**Assembly Bill 413 (Brewer)**

**Special Lines' Surplus Line Brokers**

Introduced on February 12, 1999 by Assemblywoman Marilyn C. Brewer (R-70).

*Status: October 25, 1999 Still pending in the Assembly Committee on Insurance and may be reconsidered next year.*

This bill permits special lines surplus line brokers to be referred to as "special lines brokers" in order to limit confusion between those producers that may place business with non-admitted insurers on the Commissioner's List of Eligible Surplus Line Insurers (LESLI), and those allowed to place special lines of insurance where the non-admitted insurer is not required to be on the LESLI.

**Senate Bill 896 (Speier)**

**Auditing Premium Tax Returns**

Introduced on February 25, 1999 by Senator Jackie Speier (D-8).

*Status: June 3, 1999, Failed to receive a two-thirds majority vote required for passage. Refused further consideration on the Senate floor, but may be reconsidered next year.*

Existing law imposes a tax upon the gross premiums of insurance and provides for the processing and auditing of tax returns by the DOI and for the issuing of deficiency assessments and the processing of petitions and refunds by the State Board of Equalization (SBE). This bill would transfer those tax return processing and auditing duties of the DOI to the SBE, and would appropriate an unspecified amount from the General Fund for the purpose of funding the SBE's performance of the transferred audit duties for the 1999-2000 fiscal year.

**Assembly Bill 478 (Cox)**

**Surplus Line Brokers Certificates**

Introduced on February 18, 1999 by Assemblyman Dave Cox (R-5).

*Status: Enacted. Chapter 255, Statutes of 1999. Becomes effective January 1, 2000.*

Provides a statutory distinction between certificates of insurance referred to in Insurance Code Section 384 and surplus line broker certificates referred to in Section 1764 and 1764.1 of the Code.

Existing law requires certificates evidencing the placement of insurance with an eligible non-admitted insurer to be in the name of the issuing surplus line broker and to contain specified provisions and disclosures. Existing law requires a certificate of insurance or verification of insurance provided as evidence of insurance in lieu of an actual policy of insurance to contain specified statements relating to the fact the certificate or verification is not an insurance policy, and does not amend, extend, or alter the coverage afforded by the policies listed in the certificate

or verification. This bill would exempt certificates evidencing the placement of insurance with an eligible non-admitted insurer from the latter requirements.

This bill will also require that every non-admitted insurer provide a list of all California surplus line brokers authorized by the insurer to issue policies on its behalf in California, and any additions to or deletions from that list.

**Assembly Bill 1081 (Calderon)**

**Pre-Answer Bonds**

Introduced on February 25, 1999 by Assemblyman Thomas Calderon (D-58).

*Status: Enacted. Chapter 498, Statutes of 1999. Becomes effective January 1, 2000.*

Eliminates a sunset date on a statute governing exceptions to when a non-admitted insurer must post a pre-answer bond.

BILL NUMBER: AB 478 CHAPTERED
BILL TEXT

CHAPTER 255
FILED WITH SECRETARY OF STATE AUGUST 30, 1999
APPROVED BY GOVERNOR AUGUST 30, 1999
PASSED THE ASSEMBLY AUGUST 16, 1999
PASSED THE SENATE JULY 15, 1999
AMENDED IN SENATE JUNE 23, 1999
AMENDED IN ASSEMBLY MAY 6, 1999

INTRODUCED BY Assembly Member Cox

FEBRUARY 18, 1999

An act to amend Sections 384 and 1765.1 of, and to add Sections 48 and 1762 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 478, Cox. Insurance: surplus line brokers: certificates.

(1) Existing law requires certificates evidencing the placement of insurance with an eligible nonadmitted insurer to be in the name of the issuing surplus line broker and to contain specified provisions and disclosures. Existing law requires a certificate of insurance or verification of insurance provided as evidence of insurance in lieu of an actual policy of insurance to contain specified statements relating to the fact the certificate or verification is not an insurance policy, and does not amend, extend, or alter the coverage afforded by the policies listed in the certificate or verification.

This bill would define a "surplus line broker certificate" and would exempt surplus line broker certificates from the provision of law that requires a certificate of insurance or verification of insurance to contain specified statements relating to the fact that the certificate or verification is not an insurance policy, and does not amend, extend, or alter the coverage afforded by the policies listed in the certificate or verification.

(2) Existing law prohibits a surplus line broker from placing any coverage with a nonadmitted insurer unless the nonadmitted insurer meets specified requirements, including providing the Insurance Commissioner with specified documents.

This bill would require in that regard that every nonadmitted insurer provide a list of all California surplus line brokers authorized by the insurer to issue policies on its behalf in California, and any additions to or deletions from that list.

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

SECTION 1. Section 48 is added to the Insurance Code, to read:

48. A "surplus line broker certificate" means a certificate issued by a surplus line broker to an insurance purchaser as evidence of the placement of insurance with an eligible nonadmitted insurer in accordance with the requirements of Sections 1764, 1764.1, and 1764.2.

SEC. 2. Section 384 of the Insurance Code is amended to read:

384. (a) A certificate of insurance or verification of insurance provided as evidence of insurance in lieu of an actual copy of the insurance policy shall contain the following statements or words to the effect of:

This certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by

the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

(b) This section is not applicable to a surplus line broker certificate as defined in Section 48.

SEC. 3. Section 1762 is added to the Insurance Code, to read:

1762. For purposes of Sections 1764, 1764.1, and 1764.3, the term "certificate" means a surplus line broker certificate as defined in Section 48.

SEC. 4. Section 1765.1 of the Insurance Code is amended to read:

1765.1. No surplus line broker shall place any coverage with a nonadmitted insurer unless the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at the time of placement, the nonadmitted insurer:

(a) (1) Has established its financial stability, reputation, and integrity, for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the commissioner through a surplus line broker.

(2) (A) Has capital and surplus that together total at least fifteen million dollars ($15,000,000). "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars ($15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in the calculation of surplus. If less than fifteen million dollars ($15,000,000), the commissioner has affirmatively found that the capital and surplus is adequate to protect California policyholders. The commissioner shall consider, on determining whether to make this finding, factors such as quality of management, the capital and surplus of any parent company, the underwriting profit and investment income trends, and the record of claims payment and claims handling practices of the nonadmitted insurer, or

(B) In the case of an "Insurance Exchange" created and authorized under the laws of individual states, maintains capital and surplus of not less than fifty million dollars ($50,000,000) in the aggregate. "Capital" shall be as defined in Section 36. "Surplus" shall be

shall have in force in the United States an irrevocable trust account in a qualified United States financial institution, for the protection of United States policyholders, of not less than five million four hundred thousand dollars ($5,400,000) and consisting of cash, securities acceptable to the commissioner which are authorized pursuant to Sections 1170 to 1182, inclusive, readily marketable securities acceptable to the commissioner that are listed on a regulated United States national or principal regional security exchange, or clean and irrevocable letters of credit acceptable to the commissioner and issued by a qualified United States financial institution. The trust agreement shall be in a form acceptable to the commissioner. The funds in the trust account may be included in any calculation of capital and surplus, except letters of credit, which shall not be included in any calculation.

(2) In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the syndicate shall, in addition to the requirements of that subparagraph, at a minimum, maintain in the United States a trust account in an amount satisfactory to the commissioner that is not less than the amount required by the domiciliary state of the syndicate's trust. The trust account shall comply with the terms and conditions specified in paragraph (1) of subdivision (b).

(3) In the case of a group of incorporated insurers under common administration that maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution for the payment of claims of its United States policyholders, their assigns, or successors in interest and that complies with the terms and conditions of paragraph (1) that has continuously transacted an insurance business outside the United States for at least three years, that is in good standing with its domiciliary regulator, whose individual insurer members maintain standards and financial condition reasonably comparable to admitted insurers, that submits to this state's authority to examine its books and bears the expense of examination, and that has an aggregate policyholder surplus of ten billion dollars ($10,000,000,000), the group is excepted from the capital and surplus requirements of subdivision (a).

(c) Has caused to be provided to the commissioner the following documents:

(1) The financial documents as specified below, each showing the insurer's condition as of a date not more than 12 months prior to submission:

(A) A copy of an annual statement, prepared in the form prescribed by the NAIC. For an alien insurer, in lieu of an annual statement, a licensee may submit a form as set forth by regulation and as prepared by the insurer, and, if listed by the IID, a copy of the complete information as required in the application for listing by the IID.

(B) A copy of an audited financial report on the insurer's condition that meets the standards of subparagraph (D) for foreign insurers or subparagraph (E) for alien insurers.

(C) If the insurer is an alien:

(i) A certified copy of the trust agreement referenced in subdivision (b).

(ii) A verified copy of the most recent quarterly statement or list of the assets in the trust.

(D) Financial reports filed pursuant to this section by foreign insurers shall conform to the following standards:

(i) Financial documents shall be certified.

(ii) An audited financial report shall constitute a supplement to the insurer's annual statement, as required by the annual statement instructions issued by the NAIC.

(iii) An audited financial report shall be prepared by an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants

and in all states where licensed to practice; and be prepared in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulator of the insurer's domiciliary jurisdiction.

(iv) An audited financial report shall include information on the insurer's financial position as of the end of the most recent calendar year, and the results of its operations, cash-flows, and changes in capital and surplus for the year then ended.

(v) An audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with its domiciliary jurisdiction, and presenting comparatively the amounts as of December 31 of the most recent calendar year and the amounts as of December 31 of the preceding year.

(E) Financial reports filed pursuant to this section by alien insurers shall conform to the following standards:

(i) Except as provided in clause (ii) of subparagraph (C), financial documents should be certified, if certification of a financial document is not available, the document shall be verified.

(ii) Financial documents should be expressed in United States dollars, but may be expressed in another currency, if the exchange rate for the other currency as of the date of the document is also provided.

(iii) The responses provided pursuant to subparagraph (A) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent ISI Guide to Alien Reporting Format, "Standard Definitions of Accounting Items." Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent licensed auditor in the insurer's domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted Accounting Principles, or (II) International Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants; and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, any certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The supplement must meet the same requirements which apply to the supplemented document, and must update the outdated document to a date within the prescribed time period, preferably to the same date as the nonsupplemented document.

(2) A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either that jurisdiction or, if the jurisdiction does not issue those certificates, from any state where it is licensed.

(3) Information on the insurer's agent in California for service of process, including the agent's full name and address. The agent's address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) A certified or verified explanation, report, or other statement, from the insurance regulatory office or official of the insurer's domiciliary jurisdiction, concerning the insurer's record regarding market conduct and consumer complaints; or, if that information cannot be obtained from that jurisdiction, then any other information that the licensee can procure to demonstrate a good reputation for payment of claims and treatment of policyholders.

(6) A verified statement, from the insurer or licensee, on whether the insurer or any affiliated entity is currently known to be the subject of any order or proceeding regarding conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The statement shall identify the proceeding by date, jurisdiction, and relief or sanction sought; and shall attach a copy of the relevant order.

(7) A certified copy of the most recent report of examination or an explanation if the report is not available.

(8) A list of all California surplus line brokers authorized by the insurer to issue policies on its behalf, and any additions to or deletions from that list.

(d) (1) Has provided any additional information or documentation required by the commissioner that is relevant to the financial stability, reputation, and integrity of the nonadmitted insurer. In making a determination concerning financial stability, reputation, and integrity of the nonadmitted insurer, the commissioner shall consider any analysis, findings, or conclusion made by the National Association of Insurance Commissioners (NAIC) in its review of the insurer for purposes of inclusion on or exclusion from the list of authorized nonadmitted insurers maintained by the NAIC. The commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of the NAIC, as the commissioner deems appropriate. In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of any state, as the commissioner deems appropriate, as long as that state, in its method of regulation and review, meets the requirements of paragraph (2).

(2) The regulatory body of the state shall regularly receive and review the following: (A) an audited financial statement of the syndicate, prepared by a certified or chartered public accountant; (B) an opinion of a qualified actuary with regard to the syndicate's aggregate reserves for payment of losses or claims and payment of expenses of adjustment or settlement of losses or claims; (C) a certification from the qualified United States financial institution that acts as the syndicate's trustee, respecting the existence and value of the syndicate's trust fund; and (D) information concerning the syndicate's or its manager's operating history, business plan, ownership and control, experience and ability, together with any other pertinent factors, and any information indicating that the syndicate or its manager make reasonably prompt payment of claims in this state or elsewhere. The regulatory body of the state shall have the authority, either by law or through the operation of a valid and enforceable agreement, to review the syndicate's assets and liabilities and audit the syndicate's trust account, and shall exercise that authority with a frequency and in a manner satisfactory to the commissioner.

(e) Has established that:

(1) All documents required by subdivisions (c) and (d) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents affirm that the insurer has actively transacted insurance for the three years immediately preceding the filing made under this section, unless an exemption is granted. As used in this paragraph, "insurer" does not include a syndicate of underwriting entities. The commissioner may grant an exemption if the licensee has applied for exemption and demonstrates either of the following:

(A) The insurer meets the condition for any exception set forth in subdivision (a), (b), or (c) of Section 716.

(B) If the insurer has been actively transacting insurance for at least 12 months, and the licensee demonstrates that the exemption is warranted because the insurer's current financial strength, operating history, business plan, ownership and control, management experience, and ability, together with any other pertinent factors, make three years of active insurance transaction unnecessary to establish sufficient reputation.

(4) The documents confirm that the insurer holds a license to issue insurance policies (other than reinsurance) to residents of the jurisdiction that granted the license unless an exemption is granted. The commissioner may grant an exemption if the licensee has applied for an exemption and demonstrates that the exemption is warranted because the insurer proposes to issue in California only commercial coverage, and is wholly owned and actually controlled by substantial and knowledgeable business enterprises that are its policyholders and that effectively govern the insurer's destiny in furtherance of their own business objectives.

(5) The information filed pursuant to paragraph (5) of subdivision (c) or otherwise filed with or available to the commissioner, including reports received from California policyholders, shall indicate that the insurer makes reasonably prompt payment of claims in this state or elsewhere.

(6) The information available to the commissioner shall not indicate that the insurer offers in California a licensee products or rates that violate any provision of this code.

(f) Has been placed on the list of eligible surplus line insurers by the commissioner. The commissioner shall establish a list of all surplus line insurers that have met the requirements of subdivisions (a) to (e), inclusive, and shall publish a master list at least semiannually. Any insurer receiving approval as an eligible surplus line insurer shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. If an insurer appears on the most recent list, it shall be presumed that the insurer is an eligible surplus line insurer, unless the commissioner or his or her designee has mailed or causes to be mailed notice to all surplus line brokers that the commissioner has withdrawn the insurer's eligibility. Upon receipt of notice, the surplus line broker shall make no further placements with the insurer. Nothing in this subdivision shall limit the commissioner's discretion to withdraw an insurer's eligibility.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that any insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the eligibility requirements under subdivisions (a) to (e), inclusive, (C) has violated the laws of this state, or (D) without justification, or with a frequency so as to indicate a general business practice, delays the payment of just claims, the commissioner may issue an order removing the insurer from the list. Notice of hearing shall be served upon the insurer or its agent for service of process stating the time and place of the hearing and the conduct, condition, or ground upon which the commissioner would make his or her order. The hearing shall occur not less than 20 days, nor more than 30 days after notice is served upon the insurer or its agent for service of process.

(2) If the commissioner determines that an insurer's immediate removal from the list is necessary to protect the public or an insured or prospective insured of the insurer, or, in the case of an application by an insurer to be placed on the list which is being denied by the commissioner, the commissioner may issue an order pursuant to paragraph (1) without prior notice and hearing. At the time an order is served pursuant to this paragraph to an insurer on the list, the commissioner shall also issue and serve upon the insurer a statement of the reasons that immediate removal is necessary. Any order issued pursuant to this paragraph shall include a notice stating the time and place of a hearing on the order, which shall be not less than 20 days, nor more than 30 days after the notice is served.

(3) Notwithstanding paragraphs (1) and (2), in any case where the commissioner is basing a decision to remove an insurer from the list, or deny an application to be placed on the list, on the failure of the insurer or applicant to comply with, meet or maintain any of the objective criteria established by this section, or by regulation adopted pursuant to this section, the commissioner may so specify this fact in the order, and no hearing shall be required to be held on the order.

(4) Notwithstanding paragraphs (1) and (2), the commissioner may, without prior notice or hearing, remove from the list established pursuant to subdivision (f) any insurer that has failed or refused to timely provide documents required by this section, or any regulations adopted to implement this section. In the case of removal pursuant to this paragraph, the commissioner shall notify all surplus line brokers of the action.

(h) In addition to any other statements or reports required by this chapter, the commissioner may also address to any licensee 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 business. 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 the licensee in writing 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 the nonadmitted insurer on behalf of any person. Any placement in the nonadmitted insurer made by a licensee after receipt of that order is a violation of this chapter. The commissioner may issue an order when documents submitted pursuant to subdivisions (c) and (d) do not meet the criteria of subdivisions (a) to (e), inclusive, or when the commissioner obtains documents on an insurer and the insurer does not meet the criteria of subdivisions (a) to (e), inclusive.

(i) The commissioner shall require, at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained.

(j) The commissioner shall establish by regulation a schedule of fees to cover costs of administering and enforcing this chapter.

(k) (1) Insurance may be placed on a limited basis with insurers not on the list established pursuant to this section if all of the following conditions are met:

(A) The use of multiple insurers is necessary to obtain coverage for 100 percent of the risk.

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that appear on the list of eligible nonadmitted insurers.

(C) The placing surplus line broker submits to the commissioner, or his or her designee, copies of all documentation relied upon by

the surplus line broker to make the broker's determination that the financial stability, reputation, and integrity of the unlisted insurer or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the unlisted insurer requested by the commissioner, shall be submitted no more than 30 days after the insurance is placed with the unlisted insurer for the initial placement by that broker with the particular unlisted insurer, and annually thereafter for as long as the broker continues to make placements with the unlisted insurer pursuant to this paragraph.

(D) The insured has aggregate annual premiums for all risks other than workers' compensation or health coverage totaling no less than one hundred thousand dollars ($100,000).

(2) Insurance may not be placed pursuant to paragraph (1) if any of the following applies:

(A) The unlisted insurer has for any reason been objected to by the commissioner pursuant to this section, removed from the list, or denied placement on the list.

(B) The insurance includes coverage for employer-sponsored medical, surgical, hospital, or other health or medical expense benefits payable to the employee by the insurer.

(C) The insurance is mandatory under the laws of the federal government, this state, or any political subdivision thereof, and includes any portion of limits of coverage mandated by those laws.

(D) The insured is a multiple employer welfare arrangement, as defined in Section 1002(40)(A) of Title 29 of the United States Code, or any other arrangement among two or more employers that are not under common ownership or control, which is established or maintained for the primary purpose of providing insurance benefits to the employees of two or more employers.

(E) Unlisted insurers represent a disproportionate portion of the lower layers of the coverage.

(3) Nothing in this section is intended to alter any duties of a surplus line broker pursuant to subdivision (b) of Section 1765 or other laws of this state to safeguard the interests of the insured under the policy in recommending or placing insurance with a nonadmitted insurer.

(4) Placements authorized by this subdivision are intended to provide sophisticated insurance purchasers with a means to obtain necessary commercial insurance coverage from nonadmitted insurers not listed by the commissioner in situations where it is not commercially possible to fully obtain that coverage from either admitted or listed insurers. This subdivision shall not be deemed to permit surplus line brokers to place with nonadmitted insurers common commercial or personal line coverages for insureds that can be placed with insurers that are admitted or listed pursuant to this section, whether the insured is an individual insured, or a group created primarily for the purpose of purchasing insurance.

(l) As used in this section:

(1) "Certified" means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(2) "Domiciliary jurisdiction" means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(3) "Domiciliary state of the syndicate's trust" means the state in which the syndicate's trust fund is principally maintained and administered for the benefit of the syndicate's policyholders in the United States.

(4) "IID" means the International Insurers Department.

(5) "Insurer" means (unless the context indicates otherwise) "nonadmitted" insurers that are either "foreign" or "alien" insurers, as those terms are defined in Sections 25, 27, and 1580, and

syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator. The term "insurer" includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 (commencing with Section 125) of Part 1 of Division 1), except insurers that are risk retention groups as defined by those acts.

(6) "ISI" means Insurance Solvency International.

(7) "Licensee" means a surplus line broker as defined in Section 47.

(8) "NAIC" means the National Association of Insurance Commissioners or its successor organization.

(9) "NAIIO" means the Nonadmitted Alien Insurer Information Office of the NAIC or its successor office.

(10) "State" means any state of the United States; the District of Columbia; a commonwealth, or a territory.

(11) "Verified" means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under penalty of perjury under California law, that the assertions made in the document are true.

(m) With respect to a nonadmitted insurer that is listed as an authorized surplus line insurer as of December 31, 1994, pursuant to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the California Code of Regulations, this section shall not be effective until the subsequent expiration of the listing of that insurer. Nothing in the bill that amended this section during the 1994 portion of the 1993-94 Regular Session is intended to repeal or imply there is not authority to adopt, or to have adopted, or to continue in force, any regulation, or part thereof, with respect to surplus line insurance which is not clearly inconsistent with it.

BILL NUMBER: AB 1081 CHAPTERED
BILL TEXT

CHAPTER 498
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AMENDED IN ASSEMBLY MAY 28, 1999
AMENDED IN ASSEMBLY APRIL 27, 1999

INTRODUCED BY Assembly Member Calderon
(Principal coauthor: Senator Johnston)

FEBRUARY 25, 1999

An act to amend and repeal Section 1620 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1081, Calderon. Insurance: surplus lines.

Existing law generally requires an insurer to be admitted in order to transact business in California, but permits insurance to be transacted through nonadmitted insurers in various instances, including through a surplus line broker.

Existing law provides that before any nonadmitted foreign or alien insurer may file any pleading in any action, suit, or proceeding instituted against it, the insurer shall either procure a certificate of authority to transact insurance or file a bond in the action. However, this requirement does not apply when the insurance is exempt from requirements regulating insurance by nonadmitted insurers, or when the insurer has lawfully transacted surplus line insurance, as specified, and the insurer has appointed an agent for the service of process. In that case, the court is permitted to require the insurer to file a bond unless it makes a showing that it has sufficient assets.

Existing law also provides, until January 1, 2000, that the restrictions as to filing suits by nonadmitted foreign or alien insurers do not apply to the above-mentioned categories of insurance and, in addition, those restrictions do not apply to insurance procured by the insured from a nonadmitted insurer and insurance determined to be eligible for placement with a nonadmitted insurer and to be exempt by the Insurance Commissioner, as specified, or if the contract is governed by and is in compliance with the laws of the state in which the contract was issued. Existing law also provides, until January 1, 2000, that an insurer need not file a bond if at the time the insurer files any pleading in any action, suit, or proceeding instituted against it, the insurer is an eligible surplus line insurer, as specified, or with respect to a dispute arising out of certain contracts of reinsurance, the reinsurer has complied with specified requirements.

This bill would delete the January 1, 2000, repeal date applicable to these provisions.

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

SECTION 1. Section 1620 of the Insurance Code, as amended by Section 1 of Chapter 687 of the Statutes of 1996, is amended to read:

1620. (a) The provisions of the preceding sections of this article shall not apply to any action, suit or proceeding against any unauthorized foreign or alien insurer arising out of any contract of insurance effected in accordance with Section 1760, 1760.5, 1763, or 1763.1, or, if the contract is governed by and complies with the laws of the state in which the contract was entered. The provisions of Section 1610 shall apply to any action, suit, or proceeding under this section unless the insurer has designated an agent in California for service of process or the contract contains a provision designating a resident of this state or any firm of which one member is a resident of this state to be its true and lawful attorney upon whom may be served all lawful process in any such action, suit or proceeding.

(b) In any such action, suit or proceeding arising out of any such contract of insurance, the court may require the insurer to file a bond, in an amount sufficient to secure the payment of any final judgment which may be rendered unless one or more of the following is applicable:

(1) The insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities in trust or otherwise, sufficient and available to satisfy any such final judgment and that it will pay the judgment without requiring suit to be brought thereon in the state where the securities or funds are located.

(2) At the time the insurer files any pleading in any action, suit, or proceeding instituted against it, the insurer is listed as an eligible surplus line insurer in accordance with subdivision (f) of Section 1765.1, unless by facts presented to the court there is created a reasonable doubt as to the present ability of the insurer to satisfy any final judgment in the action, suit, or proceeding. Upon request of a party or the court, the unauthorized foreign or alien insurer or reinsurer shall provide the court and the party requesting the bond with copies of documents relating to the financial condition of the insurer, including, but not limited to, copies of the insurer's most recent annual statement and audited financial report and, where applicable, a certified copy of the trust agreement required by subdivision (b) of Section 1765.1 and a verified copy of the most recent quarterly statement or list of assets in the trust.

(3) With respect to a contract of reinsurance issued in accordance with Section 1760.5, the reinsurer has complied with the provisions of this code necessary to permit the ceding insurer to take credit on its financial statement for the reinsurance as set forth in Section 922.4 or 922.5.

SEC. 2. Section 1620 of the Insurance Code, as added by Section 2 of Chapter 687 of the Statutes of 1996, is repealed.