

**December 18, 1992 BULLETIN #539****BULLETIN TO ALL MEMBERS:****RE: SENATOR JOHNSTON'S PROPOSED AMENDMENTS TO THE CALIFORNIA SURPLUS LINE LAW**

This bulletin is intended to inform the Membership of important proposed changes in the California Surplus Line Law. Senator Johnston is expected to introduce these changes to the Legislature in the 1993 session in the form of two bills.

**1. Submission of Auto Liability to the California Assigned Risk Plan**

One proposed law would require submission of automobile liability risks to the California Automobile Assigned Risk Plan prior to exportation. This bill would apply to private passenger automobiles, motorcycles and commercial vehicles if the insurance sought contains in whole or part the limits of coverage provided under the assigned risk plan.

**2. Comprehensive Changes to the California Surplus Line Law**

The second piece of legislation sets forth comprehensive changes to the Surplus Line Law including the following:

**a. Definitional Changes**

Under current law (AB 2608), effective January 1, 1993, a surplus line broker can generally place insurance with a nonadmitted insurer only if that insurance cannot be procured from insurers admitted for a particular class(es) of insurance that actually write the particular type of insurance. Also, a diligent search effort must be made to place the risk with insurers actually writing the particular type of insurance, and at least three declinations obtained.

The new law would define "class" to mean the classes applicable to admitted insurers. The term "type" would be replaced with the term "line" which would be defined to mean the lines of insurance required to be reported in the annual statement filed by admitted insurers and would include the following sub-lines: Private passenger automobile liability, private passenger automobile physical damage, commercial automobile liability and commercial automobile physical damage.

Additionally, under AB 2608, three declinations will constitute "prima facie evidence" that a diligent search was conducted. This prima facie evidence provision would be replaced with a provision permitting a diligent search among admitted insurers to "be demonstrated" by three declinations.

## b. Retention of the Freestanding Disclosure Statement and Remedy for Non-compliance

Under SB 1145, effective January 1, 1993, a freestanding disclosure statement must be signed by applicants. Senator Johnston's proposed law would require that these signed statements be maintained by the surplus line broker for at least five years. These records would be available to the Commissioner and the insured upon request. If the applicant does not receive and sign the disclosure form, he or she would be permitted to cancel the insurance pro rata and receive a return of any broker's fees charged.

## c. Expanded Penalty Provision

Under the proposed new law, the surplus line broker could be penalized for violation of any provision of the Surplus Line law with up to one year imprisonment and/or fine of \$10,000.

## d. Prior Approval of Nonadmitted Insurers

The proposed law would give the Commissioner prior approval power to establish the eligibility of nonadmitted insurers. A surplus line broker would not be permitted to make any placements with a nonadmitted insurer unless the following conditions are satisfied:

- (1) The surplus line broker must submit evidence establishing the nonadmitted insurer's financial stability, reputation and integrity.
- (2) The nonadmitted insurer must have capital and surplus of at least \$15 million, unless the Commissioner has found that the capital and surplus is adequate to protect California policyholders. Exemptions are provided for certain types of "U.S. domiciled insurance exchanges" and "groups of unincorporated individual underwriters," such as Lloyd's of London.
- (3) Alien insurers must maintain a trust account of at least \$5.4 million consisting of cash, securities and/or letters of credit.
- (4) Current audited annual financial statements and any additional information required by the Commissioner must be provided.
- (5) Placements may only be made with insurers contained on a list of eligible surplus line insurers ("white list"), which is to be updated semi-annually. The Commissioner is given broad discretion to remove a nonadmitted insurer from the list.

## e. The Surplus Line Broker Deemed to be Agent for Premium Collection Purposes

Payments of premium to a surplus line broker will be deemed to be made to the insurer.

## f. Affirms Jurisdiction Over Nonadmitted Insurers

The proposed new law affirms that surplus line insurers may be sued upon any cause of action arising in California under their surplus line insurance contracts, or any evidence of insurance issued or delivered by the placing surplus line broker. The substance of this provision must be recited in any policy or evidence of insurance issued by the surplus line insurer or surplus line broker.

The Surplus Line Association is discussing refinements to the proposals with Senator Johnston and his legislative assistant, Jeff Shelton. If you have questions or comments, you may refer them to:

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