



THE SURPLUS LINE ASSOCIATION
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December 12, 1990

Bulletin #462

BULLETIN TO ALL MEMBERS:

Re: Emergency Regulation - Exportability of Automobile Liability Insurance

The Insurance Commissioner recently promulgated an emergency regulation that was filed with the California Secretary of State, and became effective, on November 16, 1990. The emergency regulation (Code of Regulations, title 10, section 2173) provides as follows:

Section 2173. Pre-Conditions to Placement with Nonadmitted Insurers

No surplus line broker shall solicit from and place with any nonadmitted insurer any automobile bodily injury, property damage liability, or medical payment insurance that contains, either in whole or in part the limits of coverage provided under the California Automobile Assigned Risk Plan ("CAARP") unless: (1) the surplus line broker or insured has first submitted to CAARP a properly completed and executed application in accordance with Title 10, CCR Sections 2441-2443 for the limits of coverage provided under CAARP and (2) CAARP itself has determined that the applicant is ineligible for the limits of coverage applied for.

On November 20, 1990, the regulation's validity was upheld in Cowan v. State of California, et al., Los Angeles County Superior Court Case No. BC 010105.

On its face, the emergency regulation applies to commercial as well as private passenger automobile liability insurance. The Department of Insurance has scheduled a public hearing on the regulation on February 4, 1991, 9:30 A. M. at the Department of Insurance Hearing Room, 22nd Floor, 45 Fremont Street, San Francisco, California. All interested persons may present oral and/or written testimony at the hearing. The deadline for submitting written testimony is 5:00 P. M. on February 4, 1991.

(See the Department's Notice of Proposed Action and Notice of Public Hearing dated November 30, 1990, attached hereto.)

The Association has received numerous inquiries by members of the Association and others regarding the scope, effect, and implementation of this regulation. Please address any specific questions to Carol A. Fistler, Staff Counsel, Department of Insurance (415) 557-3840, or consult your own counsel.

A. D. Freeman, Jr.

A. D. Freeman, Jr.
Manager

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
100 Van Ness Avenue
San Francisco, California 94102

November 30, 1990
RH-290

NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING

Subject of Hearing:

Regulation Section 2173, Title 10, California Code of Regulations ("CCR"), Pre-Conditions to Placement with Nonadmitted Insurers (copy attached).

Authority and Reference:

Notice is hereby given that the Insurance Commissioner, pursuant to authority vested in her by California Insurance Code Section 1763 to make and publish reasonable rules and regulations, consistent with Chapter 6 of the California Insurance Code, in respect to transactions governed thereby and the basis or bases for her determinations thereunder, proposes to adopt regulation Section 2173 of Title 10 of the California Code of Regulations regarding Pre-Conditions to Placement with Nonadmitted Insurers.

Hearing Date and Location:

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to this proposal, at the following date, place and time:

February 4, 1991 - 9:30 a.m.
Department of Insurance Hearing Room
22nd Floor
45 Fremont Street
San Francisco, California 94105

ASSOCIATION
SURPLUS LINE
1990 DEC 12 PM 1:29
RECEIVED

Informative Digest:

The Department of Insurance on November 6, 1990, submitted to the Office of Administrative Law ("OAL") an emergency regulation. This emergency regulation was accepted by OAL on November 16, 1990, and was filed with the Secretary of State's Office on that date. The regulation was thus effective on November 16, 1990. In accord with Government Code Section 11346.11(e), the Department is now beginning the full regulation adoption process.

This regulation is needed to stop the egregious abuse of the legal procedures for obtaining coverage from insurers not authorized to sell insurance in California. The regulation will plug a loophole which certain brokers are using to sell automobile liability insurance for these insurers to California residents even though automobile liability coverage is available from California licensed insurers.

Proposition 103, which was passed by the voters on November 8, 1988, enacted Insurance Code Section 1861.02(b)(1). This statute mandates that insurers writing automobile liability insurance must write good driver discount policies. Such policies, as defined by Title 10, Chapter 5, Subchapter 4.7, Article 4, Section 2632.14.1 include the minimum liability coverage required by Vehicle Code Section 16056. Such coverage is thus available by law from admitted companies (companies with a Certificate of Authority).

In addition, the California Assigned Risk Plan (CAARP) provides coverage for all drivers (both private and commercial) who are unable to obtain coverage in the "voluntary" market. CAARP is a legally mandated plan under Insurance Code Section 11620 for assigning all such drivers to admitted insurers. All admitted insurers must participate in the Plan. Pursuant to Insurance Code Section 11622, CAARP provides the automobile insurance protection required by law and that is the coverage required by Vehicle Code Section 16056. It is clear from the creation of CAARP and the most recent enacted statute, Section 1861.02(b)(1), that the California voters and legislators mandate that automobile insurance be available to private and commercial entities from admitted companies.

Despite the legally mandated availability codified in Section 1861.02(b)(1) and CAARP, a significant and steadily increasing amount of private and commercial automobile business that can and must be written by the admitted market, either through CAARP or the voluntary market, is being "exported" to nonadmitted carriers. The 1990 premium volume for exported automobile liability business is as follows: Private passenger 1st quarter, \$292,041; 2nd quarter, \$344,070; 3rd quarter, \$3,111,933; and for commercial business: 1st quarter, \$21,851,501; 2nd quarter, \$6,461,901; and 3rd quarter, \$15,410,788.

Thousands of policyholders have been insured by nonadmitted insurers. This placement is in violation of Insurance Code Section 1763, which allows business to be placed in nonadmitted insurers only if the coverage cannot be obtained in the admitted market. Agents are able to circumvent this law because the existing procedures for determining whether coverage is available on the admitted market do not specifically mention CAARP. Thus, agents and brokers are claiming they have followed all required procedures to determine availability even though they have not applied for CAARP.

The Department is seeking to stem the tide of this abusive exportation by spelling out specifically the procedure for exportation on the policies available through CAARP in this regulation.

In the absence of such regulation, the brokers may continue to place business improperly to the detriment of the insurance buying public. To the extent that such coverage is placed in nonadmitted markets, the coverage is in carriers which are not regulated by the Department, and gives the insurance buying public less protection. Nonadmitted carriers are not examined regularly and do not file financial statements on a regular basis. These carriers are also not subject to the Insurance Code in general. The Department needs to stop this abuse immediately.

The Department has tried to stop the practice by issuing a warning letter dated August 29, 1990, on this topic to all surplus line brokers with the Surplus Line Association. The Department has been sued on this action. (Cowan v. Department of Insurance, Case No. BC010105, Los Angeles Superior Court of the County of Los Angeles.) The plaintiff alleged that the Department should have issued a regulation. In the final hearing on this case, the Department formally retracted its letter of August 29, 1990. The Department believes that it was therefore prudent to adopt an emergency regulation and now this full regulation, as the Department is concerned about these abuses and seeks a regulatory forum to formalize its warning and clarify the law under Section 1763.

Local Mandate/Reimbursement Costs

This regulation does not impose a mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the California Government Code would require reimbursement.

Cost or Savings to State Agencies:

The matters proposed herein will not result in any cost or savings to state agencies.

Cost or Savings and Mandate to Local Agencies and School Districts:

The Insurance Commissioner has determined that there will be no cost savings or increase, nor will there be any new programs mandated on any local agency or school district, as a result of this regulation. The proposed action will not mandate any programs upon local agencies or school districts.

Nondiscretionary Cost or Savings:

The matters proposed herein will not result in any cost or savings to local agencies.

Federal Funding to the States:

The matters proposed herein will not affect any federal funding.

Impact on Small Business:

The matters proposed herein will not have an adverse impact on small business (Government Code Section 11342(e)(2)(B).) No studies/data were relied upon to make this determination.

Cost Impact on Private Persons or Entities:

Compliance by private persons or entities with the matters proposed herein will not generate additional costs.

Impact on Housing Costs:

The matters proposed herein will not effect any housing costs.

Alternatives

The Insurance Commissioner must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Comparable Federal Law:

There are no existing federal regulations or statutes comparable to the proposed regulations.

Access to Hearing Rooms:

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person for the hearing in order to make special arrangements, if necessary.

Presentation of Oral and/or Written Comments:

All persons are invited to submit written comments on the proposed regulation to the Insurance Commissioner prior to or at the public hearing. Such comments should be addressed to:

California Department of Insurance
Attn: Carol A. Fistler
100 Van Ness Avenue, 17th Floor
San Francisco, CA 94102

No written comments may be submitted by facsimile (FAX) transmission.

Any interested person may present oral and/or written testimony at the scheduled public hearing.

Deadline For Written Comments:

All written materials, unless submitted at the hearing, must be received by the Insurance Commissioner at the address listed above, no later than 5:00 p.m. on February 4, 1991.

Availability of Text of Regulation and Statement of Reasons:

The Insurance Commissioner has prepared an initial statement of reasons for the proposed regulation, in addition to the informative digest included in this notice. The express terms of the proposed regulation, and the statement of reasons, will be made available for inspection or provided upon written request. The Department will also make available all the information upon which the proposed action is based and the express terms of the proposed action.

Access to Copies of Proposed Regulation and Statement of Reasons:

Any interested person may inspect a copy of or direct questions about the proposed regulation, the statement of reasons therefor, and any supplemental information contained in the rulemaking file. The rulemaking file is available for inspection at 100 Van Ness Avenue, 17th Floor, San Francisco, California 94102, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

Requests for copies of the proposed regulation, the statement of reasons, supplemental information contained in the rulemaking file and specific questions should be directed to:

California Department of Insurance
Attn: Carol A. Fistler
100 Van Ness Avenue, 17th Floor
San Francisco, CA 94102
(415) 557-3840

Automatic Mailing:

A copy of this notice, including the informative digest which contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's mailing list.

Adoption of Regulation:

Following the hearing, the Insurance Commissioner may adopt the regulation substantially as described in the notice and informative digest. Copies of the regulation as adopted will be sent to all persons on the Insurance Commissioner's mailing list and to all persons who testified at the public hearing or submitted written comments during the comment period or at the public hearing, and to those persons who have requested copies of information regarding the regulation.

Additional Public Comment--Substantive Changes:

As a result of public comment (oral or written), the Insurance Commissioner may determine that changes to the proposed regulation are appropriate. Pursuant to Government Code Section 11346.8, these changes may be (1) nonsubstantial or solely grammatical in nature or, (2) sufficiently related to the original text that the public was adequately placed on notice that the changes could result from the originally proposed regulation action. If a sufficiently related change is made,


copies of the revised proposed regulation will be sent to all persons who testified at the public hearing or submitted written comments during the comment period or at a public hearing and to those who have requested copies of information regarding the regulation. The text will also be available at least 15 days prior to the date on which the agency adopts, amends or repeals the resulting regulation.

Thereafter, the Insurance Commissioner will accept written comments, arguments, evidence and testimony for a period of at least 15 days after the date upon which the changes were made available. At least 45 days notice will be given if the changes are not sufficiently related.

If adopted, the regulation will appear in Title 10, CCR Section 2173.

DATED: November 30, 1990

ROXANI M. GILLESPIE
Insurance Commissioner

By 

FERMIN J. RAMOS

Ooc. #9766s

Title 10, CCR Section 2173

Section 2173. Pre-Conditions to Placement with
Nonadmitted Insurers

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Authority: Insurance Code Section 1763

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