
SENATE COMMITTEE ON INSURANCE

Senator Susan Rubio, Chair
2019 - 2020 Regular

Bill No:	SB 1192	Hearing Date:	May 14, 2020
Author:	Bradford		
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Urgency:	No	Fiscal:	Yes
Consultant:	Hugh Slayden		

SUBJECT: Firefighters', police officers', or peace officers' benefit and relief associations

DIGEST: Requires firefighters', police officers', and peace officers' benefit and relief associations that administer self-funded long-term disability and long-term care plans to periodically file an actuarial opinion with the California Department of Insurance (CDI), requires these associations to provide a notice in its contracts and certificates that the all or a portion of the benefits are not subject to regulation by CDI or guaranteed by the California Insurance Guarantee Association, and to provide a copy of a plan document that describes member benefits within 30 days of a written request.

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Committee on Judiciary.

Existing law:

- 1) Prohibits a person, generally, from transacting insurance without a certificate of authority from CDI and establishes laws and standards applicable to the business of insurance.
- 2) Provides that firefighters', police officers' or peace officers' benefit and relief associations ("associations") formed for the purpose of aiding their members and dependents in case of sickness, accident, distress, or death shall not be subject to any other provision of the Insurance Code nor any state law relating to insurance.
- 3) Requires associations to obtain a certificate of authority from CDI.
- 4) Limits membership to members of police departments and fire departments; regular and salaried peace or law enforcement officers; and emergency medical services personnel employed by a fire department of a city, county, or districts. (A member may remain if they are no longer in a qualifying position but did qualify at the time they joined.)
- 5) Requires that the trustees, directors, or governing body be elected by the membership.
- 6) Prohibits the use of money or property from being paid out as benefits to anyone other than its members, their dependents, or nominated beneficiaries.

- 7) Provides that associations shall be supported mainly by contributions from its members and by donations.

This bill:

- 1) Requires associations that issue long-term disability or long-term care policies or contracts to submit an actuarial opinion and supporting memorandum to CDI, no later than July 1, 2021, as to whether the reserves and related actuarial items are adequate to support benefits and are based on reasonable assumptions and recognized actuarial standards.
 - a) Permits an association to submit a previously prepared opinion if it had been completed no earlier than December 31, 2019.
 - b) Requires an association to submit a new opinion no more than 4 years from the date of its last opinion on file.
 - c) Exempts associations that offer benefits through an admitted insurer.
- 2) Provides that an association seeking a certificate of authority to file, if feasible, an actuarial opinion that it would have adequate resources to provide the benefits promised in its contracts.
- 3) Requires CDI to notify an association if a filing fails to meet the standards required by the bill and specify issues that are deficient to be addressed in an amended filing.
- 4) Recognizes documents, materials, or other information as proprietary and to contain trade secrets, and exempts those materials and information contained within from the public disclosure requirements, including the California Public Records Act.
- 5) Requires an association that self-funds all or a portion of its benefits to include the following language in all contracts and certificates evidencing coverage under those contracts: "THE BENEFITS PROVIDED BY THIS CONTRACT ARE NOT SUBJECT TO REGULATION BY THE CALIFORNIA DEPARTMENT OF INSURANCE, AND THE CONTRACT IS NOT GUARANTEED BY THE CALIFORNIA INSURANCE GUARANTEE ASSOCIATION."
- 6) Requires an association that issues long-term disability and long-term care policies to provide a copy of a plan document that describes plan benefits within 30 days of a written request.

Background

Police, peace officer, and firefighter benevolent associations have been around in the United States for well over 150 years. Originally, these associations were formed as "widows and orphans" funds and evolved to provide aid and assistance to either injured public safety employees or their dependents. As member needs and these associations grew more sophisticated, the nature of benefits developed as well. Now they offer any number of health care, disability, and related benefits. This bill applies to associations that offer self-funded plans that provide (1) long-term disability income benefits (LTD) designed to replace lost income when the covered person is injured and (2) long-term

care benefits designed to pay for services that assist in performing the basic “activities of daily living” (like feeding, bathing, clothing, etc.).

But these associations are designed to share losses among members and are not insurers, although the plans they offer may look very much like an insurance policy. So long as they meet specified operational and administrative requirements, they are not treated as insurers. As of 2017, CDI identified 83 associations with certificates of authority providing coverage to approximately 100,000 firefighters, police officers, peace officers, and their spouses.

Self-funding v. Insurance. Some associations offer fully-insured benefits, meaning they make arrangements to provide benefits backed by an admitted insurer that is subject to the insurance laws. Others offer self-funded benefits funded by membership contributions and investment income and not subject to most Insurance Code provisions or oversight by CDI.

Other forms of self-funded arrangements not subject to CDI oversight include nonprofit and affordable housing entity risk pools (providing property and casualty coverage to members) and the long-term care plan offered by CalPERS (providing an equivalent to long-term care insurance). These arrangements follow a pattern. Directors are elected by members and owe fiduciary duties to the members and other beneficiaries. These arrangements may only issue policies to a specified group (in this case public safety personnel) and may not sell to the public generally. Contributions may not be used to pay benefits for anyone other than members, their dependents, or beneficiaries.

Insurance regulation typically requires that an insurer have adequate resources to make good on promised benefits. For example, insurers are required to set aside assets in fairly safe, but low-earning investment vehicles (“reserves”). While this approach may ensure some assets to pay future claims, it also involves significant opportunity costs because the funds are not invested in more productive (and more risky) investments. Self-funded plans are allowed to make riskier investments and more optimistic assumptions than insurers.

Some associations primarily rely on a “pay as you go” model to fund the benefits; they depend largely on premiums paid by active members to fund at least some of the obligations owed to members who accrued their membership rights in the past. These benefit associations are voluntary; if the association has to adjust contributions or benefits in a way that make the product unattractive, the association could suffer from adverse selection or a self-perpetuating cycle of premium increase/benefit reductions and membership losses. On the other hand, some of these groups have been offering these benefits decades without financial problems.

As associations expanded the nature of benefits and they grew in size, concerns were raised about the risks of self-funding and many associations shifted from self-funded to fully or partially-insured programs. In 2017, Insurance Commissioner Dave Jones suggested that this approach may allow self-funded plans to offer cheaper rates and grow their membership more quickly, but there is a greater danger that they will have to reduce promised future benefits or could lack the assets to pay accrued liabilities. This bill requires associations that offer full or partially self-funded benefits to submit an

actuarial opinion, at least every four years, that its reserves and other resources are adequate to support plan benefits in the future.

Self-funded associations do not participate in a guarantee association and there would be no back-up to pay for benefits in case of insolvency. This bill would reenact provisions that expired in 2018 requiring associations to include a notice in all contracts that plan benefits are not regulated by CDI or covered by a guarantee association.

There are many of these associations in various forms operating in California, but the following entities are among the largest. The California Law Enforcement Association (CLEA) for police and the California Association of Professional Firefighters (CAPF) for firefighters are multi-employer associations that offer self-funded LTD benefits; their joint trust, the National Peace Officers and Fire Fighters Benefit Association (NPFBA), offers self-funded LTC benefits. The Peace Officers Research Association of California (PORAC) is a multi-employer association that offers group short term and long-term disability benefits through its Insurance & Benefits Trust that offers different options that can be either insured or self-funded.

AB 1072 (Daly). AB 1072 (Daly), Chapter 503, Statutes of 2015, required self-funded plans to submit an actuarial report for review and consideration by Commissioner. It also required the Commissioner to issue a report and recommendations. Commissioner Jones issued a 2017 report outlining numerous concerns about self-funded plans and included several recommendations that would have imposed requirements similar to those placed on insurers, including investment restrictions, a conservative basis for reserves, and enforcement authority. However CDI did not pursue legislation and AB 1072 was allowed to sunset in 2018. This bill permanently reenacts much of AB 1072 with some minor modifications.

Senate Judiciary Committee Comments. This bill touches on various issues within the jurisdiction of the Senate Judiciary Committee, such as establishing that certain actuarial opinions and supporting documents required to be submitted to the Insurance Commissioner or the Department of Insurance are exempt from disclosure under the California Public Records Act (CPRA) and would not be subject to subpoena, discovery, or be admissible as evidence in any private party civil action.

As noted above, the proposed amendments to the bill will make the bill largely identical to AB 1072 (Daly, Ch. 503, Stats. 2015), which was allowed to sunset in 2018. The Senate Judiciary Committee heard and passed AB 1072 in its final form with a unanimous vote. In particular, the CPRA and discovery exemptions in this bill are the same as the ones in the bill considered by the Senate Judiciary Committee and ultimately signed by the Governor. Here, as in AB 1072, these protections from disclosure ensure the critical cooperation and full disclosure of insurers and affiliates who otherwise may be forced to seek protection under other law. This bill also adds two consumer-protection requirements not currently in place: a requirement that insurance contracts not regulated by the Department of Insurance include a disclaimer to that effect in at least 12-point font; and a requirement that any association holding a certificate of authority and issuing long-term disability or long-term care policies or contracts shall make certain plan information available to a member within 30 days of a written request from that member.

ARGUMENTS IN SUPPORT: According to Insurance Commissioner Ricardo Lara, SB 1192 is needed now to help ensure CDI is able to maintain its ability to periodically review these associations' actuarial opinions as well as allow for association members to receive necessary information about their benefits upon request.

SUPPORT:

Insurance Commissioner Ricardo Lara (source)

OPPOSITION:

None received

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