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SB-1040 Insurance: restitution. (2021-2022)

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Senate Bill No. 1040

CHAPTER 540

An act to amend Sections 12928.6 and 12976 of, and to add Section 12928.7 to, the Insurance Code, relating to insurance.

[Approved by Governor September 25, 2022. Filed with Secretary of State September 25, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1040, Rubio. Insurance: restitution.

Existing law generally regulates insurance and creates the Department of Insurance, headed by the Insurance Commissioner. Existing law authorizes the commissioner to bring a superior court action to enjoin a person who is violating or about to violate the Insurance Code. Existing law also authorizes the commissioner to apply to the clerk of the superior court for a judgment to enforce an order requiring a person to pay a monetary penalty or reimburse the department for costs incurred by the department in prosecuting the matter.

This bill would authorize the commissioner to seek a judgment to enforce an order for restitution. The bill would authorize the commissioner to order a respondent, if certain requirements are met, to provide restitution, as defined, for a loss arising from the respondent's conduct. With a restitution order, and if the facts and equity permit, the bill would also authorize the commissioner to issue an order of rescission enforceable on any person subject to the commissioner's jurisdiction. The bill would require the rescission or restitution order to be subject to judicial review.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12928.6 of the Insurance Code is amended to read:

12928.6. (a) Whenever the commissioner believes, from evidence satisfactory to the commissioner, that a person is violating or about to violate this code or an order or requirement of the commissioner issued or promulgated pursuant to authority expressly granted the commissioner by this code or by law, the commissioner may bring an action in the name of the people of the State of California in the superior court of the State of California against the person to enjoin that person from continuing the violation or engaging therein or doing any act in furtherance thereof. In that action, an order or judgment may be entered awarding the preliminary or final injunction as is proper.

(b) (1) The commissioner may apply to the clerk of the superior court for a judgment to enforce an order requiring a person to pay restitution, a monetary penalty, or reimburse the department for costs incurred by the department in prosecuting a matter. The commissioner's application shall include a certified copy of the order and any associated decision.

(2) Subject to the requirements of paragraph (3), the order and decision shall constitute a sufficient showing to warrant issuance of a judgment in the amount ordered by the commissioner, plus interest. The clerk of the court shall accordingly enter a judgment within five court days.

(3) For an order to qualify for a judgment pursuant to this section, the application shall be accompanied by a declaration given by the legal counsel for the commissioner affirming on information and belief that a petition for mandamus or other legal action for relief from the order has either been denied, or the time for the filing of a petition or action has lapsed.

(4) A judgment entered under this section has the same force and effect as, and is subject to all the laws relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

SEC. 2. Section 12928.7 is added to the Insurance Code, to read:

12928.7. (a) The commissioner may order a respondent to provide restitution for a loss arising from the respondent's conduct. If the facts and equity permit, with a restitution order, the commissioner may issue an order of rescission enforceable on any person subject to the commissioner's jurisdiction.

(b) A restitution order under this section shall meet all of the following requirements:

(1) The respondent shall be subject to the commissioner's jurisdiction.

(2) The restitution order shall be ancillary to another proceeding authorized by this code in which the commissioner does both of the following:

(A) Determines the respondent violated this code or the standards of conduct applicable to persons acting in the capacity the respondent was acting in or purporting to act in when the loss occurred.

(B) Issues an order imposing a cease and desist order, an order for a monetary penalty, or another sanction with respect to the respondent's conduct.

(3) The restitution order shall cite the factual basis for the restitution order.

(4) The restitution order shall state the persons, or classes of persons, who suffered a loss.

(5) The restitution order shall state the amount to be paid or property to be returned as restitution.

(c) A rescission or restitution order shall be subject to judicial review in the same manner and at the same time as the order to which it is ancillary.

(d) A rescission or restitution order may be judicially enforced in an action brought by the commissioner, the Attorney General, a district attorney, a city attorney, or any person owed restitution pursuant to the order. In that action, the court may award attorney's fees and court costs to a prevailing plaintiff.

(e) This section does not apply to an insurer authorized to transact business in this state or to a placement of insurance with an insurer that was in compliance with Section 1765.1 or 1765.2 at the time of the placement. This section does not apply to a person with respect to acts within the scope of a license issued under Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), or Chapter 6 (commencing with Section 1760) of Part 2 if the person holds that license at the time of those acts or at the time an initial pleading seeking restitution is issued.

(f) The commissioner may order a respondent who is ordered to provide restitution pursuant to this section to reimburse the commissioner for the commissioner's costs of implementing and enforcing this section, including attorney's fees. The commissioner shall not credit any funds received from a respondent towards payment of a monetary penalty until restitution has been tendered to all persons to whom restitution is owed, or to the commissioner on their behalf, as required by a restitution order.

(g) This section does not limit or restrict actions, remedies, or procedures otherwise available to the commissioner, the department, or any person pursuant to an administrative or civil action to enforce any law. It

is not a defense in an administrative or civil action that the commissioner did not order a person to pay restitution.

(h) This section does not expand, limit, or otherwise affect the commissioner's authority to seek or to have sought restitution, refunds, or penalties against insurers, except as expressly provided.

(i) As used in this section, "restitution" means the full amount that will compensate each person for their direct and indirect financial and nonfinancial losses proximately caused by the respondent's violations.

(j) Money received by the commissioner for distribution to persons as restitution pursuant to this section or Section 12928.6 or 12976 shall be deposited into the Insurance Fund.

SEC. 3. Section 12976 of the Insurance Code is amended to read:

12976. All fines, forfeitures, taxes, assessments, restitution, and penalties provided for in this code shall be due and payable on the demand of the commissioner. If payment is not made within 10 days after that demand, then the commissioner shall institute an action in the name of the people of the State of California for the purpose of recovering that moneys due. All such actions shall be subject to all the provisions of the Code of Civil Procedure which may be applicable thereto.