



**THE SURPLUS LINE ASSOCIATION  
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**Bulletin # 1083**

**REPORT ON 2005 LEGISLATION**

Enclosed is the legislative analysis of three bills enacted by the California Legislature in 2005 that have a direct impact on California Surplus Line Brokers. These new laws become effective January 1, 2006.

Sincerely,

A handwritten signature in black ink, appearing to read 'Theodore M. Pierce', written in a cursive style.

Theodore M. Pierce  
Executive Director

Please find below revised summaries of the three legislative enactments of the 2005 California legislative session that most impact California surplus line brokers:

ASSEMBLY BILL 729 (KORETZ)

Signed by the Governor on September 22, 2005 and effective as of January 1, 2006, AB 729 amends several provisions of the California Insurance Code impacting upon agents and brokers generally. Specifically, AB 729:

- (i) requires that surplus line brokers organized as limited liability companies (LLCs) provide the Commissioner with a certification (the form for which is set forth within AB 729) of security for claims against them in the form of errors and omissions (E&O) coverage or acceptable alternative security equal to \$100,00 for each claim multiplied by the number of licensees rendering professional services on behalf of the company with a minimum required amount of \$500,000 (though the maximum coverage is not required to exceed \$5 million);
- (ii) permits a deductible for such E&O coverage so long as the insurer agrees by contract that it is ultimately responsible to cover the deductible and otherwise requires the licensee to post security for the payment of the deductible;
- (iii) empowers the Commissioner to summarily deny or decline to act upon an application for the issuance or renewal of a license, or to summarily inactivate an existing license, for failure to comply with the above-described financial security provisions;
- (iv) permits the Commissioner to impose an administrative penalty, including revocation of license, under the notice and hearing provisions of the Administrative Procedures Act if a licensee willfully or knowingly causes or allows to be filed with the Commissioner false, fraudulent or misleading documents for the purpose of demonstrating compliance with the above-described financial security provisions;
- (v) permits the Commissioner to disclose on the California Department of Insurance website, and report to the National Association of Insurance Commissioners, the names and license numbers of those licensees whose licenses have been inactivated or who have been penalized due to noncompliance with the above-described financial security provisions;
- (vi) imposes criminal sanctions, punishable by a fine not exceeding \$10,000 or imprisonment not exceeding one year, upon any person who willfully cheats on a licensing examination given by the California Department of Insurance;

- (vii) requires a licensee, before he or she may operate beyond the renewal period under his or her existing license for the 60-day grace period, to, at a minimum, submit all applicable renewal application forms and the appropriate fee and satisfy all continuing education requirements;
- (viii) requires licensees and license applicants to reply promptly in writing (within 21 days) to any inquiry from the Commissioner relative to an application or renewal of a license, an investigation relating to a consumer complaint, or a matter relating to a producer licensing background change reporting requirement, and authorizes the Commissioner to revoke, suspend or refuse to issue or renew a license if the licensee or license applicant does not so promptly reply;
- (ix) deletes the requirement that tax remittance forms must be mailed by the Department of Insurance to surplus line brokers and permits such forms to be posted on the California Department of Insurance website;
- (x) specifies that payment on a delinquent tax is to be applied as follows: first, to any interest due on the tax; second, to any penalty imposed; and third, the balance, if any, to the tax itself;
- (xi) amends the existing consumer complaint investigation, response and enforcement program to make such program equally applicable to insurers and agents or brokers; and
- (xii) permits the Commissioner, if he deems it appropriate, to publish the record of complaints against a production agency, though the Commissioner must provide the production agency with a copy of the record at least 30 days prior to the release of the information to the public.

ASSEMBLY BILL 1043 (HARMAN)

Signed by the Governor on September 22, 2005 and effective as of January 1, 2006, AB 1043 deletes the requirement that, whenever a commercial lines policy is rejected, declined or cancelled and the unearned premium is tendered to a broker or agent, the broker or agent must refund such unearned premium to the insured within 30 days. AB 1043 provides that whenever a policy of personal lines insurance terminates for any reason or there is a reduction in coverage, the insurer shall return the gross unearned premium to the insured or the appropriate party within 25 business days. AB 1043 also imposes an 80-business day deadline for the return of gross unearned premium whenever a commercial lines policy terminates for any reason or there is a reduction in coverage. If the policy is not auditable, the 80 business days begins to run upon the insurer receiving notice of the cancellation or other event leading to the unearned premium, but if the policy is subject to audit, the 80 business days begins to run after the insured provides all requested audit information to the insurer.

In addition, AB 1043 requires:

- (i) the insurer to pay 10% interest on any unearned premium not tendered to the insured in accordance with the above-described timeframes;
- (ii) the insurer to tender the unearned premium directly to the insured or provide the insured with the agent's or broker's accounting of any offset within 15 days of the insured notifying the insurer that the agent or broker has failed to provide an accounting of such of an offset within 25 days of the insurer first tendering the unearned premium to such agent or broker;
- (iii) the insurer to notify the agent or broker of the amount of the unearned commission whenever the insurer tenders the net rather than the gross unearned premium to the agent or broker;
- (iv) an agent or broker that receives a refund from a premium finance company or an agent or broker with an assignment from the insured that receives unearned premium from an insurer to tender such refund or provide an accounting of any offset to the insured within 25 days; and
- (v) the insurer to provide the insured or the agent or broker, upon the request of either, with a clear, concise and easy-to-comprehend explanation of how the amount of unearned premium refund was calculated (AB 1043 permits the Commissioner to promulgate regulations setting forth standards governing the explanation of the unearned premium refund to be provided by the insurer).

ASSEMBLY BILL 1424 (SALDANA)

Signed by the Governor on September 6, 2005 and effective as of January 1, 2006, AB 1424 provides that, similar to the current tax lien provisions governing insurers, the tax levied upon a surplus line broker under the California Revenue and Taxation Code is a lien upon all property and franchises of every kind and nature belonging to the surplus line broker, and has the effect of a judgment against the surplus line broker. AB 1424 clarifies, however, that the lien levied on surplus line brokers shall not exceed the amount of unpaid tax actually collected by the surplus line broker from the insured (as opposed to the amount of unpaid tax actually due from the insured). AB 1424 also precludes any court from entering a final discharge in bankruptcy or similar decree of dissolution until all taxes, interest, penalties and costs of the surplus line broker are paid and discharged. Finally, AB 1424 provides that every payment on a surplus line broker's delinquent annual tax shall be applied as follows: first, to any interest due on the tax; second, to any penalty imposed by this part; and third, the balance, if any, to the tax itself.