



December 18, 1992

BULLETIN #540

BULLETIN TO ALL MEMBERS:

**RE: SENATE BILL 1145 - CHANGES IN THE DISCLOSURE REQUIREMENTS
OF SECTION 1764.1**

This bulletin is intended to inform the Membership of important changes in the California Surplus Line Law which will go into effect January 1, 1993. Senate Bill 1145, which the Legislature recently enacted, modifies the disclosure statement mandated by existing Section 1764.1 and requires, with an exception for "industrial insureds," that the new disclosure statement be in boldface 16-point type on both (1) a freestanding document which is signed by the applicant and (2) the front of every policy issued by a nonadmitted insurer. These new disclosure requirements are described below in detail.

A. Freestanding Disclosure Statement

When accepting an application for insurance, both the nonadmitted insurer and the surplus line broker handling the placement are responsible to ensure that the signature of the applicant has been obtained on a freestanding disclosure statement in boldface 16-point type unless the applicant qualifies as an "industrial insured" as that term is defined in the statute. On the freestanding document, the language "are applying to purchase" rather than "have purchased" should be used. Attached as Exhibit A is a specimen of the required freestanding disclosure statement, which you may copy and use.

Although the law does not prohibit a retail producer from actually procuring the applicant's signature on the disclosure statement, the responsibility is placed on the nonadmitted insurer and the surplus line broker to ensure that such signature was in fact obtained prior to issuance of the coverage. The law does not permit a retail agent or broker, or a surplus line broker, to sign the disclosure statement on an applicant's behalf pursuant to a power of attorney.

1. Special Rules for Commercial Coverages:

With respect to commercial insurance coverages only, two special rules permit somewhat greater flexibility in obtaining the required signature:

- (a) Facsimile or other electronic transmittal of the signed statement from the applicant to the retail producer is permitted, but only if both: (1) the insurance being applied for is a commercial coverage, and (2) the insurance is not being transacted at an "in-person, face-to-face" meeting.

(b) The applicant's signature may be obtained after a commercial coverage has been bound, but no more than five (5) days after binding if, at the time of accepting the application:

- (1) the applicant requires immediate binding; and
- (2) within two (2) business days, either (a) the applicant's existing commercial coverage will lapse or (b) the applicant's commercial coverage must be in place; and
- (3) the applicant cannot meet the retail producer in person to sign the form.

However, if the disclosure statement is delivered to the applicant after coverage has been bound, the applicant will have five (5) days from receiving the disclosure statement to cancel the coverage pro rata and receive a return of all brokerage fees.

2. Industrial Insured Exemption:

If the applicant is an "industrial insured," the insured's signature on a freestanding disclosure statement is not required. The surplus line broker is responsible to ensure that the applicant is an industrial insured under either paragraph (a) or (b) below:

- (a) The insured has an average of 25 or more employees over the past year and pays \$25,000 annually in insurance premiums (not including workers' compensation or health insurance); or
- (b) The insured obtains its insurance through a full-time employee acting as insurance manager or a continuously retained insurance consultant (but such consultant may not be an insurance producer or subproducer involved in the placement).

B. Disclosure Statement on Nonadmitted Insurer's Policy

In addition to the freestanding disclosure statement, the new law requires that every nonadmitted insurer's policies "shall contain . . . on the front page of the policy" the required disclosure statement in boldface 16-point type. On the policy, the language "have purchased" rather than "are applying to purchase" should be used. Attached as Exhibit B is a specimen of the notice.

The disclosure statement is required to be on such policies whether the insurance is placed with a nonadmitted insurer by and through a licensed California surplus line broker or is a direct placement pursuant to Insurance Code Section 1760. The law does not require surplus line brokers' certificates or confirmations of insurance to contain the disclosure statement unless the applicant is an industrial insured, in which case the disclosure statement must be contained on the certificate, confirmation or policy, whichever is provided to the insured first. Nevertheless, the Association strongly recommends that all members add the new disclosure language to the front of any certificates they issue pursuant to section 1764 et seq., particularly if the certificate is intended to serve as the sole evidence of coverage.

C. Penalties

The new law does not provide for any specific penalties for failing to comply; however, under existing law, noncompliance could serve as the basis for disciplinary action against the license of any surplus line broker or retail broker or agent involved in the placement.

For additional information on SB 1145, see the attached bulletin issued by the Department of Insurance.

James S. Pugh
Assistant Manager

JSP/imb

Enclosures
EXHIBIT A

NOTICE:

1. THE INSURANCE POLICY THAT YOU 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.
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.

DATE

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EXHIBIT B NOTICE: 1. THE INSURANCE POLICY THAT YOU HAVE PURCHASED 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. 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. SLA Form D-2 9/92 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: 1764.1. (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 * * * 1253 Ch. 397 STATUTES OF 1992 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 "continuous 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 coverages, 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 the agent 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.