



URGENT!!!

June 8, 1995

BULLETIN #701

RE: SB1021 - JOHNSTON - "STRICT LIABILITY"

We have been notified that the above bill has been changed to a "Two Year Bill." The Senate Judiciary Committee hearing of the bill which was scheduled for Tuesday, June 13, 1995, has been canceled. Any further action of the bill has been postponed until the next legislative session.

We are confident that by working together with Senator Johnston and his staff, they will be able to draft an acceptable bill that will not only accomplish the Senator's goals, but will eliminate some of the objections the retail agents and brokers, surplus line brokers, and members of the wholesale insurance community may have to the current bill. A copy of the current bill is attached.

I want to thank the interested industry groups and our members who supported us by appearing at hearings and writing to the Senators during the discussions of this bill. We also want to thank Senator Johnston for agreeing to further discuss this bill before it goes on the floor of the Assembly and Senate.

Sincerely,
SURPLUS LINE ASSOCIATION
David F. Andenson, Chairman
Legislative Committee

P.S. We learned from our experience in working with this and other bills that it is important to know our state senators and assembly persons so that we are able to discuss issues and concerns with them. I suggest and encourage you to get to know your State Senator and Assembly Person, and be prepared to write to them on issues of importance and be-come a part of the legislative process.

AMENDED IN SENATE MAY 9,1995
SENATE BILL

No. 1021
Introduced by Senator Johnston
February 24, 1995

An act to add Section 152 to the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1021, as amended, Johnston. Insurance: contract liability.

Existing law provides that any person capable of making a contract may be an insurer, subject to the restrictions imposed by the Insurance Code. This bill would provide that in the event of a failure of any unauthorized insurer, as defined, to pay a claim or loss, any person who assisted or aided in the procurement of the contract is declared a party to the contract and liable for the full amount of the claim or loss, as specified. The bill would exempt certain persons from liability under these provisions, as specified

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 152 is added to the Insurance
2 Code, to read:

3 152. (a) In the event of a failure by any unauthorized
4 insurer to pay any claim or loss within the provisions of a
1 contract issued by it to a California resident, any person
2 who assisted, or in any manner aided directly or
3 indirectly; in the procurement of the contract shall be
4 deemed a party to the contract and and liable to the covered
5 party or parties for the full amount of the claim or loss in
6 the manner provided by the provisions of the contract
7 and for any consequential damages resulting from the
8 failure of the unauthorized insurer to pay its contractual
9 obligation.

10 (b) For the purposes of this section, "unauthorized
11 insurer" means any person who is transacting or has
12 transacted insurance in this state in violation of Section
13 700 and any person who is or was required to be placed
14 on the list of authorized surplus line insurers as required
15 by subdivision (f) of Section 1765.1, but was not on the list
16 at the time the insurance was placed with that insurer.

17 (c) Notwithstanding subdivision '(a), there is no
18 liability under this section if one or more of the following
19 apply.

20 (1) The nonadmitted insurer was not on the list
21 required by subdivision (f) of Section 1765.1 but the
22 insurance was lawfully placed with that insurer under
23 Section 1 760.5 or subdivision (k) of Section 1 765. I.

24 (2) All of the following circumstances apply.

25 (A) The person is an insurance agent or broker

26 licensed under Chapter 5 (commencing with Section

27 1621) of Part 2 of Division 1.

28 (B) The person is not licensed under Chapter 6

29 (commencing with Section 1760) of Part 2 of Division 1.

30 (C) The nonadmitted insurer was on the last

31 published version of the list required by subdivision (f) of

32 Section 1765. immediately prior to placement of the

33 insurance.

34 (D) The person had no knowledge of the interim

35 removal of the insurer from the list required by

36 subdivision (f) of Section 1765.1.

37 (3) All of the following circumstances apply.

38 (A) The person is employed by the person who laced

39 the coverage solely as a clerical employee.

1 (B) The person played no role in obtaining or

2 identifying the customer or the insurer or other entity

3 with which the coverage was laced.

4 (C)(C) The person has no responsibility for

5 decisionmaking related to procuring customers or

6 locating or identifying insurers or other entities with

7 which to place coverage.

8 (4) The coverage is placed with an nonadmitted insurer

9 domiciled in the Republic of Mexico and the placement

10 covers only liability arising out of the ownership,

11 maintenance, or use of a motor vehicle, aircraft, or boat

12 in the Republic of Mexico.

13 (5) All of the following apply:

14 (A) The person is licensed under Chapter 6

15 (commencing with Section 1760) of Part 2 of this division.

16 (B) The nonadmitted insurer was removed from the

17 list required by subdivision (f) of Section 1765.1 after the

18 last publication of the list by the commissioner.

19 (C) The Surplus Line Advisory Organization

20 established pursuant to Chapter 6.1 (commencing with

21 Section 1780.50) of Part 2 of this division, had not

22 provided, at the time of the placement, notice to the

23 person that the insurer was removed from the list.