



May 25, 1993

BULLETIN #588

RE: THE SURPLUS LINE COALITION

This bulletin is to inform the Membership of a bill recently introduced in the California Assembly, AB 865 (copy attached), authored by Assemblyman Ross Johnson, which would codify the working relationship between the surplus line industry and the Department of Insurance.

The bill would designate a statutory surplus line advisory organization with specified "quasi-regulatory" functions that are significantly broader than the functions currently performed by the SLA. These functions would be performed subject to the supervision of the Insurance Commissioner. The SLA expects that it would qualify to serve as the surplus line advisory organization.

This bill is sponsored by the Surplus Line coalition, a newly-formed lobbying group consisting of surplus line brokers who are active in the SLA, and other interested parties. The Surplus Line Coalition has been formed to seek legislation along the lines of AB 865. Over the past few years, the reputation of California's surplus line market has been damaged by a few unscrupulous non-admitted carriers and surplus line brokers. AB 865 would improve the current market conditions by strengthening and restoring the regulatory/industry working relationship which has worked well for so many years.

The SLA believes that the case for appropriate codification can best be made before the California Legislature by a broadly based coalition of surplus line brokers such as the Surplus Line Coalition. Consequently, the Executive Committee of the SLA has passed unanimously a resolution supporting the proposed codification bill and the Coalition's efforts to achieve its enactment. Although the SLA is not actively working for its passage, the bill's progress is being continually monitored.

For additional information on the Surplus Line Coalition, please contact Gerald J. Sullivan or Jorge Wong at:

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Attachment

**AMENDED IN ASSEMBLY APRIL 12, 1993
CALIFORNIA 1993-1994 REGULAR SESSION
ASSEMBLY BILL No. 865**

Introduced by Assembly Member Johnson

February 25, 1993

An act to add-- Chapter 6.1 (commencing with Section 1780.50) to Part 2 of Division 1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 865, as amended, Johnson. - Insurance: surplus line advisory organization.

Existing law licenses and regulates surplus line brokers and permits a surplus line broker to solicit and place insurance with nonadmitted insurers but only if that insurance cannot be procured from insurers admitted in this state for that class of insurance.

This bill would authorize a surplus line advisory organization to perform or exercise specified duties and powers to assist the Insurance Commissioner in regulating the placement of insurance by surplus line brokers with nonadmitted insurers.

AB 865 2

Vote: majority. Appropriation: no.

Fiscal committee: yes.

State-mandated local program: no.

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

I SECTION 1. section 1875.5 is added to the Insurance 2 SECTION 1. Chapter 6.1 (commencing with Section 3 1780.50) is added to Part 2 of Division I of the Insurance 4 Code, to read. 5 6 CHAPTER 6.1. SURPLUS LINE ADVISORY 7 ORGANIZATION 8 9 1780.50. (a) The Legislature finds and declares that 10 consumers in the State of California have a broad 11 spectrum of insurance needs, not all of which can be met 12 through the admitted insurance market. For this reason, 13 insurance consumers frequently seek out, and take 14 advantage of, insurance underwritten by nonadmitted 15 insurers, as permitted by law. In order to help ensure that 16 insurance consumers continue to have access to 17 nonadmitted insurance, it is in the public interest to 18 authorize a surplus line advisory organization

within the 19 State of California to exercise the powers and duties set 20 forth in this chapter. 21 (b) The Legislature further finds and declares that it 22 is in the public interest for the surplus Line advisory 23 organization authorized under this chapter to be an 24 association comprised of surplus Line brokers whose 25 activities as an advisory organization shall constitute an 26 integral part of the business of insurance. The surplus line 27 advisory organization authorized under this chapter will 28 facilitate the state's ability -to monitor and regulate the 29 transfer of risk on a sound basis through surplus line 30 brokers to nonadmitted insurers in accordance with 31 Chapter 6 (commencing with Section 1760), and will AB 865 3 1 perform certain essential functions in this state's system 2· of monitoring and regulating the persons and entities in 3 this state involved in the surplus Line segment of the 4 insurance industry. 5· (c) The Legislature further finds and declares that the 6 surplus Line advisory organization authorized under this 7 chapter, and the acts and services it wi11 perform, will 8 further the policies of the State of California expressed in · the findings set forth in this section. The oversight, 10 supervision, and examination by the Insurance 11 Commissioner provided for in this chapter is intended to 12 subject the activities of the surplus line advisory 13 organization to active state supervision. 14 1780.51. (a) As used in this chapter, "surplus Line 15 advisory organization" means a private, nonprofit 16 association of California surplus line brokers in existence 17 on January 1, 1994, possessing at a minimum 10 years of 18 experience in professional surplus line advisory activity in 19 California, and having the majority of all surplus line 20 brokers Licensed under Chapter 6 (commencing with 21 Section 1760) as members. All references in this chapter 22 to "advisory organization" shall mean "surplus Line 23 advisory organization. 24 (b) As used in this chapter the term "surplus line law" 25 shall refer to Chapter 6 (commencing with Section 1760). 26 1780.52. A Surplus Line advisory organization that 27 satisfies the requirements of Section 1780-54 is authorized 28 to perform the duties listed in Section 1780.55 and to 29 exercise the powers listed in Section 1780-56 for the 30 purpose of assisting the commissioner's regulation of the 31 placement of insurance with nonadmitted insurers by 32 and through surplus line brokers pursuant to the surplus 33 line law, and shall have the immunities Listed in Section 34 1780.57. A surplus line advisory organization that qualifies 35 under Section 1780-54 shall be deemed to constitute a 36 joint arrangement established by statute to assure the 37 availability of insurance on a sound basis under paragraph 38 (2) of subdivision (b) of Section 1861.03. 39 1780.53. Nothing in this chapter shall be deemed or 40 construed to diminish or impair the commissioner's AB 865 4 1 authority to regulate the placement of insurance on 2 property, risks, or persons located in this state with 3 foreign or alien nonadmitted insurers pursuant to the 4 surplus Line law. 5 1780-54. In order to qualify under Section 1780.52, a 6 surplus line advisory organization shall: 7 (a) Submit to the supervision of the commissioner. 8 The commissioner shall, at least once every three years, 9 make or cause to be made an examination of the advisory 10 organization. The reasonable cost of those examinations 11 shall be paid by the advisory organization upon 12 presentation by the commissioner of a detailed account 13 of the cost. The commissioner shall furnish two copies of 14 the examination report to the advisory organization and 15 shall notify the advisory organization that it may, within 16 20 days thereafter, request a hearing on the report or on 17 any facts or recommendations contained in the report. 18 That hearing shall be conducted in accordance with 19 Chapter 5 (commencing with Section 11500) of Part I of 20 Division 3 of Title 2 of the Government Code. If, after the 21 hearing, the commissioner finds the advisory 22 organization to be in violation of this chapter, the 23 commissioner may issue an order requiring the 24 discontinuance of the violation. 25 (b) File with the commissioner all of the following. 26 (1) A copy of its constitution, its articles of agreement 27 or association, or its certificate of

incorporation. 28 (2) A copy of its bylaws. 29 (3) A current list of its members. 30 (4) The name and address of a resident of this state 31 upon whom notices or orders of the commissioner or 32 process issued at his or her direction may be served. 33 (5) A plan of operation describing the manner in 34 which the advisory organization will operate under the 35 provisions of this chapter. The plan of operation shall be 36 approved by the commissioner. 37 (c) The advisory organization shall file with the 38 commissioner every material change in the documents 39 filed pursuant to subdivision (b). 40 1780.55. The advisory organization shall have the AB 865 1 following duties: 2 (a) To facilitate and encourage compliance by its 3 members with the laws of California and the rules and 4 regulations of the commissioner relating to surplus line 5 insurance. 6 (b) To receive, review, and record all documents 7 required by law, regulation, or order to be filed with the 8 commissioner or his or her designee with respect to 9 foreign and alien nonadmitted Insurers and any 10 insurance placed with nonadmitted insurers, except that 11 the advisory organization shall not receive documents 12 submitted pursuant to subdivision (c) of Section 1763. 13 The review under this section shall be for completeness 14 and accuracy. The advisory organization shall notify the 15 filing surplus line broker in writing of any filing that the 16 advisory organization determines to be incomplete or 17 inaccurate, and shall request the filing broker to correct 18 the problem. As directed by the commissioner, the 19 advisory organization shall notify the commissioner of 20 incomplete or inaccurate filings. 21 (c) To conduct a security review and analysis of all 22 foreign and alien nonadmitted insurers with which 23 surplus line brokers place or propose to place insurance 24 covering property or risks located or persons residing in 25 this state, and to provide to the commissioner a report on 26 any foreign or alien nonadmitted insurer based on that 27 review and analysis. 28 (d) To maintain and report to the commissioner 29 information needed for the calculation and collection of 30 premium taxes on surplus line insurance premiums. 31 (e) To maintain files for all documents received under 32 this chapter. 33 (f) To provide, upon request by the commissioner, 34 comments on any proposed legislation or regulation 35 affecting the placement of insurance pursuant to the 36 surplus Line law. 37 (g) The duties described in this chapter are official 38 duties under subdivision (a) of Section 47 of the Civil 39 Code. 40 1780.56. The advisory organization shall have the AB 865 1 right and power, but not the obligation, to do the 2 following: 3 (a) To report to the commissioner and other 4 appropriate authorities any facts that come to the 5 association's attention and that appear to the association 6 to indicate the presence of fraudulent or illegal insurance 7 activity in the surplus line market. Those 8 communications shall be considered communications by 9 an interested person to another interested person under 10 subdivision (c) of Section 47 of the Civil Code. 11 (b) To make recommendations to the commissioner as 12 to the suitability of any foreign or alien nonadmitted 13 insurer to insure property or risks located or persons 14 residing in this state, or whether any foreign or alien 15 nonadmitted insurer should be added to or removed 16 from any list of either eligible or disapproved 17 nonadmitted insurers maintained by the commissioner. 18 The recommendations shall be based on any review and 19 analysis performed under this chapter and any additional 20 information that may come to the advisory organization's 21 attention. The communications shall be considered 22 communications by an interested person to another 23 interested person under subdivision (c) of Section 47 of 24 the Civil Code and shall be deemed confidential 25 communications as defined in Section 12919 of this code. 26 (c) To enter into written arrangements with the 27 commissioner whereby the advisory organization will 28 perform any other functions relevant to the collection, 29 filing, and dissemination of information concerning 30 nonadmitted insurers that, in the judgment of the 31 commissioner and the advisory organization, will help 32 the commissioner

provide effective and cost-efficient supervision of the surplus line market. (d) To communicate with organizations of admitted insurers with respect to the proper use of the surplus line market. (e) To receive and disseminate to its members information relating to surplus line insurance. (f) To bring and defend actions, in the name of the advisory organization, in judicial and administrative proceedings related to the advisory organization, with all powers attendant thereto. (g) To make contracts as are necessary to carry out the purposes of the advisory organization. (h) To employ and retain those persons as are necessary to carry out its duties. (I) To perform any other acts as are necessary or appropriate to carry out its duties. 1780.57. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the advisory organization, its officers or committee members, agents, or employees, or the Department of Insurance, the commissioner, or employees or representatives of the Department of Insurance, for any action taken or omitted by any of them in the performance of their powers and duties under this chapter. 1780.58. All surplus line brokers licensed under the surplus line law shall be deemed to be members of the advisory organization. 1780.59 Any decision of the advisory organization may be submitted to the commissioner by any member adversely affected thereby, but only after all remedies available under the advisory organization's constitution, articles, and bylaws, if any, have been exhausted.