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14 JAN FRANK

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN FRANCISCO

17 CALIFORNIA ATTORNEYS,
18 ADMINISTRATIVE LAW JUDGES AND
19 HEARING OFFICERS IN STATE
20 EMPLOYMENT, GLEN GROSSMAN,
21 MARK HENDERSON, GEOFFREY
22 SIMS, and DOES 1-500,

23 Petitioners/Plaintiffs,

24 vs.

25 ARNOLD SCHWARZENEGGER as,
26 Governor of the State of California;
27 DAVID GILB as Director of the
28 Department of Personnel Administration;
JOHN CHIANG, Controller of the State of
California; JAN FRANK, as President of
STATE COMPENSATION INSURANCE
FUND, and DOES 1 50,

Defendants/Respondents.

Case No. CPF-09-509205

**DECLARATION OF RONALD B.
TUROVSKY IN SUPPORT OF
MEMORANDUM OF POINTS AND
AUTHORITIES IN RESPONSE TO THE
COURT'S MARCH 20, 2009, REQUEST**

Date: April 15, 2009
Time: 9:30 a.m.
Department: 301

[Filed concurrently with Memorandum of
Points and Authorities In Response to the
Court's March 20, 2009, Request]

I, Ronald B. Turovsky, declare:

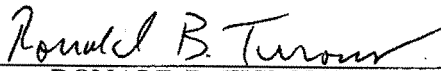
1. I am an attorney licensed to practice law in the State of California and a partner at the law firm of Manatt, Phelps & Phillips, LLP, counsel of record for Respondent and Defendant

1 Jan Frank. I know the following of my own personal knowledge and could and would
2 competently testify to the following if called upon as a witness.

3 2. Attached hereto as Exhibit 1 is a true and correct copy of selected pages of the
4 transcript of the hearing on March 20, 2009, in this matter.

5 3. Attached hereto as Exhibit 2 is a true and correct copy of pertinent pages of a
6 Legislative History that I requested from Legislative Intent Service, Inc. of Assembly Bill 227,
7 which enacted California Insurance Code §11873(c).

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed this 9th day of April, 2009.

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12 _____
13 RONALD B. TUROVSKY

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EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE PETER J. BUSCH, JUDGE PRESIDING

DEPARTMENT NUMBER 301

---oOo---

CALIFORNIA ATTORNEYS,)	
ADMINISTRATIVE LAW JUDGES AND)	
HEARING OFFICERS IN STATE)	
EMPLOYMENT, GLEN GROSSMAN,)	
MARK HENDERSON, GEOFFREY SIMS,)	
AND DOES 1 - 500)	
)	
Petitioners/Plaintiffs,)	Case No. 09-509205
)	
vs.)	
)	Pages 1 - 52
ARNOLD SCHWARZENEGGER, AS)	
GOVERNOR OF THE STATE OF)	
CALIFORNIA; DAVID GILB AS)	
DIRECTOR OF THE DEPARTMENT OF)	
PERSONNEL ADMINISTRATION; JOHN)	
CHIANG, CONTROLLER OF THE)	
STATE OF CALIFORNIA; JAN)	
FRANK, AS PRESIDENT OF STATE)	
COMPENSATION INSURANCE FUND,)	
AND DOES 1 - 50,)	
)	
Defendants/Respondents.)	

Reporter's Transcript of Proceedings

Friday, March 20, 2009

GOVERNMENT CODE § 69954(D): "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE A COPY OF PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR PERSON."

Reported By: Carol A. Karen, CSR No. 8189, RDR, CRR

EXHIBIT 1
PAGE 1

1 **THE COURT:** Well, if you don't want to file anything, of
2 course, you're free not to do that. I guess I don't think you
3 should be filing both on March 30th and April 9th.

4 **MR. TUROVSKY:** I don't intend to do both.

5 **THE COURT:** If for some reason your client or SCIF decides
6 to either be taking issues or pressing issues in some forum, I
7 would like to know that before we get to that date because I
8 think potentially, at least, that would be significant.

9 **MR. WHALEN:** The last stipulation, Your Honor, is that we
10 can continue electronic service.

11 **MR. TYRA:** So stipulated.

12 **MR. TUROVSKY:** Stipulated to that.

13 **MR. TYRA:** Thank you, Your Honor.

14 **THE COURT:** All right. Thank you.

15 **MR. TUROVSKY:** Thank you, Your Honor.

16 **THE COURT:** We'll see you again in a while.

17 (Whereupon, proceedings adjourned at 12:47 p.m.)

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EXHIBIT 2

LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

LEGISLATIVE HISTORY REPORT AND ANALYSIS

Re: **Assembly Bill 227 (Vargas – 2003)**
Chapter 635, Statutes of 2003

Our File No.: 0927995

The legislative history of the above-referenced bill is documented by materials itemized in one declaration.

To comprehend quickly the presentation and order of the documents and obtain important information on our research policies and procedures and request for judicial notice, please visit our web site at www.legintent.com and click on the links “Points and Authorities” and “Research Aids and Policies.”

ASSEMBLY BILL 227 (VARGAS – 2003)
CHAPTER 635, STATUTES OF 2003

Numerous Government, Insurance, and Labor Code sections were affected following legislative passage of Assembly Bill 227 in 2003. (See Exhibit #1e) Assembly member Juan Vargas introduced this bill on January 29, 2003 as a bill relating to credit information. (See Exhibit #1a) This language was stricken on April 28, 2003, and replaced with a proposal to add language to the Labor Code regarding workers’ compensation and the establishment of an interim outpatient surgery facility fee schedule. (See Exhibit #1b) This language was then removed by the Senate amendments of July 14, 2003. (See Exhibit #1c) An explanation for this amendment was provided in the analysis of the Senate Committee on Labor and Industrial Relations:

There are 20 workers’ compensation measures, which have passed out of their houses of origin this session. . . .

With the agreement of Senate and Assembly Leadership, the Chairs of the Senate Labor and Industrial Relations Committee and the Assembly Committee on Insurance, and the authors of this session’s workers’ compensation legislation, it has been determined that . . . all such workers’ compensation bills will be amended to reflect the same intent language prior to submission to conference.
(See Exhibit #7, page 4)

Assembly Bill 227 was assigned to the Assembly Committee on Insurance and the Senate Committee on Labor and Industrial Relations where policy issues raised by the bill were considered. (See Exhibits #3 and #7) The fiscal ramifications of the bill were considered by the Assembly Committee on Appropriations and the Senate Committee on Appropriations. (See Exhibits #2 and #5) Two amendments were made to Assembly Bill 227, one in each House. (See Exhibits #1b, #1c, and #2) Subsequent to the July 14th amendment, the measure was approved by the Senate and returned to the Assembly which referred it to a Conference Committee. (See Exhibit #2) The purpose of a Conference Committee is to bring together six legislators, three from each House, in an attempt to reach a compromise on a bill's language which is acceptable to both the Senate and the Assembly. (See Exhibit #1d)

After the Conference Committee amendment and legislative approval, Governor Gray Davis signed the bill on September 30, 2003, and it was recorded by the Secretary of State on October 1, 2003 as Chapter 635 of the Statutes of 2003. (See Exhibits #1e and #2)

The analysis prepared by the Assembly Committee on Insurance entitled "Proposed Conference Report No. 1" summarized Assembly Bill 227 as last amended on September 9, 2003, as follows:

. . . Authorizes the California Infrastructure and Economic Development Bank (Bank) to issue up to \$1.5 billion worth of bonds at any one time in order to generate funds to be borrowed by the California Insurance Guarantee Association (CIGA); increases maximum fine for workers' compensation fraud; requires the Insurance Commissioner (IC) to take into account the projected savings from the changes enacted this session in determining the advisory pure premium rates; provides that employer assessments shall account for the total costs for the administration of the workers' compensation program; and repeals existing provisions of law relating to vocational rehabilitation and instead provides for a supplemental job displacement benefit. . . .

(See Exhibit #11, page 1)

The Third Reading analysis prepared by the Office of Senate Floor Analyses stated the following regarding the reason and purpose for the Conference:

While there is agreement among the parties that the system is in need of repair, what remains subject for debate is what the real systemic problems are and how best to address them without diminishing the arguably meager benefits injured workers receive in this state.

There are 20 workers' compensation measures, which have passed out of their houses of origin this session. These bills cover such

complex and varied subject matter areas as medical fee scheduling, utilization and insurance market regulation.

With the agreement of Senate and Assembly Leadership, the Chairs of the Senate Labor and Industrial Relations Committee and the Assembly Committee on Insurance, and the authors of this session's workers' compensation legislation, it has been determined that all workers' compensation bills will be submitted to conference committee, for the purpose of ensuring a cohesive and carefully crafted package of workers' compensation reform measures. . . .

(See Exhibit #9, page 2)

The analysis prepared by the Senate Committee on Labor and Industrial Relations for hearing on July 9, 2003 noted the purpose of Assembly Bill 227 was the following:

To state the intent of the Legislature to improve the workers' compensation system by promoting the efficient delivery of high quality appropriate medical care.

(See Exhibit #7, page 1)

This analysis further noted the following as the background on Assembly Bill 227:

Workers' compensation carriers, service providers, and attorneys all agree with the employers who pay workers' compensation premiums and the employees who rely on the workers' compensation benefits that the California workers' compensation system is in the midst of a crisis. The costs of the system, which was originally created to achieve the dual purpose of (1) ensuring compensation for occupational injuries, and (2) protection of employers from the high costs of occupational injury litigation, have increased dramatically over the past few years. These skyrocketing costs have resulted in employers threatening to take action such as discontinuing employee coverage, diminishing other employee benefits or closing their businesses.

(See Exhibit #7, page 3)

This same analysis detailed the reasons the costs have increased. (See Exhibit #7, pages 3 and 4) Also, the analysis detailed the other 19 workers' compensation bills that had passed out of their House of origin. (Id., at pages 4 through 8) You will note that the analysis of the Assembly Committee on Insurance listed 37 related bills that were still pending in Committee and had not yet passed their House of origin. (See Exhibit #3, pages 8 through 13)

Supporters of Assembly Bill 227 included the California Chamber of Commerce, California Labor Federation, California Conference of Machinists, and the Department of Finance, among others. (See Exhibit #13, document PE-2)
Opponents included Primal Key Learning and Zephyr-TEC. (Id.)

An Enrolled Bill Report by the Department of Industrial Relations provided a section titled "Legislative History," which stated:

This bill and AB 228 are the two major workers' compensation omnibus bills in 2003 and are the result of recent conference committee hearings and meetings, and include elements of many other workers' compensation bills that were introduced earlier this year.

(See Exhibit #13, document PE-32)

Insurance Code section 11873(c):

The amendment of Insurance Code section 11873 to add subdivision (c) did not occur until the Conference amendments in the last amended version of the bill. (See Exhibits #1b through #1d) Thereafter, the amendments were enacted into law. (See Exhibit #1e)

As mentioned above, Assembly Bill 227 was an omnibus bill that included provisions that were introduced in prior bills. Our review of the Table of Sections Affected for the 2003 – 2004 Legislative Session indicated that there were no other bills that proposed to amend Insurance Code section 11873 prior to the language appearing in Assembly Bill 227. Additionally, we reviewed the Table of Sections Affected for the 2001- 2002 Session and still found no attempts to amend section 11873.

You may find references to your focus of research within the materials provided. For example, the Proposed Conference Report No.1 in September 9, 2003, proposed, among other changes, to amend section 11873, subdivision (c), as follows:

(c) Notwithstanding any provision of the Government Code or any other provision of law, the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law. This subdivision is declaratory of existing law.

(See Exhibit #1d, page 35)

The Enrolled Bill Report by the Department of Industrial Relations addressed the amendment to section 11873, stating:

Section 12 of the bill, exempting the positions funded by the State Compensation Insurance Fund (SCIF) from any hiring freezes and

staff cutbacks otherwise required by law would have a positive economic impact on SCIF's policy holders.

The state hiring freeze had a substantial impact on SCIF during a period of intense growth in SCIF's policyholder base due to many other Insurance companies dropping out of the California workers' compensation market. Despite large increases in premium volume, numbers of policyholders, necessity for claims adjustment services, increased demand for health and safety services and other insurance company operations, SCIF was unable to increase the size of its workforce. This in itself may have had negative impact on the costs of claims, in that delays in underwriting and claims adjusting responsibilities may have caused higher policy costs to employers, may have caused penalties to occur, and may have led to more and unnecessary litigation—to the extent that employers operated without any insurance due to their inability to obtain a policy from SCIF, this may have led to civil liability and/or substantial penalty assessments for illegal uninsurance.

The impact of allowing SCIF to expand and contract its workforce without regard for hiring requirements applicable to other state departments will allow SCIF's executive leadership to exercise its best business judgment on SCIF's staffing needs. This should have a positive impact on controlling policy costs and providing better service to policyholders.

(See Exhibit #13, documents PE-30 and PE-31)

The language you are investigating may be affected by bills, pending or enacted, in the current legislative session. *We do not ordinarily review for current session bills, but will do so upon request.*

Any analysis provided in this report is based upon the nature and extent of your request to us, as well as a brief review of the enclosed documents. As such, it must be considered tentative in nature. A more conclusive statement of the impact of the legislative history in your case would be dependent upon a complete understanding of all of the factual issues involved and the applicable legal principles.

We appreciate the opportunity to provide this assistance and hope that these efforts will be of value to you.

LEGISLATIVE INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 227 of 2003. Assembly Bill 227 was approved by the Legislature and was enacted as Chapter 635 of the Statutes of 2003.

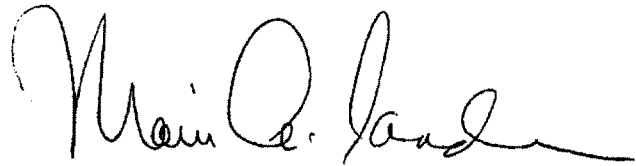
The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 227 of 2003. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

ASSEMBLY BILL 227 OF 2003:

1. All versions of Assembly Bill 227 (Vargas-2003);
2. Procedural history of Assembly Bill 227 from the 2003-04 Assembly Recess History;
3. Analysis of Assembly Bill 227 prepared for the Assembly Committee on Insurance;
4. Material from the legislative bill file of the Assembly Committee on Insurance on Assembly Bill 227;
5. Analysis of Assembly Bill 227 prepared for the Assembly Committee on Appropriations;
6. Third Reading analysis of Assembly Bill 227 prepared by the Assembly Committee on Insurance;
7. Analysis of Assembly Bill 227 prepared for the Senate Committee on Labor and Industrial Relations;

8. Material from the legislative bill file of the Senate Committee on Labor and Industrial Relations on Assembly Bill 227;
9. Third Reading analysis of Assembly Bill 227 prepared by the Office of Senate Floor Analyses;
10. Concurrence in Senate Amendments analysis of Assembly Bill 227 prepared by the Assembly Committee on Insurance;
11. Proposed Conference Report No. 1 analysis of Assembly Bill 227 prepared by the Assembly Committee on Insurance;
12. Conference Completed analysis of Assembly Bill 227 prepared by the Assembly Committee on Insurance;
13. Post-enrollment documents regarding Assembly Bill 227;
14. Two articles from Research, News, and Opinions from the Senate Democrats, dated September 29, 2003, available online at <http://democrats.sen.ca.gov> as follows:
 - a. "Alarcón expressing 'Grave Concerns' Re: Workers' Comp. Hearing";
 - b. "Senator Alarcón Letter to Commissioner Garamendi";
15. Summary of Assembly Bill 227 and Workers' Compensation Reform from the State Compensation Insurance Fund available online at <http://www.scif.com>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of April, 2009 at Woodland, California.



MARIA A. SANDERS

CONFIDENTIAL - Government Code §6254(l)		
Department/Board Industrial Relations		Bill Number/Author: AB 227/Vargas
Sponsor: Conference Report	Related Bills SB 228 (Alarcon) SB 1007 (Speier) AB 149 (Cohn) AB 1099 (Negrete-McLeod) AB 1262 (Matthews) AB 1557 (Vargas)	Chaptering Order (if known) AB 227 SB 1007 <input checked="" type="checkbox"/> Attachment
<input type="checkbox"/> Admin Sponsored	Proposal No.	
Subject: Workers' Compensation - Administration and Benefits		

SUMMARY

This bill is one of two major components of a package of workers' compensation reform bills passed this session. Essentially, AB 227 makes various changes to provisions concerning workers' compensation including:

The California Insurance Guarantee Association (CIGA); increase in fine for committing fraud in obtaining or denying compensation, increasing the maximum fine from \$50,000 to \$150,000; expands group insurance for manufacturing facilities; makes various changes to the Insurance Commissioner's responsibilities; provides State Compensation Insurance Fund (SCIF) with exemptions from hiring freezes and staff cutbacks; provides for 100% user funding for the Division of Workers Compensation (DWC); requires the Commission on Health Safety and Workers Compensation (CHSWC) to undertake a study on the feasibility of reinstatement of insurance rate regulation; and repeal of vocational rehabilitation, and creates a Supplemental Job Displacement Benefit.

Departments That May Be Affected Department of Industrial Relations: Division of Workers' Compensation, Commission on Health and Safety and Workers' Compensation; Department of Insurance; State Compensation Insurance Fund; California Insurance Guarantee Association; the Workers' Compensation Insurance Rating Bureau; and, California Infrastructure and Economic Development Bank.			
<input type="checkbox"/> New / Increased Fee	<input type="checkbox"/> Governor's Appointment	<input type="checkbox"/> Legislative Appointment	<input type="checkbox"/> State Mandate <input type="checkbox"/> Urgency Clause
Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:	Agency Secretary Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:	PE-16	
Department Director <i>Chris Lane</i>	Date 9-24-03	Agency Secretary <i>[Signature]</i>	Date 9-27-03

LEGISLATIVE INTENT SERVICE (800) 666-1917



PURPOSE OF THE BILL

This bill would enact significant structural and cost saving reforms in the administration of the workers' compensation system. The estimated savings are projected to be between \$5-6 billion, to a system size of approximately \$26 billion.

RECOMMENDATION AND SUPPORTING ARGUMENTS**SIGN**

The 2003 workers' compensation reform package is estimated to reduce the annual cost of the workers' compensation system by approximately \$5-6 billion without rolling back the benefit increases for injured workers provided by the 2002 bills, AB 749 and AB 486.

AB 227, along with SB 228 and the other bills contained in the package, is an important step to rein in the cost of workers' compensation and provide employers with relief from the skyrocketing costs of workers' compensation insurance. This bill contains significant components of the Governor's May 1st packet of Workers' Compensation reforms. It is anticipated this bill and SB 228 will generate more than \$5 billion in one-time savings and \$5 billion to \$6 billion a year in on-going reductions.

SUMMARY OF THE MAJOR PROVISIONS OF THE BILL

The major provisions of this bill:

- 1) Provide for 100 percent employer funding for the Division of Workers' Compensation;
- 2) Repeal the existing vocational rehabilitation statute as part of repeal of vocational rehabilitation mandate and implement a new supplemental job displacement benefit for injuries occurring on or after January 1, 2004;
- 3) Allow the California Insurance Guarantee Association (CIGA) to borrow funds to pay the claims of insolvent workers' compensation insurers, expand the definition of "insolvency" to also mean the inability of an insurer to meet its financial obligations when they are due, and exempt CIGA from penalty awards based upon the actions of an insolvent insurer;
- 4) Increase maximum fine for workers' compensation fraud from \$50,000 to \$150,000;
- 5) Allow workers' compensation group insurance to include specified manufacturing facilities;
- 6) Require the Insurance Commissioner to take into account the projected savings from the changes in workers' compensation laws enacted this session in determining advisory pure premium rates for 2004;
- 7) Require the Insurance Commissioner, on or before July 1, 2004, to establish and maintain on the Department of Insurance's web site, an online rate comparison guide



- showing workers' compensation insurance rates for the 50 insurance companies writing the highest volume of business in this line during the two preceding years;
- 8) Require the Workers' Compensation Insurance Rating Bureau to determine the cost savings achieved in the 2003 workers' compensation reform legislation. The bill also requires each insurer to certify that its rates reflect those cost savings. The bill would also provide that these certifications shall be made available to the public on DOI's web site;
- 9) Specify that the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law;
- 10) Make enactment of this bill contingent upon enactment of SB 228.

ANALYSIS

Existing law (Government Code Section 63001 et seq.) establishes the California Infrastructure and Economic Development Bank for specified purposes related to the financing of projects in the public interest. Existing law also requires that entities applying for financing from the bank meet various requirements, and places certain limitations on the bank's approval of projects.

This bill would provide that a project for the financing of the costs of claims of insolvent workers' compensation insurers at the request of the California Insurance Guarantee Association (CIGA) shall be deemed to be in the public interest and eligible for financing by the bank. It would provide that the requirements and limitations applicable to the financing of certain projects do not apply to the financing of the costs of these claims. The bill would allow the bank to issue bonds to finance these costs and would specify how the bond proceeds may be used. (Sections 1, 2.)

Existing law (Government Code Section 63071) provides that the total amount of revenue bonds issued by the bank that may be outstanding at any one time shall not exceed \$5 billion exclusive of rate reduction bonds, as defined, and certain bonds issued by the bank to finance economic development facilities, as defined.

This bill would provide, instead, that the total amount of bonds issued by the bank to finance public development facilities, as defined, that may be outstanding at any one time shall not exceed \$5 billion. (Section 3.)

Existing law (Insurance Code Section 1063, et seq.) establishes the CIGA for specified purposes related to the payment of the obligations of insurers.

Existing law (Insurance Code Section 1011) requires the Insurance Commissioner to take possession of the property, business, books, records, and accounts of an insurer if it appears to the commissioner that the insurer is insolvent, and to retain them subject to a court order. Existing law also requires a court, upon a filing by the commissioner showing



the insolvency of an insurer, to issue an order vesting title to all of the insurer's assets in the commissioner.

Existing law (Insurance Code Section 985) defines "insolvency" for these purposes to mean any impairment of minimum paid-in capital, as defined, required in the aggregate of an insurer by specified provisions of law for the classes of insurance that it transacts.

This bill would expand the definition of "insolvency" to include, in addition, an inability of the insurer to meet its financial obligations when they are due. (Section 4.)

Existing law (Insurance Code Section 1063(f)) requires CIGA to adopt a plan of operations, and any amendments thereto, as specified, and allows CIGA to borrow funds when necessary to carry out its mandate.

This bill would, in addition, allow CIGA to provide in its plan of operations for the issuance of specified financing instruments and for securing those instruments. (Section 5.)

Existing law (Insurance Code Section 1063.50, et seq.) authorizes CIGA to pay certain claims of insolvent insurers that arise as the result of a natural disaster, and allows the Department of Insurance to issue bonds for that purpose.

This bill would, in addition, specify circumstances involving the insolvency of one or more workers' compensation insurers, authorize the board of directors of CIGA to request the California Infrastructure and Economic Development Bank to issue bonds to provide funds for the payment of covered claims and related expenses. It would require CIGA to provide the commissioner with a copy of the request, and would allow the commissioner to modify, cancel, or require a delay in the requested issuance. (Section 7.)

This bill would require proceeds from the sale of these bonds to be deposited in a separate account in the Workers' Comp Bond Fund, which is created by these provisions, and would allow disbursements from this account only by CIGA or the trustee for the bonds, as specified.

This bill would also allow CIGA to levy upon member insurers special bond assessments in the amount necessary to pay the principal and interest on the bonds, and to meet other requirements, as specified. It would require that these assessments be placed in a separate account in the Workers' Comp Bond Fund, and would provide that only the trustee for the bonds may authorize disbursements from the account.

This bill would require that any bonds issued to provide funds for covered workers' compensation claim obligations be issued before January 1, 2007, in an aggregate principal amount not to exceed \$1.5 billion, and would provide that the bonds shall not have a final maturity date exceeding 20 years from the date of issuance. The bill would add related provisions and make related changes.



Existing law (Insurance Code Section 1063.1(c)(8)) provides that CIGA's liability for "covered claims" does not include any amount awarded as punitive or exemplary damages.

Existing law (Labor Code Section 5814) provides that when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the order, decision, or award shall be increased by 10 percent. Multiple increases shall not be awarded for repeated delays in making a series of payments due for the same type of benefit unless there has been a legally significant event between the delay and the subsequent delay in payments of the same type or specie of benefits.

Existing law (Labor Code Section 5814.5) provides that when the payment of compensation has been unreasonably delayed or refused subsequent to the issuance of an award by an employer that has secured the payment of compensation pursuant to Section 3700, the appeals board shall, in addition to increasing the order, decision, or award pursuant to Section 5814, award reasonable attorneys' fees incurred in enforcing the payment of compensation awarded.

In the En Banc decision in Lester Hershman v. James Eisenberg Medical Group; California Compensation Insurance Company, In Liquidation; California Insurance Guarantee Association; and Kemper Employers Claims Service (servicing Facility), (2002) 67 Cal.Comp.Cases 808, the WCAB held that Section 5814 penalties, imposed based on the basis of an insolvent insurance carrier's unreasonable failure to pay (or unreasonable delay in paying) its workers' compensation obligations before the appointment of a liquidator, fall within the general definition of covered claims for which CIGA is responsible. The WCAB therefore held that CIGA is liable for section 5814 penalties imposed on the basis of an insolvent insurer's pre-liquidation unreasonable delays in paying (or failures to pay) workers' compensation benefits.

This bill would provide that CIGA is not responsible for paying 5814 and 5814.5 penalties for unreasonable delay or claim refusal when the penalties were awarded in response to actions taken by insolvent insurance companies prior to administration by CIGA. (Section 6.)

Existing law (Insurance Code Section 1872.83) provides for the Fraud Assessment Commission to determine the level of assessment to fund the investigation and prosecution efforts in workers' compensation insurance fraud. The Commission membership is comprised of five individuals consisting of representatives from self-insurers, insured employers, workers' compensation insurers, and the President of the State Compensation Insurance Fund who serves as an ex-officio member.

Existing law (Insurance Code 1871.4, 11760, and 11880) provides that it is unlawful to make knowingly false or fraudulent statements or representations for the purpose of either obtaining or denying any compensation, or reducing the premium, rate, or cost of insurance. Existing law also specifies the penalties for violating these provisions, including a fine up to \$50,000, or twice the amount of the fraud, whichever is greater.



This bill would increase the maximum fine from \$50,000 to \$150,000, or twice the amount of the fraud, whichever is greater. (Section 8.)

Existing law (Insurance Code Section 11656.6) authorizes an insurer to issue a workers' compensation policy insuring an organization or association of employers subject to specified conditions, including requirements that the organization or association file certain documents with the commissioner or a licensed workers' compensation rating organization relating to (a) the percentage of its membership engaged in a common trade or business, and (b) the naming in certain statements of members eligible for insurance.

Existing law limits the eligibility for group insurance under a "common trade or business" to several categories of work. These categories include agriculture, construction, transportation and warehousing, timber and lumber, provision of water services, and sheltered workshop and rehabilitation industries, as well as "all other enterprises in which the principal payroll develops under a single manual classification or a combination of classifications and which organization or association has had at least 50 percent of its present membership for at least one year prior to the issuance of the policy, and not less than 75 percent of the payroll of each employer to be insured under the group policy developed under the same two manual classifications for the preceding policy year, or not less than 75 percent of his estimated annual payroll develops under such classifications.

Existing law defines the term "common trade or business" for purposes of these provisions.

This bill expands the definition of "common trade or business" for the purpose of association or trade group workers' compensation insurance policies to include manufacturing facilities as identified in the North American Industry Classification System (NAICS). This definition now includes manufacturing facilities specified, operations in which the principal payroll of the employer develops under any combination of classifications of the Manual of Rules, Classifications, and Basic Rates of Workers' Compensation Insurance by the Insurance Commissioner applicable to establishments engaged in mechanical, physical, or chemical transformation of materials, substances, or components into new products. (Section 9.)

Existing law (Insurance Code Section 11730 et seq.) regulates the establishment of advisory pure premium rates of workers' compensation insurers.

Existing law (Insurance Code Section 11732) requires rates to be adequate to cover an insurer's losses and expenses, requires that rates tend not to impair or threaten the solvency of an insurer, and provides that they shall not tend to create a monopoly.

Existing law (Insurance Code Section 11732.5) also prohibits rates that are unfairly discriminatory.

Existing law (Insurance Code Section 11734) requires workers' compensation insurers to adhere to a uniform experience-rating plan filed with the Insurance Commissioner by a rating organization designated by the commissioner.



Existing law (Insurance Code Section 11735) requires insurers to file all rates with the commissioner.

This bill would require the Insurance Commissioner, in determining the advisory pure premium rates for policies incepting on or after January 1, 2004, to take into account projected savings due to changes enacted in the 2003 Regular Session.

This bill would require insurers to file rates to apply to policies incepting on or after January 1, 2004, that include the provision for projected savings determined by the insurance commissioner, as specified. The bill would provide that these provisions shall remain in effect until January 1, 2005. (Section 10.)

This bill expresses a legislative finding that insolvencies have constricted the insurance market but that a central updated online information source comparing insurance rates would increase consumer power of employers buying workers' compensation coverage. Under this bill, the insurance commissioner would be required to create an online guide comparing workers' compensation insurance rates for at least the 50 insurance companies writing the highest volume of business in this line during the 2 preceding years, and indicating effective dates of each rate—this online comparison would be similar to online rate comparisons already in operation for several other insurance lines.

This bill would require the rating organization designated by the commissioner as his or her statistical agent (the WCIRB) to determine the cost savings achieved in the 2003 workers' compensation reform legislation, and would require each insurer to certify that its rates reflect those cost savings. It would require that the certifications be made available on the department's Internet Web site. (Section 11.)

Existing law (Insurance Code Section 11770) provides that the State Compensation Insurance Fund is to be administered for the purpose of transacting specified forms of insurance, including workers' compensation insurance.

Existing law (Insurance Code Section 11773) provides that the State Compensation Insurance Fund is to be organized as a public enterprise fund.

Existing law (Insurance Code Section 11820) requires the board of directors of the fund to establish the rates to be charged by the fund, as specified, and provides that those rates are subject to certain regulatory provisions.

Existing law (Insurance Code Section 11873) exempts the State Compensation Insurance Fund from specified provisions of law applicable to other state agencies generally.

This bill would provide that the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law. (Section 12.)

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Existing law (Labor Code Section 62.5) establishes the Workers' Compensation Administration Revolving Fund as a special account in the State Treasury and moneys in the fund may be expended by the Department of Industrial Relations, upon appropriation by the Legislature, for the administration of the workers' compensation program.

Existing law requires that 80% of the costs of the workers' compensation program be borne by the General Fund and 20% of the costs of the program be borne by employers through assessments levied by the Director of Industrial Relations.

This bill would instead require that employer assessments account for the total costs of the workers' compensation program. (Section 13.)

The bill would also specify that it is the intent of the Legislature that a sufficient portion of the fund be allocated to the following priority initiatives:

- Implementation of the fraudulent claim reporting provisions;
- Communication to the public when changes are made in the medical fee schedules;
- Adoption of implementation of a clerical upgrade to promote adequate staffing and clerical employee retention necessary to support the judicial system of the Workers' Compensation Appeals Board; and, development of a cost-efficient electronic adjudication management system (electronic filing, calendaring, and case management).

Existing law (Labor Code Section 4650) provides for the payment of temporary disability indemnity payments to any injured employee under specified circumstances.

Existing Law (Labor Code Sections 139.5 and 4635 et seq.) provides for the provision of vocational rehabilitation services to injured workers who meet specified standards for medical and vocational eligibility. These services are limited to workers who are permanently precluded, or likely to be permanently precluded, from performing their usual and customary occupation or the job at the time of injury. Vocational rehabilitation services are funded by the employer or insurer.

The Division's Vocational Rehabilitation Unit determines which services are needed to assist injured workers to return to suitable gainful employment when the workers are unable to return to their jobs, and resolves disputes regarding rehabilitation benefits and services.

This bill would eliminate the vocational rehabilitation benefit for dates of injury on or after January 1, 2004. (Sections 14, 14.3 and 16.)

This bill would provide that for injuries occurring on or after January 1, 2004, if an injury causes permanent disability and the injured employee does not, within 60 days of the termination of temporary disability indemnity payments, return to work to his or her usual or customary job for the employer, the injured employee shall be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for



education-related retraining or skill enhancement, or both, at state approved or accredited schools. (Sections 14.2, 14.4, 15.)

The benefit would be awarded as follows:

- a) Up to \$4,000 for permanent partial disability awards of less than 15%;
- b) Up to \$6,000 for permanent partial disability awards between 15% and 25%;
- c) Up to \$8,000 for permanent partial disability awards between 26% and 49%; and,
- d) Up to \$10,000 for permanent partial disability awards between 50% and 99%.

The bill would provide that the voucher may be used for payment of tuition, fees, books, and other expenses. No more than 10% of the voucher moneys could be used for vocational or return to work counseling.

The bill would provide that the employer shall not be liable for the supplemental job displacement benefit if the employer meets either of the following conditions:

- a) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, modified work accommodating the employee's work restrictions, lasting at least 12 months; or,
- b) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, alternative work meeting all of the following conditions:
 - i) The employee has the ability to perform the essential functions of the job provided;
 - ii) The job provided is in a regular position lasting at least 12 months;
 - iii) The job provided offers wages and compensation that are within 15% of those paid to the employee at the time of injury; and,
 - iv) The job is located within reasonable commuting distance of the employee's residence at the time of injury.

Existing law (California Constitution Article 14, Section 4) provides that the Legislature is expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party.

This bill would state the findings and declarations of the Legislature that to ensure that injured workers are fairly treated, receive prompt and adequate disability benefits, and have access to quality health care, a stable and predictable workers' compensation system is required. Accordingly, the bill would require the Commission on Health and



Safety and Workers' Compensation to study and report to the Legislature the feasibility of reinstating a minimum rate regulatory structure for the workers' compensation insurance market, to be phased in over a 5-year period. (Section 17.)

This bill would also declare that it would not become operative unless SB 228 is enacted on or before January 1, 2004. (Section 18.)

This bill would also provide that its provisions are severable. (Section 19.)

PROGRAM BACKGROUND

California's workers' compensation system was established in 1913 and provides the exclusive remedy for industrial injuries, irrespective of the fault of the employee or employer. Injured workers receive medical treatment without cost to the employee and receive a variety of benefits to compensate for injuries arising out of and in the course of employment.

All employers in California, except the state, must secure payment of workers' compensation insurance through purchase of an insurance policy or by obtaining a certificate of self-insurance from the Department of Industrial Relations. The state is a legally uninsured employer.

Disputes are adjudicated by Worker's Compensation Administrative Law Judges employed by the Division of Workers' Compensation in the Department of Industrial Relations. The Workers' Compensation Appeals Board, consisting of seven commissioners appointed by the Governor, may reconsider the decisions of these judges.

Workers' compensation benefits consist of the following:

Medical Treatment.

An injured worker is entitled to medical treatment that is reasonably required to cure or relieve the effects of the injury. This treatment includes medical, surgical, chiropractic and hospital treatment, including nursing, medicines, medical and surgical supplies, and crutches. A physician, surgeon, psychologist, acupuncturist, optometrist, dentist, podiatrist, or chiropractor may provide these services. Maximum medical and hospital expenses are subject to a medical fee schedule and an inpatient hospital fee schedule promulgated by the Administrative Director of the Division of Workers' Compensation.

Temporary and Permanent Total Disability

Workers' compensation disability indemnity benefits are paid at the rate of 2/3 of the worker's average weekly wage at the time of the injury or illness caused by employment but are subject to statutory minimums and maximums.



Temporary disability benefits are paid during the period that a worker recovers from an illness or injury. The 2004 minimum benefit will be \$126 per week. The 2004 maximum benefit will be \$728 per week.

Permanent total disability benefits are paid to a worker whose injury results in a total disability. The 2004 minimum benefit will be \$126 per week and the 2004 maximum benefit will be capped at \$728 per week for life.

Permanent Partial Disability

Permanent partial disability benefits are paid to workers whose injury or illness leaves them permanently but only partially impaired. This benefit for 2004 will be capped at \$200 per week for a disability up to 69.75 percent, and \$250 for a disability between 70 and 99.75 percent. The minimum benefit will be \$105 per week.

The number of weeks for which permanent partial disability payments are allowed is based on the percentage of permanent disability and increases with the severity of the disability.

Vocational Rehabilitation

The Administrative Director is required to establish a vocational rehabilitation unit, which has specified duties, including approving vocational rehabilitation plans developed by a qualified rehabilitation representative. An employee may receive additional living expenses while receiving vocational rehabilitation in the form of a vocational rehabilitation maintenance allowance. This vocational rehabilitation maintenance allowance is capped at \$246 per week. In no event may the counseling fees, maintenance allowance, and costs associated with, or arising out of, vocational rehabilitation services incurred after the employee's request for vocational rehabilitation services, except temporary disability payments, exceed \$16,000.

For injuries occurring on or after January 1, 2003, an employer and a represented employee may agree to settle the employee's right to prospective rehabilitation services for a one-time payment to the employee of not more than \$10,000 for use in the employee's self-directed vocational rehabilitation.

Life Pension

A worker who is 70 percent or more disabled, but less than 100 percent disabled receives a life pension for the remainder of his or her life when the permanent partial benefits are exhausted.

Death Benefits.

Total and partial dependents of a worker who dies as a result of an industrial injury are entitled to a death benefit. These benefits include \$125,000 for a single total dependent, \$145,000 where there are two total dependents and \$160,000 for three or more total dependents.

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This benefit is paid at the rate of temporary disability benefits until the benefit amounts are exhausted. A minor who was totally dependent on the deceased worker receives the benefit until reaching the age of 18, notwithstanding the maximum limitation.

OTHER STATES' INFORMATION

User Funding

One hundred percent user funding for the states' workers' compensation programs is in operation in approximately 40 other states. In most cases, the user funding is authorized at an amount up to a specified percentage of premiums, usually between 1 and 3% of premium or premium equivalent or losses paid in the case of self-insured employers.

Texas – Financed by a maintenance tax assessment not to exceed two percent of total annual amount of unmodified workers' compensation insurance premiums against all insurance companies who write workers' compensation insurance policies in the state. 2001 assessment was 1.67 percent of premium.

Florida – Financed by a prorated assessment of net premiums collected by each carrier and amount of premium a self-insured employer would have to pay. For 2002 year, rate was 2.56 of the net premiums collected.

Oregon – Primary funding source is premium assessment of 8.0 percent of the direct earned premium of insurers and the simulated earned premium of self-insured employers. Premium assessment covers funding for divisions and the Oregon OSHA program.

New York - Financed by assessment against insurance companies and self-insured employers. The amount of the assessment is unknown.

Arizona – Financed by a floating premium tax, not to exceed three percent. 2002 rate was 2.75% of premium.

Group Insurance

New York - Electrical manufacturers and paper products manufacturers in New York state may join safety groups.

Texas - Employers that are members of NFIB are eligible for a safety group in manufacturing that grants a 10% discount to participants in group safety programs.

Fraud Penalties

Connecticut - Workers' compensation fraud is a B or C felony subject to penalties up to treble damages in a civil proceeding.

Florida - Workers' compensation fraud is a first-degree misdemeanor subject to fines of \$500 to \$15,000.



Massachusetts - Workers' compensation fraud is punishable with up to five years imprisonment and fines from \$1,000 to \$10,000.

Texas - Requires an employee found guilty of workers' compensation fraud to make full repayment, including interest, and may result in a fine of up to \$5,000. If an employer is found guilty of fraud, he or she is liable for past premiums otherwise payable to the insurance company, interest, and a fine up to \$5,000.

Washington - An employer who misrepresents payroll shall be liable for ten times the amount of the difference between premiums paid and the amount the employer should have paid and for the reasonable expense of auditing the employer books and collecting such sums.

Vocational rehabilitation

Every state (including the District of Columbia), except South Carolina, has some form of vocational rehabilitation with most states making vocational rehabilitation a discretionary benefit.

LEGAL IMPACT

The Division of Workers' Compensation will be required to revise existing regulations and adopt new regulations to implement various portions of this bill. These regulatory requirements are discussed below in the Economic Impact section.

The provisions of section 6 of the bill exempting CIGA from liability for 5814 and 5814.5 penalties for unreasonable delay or claim refusal when the penalties were awarded in response to actions taken by insolvent insurance companies prior to administration by CIGA would overturn the WCAB's En Banc decision in Lester Hershman v. James Eisenberg Medical Group; California Compensation Insurance Company, In Liquidation; California Insurance Guarantee Association; and Kemper Employers Claims Service (servicing Facility), (2002) 67 Cal.Comp.Cases 808.

Unless promptly addressed in a clean-up bill with urgency clause, the repeal of the mandatory vocational rehabilitation benefit effective January 1, 2004 (section 14, 14.3 and 16) without providing for continuation of rehabilitation benefits for dates of injury preceding January 1, 2004 may result in litigation to clarify whether or not the repeal applies retroactively.

The elimination of vocational rehabilitation will result in a gradual reduction in the number of appeals to the WCAB of rehabilitation unit decisions.

The uncodified requirement for the Commission on Health and Safety and Workers' Compensation to study and report to the Legislature the feasibility of reinstating a minimum rate regulatory structure for the workers' compensation insurance market could have significant legal effect if a minimum rate law was re-enacted. The repeal of the minimum rate law unleashed unbridled competition for market share among insurers and rates were often quoted below the level seen as adequate to pay claims and loss



adjustment expenses. Ultimately, this led to a significant number of insolvencies among large and small carriers, and led to the present situation in which the State Fund has a much larger share of business than any other year in recent memory.

The reinstatement of the minimum rate law would likely reorient the focus of insurance ratemaking to the solvency of the carriers, and away from efficiency. Reinstatement would reduce the ability of individual insurers to adjust rates for policyholders and likely reduce the number of insurer insolvencies.

FISCAL IMPACT:

There will be costs to DIR generally and DWC and the Commission on Health and Safety and Workers' Compensation specifically to implement various portions of this bill.

Section 14.4(b) of the bill will impose personnel costs and operating expenses on DWC to implement the bill's requirements for the Administrative Director to adopt regulations concerning the newly created supplemental job displacement benefit.

Providing for 100 percent employer assessment funding (Labor Code §62.5) for the administration of the workers' compensation program would create approximately \$75 million in savings for the general fund. DWC and other agencies would have a more stable funding level than those experienced during recent years when state budget reductions led to decreases in staffing and funding for the Division. The Division could be required to revise the existing Workers' Compensation Administration Revolving Fund regulations.

The Division of Workers' Compensation estimates it would require 2.5 personnel years with zero one-time costs and ongoing costs for fiscal year 2004-2005, and thereafter, of \$238,000. Estimated clerical positions are 23 personnel years with one-time costs of \$202,000 and ongoing costs of \$4.324 million for fiscal year 2004-2005 and beyond. Total cost for clerical personnel years are \$4.526 million.

Section 17 of the bill will impose costs on CHSWC to study and report to the Legislature the feasibility of reinstating a minimum rate regulatory structure for the workers' compensation insurance market.

The reinstatement of the minimum rate law would reorient the focus of insurance ratemaking to the solvency of the carriers, and away from efficiency. Such reinstatement would require the Insurance Commissioner to set rates, and would reduce the ability of individual insurers to adjust individual rates for policyholders or in the aggregate to capture market share. The net effect on rates, judging from past experience, would be an increase in employers' costs in the short run.

The Commission on Health and Safety and Workers' Compensation (CHSWC) estimates that this study will have one time and total cost of \$500,000. Further, in order to measure the impact of reforms and report to the Legislature, CHSWC estimates one-time cost of



\$100,000 and ongoing costs beyond fiscal year 2004-2005 of \$100,000, with total costs accruing to \$200,000.

For Labor Code § 62.5, the electronic adjudication management system, implementation costs are approximately 4.0 personnel years with one-time costs through fiscal year 2007-2008 of \$13.17 million and ongoing costs beyond fiscal year 2004-2005 of \$899,000. Total one-time and ongoing costs for implementation of this section are \$14.073 million.

Information systems' staff will need to maintain data systems needed for provisions in SB 228, this will incur personnel year costs. Please see the EBR for SB 228 for the fiscal detail.

ECONOMIC IMPACT:

If enacted, the package of 2003 workers' compensation reform bills is estimated by proponents to reduce the overall costs of workers' compensation by approximately \$5-6 billion.

Sections 1 through 6 which concern the California Insurance Guarantee Association (CIGA) will contribute to the fiscal soundness of the Guarantee Association and preserve CIGA's viability as the "safety net" for injured workers' whose employers' workers' compensation insurers become insolvent.

Section 9 of the bill, allowing manufacturers to obtain group workers' compensation insurance will create costs savings in the form of reduced workers' compensation premiums.

Section 10 of the bill will create cost savings for employers by making it easier for them to compare policy costs for coverage.

Section 11 of the bill will create cost savings for employers by ensuring that insurers pass on to consumers the cost savings from the 2003 workers' compensation legislation.

As the cost reductions from this legislative package are coming at the same time as a proposed premium increase due to factors predating the legislation, employers may see a stabilization and possible rollback of rates instead of another premium increase.

Section 12 of the bill, exempting the positions funded by the State Compensation Insurance Fund (SCIF) from any hiring freezes and staff cutbacks otherwise required by law would have a positive economic impact on SCIF's policyholders.

The state hiring freeze had a substantial impact on SCIF during a period of intense growth in SCIF's policyholder base due to many other insurance companies dropping out of the California workers' compensation market. Despite large increases in premium volume, numbers of policyholders, necessity for claims adjustment services, increased demand for health and safety services and other insurance company operations, SCIF was unable to increase the size of its workforce. This in itself may have had negative



impact on the costs of claims, in that delays in underwriting and claims adjusting responsibilities may have caused higher policy costs to employers, may have caused penalties to occur, and may have led to more and unnecessary litigation—to the extent that employers operated without any insurance due to their inability to obtain a policy from SCIF, this may have led to civil liability and/or substantial penalty assessments for illegal uninsurance.

The impact of allowing SCIF to expand and contract its workforce without regard for hiring requirements applicable to other state departments will allow SCIF's executive leadership to exercise its best business judgment on SCIF's staffing needs. This should have a positive impact on controlling policy costs and providing better service to policyholders.

Section 13 of the bill, requiring the entire cost of the workers' compensation program to be funded from employer assessments will increase the amount of the current user funding assessments from approximately \$20 million to \$100 million annually.

However, these costs will be more than offset by the savings created by the ability of the DWC to implement the cost saving reform provisions of the 2002 and 2003 workers' compensation reform legislation. State budget reductions and decreases in DWC staffing have had a negative impact on accomplishing the DWC's priorities under the Labor Code, and may have led to increased employer costs through inability to set timely hearings on disputed cases, inability to make collections on uninsured employer cases, and inability to oversee the development, production and dissemination of medical fee schedules. The Division (DWC) estimates that both the new reforms and those contained in AB 749 (2002) in these areas will save employers approximately \$500 million per year.

Sections 14 and 16 of the bill repeal mandatory vocational rehabilitation. Section 14.4 and 15 of the bill establish a new supplemental job displacement benefit with savings from repeal of vocational rehabilitation to provide non-transferable education vouchers to injured workers who are not back at work within 60 days after the termination of temporary disability benefits and have not received a qualified offer of modified work.

Based on the CHSWC/RAND Institute study on permanent disability and information from the CHSWC vocational rehabilitation survey on the percentage of workers who refuse offers of modified work, the WCIRB estimates that the net savings produced by (a) eliminating all vocational rehabilitation costs on of after January 1, 2004 and (b) providing the new supplemental job displacement benefit to eligible workers is that total cost savings on 2004 injuries would be approximately \$1.2 billion.



ARGUMENTS

Pro:

This bill may satisfy the demand of business groups that have demanded reforms to the workers' compensation system to bring down employer costs and offset the costs of the benefit increases enacted by the 2002 workers' compensation benefits bills (AB 749 and AB 486).

Con:

Opponents will allege that the system reforms enacted in this bill do not go far enough to adequately offset the benefit increases of AB 749 and AB 486.

Need for clean-up bill

Due to an error in the drafting process, Section 14.2 of the bill repeats the provisions of Section 14.4.

Section 14.2 was likely intended to enact a grandfather clause providing that employees receiving vocational rehabilitation services prior to January 1, 2004, shall still be entitled to vocational rehabilitation services in accordance with existing statutes and regulations until those services are concluded.

LEGISLATIVE HISTORY

AB 749 (Calderon, 2002) and AB 486 (Calderon, 2002) were the major workers' compensation omnibus reform bills last year. AB 486 modified some of the provisions of AB 749, including a portion of the proposed increases in workers' compensation benefits, enacted changes to the administration of the workers' compensation system, and made various other changes.

This bill and AB 228 are the two major workers' compensation omnibus bills in 2003 and are the result of recent conference committee hearings and meetings, and include elements of many other workers' compensation bills that were introduced earlier this year.

Section 4 of the bill, expanding the definition of "insolvency" to include inability of an insurer to meet its financial obligations when they are due was initially introduced as AB 1729 (Assembly Committee on Insurance) and was sponsored by the Department of Insurance.

Section 9 of the bill, allowing manufacturers to obtain group insurance, was initially introduced as SB 1007 (Speier) and was sponsored by the California Manufacturers and Technology Association.



Section 11 of the bill, requiring the Insurance Commissioner to post and maintain at the department web site, rate and coverage information for the top 50 insurance companies in the state, was initially introduced as a component of SB 191 (Alarcon) sponsored by the California Labor Federation, AFL-CIO and the California Applicant's Attorneys Association.

Section 13 of the bill, providing for 100 percent user funding for the administration of the workers' compensation program was initially introduced as an Administration sponsored provision in SBX1 10 (Committee on Budget and Fiscal Review).

SUPPORT/OPPOSITION

Support:

California Labor Federation
California State Association of Counties and League of California Cities
California Teamster's Public Affairs Council
California Conference of Machinists
Hotel, Employees and Restaurant Employees International Union,
United Food and Commercial Workers, Region 8 State Council
American Federation of Television and Radio Artists
California Conference Board of the Amalgamated Transit Union
Jockeys Guild
Engineers and Scientist of California - IFPTE Local 20
Professional and Technical Engineers - IFPTE Local 21
California Association of Joint Powers Authorities
Los Angeles County Sheriffs
California Chamber of Commerce
Pacific Association of Building Service Contractors (PABSCO)
California Coalition on Workers' Compensation
California Manufacturers and Technology Association

OPPOSE

None on file

VOTES

As introduced, Assemblymember Vargas' bill initially required the Administrative Director to promulgate an interim workers' compensation outpatient surgery facility fee schedule.

On July 14, 2003, the senate amended the bill to state the Legislature's intent to improve the workers' compensation system by promoting the efficient delivery of high quality appropriate medical care.



On September 9, 2003, the intent bill was gutted and the current conference committee report provisions inserted. All votes prior to September 9, 2003 are irrelevant.

9/12/03 Assembly Roll Call

Ayes - 47
 Noes - 25

9/12/03 Senate Roll Call

Ayes - 24
 Noes - 12

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DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: September 9, 2003
RECOMMENDATION: Sign

BILL NUMBER: AB 227
AUTHOR: J. Vargas
RELATED BILLS: SB 228, AB 149,
SB 1007, AB 1099,
AB 1262, AB 1557

ASSEMBLY: 47/25
SENATE: 24/12

BILL SUMMARY

This bill would enact various reforms related to the State's workers' compensation (WC) system. This bill is included in the Workers' Compensation Conference Committee Report adopted by the Legislature, and would take effect January 1, 2004 if enacted.

Among other things, this bill would:

- Provide for the issuance of up to \$1.5 billion in bonds to cover the cost of WC claims held by insolvent insurers;
- Require the Insurance Commissioner (IC) to consider specified projected savings in setting advisory rates, and to establish and maintain an online rate comparison guide for specified WC insurance carriers;
- Provide that employer assessments shall fund 100 percent of the cost of specified WC programs and set forth legislative priorities for these funds; and,
- Repeal the vocational rehabilitation (VR) benefit for injuries occurring on or after January 1, 2004.

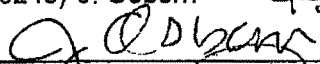
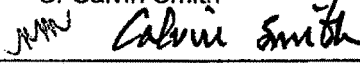
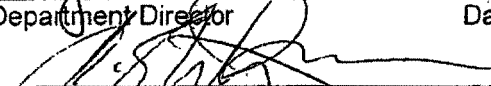
More detailed information about the provisions in this bill is included in the "Programmatic Analysis" section of this document. This bill is contingent upon the enactment of SB 228 (Alarcon).

FISCAL SUMMARY

This bill would result in increased costs to the Department of Insurance (DOI) of \$275,000 (Insurance Fund) in 2003-04 and ongoing. This bill would result in increased costs of up to \$13.548 million in 2004-05 (Workers Compensation Administration Revolving Fund/WCARF) to the Department of Industrial Relations (DIR), and ongoing costs in the range of \$7.0 million annually. Any request for increased expenditure authority is subject to review and approval through the annual budget process. We note that since this bill creates new costs to departments but does not include an appropriation for these costs, the activities mandated by this measure would have to be absorbed within existing resources or delayed until July 1, 2004, when a Budget Act appropriation can be provided.

This bill would authorize the California Insurance Guarantee Association (CIGA) to assess a surcharge on member insurance providers in an amount necessary to repay any bonds. The potential impact of this surcharge on CIGA members is unknown, but we note that it will likely result in increased insurance costs to employers, to the extent CIGA members pass this surcharge on to their customers.

Repeal of the VR benefit is estimated to result in savings of up to \$1.2 billion annually in the state's WC system. This estimate comes from both the Workers' Compensation Insurance Rating Bureau and the Commission on Health and Safety and Workers' Compensation. To the extent that employers realize savings related to WC insurance and earn higher profits, it is possible that State General Fund revenues could increase.

Analyst/Principal (0240) J. Osborn	Date 9-24-03	Program Budget Manager S. Calvin Smith	Date 9-24-03
			
Department Director	Date 9/24/03	PE39	
			

ENROLLED BILL REPORT

Form DF-43 (Rev 03/95 Pink)

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J. Vargas

September 9, 2003

AB 227

FISCAL SUMMARY (cont).

This bill would authorize increased assessments on employers to fund 100 percent of the cost of DIR's workers' compensation programs. This was a Governor's Budget proposal that was not adopted as part of the budget process. The 2003 Budget Act contains \$27.1 million General Fund to support partial-year costs of these programs, and assumes passage of this provision. Without this provision, DIR will incur a significant General Fund deficiency.

COMMENTS

This bill contains provisions that are expected to facilitate some level of cost savings for employers in the workers' compensation insurance market. Though this bill contains only one of the significant cost-saving provisions (the rest are in SB 228), this bill would enact needed changes to the funding mechanism for DIR's workers' compensation programs, authorize the issuance of bonds to address the CIGA's funding shortfall and specify a method by which such bonds would be repaid, and require the Insurance Commissioner to make available specified information that is expected to assist employers with making decisions about their workers compensation insurance options. For these reasons, Finance recommends signature.

ANALYSIS

A. Programmatic Analysis

Existing law provides for the CIGA, which is established for the purpose of making specified payments related to the obligations of insurers. Existing law also provides for the California Infrastructure and Economic Development Bank (Bank) for the purpose of assisting with the financing of specified projects that are in the public interest.

Related to these entities, this bill would:

- Provide that a project for the financing of the cost of claims from insolvent WC insurers, at the request of the CIGA, is deemed to be in the public interest and eligible for financing by the Bank.
- Provide that the requirements and limitations applicable to the financing of certain projects do not apply to the financing of the costs of these claims, and allow the Bank to issue bonds to finance these costs and would specify how the bond proceeds would be used.
- Provide that the total amount of bonds issued by the Bank to finance public development facilities that may be outstanding at any one time shall not exceed \$5 billion.
- Expand the definition of "insolvency," as it relates to investigations by the IC into the financial and business records of a WC insurer, to include an inability to meet specified financial obligations when due.
- Allow CIGA to provide for the issuance of specified financing instruments, and authorize the board of directors of CIGA to request the Bank to issue bonds to provide funds for the payment of covered claims and related expenses.
- Require CIGA to provide the IC with a copy of any such request, and allow the IC to modify, cancel, or require a delay in the requested issuance.
- Require the proceeds from the sale of these bonds to be deposited in the Workers' Comp Bond Fund, which is created by this bill, and allow disbursements as specified.
- Allow the CIGA to levy upon member insurers special bond assessments in the amount necessary to pay the principal and interest on the bonds, and to meet other requirements, as specified.

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A. Programmatic Analysis (cont).

- Require that any bonds issued to provide funds for covered workers' compensation claim obligations be issued before January 1, 2007, in an aggregate principal amount not to exceed \$1.5 billion, and provide that the bonds shall not have a final maturity date exceeding 20 years from the date of issuance.

Existing law further provides for a workers' compensation system to compensate an employee for injuries that arise out of or in the course of employment. The Division of Workers Compensation (DWC) within the Department of Industrial Relations (DIR) oversees the court system for workers compensation. Insurance providers, including those offering workers' compensation insurance, are subject to regulation by the Insurance Commissioner (IC) and the Department of Insurance (DOI).

In relation to the programs administered and overseen by these entities, this bill would:

- Increase the maximum fine for WC insurance fraud.
- Expand the definition of "common trade or business," for the purpose of defining the type of work performed by covered employees, to include specified types of manufacturing facilities.
- Require the IC, in determining the advisory pure premium rates for policies incepting on or after January 1, 2004, to consider projected savings due to changes in the WC system enacted in the 2003 Regular Session of the Legislature.
- Require insurers to file rates for specified policies to include the provision for projected savings determined by the IC, as specified.
- Require the IC to establish and maintain on the DOI web site an online rate comparison guide showing WC insurance rates for the 50 insurance companies writing the highest volume of business during the preceding two years, as specified.
- Require the rating organization designated by the IC as his or her statistical agent to determine the cost savings achieved in the 2003 WC reform legislation, and would require each insurer to certify that its rates reflect those cost savings. These certifications would be required to be made available on the DOI web site.
- Provide that the positions funded by the State Compensation Insurance Fund (SCIF) are exempted from hiring freezes and staff cutbacks otherwise required by law.
- Provide that employer assessments, which are deposited into the WCARF administered by DIR shall support 100 percent of the cost of administering specified WC programs, and require that a sufficient portion of the fund support specified legislative priorities.
- Make findings and declarations of the Legislature aimed at ensuring the fair treatment of injured workers, as specified, and require the Commission on Health and Safety and Workers' Compensation (CHSWC) to study and report to the Legislature the feasibility of reinstating a minimum rate regulatory structure for the WC insurance market, to be phased in over a five year period.
- Repeal the VR benefit for injuries occurring after January 1, 2004, and replace it with a voucher payment based on extent of permanent disability.

(Continued)

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B. Fiscal Analysis

- Staff of the DOI indicate that the provisions of this bill requiring the IC to post specified information on the DOI website would result in additional contract and staffing costs of \$275,000 annually.
- To the extent that the Bank issues bonds to cover the costs of workers compensation insurance insolvencies, their own costs would be recovered through that process. This bill would authorize the CIGA to assess a surcharge on member insurance providers in an amount necessary to repay any bonds. It is our understanding that the Bank would issue bonds during the last quarter of 2004 in the amount of \$600 million. Subsequent issuances would occur in 2005 and 2006, in approximately equivalent amounts, until such time the CIGA's cash flow problems are mitigated.
- Staff of the DIR indicate that this bill would result in the following new costs:
 - One time costs of \$500,000 (WCARF) for the required CHSWC study.
 - Ongoing costs of approximately \$13.0 million (WCARF) and 29.5 positions in 2004-05, and approximately \$8.4 million in 2005-06, and \$5.8 million in 2006-07 and ongoing for new activities identified as legislative priorities. These include a clerical upgrade in the DWC, the purchase and implementation of an automated case management system, and other specified activities. The DIR is currently preparing budget change proposals to seek increased expenditure authority for these activities.
 - Though this bill would repeal the VR benefit for injuries occurring after January 1, 2004, the DIR's VR unit would still have workload related to the existing benefits for injuries prior to that date. However, at some point in the future the VR unit will no longer be required in the department, resulting in future savings.
- By enacting the 100 Percent User Funding proposal for DIR's workers' compensation programs, this bill would prevent the department from having a significant General Fund deficiency in 2003-04, since the 2003 Budget Act did not contain full-year funding under the existing funding split.
- The exemption from hiring freezes and staffing reductions for the SCIF would not result in a direct fiscal impact to the state, since SCIF is an off-budget department. However, to the extent the Administration wishes to capture some level of the 16,000-position reduction required by Control Section 4.10 of the 2003 Budget Act from this department, this should be done prior to the enactment of this measure.
- The repeal of the VR benefit is estimated to result in cost-savings to employers of up to \$1.2 billion annually (in a \$29 billion system). To the extent that employers realize savings related to WC insurance and earn higher profits, it is possible that State General Fund revenues could increase.

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BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

J. Vargas

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Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	2003-2004	FC	2004-2005	FC	2005-2006	
2920/TechTrd&Comm	UN	No		See Fiscal Analysis					0499
7350/DIR	SO	No		--	C	\$13,548	C	\$8,412	0223
0845/Insurance	SO	No	C	\$275	C	\$275	C	\$275	0217
8420/Workers Comp	SO	No		See Fiscal Summary					0512

Fund Code	Title
0217	Insurance Fund
0223	Workers' Comp Administration Revolv Fund
0499	Pending New Special Funds
0512	Compensation Insurance Fund

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1 **PROOF OF SERVICE**

2 I, Maria Domingo, declare as follows:

3 I am employed in San Francisco County, San Francisco, California. I am over the
4 age of eighteen years and not a party to this action. My business address is MANATT, PHELPS
& PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On
5 April 9, 2009, I served the within:

6 **DECLARATION OF RONALD B. TUROVSKY IN SUPPORT OF**
7 **MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO**
8 **THE COURT’S MARCH 20, 2009, REQUEST**

9 on the interested parties in this action addressed as follows:

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11 Kronick, Moskovitz, Tiedemann &
12 Girard
13 A Law Corporation
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15 Sacramento, CA 95814
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17 Facsimile: 916-321-4555
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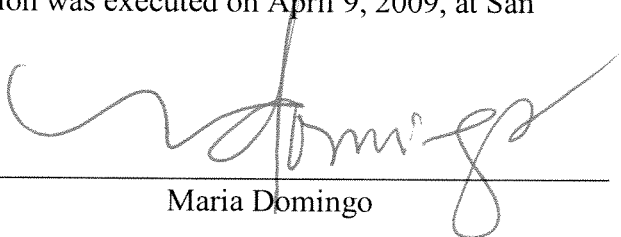
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20 (BY ELECTRONIC MAIL) By transmitting such document(s) electronically at
21 2:00 pm from my e-mail address, mdomingo@manatt.com at Manatt, Phelps &
22 Phillips, LLP, San Francisco, California, to the person(s) at the electronic mail
23 addresses listed above. The transmission was reported as complete and without
24 error.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct and that this declaration was executed on April 9, 2009, at San
27 Francisco, California.

28 

Maria Domingo