



OCTOBER 7, 1994
BULLETIN #665
RE: SENATE BILL 959

We are pleased to announce that Senate Bill 959 ("SB 959") was signed on Thursday, September 29, 1994 by Governor Pete Wilson. This bill will become effective on January 1, 1995.

SB 959 revises substantial segments of the surplus line law. The following is an executive summary of the bill, as submitted to the Governor, focusing on those changes.

EXECUTIVE SUMMARY OF FINAL VERSION OF CALIFORNIA SENATE BILL 959

*** Creation of "White List" of Eligible Surplus Line Insurers**

SB 959 will establish a "white list" of eligible nonadmitted surplus line insurers. The Commissioner will have "prior approval" to add insurers to, or remove them from, the list. The SB 959 eligibility standards are discussed below. A surplus line broker, including the filing broker, may not use a nonadmitted insurer until it has been placed on the list of eligible surplus line insurers by the Commissioner.

*** Surplus Line Association Sunset Repeal**

The bill passed last year codifying The Surplus Line Association of California (Assembly Bill 865) contained a sunset clause, which is repealed by SB 959 thus preserving the SLA's statutory existence.

*** Exportability Requirements**

The diligent search and price requirements for exportability of California risks remain substantially the same as under current law.

Bulletin #665

October 7, 1994

Page Two * "Type of insurance" Defined

For purposes of determining unavailability of coverage in the admitted market, the bill newly defines "type of insurance" to mean the "hazard or combination of hazards covered by a contract of insurance." Since this is how the Department of Insurance has been interpreting "type of insurance" for several years, it is not a substantive change.

*** Disclosure Statement Revisions**

The 16-point, boldface disclosure statement required to appear on the front of any nonadmitted insurer's policy and, in many cases, signed by the applicant has been slightly modified requiring a toll-free number for the California Department of Insurance. Currently, that telephone number is 1-800-927-4357. Also, if the policy is advertised, solicited or negotiated primarily in a language other than English, the disclosure statement must be printed in both that language and in English.

*** Grounds for Removal from White List**

There are four grounds for the Commissioner to remove an insurer from the list; (1) unsound financial condition, (2) no longer satisfying the eligibility requirements, (3) violating the laws of California, or (4) without justification or with a frequency so as to indicate a general business practice, delaying payment of just claims.

* Civil and Criminal Penalties Expanded

The list of statutory violations that may result in a one year jail sentence and fine has been expanded to include most provisions of the surplus line law. The maximum civil fine has been increased to \$10,000.

* Premium Payment Presumption

Premium payment to the surplus line broker is deemed payment to the insurer.

* Gap Exemption

Surplus line brokers will be permitted to place up to 20% of a risk (other than state mandated coverages, multiple employer welfare arrangements, or employer-sponsored

Bulletin #665

October 7, 1994

Page Three

medical or health benefits, or common commercial or personal line coverages that could be placed with admitted or listed insurers) with nonadmitted insurers that are not surplus line eligible subject to the following requirements:

80% of the risk is placed with admitted or listed insurers, multiple insurers are needed to write the risk, the insured has annual property and casualty premiums of \$100,000 or more, and unlisted insurers may not represent a disproportionate portion of the lower layers of coverage.

* **Department Form A Filings**

The bill does not expressly adopt the Regulation 2174 system of "initial filing brokers" and "Department Form A filing brokers." It is not yet clear, however, whether the Department intends to continue the use of Department Form A. This point will soon be clarified through discussions with the Department and the Membership will be advised.

* **Mexican Insurance**

Insurance covering property operations exclusively in Mexico are exempted from the diligent search, disclosure statement and in some cases, surplus line insurer eligibility requirements.

* **Service of Suit Jurisdiction over Surplus Line Insurers**

Surplus line insurers will be subject to suit in California on any cause of action arising in this state under any policy they issue or any evidence of insurance issued or delivered by a surplus line broker. In addition, every surplus line insurer assuming California surplus line insurance is thereby deemed to have subjected itself to the entire surplus line law.

* **Lloyd's Corporate Capital**

The surplus line law and credit for reinsurance provisions have been modified to accommodate Lloyd's introduction of corporate capital.

Bulletin #665

October 7, 1994

Page Four

INSURER ELIGIBILITY STANDARDS

The SB 959 standards for eligibility of surplus line insurers will remain substantially the same as under the existing Regulation 2174, although there have been some refinements, described below:

*** Grandfather Clause for Insurers Eligible Under Regulation 2174**

Insurers whose surplus line eligibility under Regulation 2174 is in force on January 1, 1995 need not file for approval under SB 959 until the first annual expiration of their listing after the bill's effective date.

*** Insurer Capital and Surplus Requirements**

Generally, nonadmitted insurers must maintain minimum capital and surplus of \$15 million and a U.S. trust fund of at least \$5.4 million. Unlike Regulation 2174, the bill does not expressly provide for any exemptions from this capital and surplus requirement for smaller insurers serving "unique and specialized" niche markets.

Specific provisions address capital and surplus requirements for Lloyd's, the Institute of London Underwriters ("ILU") and the Illinois Insurance Exchange ("HE"). Lloyd's will satisfy the capital and surplus requirements by maintaining a single U.S. trust fund of at least \$100 million, i.e., Lloyd's American Trust Fund. The ILU may satisfy the capital and surplus requirement by maintaining aggregate policy holder's surplus of \$10,000,000,000 and a U.S. trust fund of at least \$100,000,000.

In order for syndicates of the HE to be eligible in California, the IIE must maintain a fund of \$50,000,000 and each syndicate must maintain capital and surplus of \$6.4 million, to be increased by \$1 million annually until reaching \$15 million. If no central fund is maintained, then each syndicate must qualify individually under the general standard of \$15 million capital and surplus.

Calculating Capital and Surplus

Generally, the bill specifies that an eligible nonadmitted insurer's surplus is determined by the excess of assets over the sum of liabilities, expenses, taxes and all other indebtedness or accredited reinsurance.

Bulletin #665

October 7, 1994

Page Five

*** Asset Quality**

For surplus line eligibility, nonadmitted insurers must have at least \$15 million in cash, readily marketable securities acceptable to the Commissioner, or "general investments" (generally government securities) specified in the California Insurance Code. The remainder of assets may be in those types or in "excess" investments as defined in the California Insurance Code or be of the "same character or quality" as those assets. 'Same character or quality' is expressly intended to allow the Commissioner to approve assets maintained in accordance with the laws of another state or country; however, the Commissioner will have discretion to disallow any asset he or she deems unsound.

*** National Association of Insurance Commissioner's International Insurance Department (formerly known as the Nonadmitted Insurer Information Office) Listing**

The Commissioner must consider, and is authorized but not required to adopt, any analysis, findings or conclusions of the NAIC International Insurance Department in determining whether to add an insurer to, or remove one from, California's white list.

If you have any questions or comments, or should you wish to obtain a copy of SB 959, please let us know.

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