989

ASSEMBLY COMMITTEE ON FINANCE AND INSURANCE
Patrick Johnston, Chair

SB 1363 (Robbins) - As Amended: July 6, 1989

SENATE ACTIONS:

COMMITTEE INS., CL. & CORPS. VOTE 5-2 COMMITTEE APPR. VOTE SEN. RULE 28.3
FLOOR VOTE 33-1

SUBJECT: Penalties against insurance licensees for engaging in unfair methods of competition or unfair and deceptive acts or practices.

DIGEST

Urgency statute. 2/3 vote required.

Existing law provides that the Insurance Commissioner, if she has reason to believe that a person subject to her jurisdiction is engaged in an unfair method of competition or any unfair or deceptive act, may initiate a hearing to determine whether a cease and desist order should be issued. The provisions on Unfair Practices in current law, which are extensive, enumerate a wide array of conduct which constitutes unfair methods of competition or unfair and deceptive acts or practices in the business of insurance. If the charges concerning such conduct are justified, such an order may be issued, subject to review.

Furthermore, if such a cease and desist order has been issued and is violated, the Commissioner may, after a hearing, impose a fine of \$5,000 for such a violation, unless the violation is willful. In the latter circumstance the penalty may not exceed \$55,000.

This bill:

- 1) Provides that any person engaging in any unfair method of competition or any unfair or deceptive act or practice is liable to the state for a civil penalty not to exceed \$1,000 for each act. If the act is willful, the penalty is \$5,000. These penalties are made appealable by means of judicial review under the Insurance Code or pursuant to provisions of the Government Code relating to administrative adjudication.

- continued -

- 2) Revises the procedure and requirements for hearings pertaining to cease and desist orders to a) notify the party of their potential liability pursuant to the above provision, to b) include within the scope of the hearing a determination of whether imposition of penalties pursuant to the above provision is appropriate in addition to the cease and desist order, and c) providing for the issuance of an order to pay the penalty.
- 3) Authorizes, after an additional hearing, penalties for violations of cease and desist orders or orders to pay penalties of a) \$5,000 plus any prior penalties which remain unpaid or b) \$55,000 plus unpaid penalties in the case of willful violations.

FISCAL EFFECT

Minor revenue increases to the Department of Insurance based upon the expanded penalty authority contained in this bill.

COMMENTS

Under current law, insurers cannot be fined for practices determined by the Commissioner to be unfair and deceptive unless the practices continue after a cease and desist order has been issued. This measure will allow the Commissioner to impose charges for the initial acts which prompt regulator action. The author expresses the belief that such authority will serve as a more effective and flexible regulatory tool than restricting penalties to violations of cease and desist orders only.

SPONSOR: Author
SUPPORT: None Received
OPPOSITION: None Received

Kenneth Cooley
445-9160
afinins

Honorable Alan Robbins
Member of the Senate
State Capitol, Room 5114
Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Robbins	BILL NUMBER SB 1363
SPONSORED BY	RELATED BILLS	AMENDMENT DATE July 17, 1989

BILL SUMMARY

INSURER PENALTIES FOR UNFAIR PRACTICES

This bill would authorize the Insurance Commissioner to assess specified fines for violations of existing law relating to unfair practices and deceptive acts.

Urgency measure.

SUMMARY OF CHANGES

This version of the bill makes the following minor changes from the previous analysis of the May 9, 1989 version of the bill.

The June 20 amendments clarify that the penalties under this act will continue to accrue until a cease and desist order becomes effective and appealable pursuant to Government Code Section 11500, or Insurance Code Section 12940. The July 17 amendment increases the fines.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1989-90	FC 1990-91	FC 1991-92	
2290 - Insurance	SO	-----See Fiscal Analysis-----			

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Existing law provides that if an insurer allegedly violates certain statutory provisions relating to unfair practices and deceptive acts, the Insurance Commissioner may hold a hearing to determine whether a violation exists. If, after a hearing, the Commissioner determines that any act or practice by an insurer is in violation of law, the Commissioner may issue an order requiring the insurer to cease and desist. Under existing law, an insurer is not liable for a penalty unless it violates the order issued by the Commissioner.

This bill would provide that an insurer who violates statutory provisions relating to unfair practices or deceptive acts before an order is issued by the Commissioner is liable for a penalty of up to \$5,000 for each act, or \$10,000 for each act for a willful violation. The penalty would be assessed by the Commissioner in connection with the hearing on the order.

(Continued)

POSITION: Neutral	Department Director	Date
Principal Analyst (743) E. Jullusson	Date 7/24/89	Program Budget Manager (700) Willis L. Clark
Date		Governor's Office
		Position noted
		Position approved
		Position disapproved
		date:

FR: 0162F *[Handwritten signatures and initials]*

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DC-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Robbins

July 17, 1989

SB 1363

ANALYSIS

A. Specific Findings (Continued)

This bill is intended to discourage insurance companies from violating existing unfair practices and deceptive acts statutes.

B. Fiscal Analysis

This bill would not increase State agency expenditures but has the potential for increasing General Fund revenue from fines and penalties. However, neither the number of violations that may occur nor the number that would result in a fine or a penalty can be predicted at this time.

FR:0162F

HAYS AND MEANS COMMITTEE ANALYSIS

Author: Robbins

Amended: 07/17/89

Bill No.: SB 1363

Policy Committee: Finance and Insurance

Vote: 16-01

Urgency: Yes

Hearing Date: 08/23/89

State Mandated Local Program: No

Staff Comments By:

Disclaimed:

Michael Reyna *MR*

Summary

This bill, an urgency measure, authorizes the Insurance Commissioner to impose civil penalties on those persons in the Insurance business who engage in unfair or deceptive acts or practice.

Under current law, the Commissioner can impose civil penalties only if the person has violated an order to cease and desist from engaging in such activities. The new authority would be in addition to, rather than in lieu of, the Commissioner's existing authority.

Fiscal

Unknown, probably minor (less than \$50,000 annually), revenue to the General Fund from additional civil penalties.

MR

Legislative Analyst
August 14, 1989

ANALYSIS OF SENATE BILL NO. 1363 (Robbins)
As Amended in Assembly July 17, 1989
1989-90 Session

Fiscal Effect:

Cost: None.

Revenue: Unknown potential revenue to the General Fund to the extent additional civil penalties are imposed on persons in the insurance business who engaged in unfair or deceptive acts.

Analysis:

This bill provides that persons in the insurance business who engage in unfair or deceptive acts are liable for civil penalties of up to \$5,000 per act, or up to \$10,000 per willful act, which leads to a cease and desist order issued by the Insurance Commissioner.

Under current law, the Commissioner may hold hearings and order persons in the insurance business to cease and desist from engaging in unfair or deceptive acts. A person violating such a cease and desist order is liable for civil penalties of up to \$5,000 per act, or up to \$55,000 per willful act, for a violation of that order.

The penalties authorized by this measure would be imposed by the Commissioner for the initial act or acts giving rise to such a cease and desist order. Failure to pay penalties imposed under this measure would be a violation of the cease and desist order.

Fiscal Effect

The bill could result in unknown revenue to the General Fund from penalties imposed on persons in the insurance business found to engage in unfair or deceptive acts.

84:81/s8

SENATE THIRD READING

SB 1363 (Robbins) - As Amended: July 17, 1989

SENATE VOTE: 33-1

ASSEMBLY ACTIONS:

COMMITTEE FIN. & INS. VOTE 16-1 COMMITTEE W. & M. VOTE 17-1

Ayes: Johnston, Bader, Bane, Chacon, Ayes: Vasconcellos, Baker, Burton,
 Epple, Farr, Floyd, Katz, Clute, Felando, Friedman,
 Lancaster, Lewis, Margolin, Hannigan, Jones, Killea,
 Moore, O'Connell, Sher, Statham, Mojonnier, Nolan, O'Connell,
 Wright Roos, Roybal-Allard, Speier,
 M. Waters, Wright

Nays: D. Brown

Nays: D. Brown

DIGEST

Urgency statute. 2/3 vote required.

Existing law provides that:

- 1) The Insurance Commissioner, if he or she has reason to believe that a person subject to his or her jurisdiction is engaged in an unfair method of competition or any unfair or deceptive act, may initiate a hearing to determine whether a cease and desist order should be issued.
- 2) If such a cease and desist order has been issued and is violated, the commissioner may, after a hearing, impose a fine of \$5,000 for such a violation, unless the violation is willful. In the latter circumstance the penalty may not exceed \$55,000.

This bill:

- 1) Provides that persons engaging in unfair methods of competition or unfair or deceptive acts are liable to the state for a civil penalty, to be fixed by the commissioner, not to exceed \$5,000 for each act. If the act is willful, the maximum penalty is \$10,000. These penalties are made appealable.

- continued -

- 2) Revises the procedure for cease and desist order hearings to a) notify parties of their potential liability, b) provide for a determination of whether penalties pursuant to this bill are appropriate, and c) to permit the issuance of orders to pay the penalty.
- 3) Authorizes, after an additional hearing, penalties for violations of cease and desist orders or orders to pay penalties of a) \$5,000 plus any prior penalties which remain unpaid or b) \$55,000 plus unpaid penalties in the case of willful violations.

FISCAL EFFECT

Minor revenue increases to the Department of Insurance based upon the expanded penalty authority contained in this bill.

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LEGISLATIVE ANALYSIS

Business, Transportation & Planning Agency

DEPARTMENT INSURANCE	AUTHOR ROBBINS	NUMBER BB 1363
SUBJECT INSURANCE: UNFAIR PRACTICES		ORIGINAL

SUMMARY

Imposes penalty of 5,000 or \$55,000 per day for violation of law relating to unfair and deceptive acts committed by insurers.

ANALYSIS

Existing law sets forth various acts which are designated to be unfair methods of competition and unfair and deceptive acts or practices in the business of insurance, if committed by licensees of the Department of Insurance. When the commissioner has reason to believe that any person has engaged in a violation of those provisions, and that a proceeding by the commissioner would be in the interest of the public, he must issue and serve upon the violator a notice to show cause (which must contain a statement of the charges and a notice of a hearing to be held not less than 30 days after the service of the notice) for the purpose of determining whether the commissioner should issue a cease and desist order concerning those acts or practices. If the commissioner has issued such a cease and desist order ordering the person to refrain from engaging in such acts or practices, and the commissioner has reason to believe that the person has violated the cease and desist order, the commissioner may conduct a hearing to determine that the violation was committed and order the person to pay to the state the sum of \$5,000, or the sum of \$55,000 if the violation is found to be willful.

This bill would provide that any person who engages in any unfair method of competition or unfair or deceptive act or practice is liable to the state for a civil penalty not to exceed \$5,000 for each day in which the person engaged in that act or practice, or if the act or practice was willful, a civil penalty not to exceed \$55,000 for each day in which the person engaged in that act or practice. The penalty would be determined and imposed by the commissioner if the charges are found to be justified.

DEPARTMENTS THAT MAY BE AFFECTED			
POSITION NEUTRAL, IF AMENDED			GOVERNOR'S OFFICE
DEPARTMENT <i>Arizona</i>	AGENCY <i>Original signed by</i> JOHN H. SHARPE	POSITION NOTED	_____
DATE <i>4-24-89</i>	DATE MAY 0 1989	POSITION APPROVED	_____
CC:		POSITION DISAPPROVED	_____
		BY: _____	DATE _____

B. Cost

Slight additional costs to this department to handling this bill under current law may require more extensive preparation to include the determination and imposition of a penalty.

LEGISLATIVE HISTORY

This is the author's own bill (contact: Sal Bianco, 5-0525).

REASONS FOR RECOMMENDED POSITION

This department recommends NEUTRAL if amended position on this bill.

We note that "per day" may not be the most appropriate basis for a penalty. An insurer may engage in one particularly egregious act. In that case, it appears that under the bill the department could exact only a \$5,000 penalty, unless the act was willful. The discretion of the commissioner may be a better basis.

More importantly, this bill is somewhat ineptly drawn, and will cause problems with application and interpretation unless cleaned-up.

The penalty which the bill would impose will continue to accrue "until a cease and desist order issued under Section 790 85 becomes final." That provision may extend the days of violation by a considerable extent. Naturally, the option to comply with a cease and desist order rests with the violator, but our concern is over when the cease and desist order becomes "final" Is it the effective date designated by the commissioner? Or is it after an appeal to a court has been exhausted (in the event of a stay of the commissioner's order)? Some clarifying language is necessary here. Perhaps language could be added which says, in substance: "until the cease and desist order becomes effective and appealable by means of any remedy provided by Section 12940 of the Insurance Code or by the Administrative Procedure Act."

We would be NEUTRAL if those clarifying amendments were made.

EXPERT: BRIAN L. WALKUP
ATSS : 8-492-9209



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

Department of Finance Materials

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DEPARTMENT
Finance

BILL NUMBER
SB 1363

AUTHOR
Robbins

AMENDMENT DATE
September 11, 1989

SUBJECT

INSURER PENALTIES FOR UNFAIR PRACTICES

This bill would authorize the Insurance Commissioner to assess specified fines for violations of existing law relating to unfair practices and deceptive acts.

The bill is an urgency measure.

SUMMARY OF REASON FOR SIGNATURE

SB 1363 would discourage insurance companies from violating statutes relating to unfair practices and deceptive acts and thereby enhance the protections available to consumers.

HISTORY, SPONSORSHIP, AND RELATED BILLS

Sponsored by the author.

This bill is similar to SB 1364 relating to violations of insurance rate provisions of proposition 103.

Assembly 69-2
Senate 33-1

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1989-90	FC 1990-91	FC 1991-92	
2290 - Insurance	SO	-----See Fiscal Analysis-----			

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Existing law provides that if an insurer allegedly violates certain statutory provisions relating to unfair practices and deceptive acts, the Insurance Commissioner may hold a hearing to determine whether a violation exists. If, after a hearing, the Commissioner determines that any act or practice by an insurer is in violation of law, the Commissioner may issue an order requiring the insurer to cease and desist. Under existing law, an insurer is not liable for a penalty unless it violates the order issued by the Commissioner.

(Continued)

RECOMMENDATION:

Department Director Date

Sign the bill

Principal Analyst	Date	Program Budget Manager	Date	Governor's Office
(744) C. Ramos		(700) Wallis L. Clark		Position noted
<i>James P. Loran</i>	<i>9/19/89</i>	<i>Wallis L. Clark</i>	<i>9/20/89</i>	Position approved
				Position disapproved
				by: date:

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Robbins

September 11, 1989

SB 1363

ANALYSIS

A. Specific Findings (Continued)

This bill would provide that an insurer who violates statutory provisions relating to unfair practices or deceptive acts before an order is issued by the Commissioner is liable for a penalty of up to \$5,000 for each act or combination of inadvertent acts, or \$10,000 for each act for a willful violation. The penalty would be assessed by the Commissioner in connection with the hearing on the order.

This bill is intended to discourage insurance companies from violating existing unfair practices and deceptive acts statutes.

B. Fiscal Analysis

This bill would not increase State agency expenditures but has the potential for increasing General Fund revenue from fines and penalties. However, neither the number of violations that may occur nor the number that would result in a fine or a penalty can be predicted at this time.

FR:0637F

Honorable Alan Robbins
 Member of the Senate
 State Capitol, Room 5114
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Robbins	BILL NUMBER SB 1363
SPONSORED BY	RELATED BILLS	AMENDMENT DATE July 17, 1989

BILL SUMMARY

INSURER PENALTIES FOR UNFAIR PRACTICES

This bill would authorize the Insurance Commissioner to assess specified fines for violations of existing law relating to unfair practices and deceptive acts.

Urgency measure.

SUMMARY OF CHANGES

This version of the bill makes the following minor changes from the previous analysis of the May 9, 1989 version of the bill.

The June 20 amendments clarify that the penalties under this act will continue to accrue until a cease and desist order becomes effective and appealable pursuant to Government Code Section 11500, or Insurance Code Section 12940. The July 17 amendment increases the fines.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)			Code Fund
	LA	(Dollars in Thousands)			
	CO	FC	FC	FC	
	RV	1989-90	1990-91	1991-92	
2290 - Insurance	SO	-----See Fiscal Analysis-----			

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Existing law provides that if an insurer allegedly violates certain statutory provisions relating to unfair practices and deceptive acts, the Insurance Commissioner may hold a hearing to determine whether a violation exists. If, after a hearing, the Commissioner determines that any act or practice by an insurer is in violation of law, the Commissioner may issue an order requiring the insurer to cease and desist. Under existing law, an insurer is not liable for a penalty unless it violates the order issued by the Commissioner.

This bill would provide that an insurer who violates statutory provisions relating to unfair practices or deceptive acts before an order is issued by the Commissioner is liable for a penalty of up to \$5,000 for each act, or \$10,000 for each act for a willful violation. The penalty would be assessed by the Commissioner in connection with the hearing on the order.

(Continued)

POSITION: Neutral
 Department Director Original Signed By: Richard Ray
 Date: JUL 29 1989

Principal Analyst (743) E. Juliusson	Date 9/20/89	Program Budget Manager (700) Wallis L. Clark	Date 7/20/89	Governor's Office Position noted Position approved Position disapproved
by: [Signature]				date: 8/2

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

Robbins

July 17, 1989

SB 1363

ANALYSIS

A. Specific Findings (Continued)

This bill is intended to discourage insurance companies from violating existing unfair practices and deceptive acts statutes.

B. Fiscal Analysis

This bill would not increase State agency expenditures but has the potential for increasing General Fund revenue from fines and penalties. However, neither the number of violations that may occur nor the number that would result in a fine or a penalty can be predicted at this time.

FR:0162F

Honorable Alan Robbins
Member of the Senate
State Capitol, Room 5114
Sacramento, CA 95814

DEPARTMENT: Finance
AUTHOR: Robbins

BILL NUMBER: SB 1363

SPONSORED BY: RELATED BILLS: AMENDMENT DATE: May 9, 1989

BILL SUMMARY

INSURER PENALTIES FOR UNFAIR PRACTICES

This bill would authorize the Insurance Commissioner to assess specified fines for violations of existing law relating to unfair practices and deceptive acts.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year)			Code Fund
		(Dollars in Thousands)			
		FC 1988-89	FC 1989-90	FC 1990-91	
2290 - Insurance	SO	-----See Fiscal Analysis-----			

Impact on State Appropriations Limit--No

ANALYSIS

A. Specific Findings

Existing law provides that if an insurer violates certain statutory provisions relating to unfair practices and deceptive acts, the Insurance Commissioner may hold a hearing to determine whether a violation exists. If, after a hearing, the Commissioner determines that any act or practice by an insurer is in violation of law, the Commissioner may issue an order requiring the insurer to cease and desist. Under existing law, an insurer is not liable for a penalty unless it violates the order issued by the Commissioner.

This bill would provide that an insurer that violates statutory provisions relating to unfair practices or deceptive acts before an order is issued by the Commissioner is liable for a penalty of up to \$1,000 for each act, or \$5,000 for each act for a willful violation. The penalty would be assessed by the Commissioner in connection with the hearing on the order.

This bill is intended to discourage insurance companies from violating existing unfair practices and deceptive acts statutes.

B. Fiscal Analysis

This bill would not increase state agency expenditures but has the potential for increasing General Fund revenue from fines and penalties. However, neither the number of violations that may occur nor the number that would result in a fine or a penalty can be predicted at this time.

POSITION:
Neutral

Department Director
Original Signed by
Nancy Sweet

Date
MAY 22 1989

Principal Analyst
(743) E. Juliusson

Date

Program Budget Manager
(700) Wallis L. Clark

Date

Governor's Office

Position noted

Position approved

Position disapproved

by: date:

E. Juliusson 5/24/89

Wallis L. Clark 5/22/89

by: *MA* date: *5/23*

FR1p/0162F

Legislative Analyst
August 14, 1989

ANALYSIS OF SENATE BILL NO. 1363 (Robbins)
As Amended in Assembly July 17, 1989
1989-90 Session

Fiscal Effect:

Cost: None.

Revenue: Unknown potential revenue to the General Fund to the extent additional civil penalties are imposed on persons in the insurance business who engaged in unfair or deceptive acts.

Analysis:

This bill provides that persons in the insurance business who engage in unfair or deceptive acts are liable for civil penalties of up to \$5,000 per act, or up to \$10,000 per willful act, which leads to a cease and desist order issued by the Insurance Commissioner.

Under current law, the Commissioner may hold hearings and order persons in the insurance business to cease and desist from engaging in unfair or deceptive acts. A person violating such a cease and desist order is liable for civil penalties of up to \$5,000 per act, or up to \$55,000 per willful act, for a violation of that order.

The penalties authorized by this measure would be imposed by the Commissioner for the initial act or acts giving rise to such a cease and desist order. Failure to pay penalties imposed under this measure would be a violation of the cease and desist order.

Fiscal Effect

The bill could result in unknown revenue to the General Fund from penalties imposed on persons in the insurance business found to engage in unfair or deceptive acts.

84:81/s8

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ENROLLED BILL REPORT*Business, Transportation and Housing Agency*

DEPARTMENT INSURANCE	AUTHOR ROBBINS	BILL NUMBER SB 1363
SUBJECT SUMMARY		

SB 1363 imposes a penalty for committing an unfair or deceptive practice.

SPONSOR

This is the author's own bill. The contact person is Sal Bianco at 5-0825.

IMPACT ASSESSMENT

This bill imposes a penalty upon any person engaging in an unfair method of competition, or any unfair, deceptive, or other specified act. The fine is not to exceed \$5,000.00 for each act or \$10,000.00 for each willful act. The commissioner has discretion to define the act, except if the issuance, amendment or servicing of a policy is inadvertent, all of those acts shall be considered a single act for the purpose of the penalty.

The penalty shall be determined and imposed as part of the hearing on the charges that the person has engaged in an illegal act. The penalty may be appealed according to specified procedures.

Under current law, a monetary penalty may be imposed only if a person violates a cease and desist order issued by the commissioner upon a determination that charges against the person are justified.

ARGUMENTS PRO

Under current law, the commissioner has no power to impose a penalty until an insurer violates a cease and desist order, thus there is no meaningful deterrent against a violation of the Unfair Practices Act itself.

This bill is consistent with the spirit of Moradi - Shalal because it provides an incentive for insurers to refrain from unfair acts.

According to the author's office, the bill is supported by:

- Sacramento Urban League
- California Conference of Machinists
- Congress of California Seniors
- FAIR (Fair Automobile Insurance Rates)
- California Commission on Aging

RECOMMENDATION SIGN

DEPARTMENT <i>Praxis Allegue</i> <i>by Charlene Mathis</i> <i>(Verbal authorization)</i>	DATE	AGENCY	DATE
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ARGUMENTS CON

There is no known opposition.

RECOMMENDATION

The department recommends that the Governor SIGN SB 1363.

Expert: Roxani Gillespie
ATSS: 8-597-9624

SUPPLEMENTAL ANALYSIS

Business, Transportation & Housing Agency

SUBJECT INSURANCE: UNFAIR PRACTICES	AUTHOR ROBBINS	BILL NUMBER SB 1363 AS AMENDED 5/9/89 6/20/89
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Prior to the May 9th amendment, proposed section 790.035 allowed the commissioner to impose a fine for each day that the offender engaged in a deceptive or unfair practice. The May 9, 1989 amended version of SB 1363 provides that the commissioner shall impose a fine for each deceptive or unfair act. Further, it states that failure to pay the penalty would constitute a violation of a cease and desist order.

The Department is concerned that the 5-9 amendment will require the Department of Insurance to conduct a more thorough and time consuming investigation in order to document the specific number of instances where the offender has engaged in an unfair or deceptive practice. This may very well delay the immediate issuance of a cease and desist order to stop the unfair or deceptive practices.

The 6-20 and 7-6 versions provide that the penalty is appealable under specified sections of law.

The 7-17 version raises civil penalties from \$1,000 to \$5,000 for each act and from \$5,000 to \$10,000 for each willful act.

The Department of Insurance suggests that the Commissioner be given full discretion in the amount of the fine up to an appropriate ceiling figure. The requirements of "each day" (original version) and "each act", as used in the June 9, 1989 version, both preclude the Commissioner from imposing a befitting fine in many circumstances. Granting discretion to the Commissioner will result in, as the old adage goes, "making the punishment fit the crime," and will allow her/him to fine an appropriate amount in a case where a particularly egregious deed has been committed by an insurer.

Nevertheless, the department's original objection to the bill no longer applies, and the Department recommends a change in its position to NEUTRAL with concerns.

BY <i>Nozani Gillespie by Charlene Mathews</i>	DEPARTMENT OF	DATE 8-7-89
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LEGISLATIVE ANALYSIS

DEPARTMENT INSURANCE	AUTHOR ROBBINS	NUMBER SB 1363
SUBJECT INSURANCE: UNFAIR PRACTICES		As Amended ORIGINAL

SUMMARY

Imposes penalty of 5,000 or \$55,000 per day for violation of law relating to unfair and deceptive acts committed by insurers.

ANALYSIS

Existing law sets forth various acts which are designated to be unfair methods of competition and unfair and deceptive acts or practices in the business of insurance, if committed by licensees of the Department of Insurance. When the commissioner has reason to believe that any person has engaged in a violation of those provisions, and that a proceeding by the commissioner would be in the interest of the public, he must issue and serve upon the violator a notice to show cause (which must contain a statement of the charges and a notice of a hearing to be held not less than 30 days after the service of the notice) for the purpose of determining whether the commissioner should issue a cease and desist order concerning those acts or practices. If the commissioner has issued such a cease and desist order ordering the person to refrain from engaging in such acts or practices, and the commissioner has reason to believe that the person has violated the cease and desist order, the commissioner may conduct a hearing to determine that the violation was committed and order the person to pay to the state the sum of \$5,000, or the sum of \$55,000 if the violation is found to be willful.

This bill would provide that any person who engages in any unfair method of competition or unfair or deceptive act or practice is liable to the state for a civil penalty not to exceed \$5,000 for each day in which the person engaged in that act or practice, or if the act or practice was willful, a civil penalty not to exceed \$55,000 for each day in which the person engaged in that act or practice. The penalty would be determined and imposed by the commissioner if the charges are found to be justified.

DEPARTMENTS THAT MAY BE AFFECTED

POSITION NEUTRAL, IF AMENDED	
DEPARTMENT <i>Proximi Allegue</i>	AGENCY
DATE <i>4-24-89</i>	DATE

GOVERNOR'S OFFICE	
POSITION NOTED	_____
POSITION APPROVED	_____
POSITION DISAPPROVED	_____
BY: _____	DATE _____

CC:

B. Cost

Slight additional costs to this department as hearing required under current law may require more extensive preparation if it is to include the determination and imposition of a penalty.

LEGISLATIVE HISTORY

This is the author's own bill (contact: Sal Bianco, 5-0825).

REASONS FOR RECOMMENDED POSITION

This department recommends NEUTRAL if amended position on this bill.

We note that "per day" may not be the most appropriate basis for a penalty. An insurer may engage in one particularly egregious act. In that case, it appears that under the bill the department could exact only a \$5,000 penalty, unless the act was willful. The discretion of the commissioner may be a better basis.

More importantly, this bill is somewhat ineptly drawn, and will cause problems with application and interpretation unless cleaned-up.

The penalty which the bill would impose will continue to accrue "until a cease and desist order issued under Section 790.05 becomes final." That provision may extend the days of violation by a considerable extent. Naturally, the option to comply with a cease and desist order rests with the violator, but our concern is over when the cease and desist order becomes "final" Is it the effective date designated by the commissioner? Or is it after an appeal to a court has been exhausted (in the event of a stay of the commissioner's order)? Some clarifying language is necessary here. Perhaps language could be added which says, in substance: "until the cease and desist order becomes effective and appealable by means of any remedy provided by Section 12940 of the Insurance Code or by the Administrative Procedure Act."

We would be NEUTRAL if those clarifying amendments were made.

EXPERT: BRIAN L. WALKUP
ATSS : 8-492-9209

§ 332

Char Mathias - DOT

1365

Minimal cost for preparation and imposition of the
penalty - minor absorbable

have an order to cease -

- hold a hearing on whether to pay the penalty
- if charges are found to be untrue - issue an order citing the penalty.

violates the order or fails to pay the penalty.

for subsequent violation the com may suspend or
revoke the license.

Sal Beames - 5-0825

SB (1363)

and

Sponsor: author.

SB 1364

Purpose: Assess fines on the first offense.

current law applies the fine for the second offense - ^{Cease and desist}

If an ins co raises rates ∴ Ins Com holds a hearing -
If found guilty -
from that point on - can be fined -

This Bill

Ins Com issues C/D or non comp - fine is assessed

1. Pays penalty -

2. Sets a cap -

198⁰ Dec 88 - 89 - 5 hearings ~~relating to~~ which issue

Non-compliance or Den - NO fines -
because of the
2nd offense
concept

Jesse

9-21

These three bills have virtually
No fiscal impact.

I signed 1363 then had second
thoughts - all three S/B defer to BTH
(1 of them already does 1365)

Agree?

(AB1363, AB1364, AB1365)

Defer

PR



Legislative Research Incorporated

1107 9th Street, Suite 220, Sacramento, CA 95814
(800) 530.7613 · (916) 442.7660 · fax (916) 442.1529
www.lrihistory.com · intent@lrihistory.com

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PACIFIC LAW JOURNAL



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insurance.² Insurers must also notify the Department of intent to withdraw their lines of automobile insurance³ and property insurance⁴ if coverage is provided by a separate rider for an activity generating compensation for the insured.⁵ To ensure the availability of personal lines of property and casualty insurance,⁶ Chapter 727 adds to this group any automobile liability, physical damage, or collision policy and any other insurance covering risks from activities that are not commercial or business related.⁷

LRM

2. *Id.* § 674.6(b)(1) (amended by 1989 Cal. Stat. ch. 727, sec. 1, at ____). *See id.* § 674.5 (requirements for commercial liability insurance).

3. *See id.* § 660 (West Supp. 1989) (types of automobile insurance include automobile liability coverage, automobile physical damage coverage, and automobile collision coverage).

4. *See id.* § 675 (West 1972) (types of property insurance include coverage for loss or damage to real or personal property).

5. *Id.* § 674.6(b)(2) (amended by 1989 Cal. Stat. ch. 727, sec. 1, at ____). The Insurance Commissioner may request additional information from the insurer to determine whether the line of insurance may become unavailable to consumers. *Id.*

6. *See* 1989 Cal. Stat. ch. 727, sec. 2, at ____ (declaring legislative intent).

7. *Id.* sec. 1, at ____ (amending CAL. INS. CODE § 674.6(b)(3),(4)).

Insurance; penalties

Insurance Code §§ 790.035, 1858.07 (new); §§ 790.05, 790.07, 1858.1, 1858.3, 1859.1 (amended).

SB 1363 (Robbins); 1989 STAT. Ch. 725

SB 1364 (Robbins); 1989 STAT. Ch. 726

Support: Consumers Union, California Commission on Aging, Congress of California Seniors, Fair Automobile Insurance Rates, Sacramento Urban League

Existing law provides for penalties against persons who violate the Insurance Commissioner's orders to cease and desist engaging in unfair and deceptive practices.¹ The Commissioner may also assess a penalty against a person² who fails to comply with a final order

1. CAL. INS. CODE § 790.07 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 725, sec. 1, at ____). The Commissioner may assess the penalty after a hearing to determine that the violation exists. *Id.* The penalty may not exceed \$5000 unless the violation is willful, in which case the penalty may be no more than \$55,000. *Id.*

2. *See id.* § 1859.1(a) (amended by 1989 Cal. Stat. ch. 726, sec. 4, at ____) (insurers, organizations, groups, or associations may also be penalized).

directing compliance with rating regulations.³ Chapter 725 imposes civil penalties against any person engaging in unfair or deceptive practices.⁴ The penalty is in addition to that imposed for violation of cease and desist orders, and failure to pay the penalty constitutes a violation of cease and desist orders.⁵ Chapter 726 imposes civil penalties against a person who uses a rate, rating plan, or rating system that violates rating regulations.⁶ Failure to pay a penalty under Chapter 726 constitutes a violation of an order to comply with rating regulations⁷ and is in addition to penalties imposed for violation of the order.⁸

LRM

3. *Id.* The penalty may not exceed \$50,000, unless the failure to comply is willful, in which case the penalty may be no more than \$250,000. *Id.* The Commissioner may also assess a penalty of no more than \$10,000 for each day the violation of rate regulation continues after the period of time in which the Commissioner orders correction, not to exceed an aggregate of \$100,000. *Id.*

4. 1989 Cal. Stat. ch. 725, sec. 1, at ____ (enacting CAL. INS. CODE § 790.035(a)). The Commissioner must fix the penalty which may be no more than \$5000 for each act, but if the act is willful, the penalty may be no more than \$10,000 for each act. *Id.* The Commissioner determines what constitutes an act, but when the issuance, amendment, or servicing of a policy is inadvertent all such acts are a single act under this section. *Id.* If the Commissioner has reason to believe that a person has engaged in unfair or deceptive acts, the Commissioner must serve that person with notice of a hearing to determine whether the Commissioner should make a cease and desist order and whether the Commissioner should impose penalties under Chapter 725. *Id.* sec. 2, at ____ (amending CAL. INS. CODE § 790.05). The penalty is subject to judicial review. *Id.* sec. 1, at ____ (enacting CAL. INS. CODE § 790.035(b)). See CAL. INS. CODE § 790.03 (defines unfair and deceptive practices). See also *id.* § 12940 (West 1988) (provides for judicial review of acts and orders by the Insurance Commissioner).

5. 1989 Cal. Stat. ch. 725, sec. 3, at ____ (amending CAL. INS. CODE § 790.07). Existing law permits the Commissioner to suspend or revoke the person's license to transact insurance for subsequent violations of the cease and desist order. CAL. INS. CODE § 790.07 (West Supp. 1989). Chapter 725 also allows for license suspension or revocation upon subsequent violations of the order to pay the penalty for engaging in unfair and deceptive practices. 1989 Cal. Stat. ch. 725, sec. 3, at ____ (amending CAL. INS. CODE § 790.07).

6. 1989 Cal. Stat. ch. 726, sec. 1, at ____ (enacting CAL. INS. CODE § 1858.07(a)). The penalty must be fixed by the Commissioner at a hearing and may not exceed \$5000 for each act, but if the act was willful, the penalty may be no more than \$10,000 for each act. *Id.* The Commissioner determines what constitutes an act, but when the issuance, amendment, or servicing of a policy is inadvertent all such acts are a single act under this section. *Id.* The penalty is subject to judicial review. *Id.* (enacting CAL. INS. CODE § 1858.07(b)). The Commissioner must notify the insurer of any potential penalty under Chapter 725 when giving notice of noncompliance as required under existing law. *Id.* sec. 2, at ____ (amending CAL. INS. CODE § 1858.1). See CAL. INS. CODE § 1858.1 (amended by 1989 Cal. Stat. ch. 726, sec. 2, at ____) (requiring notification of manner and extent of alleged noncompliance).

7. CAL. INS. CODE § 1858.1 (amended by 1989 Cal. Stat. ch. 726, sec. 2, at ____). Failure to pay the penalty also constitutes a violation of an order of consent to correct the noncompliance. *Id.*

8. 1989 Cal. Stat. ch. 726, secs. 2, 3, at ____ (amending CAL. INS. CODE §§ 1858.1, 1858.3(c)). The penalty is also in addition to any penalty imposed for violation of a final order of the Commissioner. *Id.* sec. 4, at ____ (amending CAL. INS. CODE § 1859.1(a)).



LRI