

Senate Bill No. 534

CHAPTER 249

An act to add Article 10.2 (commencing with Section 927) to Chapter 1 of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 5, 2019. Filed with Secretary of State September 5, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 534, Bradford. Insurers: minority, women, LGBT, veteran, and disabled veteran business enterprises.

Existing law requires each admitted insurer with premiums written equal to or in excess of \$100,000,000 to provide information to the Insurance Commissioner on all of its community development investments and community development infrastructure investments in California.

This bill would require those insurers to also report to the commissioner on their minority, women, LGBT, veteran, and disabled veteran-owned business procurement efforts, as specified. Under the bill, a failure to report the information by the reporting deadline would subject the admitted insurer to civil penalties to be fixed and enforced by the commissioner, as provided. The bill would also require each of those insurers to report to the commissioner regarding the demographic makeup of the insurer's governing board and the insurer's goals regarding board diversity. The bill would require an insurer to provide each board member with an opportunity to participate in a survey for the purposes of collecting the demographic information, and would require an insurer to submit that information to the department in the aggregate. Under the bill, the demographic information would be confidential and the bill would prohibit the department or an insurer from releasing that information, except as provided by the bill.

The bill would require the above-described information to be reported to the commissioner on July 1, 2020, and then biennially thereafter. The bill would require the commissioner, by November 1 of each reporting year, to establish and maintain a link on the department's internet website that provides public access to the reported information.

The bill would require the commissioner to establish and appoint an Insurance Diversity Task Force to advise the department on the best methods to increase procurement with diverse suppliers and to increase diversity on governing boards within the insurance industry.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

SECTION 1. Article 10.2 (commencing with Section 927) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 10.2. Minority, Women, LGBT, Veteran, and Disabled Veteran
Business Enterprises

927. The Legislature finds and declares all of the following:

(a) It is in the state's interest to encourage competitive business opportunities for all of its people. Insurers are uniquely positioned to build relationships within the communities they serve through the development, inclusion, and utilization of certified minority, women, LGBT, veteran, and disabled veteran-owned business enterprises whenever possible. National companies are able to leverage buying power to save costs to the benefit of policyholders.

(b) It is in the state's interest to encourage corporate leadership opportunities for all of its people. Insurers are uniquely positioned to build relationships within the communities they serve through the development of a corporate board that represents the diversity of the state.

(c) By requiring each major insurer to report to the Insurance Commissioner, explaining the insurer's supplier diversity statement, expressing its goals regarding certified minority, women, LGBT, veteran, and disabled veteran-owned business enterprises, and detailing the insurer's efforts and goals regarding board diversity, and by having the commissioner place that information on the department's internet website, will help facilitate these relationships.

927.1. For the purposes of this article, the following definitions apply:

(a) "Control" means to exercise the power to make policy decisions.

(b) "Disabled veteran business enterprise" has the same meaning as defined in subparagraph (A) of paragraph (7) of subdivision (b) of Section 999 of the Military and Veterans Code, or any successor provision. Disabled veteran business enterprise certification eligibility requirements shall be consistent with those imposed by the Department of General Services, and this section applies only to those disabled veteran business enterprises certified by the Department of General Services.

(c) "LGBT business enterprise" means a business enterprise that is 51 percent owned, managed, operated, and controlled by one or more lesbian, gay, bisexual, or transgender (LGBT) individuals, has been legally formed in the United States, and exercises independence from any non-LGBT business enterprise.

(d) "Minority business enterprise" means a business enterprise, physically located in the United States or its trust territories, that is at least 51 percent owned by a minority group or groups, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups, and whose management and daily business operations are

controlled by one or more of those individuals. “Minority” includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.

(e) “Operate” means to be actively involved in the day-to-day management of the enterprise and not to be merely officers or directors.

(f) “Women business enterprise” means a business enterprise physically located in the United States or its trust territories, that is at least 51 percent owned by a woman or women, or, in the case of any publicly owned business at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more of those individuals.

(g) “Veteran business enterprise” means a business enterprise physically located in the United States or its trust territories that is at least 51 percent owned by one or more veteran groups or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more veteran groups, and whose management and daily business operations are controlled by one or more of those individuals.

927.2. (a) (1) Commencing July 1, 2020, and biennially on July 1 of each even-numbered year thereafter, each admitted insurer, with California premiums written of one hundred million dollars (\$100,000,000) or more, shall report to the commissioner on its minority, women, LGBT, veteran, and disabled veteran-owned business procurement efforts during the previous two years.

(2) The insurer shall provide all of the following:

(A) The insurer’s supplier diversity policy statement.

(B) The insurer’s outreach and communications to minority, women, LGBT, veteran, and disabled veteran business enterprises, including:

(i) How the insurer encourages and seeks out minority, women, LGBT, veteran, and disabled veteran-owned business enterprises to become potential suppliers.

(ii) How the insurer encourages its employees involved in procurement to seek out minority, women, LGBT, veteran, and disabled veteran-owned business enterprises to become potential suppliers.

(iii) How the insurer conducts outreach and communication to minority, women, LGBT, veteran, and disabled veteran business enterprises.

(iv) How the insurer supports organizations that promote or certify minority, women, LGBT, veteran, and disabled veteran-owned business enterprises.

(v) Information regarding appropriate contacts at the insurer for interested business enterprises.

(C) Information about which procurements are made from minority, women, LGBT, and veteran business enterprises with a headquarters’ address in California, and from disabled veteran business enterprises, as defined in subdivision (b) of Section 927.1, with each category aggregated separately, to the extent that information is readily accessible. An insurer may also include other relevant information.

(D) Information about which procurements are made from minority, women, LGBT, veteran, and disabled veteran business enterprises with at least a majority of the enterprise's workforce in California, with each category aggregated separately, to the extent that information is readily accessible. An insurer may also include other relevant information.

(E) Information related to total procurement contract dollars awarded, to the extent that information is readily accessible. An insurer may also include other relevant information.

(3) An insurer that does not enter into contracts to procure goods or services in California satisfies the requirements of paragraph (2) by filing a statement with the commissioner attesting that it does not enter into procurement contracts in California.

(b) This section does not require quotas, set-asides, or preferences in an admitted insurer's procurement of goods or services, and this section does not apply to insurer producer or licensee contracts. Admitted insurers retain the authority to use business judgment to select the supplier for a particular contract.

(c) This section does not preclude an admitted insurer that is a member of an insurance holding company system, as defined in Article 4.7 (commencing with Section 1215) of Chapter 2, from complying with paragraphs (1) and (2) of subdivision (a) through a single filing on behalf of the entire group of affiliated companies.

(d) Failure to report the information required by subdivision (a), by the reporting deadline, shall subject the admitted insurer to a civil penalty to be fixed by the commissioner, not to exceed five thousand dollars (\$5,000), or if the act or practice was willful, a civil penalty not to exceed ten thousand dollars (\$10,000). An insurer may request, and the commissioner may grant, a 30-day extension to report the information if needed due to unintended or unforeseen delays. If the insurer has failed to report the information within 30 days of a written notice by the commissioner that the insurer has failed to report the information, the commissioner may find that the failure to report the information was willful and increase the civil penalty to an amount not to exceed ten thousand dollars (\$10,000). The penalty imposed by this section shall be enforced by the commissioner and is appealable by means of any remedy provided by Section 12940, or by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision is the sole means for enforcement of this section.

(e) By November 1 of the reporting year, the commissioner shall establish and maintain a link on the department's internet website that provides public access to the contents of each admitted insurer's reported information on minority, women, LGBT, veteran, and disabled veteran-owned business procurement efforts. The commissioner shall include a statement on the department's internet website that the information on minority, women, LGBT, veteran, and disabled veteran-owned businesses posted pursuant to this subdivision is provided for informational purposes only.

927.3. (a) (1) Commencing July 1, 2020, and biennially on July 1 of each even-numbered year thereafter, each admitted insurer with California

premiums written of one hundred million dollars (\$100,000,000) or more, shall report to the commissioner on its governing board and board diversity efforts during the previous two years.

(2) The insurer shall provide the following information:

(A) The demographic makeup of the insurer's governing board.

(B) The insurer's goals regarding board diversity, including outreach and communication strategies to diversify its board.

(b) (1) An insurer shall provide each board member with an opportunity to participate in a survey for the purpose of collecting and reporting the information described in subparagraph (A) of paragraph (2) of subdivision (a).

(2) The insurer shall distribute a written disclosure to each board member prior to, or concurrently with, the survey. The disclosure shall notify the board member that the board member's decision to disclose their demographic information is voluntary, that no adverse action may be taken against the board member or the insurer if the board member declines to participate in the survey, and that the aggregate data collected for each demographic category will be reported.

(3) The survey shall be completed using a standardized form to be specified by the commissioner.

(4) Neither an insurer nor the department shall in any way encourage, incentivize, or attempt to influence the decision of a board member to participate in the survey.

(5) An insurer required to conduct the survey shall do both of the following:

(A) Collect survey response data from board members in a manner that maintains the anonymity of the responding board member and the confidentiality of the data reported.

(B) Transmit the survey response data to the department in a manner that does not associate the survey response data with an individual board member.

(c) This section does not require quotas, set-asides, or preferences in regard to an admitted insurer's governing board.

(d) This section does not preclude an admitted insurer that is a member of an insurance holding company system, as defined in Article 4.7 (commencing with Section 1215) of Chapter 2, from complying with subdivisions (a) and (b) through a single filing by the insurance holding company on behalf of an entire group of affiliated companies that identifies the aggregated survey results for each affiliated insurer.

(e) By November 1 of the reporting year, the commissioner shall establish and maintain a link on the department's internet website that provides public access to the information submitted pursuant to this section. The commissioner shall publish the information submitted pursuant to paragraph (5) of subdivision (b) in the aggregate, and shall not identify an individual respondent or insurer. The commissioner shall include a statement on the department's internet website that the information posted pursuant to this subdivision is provided for informational purposes only.

(f) The data collected pursuant to this section is confidential and shall not be released by the department or an insurer under any circumstances, except as provided in this section.

927.4. (a) The commissioner shall establish and appoint an Insurance Diversity Task Force.

(b) The task force shall be comprised of at least 13, but not more than 15, members as follows:

(1) The commissioner or the commissioner's designee.

(2) Two members who are representatives in the insurance industry, one of whom shall, at the time of appointment, serve as a practitioner in the field of supplier diversity, and one of whom shall, at the time of appointment, have expertise in governing board diversity.

(3) Two members who are representatives of a minority business enterprise.

(4) Two members who are representatives of a women business enterprise.

(5) A member who is a representative of a disabled veteran business enterprise or a veteran business enterprise.

(6) A member who is a representative of an LGBT business enterprise.

(7) Two members with expertise in the field of supplier diversity.

(8) Two members with expertise in the field of governing board diversity.

(c) The term of each member shall be for two years. Staggered terms shall be established by drawing lots at the first meeting of the task force so that a simple majority of the members shall initially serve a two-year term, and the remainder shall initially serve a one-year term.

(d) The task force shall have all of the following duties:

(1) To advise and provide recommendations to the department on the best methods to increase procurement with diverse suppliers and to increase diversity on governing boards within the insurance industry.

(2) To meet quarterly, or as deemed necessary by the commissioner, or the commissioner's designee.

(3) Assist the department in promoting and providing outreach to insurance companies that are actively engaged in supplier and governing board diversity issues.

(e) The members of the task force shall not receive compensation from the state for their services under this section but may be reimbursed for their actual and necessary expenses incurred in connection with attending a task force meeting.

(f) The department shall review and revise, if necessary, the department's conflicts of interest regulations to ensure that each task force member is required to disclose conflicts of interest to the public.

927.5. The commissioner may promulgate regulations that further the purposes of this article.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 927.3 to the Insurance Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision,

the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy and personal information of individual insurance company board members participating in the governing board diversity survey, it is necessary that this information be kept confidential.

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