



**November 20, 1992**

**BULLETIN #536**

**BULLETIN TO ALL MEMBERS:**

**RE: SENATE BILL 1145 AND ASSEMBLY BILL 2608**

In furtherance of our Bulletin #531, dated October 19, 1992, we are again communicating with you relative to Senate Bill 1145 and Assembly Bill 2608, concerning which your Association is diligently pursuing clarification and direction with the Department of Insurance. Both of these bills become law on January 1, 1993. While intent is clear, interpretation of the language of the bill is difficult and there are many questions concerning compliance.

While we initially anticipated conducting seminars to help the membership understand and implement the new requirements, due to the elapsed time, this will not be possible before the end of the year. We therefore ask that you carefully review the documents (copies of which are attached), and provide the Stamping Office with your written comments and suggestions concerning implementation of the new laws. This will be shared with the Department of Insurance and we will make every effort to provide you with more definitive information and clarification as soon as it is available. Recognizing the time constraints, we ask that you return the information to this office no later than December 4, 1992.

J.S. Pugh  
Assistant Manager

JSP/imb

Enclosures 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

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Introduced by Assembly Member Barbara Friedman

February 11, 1992

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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

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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 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 L Section 1763 of the Insurance Code is amended to read:
2. 1763. (a) A surplus line broker may solicit and place insurance, other
3. than as excepted in Section 1761, with nonadmitted insurers only if
4. that insurance can not be procured from insurers admitted for the
5. particular class or classes of insurance and that actually write the
6. particular type of insurance in this state. Each surplus lines broker
7. shall be responsible to ensure that a diligent search is made among
8. insurers that are admitted to transact and are actually writing the
- particular type of insurance in this state before procuring the

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1. insurance from a nonadmitted insurer. Each surplus lines broker shall  
 2. file with the commissioner or his or her designee, within 60 days of  
 3. placing any insurance with a nonadmitted insurer, a written report,  
 4. that shall be kept confidential, regarding the insurance. This report  
 5. shall include the name and address of the insured, the identity of the  
 6. insurer or insurers, a description of the subject and location of the  
 7. risk, the amount of premium charged for the insurance, a copy of the  
 8. declarations page of the policy or a copy of the surplus line broker's  
 9. certificate or binder evidencing the placement of insurance, and other  
 10. pertinent information that the commissioner may reasonably require.  
 11. In addition, each surplus lines broker shall file a standardized form to  
 12. be prescribed by the commissioner setting forth the diligent efforts to  
 13. place the coverage with admitted insurers and the results of these  
 14. efforts. The form shall be signed by a person licensed under this code  
 15. who has made the diligent search required by this section or who  
 16. supervised an unlicensed person or persons who actually conducted  
 17. the search. The insurance shall not be placed with a nonadmitted  
 18. insurer for the purpose of procuring a rate lower than the lowest rate  
 19. that will be accepted by any admitted insurer except as provided by  
 20. subdivision (c). The commissioner may make and publish reasonable  
 21. rules and regulations, consistent with this chapter, in respect to  
 22. transactions governed thereby and the basis or bases for his  
 23. determinations hereunder.

24. (b) It shall be prima facie evidence that a diligent search among  
 25. admitted insurers has been made if the standardized form filed as  
 26. required by subdivision (a) establishes that three admitted insurers  
 27. that actually write the particular type of insurance in this state have  
 28. declined the risk, or that fewer than three admitted insurers actually  
 29. write the particular type of insurance. The commissioner, or his or her  
 30. designee, may review the form for the accuracy of the information  
 31. provided on it, including, but not limited to whether the listed insurers

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32. actually write that type of insurance, and whether the three insurers  
 33. declined the risk. The commissioner may take disciplinary action  
 34. against the person signing the form for any misrepresentation made in  
 35. the form due to the negligence of or the result of an intentional act by that  
 36. person or the person or persons who actually conducted the search. Those  
 37. actions may include any action authorized to be taken against a licensed  
 38. person by this code. Nothing in this subdivision shall preclude the  
 39. commissioner or his or her designee from directing the surplus line broker  
 40. to conduct a further or additional search among admitted insurers for  
 41. similar placements in the future.

42. (c) It shall be conclusively presumed that insurance is placed in  
43. violation of this section if the insurance is actually placed with a  
44. nonadmitted insurers at a lower rate of premium or lower premium than  
45. the lowest rate of premium or the lowest premium that could be obtained  
46. from an admitted insurer unless, at the time the insurance attaches,  
47. there is filed with the commissioner a statement describing the insurance,  
48. specifying the rate and the nearest procurable rates from admitted insurers.  
49. The statement shall include an explanation of the reasons that the  
50. insurance must be placed with a nonadmitted insurer even though it is  
51. available from an admitted insurer. Unless the commissioner, or his  
52. or her designee, within five days after that filing notifies the filing broker  
53. that in his or her opinion the placing of the insurance constitutes a  
54. violation of this section, the broker may thereafter maintain in effect that  
55. insurance. If within that five-day period the commissioner notifies the  
56. surplus line broker that the insurance is in violation of this section and  
57. orders the broker to effect termination of that insurance within 10 days  
58. from the notice, and the broker fails or refuses to effect that termination,  
59. that failure or refusal is a violation of this section.

60. (d) Statements filed under this section are not subject to public  
61. inspection unless the commissioner determines that the public interest  
62. or the welfare of the filing broker requires that any statement be made  
63. public