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BILL TEXT

CHAPTER 233
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INTRODUCED BY Senator Leslie

FEBRUARY 25, 1997

An act to amend, repeal, and add Sections 703 and 1760.5 of, and to add and repeal Sections 703.1 and 1773 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 678, Leslie. Insurance: surplus lines.

Existing law provides that certain acts relative to nonadmitted insurers are misdemeanors, including the advertising in any manner of a nonadmitted insurer in this state. These prohibitions do not apply when the acts are performed by a surplus line broker.

This bill would authorize, until January 1, 2002, advertising by nonadmitted insurers under certain conditions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 703 of the Insurance Code is amended to read:

703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this state:

- (a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this state.
- (b) In any manner advertising a nonadmitted insurer in this state.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this state.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this state the sum of five hundred dollars (\$500), together with one hundred dollars (\$100) for each month or fraction thereof during which he or she continues the violation. This section shall not apply to advertising authorized by Section 703.1, subdivision (h) of Section 1760.5, or Section 1773.

(d) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 1.5. Section 703 is added to the Insurance Code, to read:

703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this state:

- (a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this state.
- (b) In any manner advertising a nonadmitted insurer in this state.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this state.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall

forfeit to this state the sum of five hundred dollars (\$500), together with one hundred dollars (\$100) for each month or fraction thereof during which he or she continues the violation.

(d) This section shall become operative on January 1, 2002.

SEC. 2. Section 703.1 is added to the Insurance Code, to read:

703.1. (a) Any nonadmitted insurer that is on the list of eligible surplus line insurers issued by the commissioner pursuant to subdivision (f) of Section 1765.1 may advertise in all media, provided that all of the following apply: (1) the insurer's unlicensed status in California is disclosed in type of a size no smaller than any telephone number, address, or fax number appearing in the advertisement or solicitation, (2) the advertisement does not contain any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, that is untrue, deceptive, or misleading, and that is known, or that by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, (3) the advertisement does not contain any information about the nonadmitted insurer's premiums or rates, and (4) no specific product shall be advertised in a newspaper of general circulation, in a television or radio broadcast, or in a news magazine of general circulation.

(b) Any nonadmitted insurer that is not on the list of eligible surplus line insurers issued by the commissioner pursuant to subdivision (f) of Section 1765.1 may advertise in all media, except for media that are targeted primarily at insureds or prospective insureds residing in California, provided that all of the conditions set forth in subdivision (a) are complied with and the advertisement does not contain any information about the insurer's specific products.

(c) A group of nonadmitted insurers may advertise to the same extent as a nonadmitted insurer, subject to the same requirements set forth in subdivision (a) or (b), as applicable.

(d) An eligible nonadmitted insurer that is a member of a group of insurers may include the name of the group in advertisements that are authorized by this section.

(e) The permission to advertise granted by this section shall not be deemed to authorize an insurer to do business in this state.

(f) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 3. Section 1760.5 of the Insurance Code is amended to read:

1760.5. (a) The provisions of this chapter limiting the insurance that may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(1) Reinsurance of the liability of an admitted insurer.

(2) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(3) Aircraft or spacecraft insurance.

(4) Insurance on property or operations of railroads engaged in interstate commerce.

(b) The insurance specified in paragraphs (2), (3), and (4) of subdivision (a) may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663 and 1665 for an insurance broker and only

one fee shall be collected from one person for both licenses. The licensee in respect to the business shall be subject to all the provisions of this chapter except Sections 1761, 1763, 1765.1, and 1775.5.

(c) The commissioner may address to any licensed special lines' surplus lines broker a written request for full and complete information respecting the financial stability, reputation, and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance specified in paragraphs (2), (3), or (4) of subdivision (a). The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order in writing the licensee to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with that nonadmitted insurer on behalf of any person. Any placement with that nonadmitted insurer made by a licensee after receipt of the order is a violation of this chapter. The commissioner may issue an order if he or she finds that a nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance is in an unsound financial condition, is disreputable, or is lacking in integrity. The order shall also include notice of a hearing to be held at a time and place fixed therein, which shall be not less than 20 nor more than 30 days from service of the order upon the licensee.

(d) The commissioner may, in respect to business written or placed under the provisions of this section, require information and reports thereof that the commissioner considers necessary, convenient, or advisable.

(e) Each placing of insurance in violation of this chapter is a misdemeanor.

(f) The commissioner may revoke, suspend, or deny any license granted pursuant to this code in accordance with the procedure provided in Article 13 (commencing with Section 1737) of Chapter 5, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever the commissioner finds that the licensee or holder of the certificate has committed a violation of this section.

(g) The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon the broker based upon gross premiums paid for insurance placed under authority conferred by the license.

(h) Special lines' surplus line brokers may advertise and solicit in conformity with Section 1773, except that they are not subject to the limitation that any nonadmitted insurer's name appearing in the advertisements or solicitations must be authorized to accept placements under Section 1765.1.

(i) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 3.5. Section 1760.5 is added to the Insurance Code, to read:

1760.5. (a) The provisions of this chapter limiting the insurance that may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(1) Reinsurance of the liability of an admitted insurer.

(2) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but

excluding insurance covering bridges or tunnels.

(3) Aircraft or spacecraft insurance.

(4) Insurance on property or operations of railroads engaged in interstate commerce.

(b) The insurance specified in paragraphs (2), (3), and (4) of subdivision (a) may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663 and 1665 for an insurance broker and only one fee shall be collected from one person for both licenses. The licensee in respect to the business shall be subject to all the provisions of this chapter except Sections 1761, 1763, 1765.1, and 1775.5.

(c) The commissioner may address to any licensed special lines' surplus lines broker a written request for full and complete information respecting the financial stability, reputation, and integrity of any nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance specified in paragraphs (2), (3), or (4) of subdivision (a). The licensee so addressed shall promptly furnish in written or printed form so much of the information requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order in writing the licensee to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with that nonadmitted insurer on behalf of any person. Any placement with that nonadmitted insurer made by a licensee after receipt of the order is a violation of this chapter. The commissioner may issue an order if he or she finds that a nonadmitted insurer with whom the licensee has dealt or proposes to deal in the transaction of insurance is in an unsound financial condition, is disreputable, or is lacking in integrity. The order shall also include notice of a hearing to be held at a time and place fixed therein, which shall be not less than 20 nor more than 30 days from service of the order upon the licensee.

(d) The commissioner may, in respect to business written or placed under the provisions of this section, require information and reports thereof that the commissioner considers necessary, convenient, or advisable.

(e) Each placing of insurance in violation of this chapter is a misdemeanor.

(f) The commissioner may revoke, suspend, or deny any license granted pursuant to this code in accordance with the procedure provided in Article 13 (commencing with Section 1737) of Chapter 5, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever the commissioner finds that the licensee or holder of the certificate has committed a violation of this section.

(g) The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon the broker based upon gross premiums paid for insurance placed under authority conferred by the license.

(h) This section shall become operative on January 1, 2002.

SEC. 4. Section 1773 is added to the Insurance Code, to read:

1773. (a) Surplus line brokers may advertise and solicit using print, electronic media, direct mail, and all other advertising or marketing media. These advertisements and solicitations may include a description of nonadmitted insurance products available through the surplus line broker, and may include the name of any nonadmitted insurer, provided that all of the following apply: (a) the insurer is authorized to accept placements from the surplus line broker pursuant to Section 1765.1, (b) a nonadmitted insurer's name is not used in connection with any nonadmitted insurance product of that

insurer, (c) the unlicensed status of the insurer or of the insurance products is disclosed in type of a size no smaller than any telephone number, address, or fax number appearing in the advertisement or solicitation, and (d) the advertisement or solicitation does not contain any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of his or her insurance business, that is untrue, deceptive, or misleading, and that is known, or that by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading. If the insurance is available from an eligible nonadmitted insurer that is a member of a group of insurers, advertisements and solicitations in accordance with this section may include the name of the group. A surplus line broker's advertisements and solicitations shall not include any information about a nonadmitted insurer's premiums or rates.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.