

Assembly Bill No. 227

CHAPTER 635

An act to amend Sections 63010 and 63071 of, and to add Article 8 (commencing with Section 63049.6) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, to amend Sections 985, 1063, 1063.1, 1871.4, 11656.6 and 11873 of, to add Section 11742 to, to add Article 14.26 (commencing with Section 1063.70) to Chapter 1 of Part 2 of Division 1 of, and to add and repeal Section 11735.1 of, the Insurance Code, and to amend Section 62.5 of, to add Sections 4658.5 and 4658.6 to, to repeal Section 5405.5 of, to repeal Article 2.6 (commencing with Section 4635) of Chapter 2 of Part 2 of Division 4 of, and to repeal and add Section 139.5 of, the Labor Code, relating to workers' compensation.

[Approved by Governor September 30, 2003. Filed with Secretary of State October 1, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 227, Vargas. Workers' compensation.

(1) Existing law establishes a workers' compensation system to compensate an employee for injuries incurred arising out of or in the course of employment.

Existing law establishes the California Insurance Guarantee Association (CIGA) for specified purposes related to the payment of the obligations of insurers. Existing law establishes the California Infrastructure and Economic Development Bank for specified purposes related to the financing of projects in the public interest. Existing law 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 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.

(2) Existing law provides that the total amount of revenue bonds issued by the bank that may be outstanding at any one time shall not exceed \$5,000,000,000, 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 \$5,000,000,000.

(3) Existing law 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 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 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.

(4) Existing law 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.

(5) Existing law 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, in specified 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.

The 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.

The bill would 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.

The 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 \$1,500,000,000, 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.

(6) Existing law makes it a crime for any person to make false or fraudulent statements, or take certain other actions, with respect to any claim under the workers' compensation system. Existing law 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 this maximum fine to \$150,000 or twice the amount of the fraud, whichever is greater.

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

This bill would expand the definition of "common trade or business" to include specified types of manufacturing facilities.

(8) Existing law regulates rates of workers' compensation insurers. Existing law requires rates to be adequate to cover an insurer's losses and expenses, and provides that they shall not tend to create a monopoly. Existing law prohibits rates that are unfairly discriminatory. Existing law 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 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. The 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.



This bill would require the Insurance Commissioner, on or before July 1, 2004, to establish and maintain, on the Internet Web site maintained by the Department of Insurance, 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 2 preceding years, and other specified information.

The bill would require the rating organization designated by the commissioner as his or her statistical agent 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.

(9) Existing law 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 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 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.

(10) Existing law 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 program be borne by the General Fund and 20% of the costs of the program be borne by the 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 program. It would also specify that it is the intent of the Legislature that a sufficient portion of the fund be allocated to certain priority initiatives.

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 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.

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

This bill would provide, with specified exceptions, that if an injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability indemnity payments, the injured employee shall receive a supplemental job displacement benefit, as specified. The bill would specify that these provisions shall apply to injuries occurring on and after January 1, 2004.

(12) Existing law establishes a vocational rehabilitation services program for qualified injured workers for purposes of developing vocational rehabilitation plans that would retrain the injured worker for future employment. Existing law also requires the administrative director to establish a vocational rehabilitation unit to perform various functions and duties with respect to the vocational rehabilitation services program.

This bill would repeal these provisions.

(13) The bill would declare that it would not become operative unless SB 228 is enacted on or before January 1, 2004.

(14) The bill would provide that its provisions are severable.

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

SECTION 1. Section 63010 of the Government Code is amended to read:

63010. For purposes of this division, the following words and terms shall have the following meanings unless the context clearly indicates or requires another or different meaning or intent:

(a) "Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) "Bank" means the California Infrastructure and Economic Development Bank.

(c) "Board" or "bank board" means the Board of Directors of the California Infrastructure and Economic Development Bank.

(d) "Bond purchase agreement" means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.



(e) “Bonds” means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond, revenue, tax or grant anticipation notes; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or beneficial interest, asset backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes.

(f) “Cost,” as applied to a project or portion thereof financed under this division, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery, equipment, and financing charges; interest prior to, during, and for a period after completion of construction, renovation, or acquisition, as determined by the bank; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; and the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project or incidental to the construction, acquisition, or financing of any project, and transition costs in the case of an electrical corporation.

(g) “Economic development facilities” means real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.

(h) “Electrical corporation” has the meaning set forth in Section 218 of the Public Utilities Code.

(i) “Executive director” means the Executive Director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(j) “Financial assistance” in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of



money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the subordinated bonds of the sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities other than in connection with the issuance of rate reduction bonds pursuant to a financing order or in connection with a financing for an economic development facility.

For purposes of this subdivision, “grant” does not include grants made by the bank except when acting as an agent or intermediary for the distribution or packaging of financing available from federal, private, or other public sources.

(k) “Financing order” has the meaning set forth in Section 840 of the Public Utilities Code.

(l) “Guarantee trust fund” means the California Infrastructure Guarantee Trust Fund.

(m) “Infrastructure bank fund” means the California Infrastructure and Economic Development Bank Fund.

(n) “Loan agreement” means a contractual agreement executed between the bank or a special purpose trust and a sponsor that provides that the bank or special purpose trust will loan funds to the sponsor and that the sponsor will repay the principal and pay the interest and redemption premium, if any, on the loan.

(o) “Participating party” means any person, company, corporation, association, state or municipal governmental entity, partnership, firm, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project. However, in the case of a project relating to the financing of transition costs or the acquisition of transition property, or both, on the request of an electrical corporation, or in connection with a financing for an economic development facility, or for the financing of insurance claims, the participating party shall be deemed to be the same entity as the sponsor for the financing.



(p) “Project” means designing, acquiring, planning, permitting, entitling, constructing, improving, extending, restoring, financing, and generally developing public development facilities or economic development facilities within the state or financing transition costs or the acquisition of transition property, or both, upon approval of a financing order by the Public Utilities Commission, as provided in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(q) “Public development facilities” means real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof, excluding any housing, that are directly related to providing the following:

(1) “City streets” including any street, avenue, boulevard, road, parkway, drive, or other way that is any of the following:

(A) An existing municipal roadway.

(B) Is shown upon a plat approved pursuant to law and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(2) “County highways” including any county highway as defined in Section 25 of the Streets and Highways Code, that includes the land between the highway lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(3) “Drainage, water supply, and flood control” including, but not limited to, ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

(4) “Educational facilities” including libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) “Environmental mitigation measures” including required construction or modification of public infrastructure and purchase and installation of pollution control and noise abatement equipment.



(6) “Parks and recreational facilities” including local parks, recreational property and equipment, parkways and property.

(7) “Port facilities” including docks, harbors, ports of entry, piers, ships, small boat harbors and marinas, and any other facilities, additions, or improvements in connection therewith.

(8) “Power and communications” including facilities for the transmission or distribution of electrical energy, natural gas, and telephone and telecommunications service.

(9) “Public transit” including air and rail transport of goods, airports, guideways, vehicles, rights-of-way, passenger stations, maintenance and storage yards, and related structures, including public parking facilities, equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

(10) “Sewage collection and treatment” including pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

(11) “Solid waste collection and disposal” including vehicles, vehicle-compatible waste receptacles, transfer stations, recycling centers, sanitary landfills, and waste conversion facilities necessary to remove solid waste, except that which is hazardous as defined by law, from its point of origin.

(12) “Water treatment and distribution” including facilities in which water is purified and otherwise treated to meet residential, manufacturing, or commercial purposes and the conduits, pipes, and pumps that transport it to places of use.

(13) “Defense conversion” including, but not limited to, facilities necessary for successfully converting military bases consistent with an adopted base reuse plan.

(14) “Public safety facilities” including, but not limited to, police stations, fire stations, court buildings, jails, juvenile halls, and juvenile detention facilities.

(15) “State highways” including any state highway as described in Chapter 2 (commencing with Section 230) of Division 1 of the Streets and Highways Code, and the related components necessary for safe operation of the highway.

(r) “Rate reduction bonds” has the meaning set forth in Section 840 of the Public Utilities Code.



(s) “Revenues” means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any fund or account of the bank or a sponsor and any receipts derived from transition property. Revenues shall not include moneys in the General Fund of the state.

(t) “Special purpose trust” means a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity authorized under the laws of the state to serve as an instrumentality of the state to accomplish public purposes and authorized by the bank to acquire, by purchase or otherwise, for retention or sale, the bonds of a sponsor or of the bank made or entered into pursuant to this division and to issue special purpose trust bonds or other obligations secured by these bonds or other sources of public or private revenues. Special purpose trust also means any entity authorized by the bank to acquire transition property or to issue rate reduction bonds, or both, subject to the approvals by the bank and powers of the bank as are provided by the bank in its resolution authorizing the entity to issue rate reduction bonds.

(u) “Sponsor” means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that makes an application to the bank for financial assistance in connection with a project in a manner prescribed by the bank. This definition shall not be construed to require that an applicant have an ownership interest in the project. In addition, an electrical corporation shall be deemed to be the sponsor as well as the participating party for any project relating to the financing of transition costs and the acquisition of transition property on the request of the electrical corporation and any person, company, corporation, partnership, firm, or other entity or group engaged in business or operation within the state that applies for financing of any economic development facility, shall be deemed to be the sponsor as well as the participating party for the project relating to the financing of that economic development facility.

(v) “State” means the State of California.

(w) “Transition costs” has the meaning set forth in Section 840 of the Public Utilities Code.

(x) “Transition property” has the meaning set forth in Section 840 of the Public Utilities Code.



SEC. 2. Article 8 (commencing with Section 63049.6) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 8. Financing of Insurance Claims

63049.6. For purposes of this article, the following terms have the following meanings, in addition to the definitions contained in Section 63010, unless the context clearly indicates or requires another meaning:

- (a) “Association” means the California Insurance Guaranty Association created pursuant to Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.
- (b) “Department” means the Department of Insurance.
- (c) “Fund” means the Insurance Assessment Bond Fund created by Section 1063.72 of the Insurance Code.

63049.62. Notwithstanding any other provision of this division, a financing of the costs of claims of insolvent insurers upon the request of the association pursuant to Section 1063.73 of the Insurance Code shall be deemed to be in the public interest and eligible for financing by the bank, and Article 3 (commencing with Section 63041), Article 4 (commencing with Section 63042), Article 5 (commencing with Section 63043), Article 6 (commencing with Section 63048), and Article 7 (commencing with Section 63049) shall not apply to the financing provided by the bank to, or at the request of, the association or the department in connection with the fund. Notwithstanding any other provision of this division, the bank shall have no authority over any matter that is subject to the approval of the Insurance Commissioner under Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

63049.64. (a) The bank may issue bonds pursuant to Chapter 5 (commencing with Section 63070) and may loan the proceeds thereof to the association, and deposit the proceeds into a separate account in the fund, or use the proceeds to refund bonds previously issued under this article. Bond proceeds may also be used to fund necessary reserves, capitalized interest, credit enhancement costs, or costs of issuance.

(b) Bonds issued under this article shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the bank, or a pledge of the faith and credit of the state or of any political subdivision, but shall be payable solely from the fund and other revenues and assets securing the bonds. All bonds issued under this article shall contain on the face of the bonds a statement to that effect.

(c) For purposes of this article, the term “project,” as defined in subdivision (p) of Section 63010, shall include financing of the costs of claims of insolvent workers’ compensation insurers, in an amount



(together with associated costs of financing) that may be determined by the association in making a request for financing to the bank.

63049.66. The fund, and any other fund or account established pursuant to the issuance of bonds authorized by this article may be invested in any investment authorized pursuant to Section 63062, and any such fund or account shall be established outside of the centralized treasury system. The bank shall select as trustee for the bonds a corporation or banking association authorized to exercise corporate trust powers.

SEC. 3. Section 63071 of the Government Code is amended to read:

63071. (a) Notwithstanding any other provision of law, but consistent with Sections 1 and 18 of Article XVI of the California Constitution, a sponsor may issue bonds for purchase by the bank pursuant to a bond purchase agreement. The bank may issue bonds or authorize a special purpose trust to issue bonds. These bonds may be issued pursuant to the charter of any city or any city and county that authorized the issuance of these bonds as a sponsor and may also be issued by any sponsor pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5) to pay the costs and expenses pursuant to this title, subject to the following conditions:

(1) With the prior approval of the bank, the sponsor may sell these bonds in any manner as it may determine, either by private sale or by means of competitive bid.

(2) Notwithstanding Section 54418, the bonds may be sold at a discount at any rate as the bank and sponsor shall determine.

(3) Notwithstanding Section 54402, the bonds shall bear interest at any rate and be payable at any time as the sponsor shall determine with the consent of the bank.

(b) The total amount of bonds issued to finance public development facilities that may be outstanding at any one time under this chapter shall not exceed five billion dollars (\$5,000,000,000). The total amount of rate reduction bonds that may be outstanding at any one time under this chapter shall not exceed ten billion dollars (\$10,000,000,000).

(c) Bonds for which moneys or securities have been deposited in trust, in amounts necessary to pay or redeem the principal, interest, and any redemption premium thereon, shall be deemed not to be outstanding for purposes of this section.

SEC. 4. Section 985 of the Insurance Code is amended to read:

985. (a) On or after January 1, 1970, as used in this article and in subdivision (i) of Section 1011, “insolvency” means either of the following:



(1) Any impairment of minimum “paid-in capital” or “capital paid in,” as defined in Section 36, required in the aggregate of an insurer by the provisions of this code for the class, or classes, of insurance that it transacts anywhere.

(2) An inability of the insurer to meet its financial obligations when they are due.

(b) On or after January 1, 1970, an insurer cannot escape the condition of insolvency by being able to provide for all its liabilities and for reinsurance of all outstanding risks. An insurer must also be possessed of additional assets equivalent to such aggregate “paid-in capital” or “capital paid in” required by this code after making provision for all such liabilities and for such reinsurance.

(c) On or after October 1, 1967, as used in this code provision for reinsurance of all outstanding risks and “gross premiums without any deduction, received and receivable upon all unexpired risks” means the greater of: (1) the aggregate amount of actual unearned premiums, or (2) the amount reasonably estimated as being required to reinsure in a solvent admitted insurer the unexpired terms of the risks represented by all outstanding policies.

(d) On or after October 1, 1967, an insurer must make provision for reinsurance of the outstanding risk on policies that provide premiums are fully earned at inception and on policies that for any other reason do not provide for a return premium to the insured on cancellation prior to expiration.

(e) On or after October 1, 1967, the commissioner shall prescribe standards for reasonably estimating the amount required to reinsure that will provide adequate safeguards for the policyholders, creditors and the public.

(f) On or after October 1, 1967, this section shall not be applicable to life, title, mortgage or mortgage guaranty insurers.

(g) In the application of this section to disability insurance, as defined in Section 106, reserves for unearned premiums and amounts reasonably estimated as required to reinsure outstanding risks shall be determined in accordance with the provisions of Section 997.

SEC. 5. Section 1063 of the Insurance Code is amended to read:

1063. (a) Within 60 days after the original effective date of this article, all insurers, including reciprocal insurers, admitted to transact insurance in this state of any or all of the following classes only in accordance with the provisions of Chapter 1 (commencing with Section 100) of Part 1 of this division: fire (see Section 102), marine (see Section 103), plate glass (see Section 107), liability (see Section 108), workers’ compensation (see Section 109), common carrier liability (see Section 110), boiler and machinery (see Section 111), burglary (see Section 112),



sprinkler (see Section 114), team and vehicle (see Section 115), automobile (see Section 116), aircraft (see Section 118), and miscellaneous (see Section 120), shall establish the California Insurance Guarantee Association (the association); provided, however, this article shall not apply to the following classes or kinds of insurance: life and annuity (see Section 101), title (see Section 104), fidelity or surety including fidelity or surety bonds, or any other bonding obligations (see Section 105), disability or health (see Section 106), credit (see Section 113), mortgage (see Section 117), mortgage guaranty, insolvency or legal (see Section 119), financial guaranty or other forms of insurance offering protection against investment risks (see Section 124), the ocean marine portion of any marine insurance or ocean marine coverage under any insurance policy including the following: the Jones Act (46 U.S.C. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage, or reinsurance as defined in Section 620, or fraternal fire insurance written by associations organized and operating under Sections 9080 to 9103, inclusive. Any insurer admitted to transact only those classes or kinds of insurance excluded from this article shall not be a member insurer of the association. Each insurer admitted to transact a class of insurance included in this article, including the State Compensation Insurance Fund, as a condition of its authority to transact insurance in this state, shall participate in the association whether established voluntarily or by order of the commissioner after the elapse of 60 days following the original effective date of this article in accordance with rules to be established as provided in this article. It shall be the purpose of the association to provide for each member insurer insolvency insurance as defined in Section 119.5.

(b) The association shall be managed by a board of governors, composed of nine member insurers, each of which shall be appointed by the commissioner to serve initially for terms of one, two, or three years and thereafter for three-year terms so that three terms shall expire each year on December 31, and shall continue in office until his or her successor shall be appointed and qualified. At least five members of the board shall be domestic insurers. At least three of the members shall be stock insurers, and at least three shall be nonstock insurers. The nine members shall be representative, as nearly as possible, of the classes of insurance and of the kinds of insurers covered by this article. In case of a vacancy for any reason on the board, the commissioner shall appoint a member insurer to fill the unexpired term. In addition to the nine member insurers, the membership of the board shall also include one public member appointed by the President pro Tempore of the Senate,



one public member appointed by the Speaker of the Assembly, one business member appointed by the commissioner, and one labor member appointed by the commissioner.

(c) The association shall adopt a plan of operations, and any amendments thereto, not inconsistent with the provisions of this article, necessary to assure the fair, reasonable, and equitable manner of administering the association, and to provide for other matters as are necessary or advisable to implement the provisions of this article. The plan of operations and any amendments thereto shall be subject to prior written approval by the commissioner. All members of the association shall adhere to the plan of operation.

(d) If for any reason the association fails to adopt a suitable plan of operation within 90 days following the original effective date of this article, or if at any time thereafter the association fails to adopt suitable amendments to the plan of operation, the commissioner shall after hearing adopt and promulgate reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. These rules shall continue in force until modified by the commissioner after hearing or superseded by a plan of operation, adopted by the association and approved by the commissioner.

(e) In accordance with its plan of operation, the association may designate one or more of its members as a servicing facility, but a member may decline this designation. Each servicing facility shall be reimbursed by the association for all reasonable expenses it incurs and for all payments it makes on behalf of the association. Each servicing facility shall have authority to perform any functions of the association that the board of governors lawfully may delegate to it and to do so on behalf of and in the name of the association. The designation of servicing facilities shall be subject to the approval of the commissioner.

(f) The association shall have authority to borrow funds when necessary to effectuate the provisions of this article, and may provide in its plan of operations for any of the following:

(1) The issuance of notes, bonds, or debentures, or the establishment of a special purpose trust or other entity, solely for the purpose of facilitating a financing.

(2) The securing of that borrowing or those notes, bonds, or debentures by pledging or granting liens or mortgages, or by otherwise encumbering its real or personal property, including, but not limited to, premiums levied under Section 1063.5.

(g) The association, either in its own name or through servicing facilities, may be sued and may use the courts to assert or defend any rights the association may have by virtue of this article as reasonably necessary to fully effectuate the provisions thereof.



(h) The association shall have the right to intervene as a party in any proceeding instituted pursuant to Section 1016 wherein liquidation of a member insurer as defined in Section 1063.1 is sought.

(i) (1) The association shall have an annual audit of its financial condition conducted by an independent certified public accountant. The audit shall be conducted, to the extent possible, in accordance with generally accepted auditing standards (GAAS) and the report of the audit shall be submitted to the commissioner.

(2) The association shall annually audit at least one-third of the service companies retained by the association to adjust claims of insolvent insurers. The audits shall (A) assure that all covered claims are being investigated, adjusted, and paid in accordance with customary industry standards and practices and all applicable statutes, rules and regulations, and (B) examine the management and supervisory systems overseeing the claims functions. The audits shall be conducted by the association or an independent auditor, provided that the three largest service companies, as measured by the number of claims processed for the association during the previous three fiscal years, shall be audited by an independent auditor at least once every three years. The association shall implement systems to retain independent auditing firms for the purpose of this paragraph, provided that no one firm is designated or utilized as an exclusive provider. Audits conducted pursuant to this paragraph shall be submitted annually to the commissioner for review.

(j) The commissioner shall examine the association to the same extent as, and in accordance with, the requirements of Article 4 (commencing with Section 730) of Chapter 1 of Part 2 of Division 2, which sets forth the examination requirements applicable to admitted insurers. A copy of the examination report shall be filed with the Chairpersons of the Senate and Assembly Committees on Insurance no later than December 31 of the year the report is completed.

SEC. 6. Section 1063.1 of the Insurance Code is amended to read:
1063.1. As used in this article:

(a) “Member insurer” means an insurer required to be a member of the association in accordance with subdivision (a) of Section 1063, except and to the extent that the insurer is participating in an insolvency program adopted by the United States government.

(b) “Insolvent insurer” means a member insurer against which an order of liquidation or receivership with a finding of insolvency has been entered by a court of competent jurisdiction.

(c) (1) “Covered claims” means the obligations of an insolvent insurer, including the obligation for unearned premiums, (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; (iii) which are



presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings; (iv) which were incurred prior to the date coverage under the policy terminated and prior to, on, or within 30 days after the date the liquidator was appointed; (v) for which the assets of the insolvent insurer are insufficient to discharge in full; (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state; and (vii) in the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) "Covered claims" also include the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. "Covered claims" under this paragraph shall be required to satisfy the requirements of subparagraphs (i) to (vii), inclusive, of paragraph (1), except for the requirement that the claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.

(3) "Covered claims" does not include obligations arising from the following:

- (i) Life, annuity, health, or disability insurance.
- (ii) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.
- (iii) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.
- (iv) Credit insurance.
- (v) Title insurance.
- (vi) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C.A. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.
- (vii) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess



workers' compensation policy issued pursuant to subdivision (c) of Section 3702.8 of the Labor Code that covers all or any part of workers' compensation liabilities of an employer that is issued, or was previously issued, a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(4) "Covered claims" does not include any obligations of the insolvent insurer arising out of any reinsurance contracts, nor any obligations incurred after the expiration date of the insurance policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the insurance policy has been canceled by the association as provided in this chapter, or after the insurance policy has been canceled by the liquidator, nor any obligations to any state or to the federal government.

(5) "Covered claims" does not include any obligations to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.

An insurer, insurance pool, or underwriting association may not maintain, in its own name or in the name of its insured, any claim or legal action against the insured of the insolvent insurer for contribution, indemnity or by way of subrogation, except insofar as, and to the extent only, that the claim exceeds the policy limits of the insolvent insurer's policy. In those claims or legal actions, the insured of the insolvent insurer is entitled to a credit or setoff in the amount of the policy limits of the insolvent insurer's policy, or in the amount of the limits remaining, where those limits have been diminished by the payment of other claims.

(6) "Covered claims," except in cases involving a claim for workers' compensation benefits or for unearned premiums, does not include any claim in an amount of one hundred dollars (\$100) or less, nor that portion of any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer.

(7) "Covered claims" does not include that portion of any claim, other than a claim for workers' compensation benefits, that is in excess of five hundred thousand dollars (\$500,000).

(8) "Covered claims" does not include any amount awarded as punitive or exemplary damages, nor any amount awarded by the Workers' Compensation Appeals Board pursuant to Section 5814 or 5814.5 because payment of compensation was unreasonably delayed or refused by the insolvent insurer.

(9) "Covered claims" does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own



name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy and does not include any claim asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter.

(10) “Covered claims” does not include any obligations arising out of the issuance of an insurance policy written by the separate division of the State Compensation Insurance Fund pursuant to Sections 11802 and 11803.

(11) “Covered claims” does not include any obligations of the insolvent insurer arising from any policy or contract of insurance issued or renewed prior to the insolvent insurer’s admission to transact insurance in the State of California.

(12) “Covered claims” does not include surplus deposits of subscribers as defined in Section 1374.1.

(d) “Admitted to transact insurance in this state” means an insurer possessing a valid certificate of authority issued by the department.

(e) “Affiliate” means a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(f) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not in fact exist.

(g) “Claimant” means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(h) “Ocean marine insurance” includes marine insurance as defined in Section 103, except for inland marine insurance, as well as any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance such as hull and machinery, marine builders’ risks, and marine protection and indemnity. Those perils and risks insured against include, without limitation, loss, damage, or



expense or legal liability of the insured arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death for loss or damage to the property of the insured or another person.

(i) “Unearned premium” means that portion of a premium that had not been earned because of the cancellation of the insolvent insurer’s policy and is that premium remaining for the unexpired term of the insolvent insurer’s policy. “Unearned premium” does not include any amount sought as return of a premium under any policy providing retroactive insurance of a known loss or return of a premium under any retrospectively rated policy or a policy subject to a contingent surcharge or any policy in which the final determination of the premium cost is computed after expiration of the policy and is calculated on the basis of actual loss experience during the policy period.

SEC. 7. Article 14.26 (commencing with Section 1063.70) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 14.26. Workers’ Compensation Bond Fund

1063.70. The California Insurance Guarantee Association is authorized to pay and discharge certain claims of insolvent insurers as defined in Section 1063.1 through the collection of premiums from its members, which amounts are limited by law and take time to assess and collect. This article provides for the ability of CIGA to request the issuance of bonds by the California Infrastructure and Economic Development Bank pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code to more expeditiously and effectively provide for the payment of covered claims that arise as a result of the insolvencies of insurance companies providing workers’ compensation insurance. The bonds are to be paid from the special bond assessments assessed by CIGA for those purposes and the other funds provided pursuant to Section 1063.74. Special bond assessments to repay bonds issued for payment of workers compensation benefits shall be assessed, to the extent necessary, for the claims category. It is a public purpose and in the best interest of the public health, safety, and general welfare of the residents of this state to provide for the issuance of bonds to pay claimants and policyholders having covered claims against insolvent insurers operating in this state.

1063.71. (a) The terms “member insurer,” “insolvent insurer,” and “covered claims” have the meanings assigned those terms in Section 1063.1.



(b) The terms “CIGA,” “commissioner,” “board,” and “department” have the meanings assigned those terms in Section 1063.51.

(c) “Bank” means the California Infrastructure and Economic Development Bank created pursuant to Article 1 (commencing with Section 63020) of Chapter 2, Division 1 of Title 6.7 of the Government Code.

(d) “Bonds” means bonds issued by the Bank pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code to provide funds for the payment of the covered claims and the adjusting and defense expenses relating to those claims that are issued at the request of the board pursuant to Section 1063.73.

(e) “Collateral” means the special bond assessments, the right of CIGA to be paid the special bond assessments, all revenues therefrom, the separate account of the Workers’ Comp Bond Fund into which special bond assessments are deposited, and the proceeds thereof.

(f) “Special bond assessment” means the premiums collected by CIGA pursuant to Section 1063.74.

(g) “Workers’ Comp Bond Fund” means the fund created pursuant to Section 1063.72.

1063.72. The Workers’ Comp Bond Fund is hereby created. Proceeds from the sale of bonds shall be deposited in a separate account in the Workers’ Comp Bond Fund. Only CIGA, and with respect to payment of the bonds, the trustee for the bonds, shall have the ability to authorize disbursements from the separate account. Special bond assessments shall be deposited in a separate account in the Workers’ Comp Bond Fund and shall not be commingled with any other moneys. Only the trustee for the bonds shall have the ability to authorize disbursements from this separate account, and CIGA shall have no right or authority to authorize disbursements from this separate account. The Workers’ Comp Bond Fund shall be maintained with the trustee for the bonds. Following payment or provision for payment of the bonds, amounts in the Workers’ Comp Bond Fund shall be transferred to the fund that is designated in the indenture. All money in the Workers’ Comp Bond Fund and all special bond assessments shall be used by CIGA for the exclusive purpose of carrying out the purposes of this part, and, notwithstanding any other provisions of law, the Workers’ Comp Bond Fund shall not be a state fund, shall not be subject to the rules or procedures of any fund in the State Treasury, and application of the fund shall not be subject to the supervision or budgetary approval of any officer or division of state government. CIGA and the trustee for the



bonds may as necessary or convenient to the accomplishment of any other purpose under this article, divide the fund into separate accounts.

1063.73. In the event CIGA determines that the insolvency of one or more member insurers providing workers' compensation insurance will result in covered claim obligations for workers' compensation claims in excess of CIGA's capacity to pay from current funds, the board, in its sole discretion, may by resolution request the Bank to issue bonds pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code to provide funds for the payment of the covered claims and the adjusting and defense expenses relating to those claims. Notwithstanding any other provision of law, CIGA is hereby authorized to borrow proceeds of the bonds to provide for those purposes. CIGA may request the Bank to issue bonds pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code. CIGA shall provide the commissioner with a copy of the request and the commissioner may, within 30 days of receipt of the request, modify, cancel, or require a delay in the requested issuance. The proceeds of bonds issued for workers' compensation benefits may be used by CIGA to reimburse funds advanced or temporarily loaned from other categories to fund workers' compensation claims.

1063.74. (a) Notwithstanding any other limits on assessments, CIGA shall have the authority to levy upon member insurers special bond assessments in the amount necessary to pay the principal of and interest on the bonds, and to meet other requirements established by agreements relating to the bonds. The assessments shall be collected only from the member insurers providing workers' compensation insurance, in the same manner as separate premium payments are used to pay the claims and costs allocated to that category pursuant to Section 1063.5. Special bond assessments made pursuant to this section shall also be subject to the surcharge provisions in Sections 1063.14 and 1063.145.

(b) In addition to the special bond assessments provided for in this section, the board in its discretion and subject to other obligations of the association, may utilize current funds of CIGA, premium assessments made under Section 1063.5, and advances or dividends received from the liquidators of insolvent insurers to pay the principal and interest on any bonds issued at the board's request and shall utilize, to the extent feasible, the recoveries from the liquidators of the estates of insolvent workers' compensation carriers to pay bonds issued at the board's request to fund workers' compensation claims.

1063.75. Any bonds issued to provide funds for covered claim obligations for workers' compensation claims shall be issued prior to



January 1, 2007, in an aggregate principal amount outstanding at any one time not to exceed \$1.5 billion, and any bonds issued or issued to refund bonds shall not have a final maturity exceeding twenty years from the date of issuance. The bonds shall be issued at the request of CIGA, shall be in the form, shall bear the date or dates, and shall mature at the time or times as the indenture authorized by the request may provide. The bonds may be issued in one or more series, as serial bonds or as term bonds, or as a combination thereof, and, notwithstanding any other provision of law, the amount of principal of, or interest on, bonds maturing at each date of maturity need not be equal. The bonds shall bear interest at the rate or rates, variable or fixed or a combination thereof, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment at the place or places within or without the state, be subject to the terms of redemption, contain the terms and conditions, and be secured by the covenants as the indenture may provide. The indenture may provide for the proceeds of the bonds and funds securing the bonds to be invested in any securities and investments, including investment agreements, as specified therein. CIGA may enter into or authorize any ancillary obligations or derivative agreements as it determines necessary or desirable to manage interest rate risk or security features related to the bonds. The bonds shall be sold at public or private sale by the Treasurer at, above, or below the principal amount thereof, on the terms and conditions and for the consideration in the medium of payment that the Treasurer shall determine prior to the sale.

1063.76. (a) The collateral shall be used solely for the purpose of paying the principal and redemption price of, and interest on, the bonds and any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77, and shall not be used for any other purpose. Member insurers shall pay the special bond assessments directly to the trustee for the bonds. Any collateral in the possession of CIGA shall be held by CIGA in trust for the benefit of the trustee for the bonds.

(b) Upon the issuance of the first bond, the collateral shall be subject to a first priority statutory lien in favor of the trustee for the bonds, for the benefit of the holders of the bonds and the parties to the contracts entered into pursuant to Section 1063.77, to secure the payment of the principal and redemption price of, and interest on, the bonds and any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77. This lien shall arise by operation of law automatically without any action on the part of CIGA, the bank, or any other person. This lien is a continuous lien on all collateral effective from the time the first bond is issued, whether or not a particular item of collateral exists at the time of the issuance. From the time the first bond is issued, this



lien shall be valid, effective, prior, perfected, binding, and enforceable against CIGA, its successors, purchasers of the collateral, creditors, and all others asserting rights in the collateral, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. Upon default in the payment of the principal or redemption price of, or interest on, the bonds, or any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77, the trustee for the bonds shall be entitled to foreclose or otherwise enforce this lien on the collateral.

(c) No person acting under any provision of law or principle of equity shall be permitted in any way to impede or in any manner interfere with (1) the full and timely payment of the principal and redemption price of, and interest on, the bonds and any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77, or (2) the statutory lien created by this section and the full and timely application of the collateral to the payment of the principal and redemption price of, and interest on, the bonds and any amounts owing by CIGA under contracts entered into pursuant to Section 1063.77.

(d) None of the collateral shall be subject to garnishment, levy, execution, attachment, or other process, writ (including writ of mandate), or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the department, the commissioner, the bank, CIGA, or the board, nor shall any of the collateral be subject to the claims of any creditor of the state, the department, the commissioner, the bank, CIGA, or the board. This paragraph shall not limit the rights or remedies of the trustee for the bonds, the holders of the bonds, or the parties to contracts entered into pursuant to Section 1063.77.

(e) As long as any bond is outstanding, CIGA shall not be subject to Article 14 (commencing with Section 1010) or Article 14.3 (commencing with Section 1064.1) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

1063.77. CIGA is authorized to enter into those contracts or agreements with those banks, insurers, or other financial institutions or parties that it determines are necessary or desirable to improve the security and marketability of, or to manage interest rates or other risks associated with, the bonds issued pursuant to Article 8 (commencing with Section 63049.6) of Chapter 2 of Division 1 of Title 6.7 of the Government Code. Those contracts or agreements may contain an obligation to reimburse, with interest, any of those banks, insurers, or other financial institutions or parties for advances used to pay the purchase price of, or principal or interest on, the bonds or other obligations.



SEC. 8. Section 1871.4 of the Insurance Code is amended to read: 1871.4. (a) It is unlawful to do any of the following:

(1) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(2) Present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(3) Knowingly assist, abet, conspire with, or solicit any person in an unlawful act under this section.

(4) Make or cause to be made any knowingly false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

For the purposes of this subdivision, “statement” includes, but is not limited to, any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test results, medical-legal expense as defined in Section 4620 of the Labor Code, other evidence of loss, injury, or expense, or payment.

(5) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(6) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of discouraging an employer from claiming any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(b) Every person who violates subdivision (a) shall be punished by imprisonment in county jail for one year, or in the state prison, for two, three, or five years, or by a fine not exceeding one hundred fifty thousand dollars (\$150,000) or double the value of the fraud, whichever is greater, or by both imprisonment and fine. Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

(c) Any person who violates subdivision (a) and who has a prior felony conviction of that subdivision, of former Section 556, of former Section 1871.1, or of Section 548 or 550 of the Penal Code, shall receive



a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b).

The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to any transaction.

SEC. 9. Section 11656.6 of the Insurance Code is amended to read:

11656.6. An insurer may issue a workers' compensation policy insuring an organization or association of employers as a group if the organization or association complies with the following conditions:

(a) Files with the commissioner or a licensed workers' compensation rating organization designated by him or her the following:

(1) A copy of its articles of incorporation and bylaws or its agreement of association and rules and regulations governing the conduct of its business, all certified by the custodian of the originals thereof.

(2) A statement setting forth its reasons for desiring insurance as a group.

(3) A statement certifying that at least 75 percent of its regular membership is engaged in a common trade or business, and an agreement that the percentage of membership will be maintained during the time that a group workers' compensation policy issued to the organization or association is in force.

(4) An agreement that only those members who are engaged in a common trade or business shall be named by the organization or association in any statement to the commissioner, a licensed workers' compensation rating organization, or an insurer as eligible for insurance as a member of the group, and an agreement that it will immediately notify its insurer if any member of the organization fails to remain a member in good standing in accordance with the basic law, rules, and regulations of the organization or association.

(5) A statement in writing undertaking to establish and maintain a safety committee which, by education and otherwise, will seek to reduce the incidence and severity of accidents.

(6) An agreement in writing duly executed stating that, if the insurer notifies the organization or association of the nonpayment of a premium by an insured member of the organization or association within 60 days after the premium was due, the organization or association may be liable to pay to the insurer the amount of any past due premium that does not



exceed the amount of the dividends that are due to the organization or association or its members from the insurer.

However, this agreement shall not be required, nor shall an organization or association be liable for payment, unless the governing board of the organization or association and the insurer agree in writing to use dividends due for the payment of past due premiums. The organization or association shall promptly notify the insurer of the known insolvency of any member of the group plan, and shall request, upon learning of the insolvency, removal of the member from the group plan. A copy of the resolution of the governing board of the organization or association authorizing the execution of the agreement shall be filed with the commissioner or a licensed workers' compensation rating organization designated by the commissioner and with any insurer issuing a group policy.

(b) "Common trade or business," as used in this article, shall mean:

(1) In agricultural enterprises, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to farms, nurserymen, cultivating or gardening of flowers, and classifications embracing other operations that may be conducted by a nonprofit cooperative association composed of producer members and combinations of nonprofit cooperative agricultural marketing associations having a central organization composed of member associations.

(2) In the building and construction industry, operations in the construction or repair of commercial or residential buildings or in general engineering construction in which the principal payroll develops under any combination of the classifications applicable to the construction or repair as they appear in the Manual of Rules, Classifications and Basic Rates for Workers' Compensation Insurance approved by the Insurance Commissioner. Commercial buildings, as defined in this paragraph, shall mean any nonresidential buildings.

(3) In the transportation and warehousing industry, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to for-hire motor carriers subject to regulation by the Public Utilities Commission and warehousemen.

(4) In the timber and lumber industry, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates



of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to land clearing, logging or lumbering, log, chip, and lumber hauling, planing or molding mills, sawmills or shingle mills, veneer or veneer products manufacturing, box or box shook manufacturing, cabinet works, door, doorframe, or sash manufacturing, and wood fiber preparation. However, no classification applicable to for-hire motor carriers under the provisions of paragraph (3) of this subdivision shall be included in any combination of classifications authorized by this paragraph.

(5) For public agencies providing industrial, domestic, or agricultural water service, operations in which the principal payroll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workers' Compensation Insurance approved by the Insurance Commissioner as applicable to irrigation, drainage, reclamation, or waterworks operations.

(6) For sheltered workshops and rehabilitation facilities licensed pursuant to Section 1191.5 of the Labor Code, 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 approved by the Insurance Commissioner.

(7) For all other enterprises, operations in which the principal payroll develops under a single manual classification or a combination of classifications under which a group policy may be issued pursuant to subdivision (d).

(8) For manufacturing facilities as identified in Sector 31 to 33, inclusive, of the North American Industry Classification System (NAICS), 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 approved by the Insurance Commissioner applicable to establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products.

(c) Except as provided in subdivision (d), "principal payroll," for the purpose of this section, means not less than 51 percent of the total payroll for the preceding policy year or, in the case of an employer who has no preceding full year's payroll, not less than 51 percent of his or her estimated annual payroll. Principal or estimated annual payroll shall not include the payroll of those employees set forth in the standard exceptions contained in the California Workers' Compensation Insurance Manual of Rules, Classifications, and Basic Rates of Workers' Compensation Insurance approved by the commissioner.



(d) An insurer may issue a workers' compensation policy insuring an organization or association of employers as a group if in addition to complying with the conditions set forth in subdivision (a), the 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, or either of them, for the preceding policy year or, in the case of an employer who has had no preceding full-year's payroll, not less than 75 percent of his estimated annual payroll develops under the classification or classifications. However, no classification applicable to for-hire motor carriers under the provisions of paragraph (3) of subdivision (b) shall be included in any combination of classifications authorized by this subdivision.

SEC. 10. Section 11735.1 is added to the Insurance Code, to read:

11735.1. (a) In determining the advisory pure premium rates for policies incepting on or after January 1, 2004, pursuant to a hearing required by subdivision (b) of Section 11750, the Insurance Commissioner shall take into account projected savings due to changes enacted in the 2003–04 Regular Session.

(b) Insurers shall 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 pursuant to subdivision (a), provided, however, that these rates shall comply with Section 11732.

(c) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 11. Section 11742 is added to the Insurance Code, to read:

11742. (a) The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and led to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rate.

(b) On or before July 1, 2004, the commissioner shall establish and maintain, on the Internet Web site maintained by the department, 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.



(c) The online comparison shall display rates for each class set forth in the classification system adopted by the commissioner pursuant to Section 11734, shall include the effective date of each rate, and shall list the rates for each class from the lowest to the highest rate.

(d) The rating organization designated by the commissioner as his or her statistical agent pursuant to Section 11751.5 shall determine the cost savings achieved in the 2003 workers' compensation reform legislation. Each insurer shall certify, in the form and manner determined by the commissioner, that its rates reflect those cost savings. The certifications shall be made available to the public on the Internet Web site maintained by the department.

SEC. 12. Section 11873 of the Insurance Code is amended to read:

11873. (a) Except as provided by subdivision (b), the fund shall not be subject to the provisions of the Government Code made applicable to state agencies generally or collectively, unless the section specifically names the fund as an agency to which the provision applies.

(b) The fund shall be subject to the provisions of Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of, and Division 5 (commencing with Section 18000) of Title 2 of, the Government Code, with the exception of all of the following:

(1) Article 1 (commencing with Section 19820) and Article 2 (commencing with Section 19823) of Chapter 2 of Part 2.6 of Division 5 of Title 2 of the Government Code.

(2) Sections 19849.2, 19849.3, 19849.4, and 19849.5 of the Government Code.

(3) Chapter 4.5 (commencing with Section 19993.1) of Part 2.6 of Division 5 of Title 2 of the Government Code.

(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.

SEC. 13. Section 62.5 of the Labor Code is amended to read:

62.5. (a) (1) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Money in the fund may be expended by the department, upon appropriation by the Legislature, for the administration of the workers' compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to Section 3702.5, and may not be used for any other purpose.

(2) The fund shall consist of assessments made pursuant to subdivision (d). Employer assessments shall account for the total costs of the program.



(3) It is the intent of the Legislature that a sufficient portion of the fund shall be allocated to the following priority initiatives:

(A) Implementation of the fraudulent claim reporting and medical fee schedule reporting provisions contained in Sections 3823 and 5307.1.

(B) 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.

(C) The development of a cost-efficient electronic adjudication management system.

(b) (1) The Uninsured Employers Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in subdivision (d). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the payment of nonadministrative expenses of the workers' compensation program for workers injured while employed by uninsured employers in accordance with Article 2 (commencing with Section 3710) of Chapter 4 of Part 1 of Division 4, and shall not be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers injured while employed by uninsured employers. Nonadministrative expenses include audits and reports of services prepared pursuant to subdivision (b) of Section 3716.1. The assessment amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, commencing January 1, 2004, all references to the Uninsured Employers Fund shall mean the Uninsured Employers Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Uninsured Employers Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Uninsured Employers Benefits Trust Fund upon enactment of the annual Budget Act.

(c) (1) The Subsequent Injuries Benefits Trust Fund is hereby created as a special trust fund account in the State Treasury, of which the director is trustee, and its sources of funds are as provided in subdivision (d). Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated for the nonadministrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments, in accordance with Article 5 (commencing with Section 4750) of Chapter 2 of Part 2 of Division 4, and Section 4 of Article XIV of the California Constitution, and shall not



be used for any other purpose. All moneys collected shall be retained in the trust fund until paid as benefits to workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical impairments. Nonadministrative expenses include audits and reports of services pursuant to subdivision (c) of Section 4755. The assessment amount for this fund shall be stated separately.

(2) Notwithstanding any other provision of law, commencing with January 1, 2004, all references to the Subsequent Injuries Fund shall mean the Subsequent Injuries Benefits Trust Fund.

(3) Notwithstanding paragraph (1), in the event that budgetary restrictions or impasse prevent the timely payment of administrative expenses from the Workers' Compensation Administration Revolving Fund, those expenses shall be advanced from the Subsequent Injuries Benefits Trust Fund. Expense advances made pursuant to this paragraph shall be reimbursed in full to the Subsequent Injuries Benefits Trust Fund upon enactment of the annual Budget Act.

(d) (1) Separate assessments shall be levied by the director upon all employers as defined in Section 3300 for purposes of deposit in the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, and the Subsequent Injuries Benefits Trust Fund. The total amount of the assessments shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall adopt reasonable regulations governing the manner of collection of the assessments. The regulations shall require the assessments to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessments to be paid by insured employers to be expressed as a percentage of premium. In no event shall the assessments paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

(2) The regulations adopted pursuant to paragraph (1) shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 14. Section 139.5 of the Labor Code is repealed.

SEC. 14.2. Section 139.5 is added to the Labor Code, to read:

139.5. (a) Except as provided in Section 4658.6, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability, 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, as follows:

(1) Up to four thousand dollars (\$4,000) for permanent partial disability awards of less than 15 percent.

(2) Up to six thousand dollars (\$6,000) for permanent partial disability awards between 15 and 25 percent.

(3) Up to eight thousand dollars (\$8,000) for permanent partial disability awards between 26 and 49 percent.

(4) Up to ten thousand dollars (\$10,000) for permanent partial disability awards between 50 and 99 percent.

(b) The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return to work counseling. The administrative director shall adopt regulations governing the form of payment, direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts, and any other matters necessary to the proper administration of the supplemental job displacement benefit.

(c) Within 10 days of the last payment of temporary disability the employer shall provide to the employee in the form and manner prescribed by the administrative director information that provides notice of rights under this section. This notice shall be sent by certified mail.

(d) This section shall apply to injuries occurring on or after January 1, 2004.

SEC. 14.3. Article 2.6 (commencing with Section 4635) of Chapter 2 of Part 2 of Division 4 of the Labor Code is repealed.

SEC. 14.4. Section 4658.5 is added to the Labor Code, to read:

4658.5. (a) Except as provided in Section 4658.6, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability, 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, as follow:

(1) Up to four thousand dollars (\$4,000) for permanent partial disability awards of less than 15 percent.

(2) Up to six thousand dollars (\$6,000) for permanent partial disability awards between 15 and 25 percent.

(3) Up to eight thousand dollars (\$8,000) for permanent partial disability awards between 26 and 49 percent.



(4) Up to ten thousand dollars (\$10,000) for permanent partial disability awards between 50 and 99 percent.

(b) The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return to work counseling. The administrative director shall adopt regulations governing the form of payment, direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts, and any other matters necessary to the proper administration of the supplemental job displacement benefit.

(c) Within 10 days of the last payment of temporary disability, the employer shall provide to the employee, in the form and manner prescribed by the administrative director, information that provides notice of rights under this section. This notice shall be sent by certified mail.

(d) This section shall apply to injuries occurring on or after January 1, 2004.

SEC. 15. Section 4658.6 is added to the Labor Code, to read:

4658.6. 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, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.

(b) Within 30 days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, alternative work meeting all of the following conditions:

(1) The employee has the ability to perform the essential functions of the job provided.

(2) The job provided is in a regular position lasting at least 12 months.

(3) The job provided offers wages and compensation that are within 15 percent of those paid to the employee at the time of injury.

(4) The job is located within reasonable commuting distance of the employee's residence at the time of injury.

SEC. 16. Section 5405.5 of the Labor Code is repealed.

SEC. 17. (a) The Legislature finds and declares 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.



(b) It is the intent of the Legislature to ensure a stable and predictable workers' compensation market in California.

(c) Accordingly, the Commission on Health Safety and Workers' Compensation shall 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 five-year period.

SEC. 18. This act shall become operative only if Senate Bill 228 of the 2003–04 Regular Session is enacted on or before January 1, 2004.

SEC. 19. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

