



October 19, 1992

BULLETIN #531

BULLETIN TO ALL MEMBERS:

**RE: SENATE BILL 1145 AND ASSEMBLY BILL 2608, BOTH OF WHICH WILL
BECOME LAW ON JANUARY 1, 1993**

Enclosed for your reference are copies of Senate Bill 1145 and Assembly Bill 2608. We strongly urge that you read these two bills to familiarize yourself with the new information and requirements contained therein.

The Surplus Line Association is working with the Department of Insurance in order to clarify the information presented and to help in the presentation to the membership of the newly created and required forms and documents.

We anticipate conducting seminars designed to help the membership understand and implement the new requirements. We will provide you with additional information and clarification as soon as it is available.

A.D. Freeman, Jr.
Manager

ADF/imb

CHAPTER 397

S.B. No. 1145

AN ACT to amend Section 1764.1 of the Insurance Code, relating to insurance. (Approved by Governor August 1, 1992.)

(Filed with Secretary of State August 3, 1992.)

LEGISLATIVE COUNSEL'S DIGEST

SB 1145, Johnston. Nonadmitted and surplus lines disclosure: insurance.

Existing law requires every nonadmitted insurer or surplus lines broker issuing a policy of insurance to prominently affix a legend in boldface 16-point type on the front page of every application and policy advising the applicant or insured that a policy issued by a nonadmitted insurer is not subject to regulation by the California Department of Insurance, and that provisions creating the California Insurance Guarantee Association do not apply to any policy underwritten by a nonadmitted insurer.

This bill would revise that requirement to require every nonadmitted insurer and surplus lines broker to be responsible to ensure that, at the time of accepting an application for any insurance policy issued by a nonadmitted insurer, except with respect to policies issued to industrial insureds, the signature of the applicant on a disclosure statement, as specified, is obtained, and would require policies to contain the disclosure statement, and would revise the disclosure statement. It would also specify certain compliance requirements for commercial insurance and the obtaining of an applicant's signature.

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

SECTION 1. Section 1764.1 of the Insurance Code is amended to read:

1761.1. (a) Every nonadmitted insurer * * *, in the case of insurance to be purchased by a resident of this state pursuant to Section 1760, and surplus lines broker * * *, in the case of any insurance with a nonadmitted carrier to be transacted by the surplus lines broker, shall be responsible to ensure that at the time of accepting an application for any insurance policy issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. This disclosure shall be signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus lines broker. The disclosure statement shall be in boldface 16-point type on * * * a freestanding document. In addition, every policy . . . issued by a nonadmitted insurer * * * shall contain the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

(b) The following notice shall be provided to policyholders and applicants for insurance as provided by subdivision (a). The surplus lines broker and nonadmitted insurer shall use the appropriate bracketed language for application and issued policy disclosures:

"NOTICE:

1. THE INSURANCE POLICY THAT YOU [HAVE PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING ISSUED BY AN INSURANCE COMPANY THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINES" INSURERS.

Additions or changes indicated by underline; deletions by asterisks * * *

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2. THE INSURANCE COMPANY IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED COMPANIES.

3. THE INSURANCE COMPANY DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURANCE COMPANY

BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

4. FOR ADDITIONAL INFORMATION ABOUT THE INSURANCE COMPANY YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINES" BROKER OR YOU MAY CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE"

(c) When a contract is issued to an industrial insured neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature.

(1) An industrial insured is an insured:

(A) Which employs at least 25 employees on average during the prior 12 months; and

(B) Which has aggregate-annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than twenty-five thousand dollars (\$25,000); or

(C) Which obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A "continuously retained insurance consultant" does not include: (i) Any agent or broker through whom the insurance is being placed, (ii) any subagent or subproducer involved in the transaction, or (iii) any agent or broker which is a business organization employing or contracting with any person mentioned in clauses (i) and (ii).

(2) The surplus lines broker shall be responsible to ensure that the applicant is an industrial insured.

(d) In the case of commercial insurance coverage's, for purposes of compliance with the requirement of subdivision (a) that the signature of the applicant be obtained, the following shall apply:

(1) Where the insurance transaction is not conducted at an in-person, face-to-face meeting, the applicant's signature on the disclosure form may be transmitted by the applicant to the agent or broker via facsimile or comparable electronic transmittal:

(2) Where an applicant requires that insurance coverage be bound immediately, either because existing coverage will lapse within two business days of the time the insurance is bound or because the applicant is required to have coverage in place within two business days, and the applicant cannot meet in person with the agent or broker to sign the disclosure form, the agent or broker may obtain the signature of the applicant within five days of binding coverage, provided that the applicant may cancel the insurance so placed within five days of receiving the disclosure form from the agent or broker. The cancellation shall be on a pro rata basis, and the applicant shall be entitled to the rescission or return of any broker's fees charged for the placement.

AMENDED IN SENATE AUGUST 17,1992

AMENDED IN SENATE JULY 13,1992

AMENDED IN ASSEMBLY APRIL 8,1992

AMENDED IN ASSEMBLY MARCH 17,1992
CALIFORNIA LEGISLATURE-1991-92 REGULAR SESSION
ASSEMBLY BILL No. 2608

Introduced by Assembly Member Barbara Friedman

February 11, 1992

An act to amend Section 1763 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2608, as amended, B. Friedman. Insurance: surplus lines.

Existing law generally requires insurance to be transacted only with admitted insurers. However, under existing law, a surplus line broker may solicit and place insurance with nonadmitted insurers but the insurance must not be able to be procured from a majority of the insurers admitted for the particular class or classes of insurance that the surplus line broker is attempting to place. Under existing law, if the insurance cannot be so procured from admitted insurers, it may be procured from nonadmitted insurers if it is not placed for the purpose of procuring a rate lower than the lowest rate of an admitted insurer. Existing law contains provisions for filings related to the rate at which insurance was obtained.

This bill would instead require the insurance placed with nonadmitted insurers to be unavailable from insurers admitted in this state for that class of insurance. It would require each surplus lines broker to be responsible to ensure that a diligent search is made among insurers that are admitted to transact and are actually writing the particular type of insurance in this state before procuring the insurance from a nonadmitted insurer. It would require each surplus lines broker to file with the commissioner, a written report, that shall be kept confidential, except as specified, regarding insurance placed with a nonadmitted insurer, and would

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require the report to include specified information. It would also require each surplus lines broker to file a standardized form setting forth the diligent efforts to place the coverage with admitted insurers and the results of these efforts.

The bill would provide that the insurance shall not be placed with a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate that will be accepted by any admitted insurer except that the bill would provide that it is prima facie evidence that a diligent search among admitted insurers has been made if the standardized form that is filed establishes that 3 admitted insurers that actually write the particular type of insurance in this state have declined the risk, or that fewer than 3 admitted insurers actually write the particular type of insurance. The bill would provide for review by the commissioner. The bill would make related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1. SECTION 1. Section 1763 of the Insurance Code is 2. amended to read: 3.
 2. 1763.(a)AA surplus line broker may solicit and place insurance, other than as
 3. excepted in Section 1761, with nonadmitted insurers only if that insurance
 4. can not be procured from insurers admitted for the particular class or classes
 5. of insurance and that actually write the particular type of insurance in this
 6. state. Each surplus lines broker shall be responsible to ensure that a diligent
 7. search is made among insurers that are admitted to transact and are actually
 8. writing the particular type of insurance in this state before procuring the
 9. insurance from a nonadmitted insurer. Each surplus lines broker shall file
 10. with the commissioner or his or her designee, within 60 days of placing any
 11. insurance with a nonadmitted insurer, a written report, that shall be kept
 12. confidential, regarding the insurance. This report shall include the name and
 13. address of the insured, the identity of the insurer or insurers, a description of
 14. the subject and location of the risk, the amount of premium charged for the
 15. insurance, a copy of the declarations page of the policy or a copy of the
 16. surplus line broker's certificate or binder evidencing the placement of
 17. insurance, and other pertinent information that the commissioner may
 18. reasonably require. In addition, each surplus lines broker shall file a
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1. standardized form to be prescribed by the commissioner setting forth the
 2. diligent efforts to place the coverage with admitted insurers and the results of
 3. these efforts. The form shall be signed by a person licensed under this code
 4. who has made the diligent search required by this section or who supervised
 5. an unlicensed person or persons who actually conducted the search. The
 6. insurance shall not be placed with a nonadmitted insurer for the purpose of
 7. procuring a rate lower than the lowest rate that will be accepted by any
 8. admitted insurer except as provided by subdivision. The commissioner may
 9. make and publish reasonable rules and regulations, consistent with this
 10. chapter, in respect to transactions governed thereby and the basis or bases for
 11. his determinations here under.
 12. (b) It shall be prima facie evidence that a diligent search among admitted
 13. insurers has been made if the standardized form filed as required by
 14. subdivision establishes that three admitted insurers that actually write the
 15. particular type of insurance in this state have declined the risk, or that fewer
 16. than three admitted insurers actually write the particular type of insurance.
 17. The commissioner, or his or her designee, may review the form for the
 18. accuracy of the information provided on it, including, but not limited to
 19. whether the listed insurers actually write that type of insurance, and whether
 20. the three insurers declined the risk. The commissioner may take disciplinary
 21. action against the person signing the form for any misrepresentation made in

22. the form due to the negligence of or the result of an intentional act by that
23. person or the person or persons who actually conducted the search. Those
24. actions may include any action authorized to be taken against a licensed
25. person by this code. Nothing in this subdivision shall preclude the
26. commissioner or his or her designee from directing the surplus line broker to
27. conduct a further or additional search among admitted insurers for similar
28. placements in the future. (c) It shall be conclusively presumed that insurance
29. is placed in violation of this section if the insurance is actually placed with a
30. nonadmitted insurer at a lower rate of premium or lower premium than the
31. lowest rate of premium or the lowest premium that could be obtained from
32. an admitted insurer unless, at the time the insurance attaches, there is filed
33. with the commissioner a statement describing the insurance, specifying the
34. rate and the nearest procurable rates from admitted insurers. The statement
35. shall include an explanation of the reasons that the insurance must be placed
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1. with a nonadmitted insurer even though it is available from an admitted
2. insurer. Unless the commissioner, or his or her designee, within five days
3. after that filing notifies the filing broker that in his or her opinion the placing
4. of the insurance constitutes a violation of this section, the broker may
5. thereafter maintain in effect that insurance. If within that five-day period the
6. commissioner notifies the surplus line broker that the insurance is in
7. violation of this section and orders the broker to effect termination of that
8.
9. effect that termination, that failure or refusal is a violation of this section.
10. (d) Statements filed under this section are not subject to public inspection
11. unless the commissioner determines that the public interest or the welfare of
12. the filing broker requires that any statement be made public.