

Assembly Bill No. 2984

Passed the Assembly July 15, 2002

Chief Clerk of the Assembly

Passed the Senate June 27, 2002

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2002, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 1628, 1637, 1639, 1656, 1662, 1679, 1704, 1750.5, 1765.2, 1767, 1768, 1781.3, and 10234.93 of, to add Sections 1638.5 and 1639.1 to, to add Article 5.2 (commencing with Section 759) to Chapter 1 of Part 2 of Division 1 of, and to repeal Sections 1647, 1648, 1649, 1659, and 1714 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2984, Committee on Insurance. Insurance: depository institutions: production agencies: surplus line brokers: reinsurance intermediaries.

(1) Existing law provides for the licensure and regulation of insurers by the Insurance Commissioner and the Department of Insurance.

This bill would establish provisions regulating retail sales practices, solicitations, advertising, and offers of any insurance product or annuity to a consumer by a depository institution, or any person engaged in those activities at the office of a depository institution or on behalf of a depository institution.

(2) Existing law contains provisions governing the licensing and practice of production agencies, surplus line brokers, and reinsurance intermediaries. A violation of certain provisions regulating the duties of surplus line brokers is a crime.

This bill would revise licensing provisions with regard to production agencies, surplus line brokers, and reinsurance intermediaries, and would also revise requirements for certain licensees within those categories. Because this bill would expand the duties of a surplus line broker and thereby expand the definitions of crimes associated with a violation of these duties, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



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

SECTION 1. The Legislature finds and declares as follows:

(a) Pursuant to the federal government's Financial Services Modernization Act of 1999 (the Gramm-Leach-Bliley Act), the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve Bank adopted joint consumer protection regulations. In order for California to retain jurisdiction to regulate the insurance sales practices of depository institutions, or persons who are engaged in those activities at an office of a depository institution or on behalf of a depository institution, California law must have similar or stronger consumer protections than those of the four federal agencies. Consequently, it is necessary to add language to the Insurance Code to provide California with consumer protection laws that are uniform with the federal regulations.

(b) The Gramm-Leach-Bliley Act authorizes the establishment of a new organization named the National Association of Registered Agents and Brokers (NARAB). NARAB comes into existence if 29 state and territory insurance regulators do not implement uniform or reciprocal laws for the licensing of nonresident insurance producers by November 2002. NARAB would establish uniform producer licensing laws and provide a mechanism for multistate licensing of insurance producers, thereby preempting state-unique licensing procedures and qualifications. In an effort to avoid the creation of NARAB and preserve state regulation of producer licensing, California should amend the Insurance Code as necessary to create reciprocal licensing laws.

SEC. 2. Article 5.2 (commencing with Section 759) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 5.2. Consumer Protection in Sales of Insurance by or
Through Depository Institutions

759. This article establishes consumer protections in connection with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by either of the following:



(a) Any depository institution, as defined in subdivision (b) of Section 760.

(b) Any person who is engaged in those activities at an office of a depository institution or on behalf of a depository institution.

760. As used in this article, the following terms have the following meanings:

(a) “Affiliate” has the same meaning as defined in Section 1215.

(b) “Depository institution” means any of the following:

(1) National banks, operating subsidiaries of a national bank, and federal branches or agencies of a foreign bank, as defined in Section 1 of the International Banking Act of 1978 (12 U.S.C. Sec. 3101 et seq.), in the case of institutions supervised by the Office of the Comptroller of the Currency.

(2) State member banks in the case of the Board of Governors of the Federal Reserve System.

(3) State nonmember banks in the case of the Federal Deposit Insurance Corporation (FDIC).

(4) Savings associations and operating subsidiaries of savings associations, in the case of the Office of Thrift Supervision.

(c) “Company” means any corporation, partnership, business trust, association, or similar organization, or any other trust, other than a trust that by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust. “Company” does not include any corporation the majority of the shares of which are owned by the United States or by any state, or a qualified family partnership, as defined in paragraph (10) of subsection (o) of Section 2 of the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841(o)(10)).

(d) “Consumer” means an individual who purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes.

(e) “Control” has the same meaning as defined in Section 1215.

(f) (1) “Covered person” means either of the following:

(A) A depository institution.

(B) Another person only when the person sells, solicits, advertises, or offers an insurance product or annuity to a consumer



at an office of a depository institution, or on behalf of a depository institution.

(2) For purposes of this definition, activities on behalf of a depository institution include activities pursuant to which a person, whether at an office of the depository institution or at another location, sells, solicits, advertises, or offers an insurance product or annuity and where at least one of the following applies:

(A) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the depository institution.

(B) The depository institution refers a consumer to a seller of insurance products or annuities and the institution has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral.

(C) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the depository institution.

(g) “Electronic media” includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(h) “Office” means the premises of a depository institution where retail deposits are accepted from the public.

(i) “Subsidiary” has the same meaning as defined in Section 1215.

761. (a) A covered person shall not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of subsection (b) of Section 106 of the federal Bank Holding Company Act Amendments of 1970 (12 U.S.C. Sec. 1972), is conditional upon either of the following:

(1) The purchase of an insurance product or annuity from the depository institution or any of its affiliates.

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an affiliated entity.

(b) A covered person shall not engage in any practice or use any advertisement at any office of, or on behalf of, the depository institution or a subsidiary of the depository institution that could



mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to any of the following:

(1) The fact that any insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the depository institution is not backed by the federal government or the depository institution, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation.

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value.

(3) In the case of a depository institution or subsidiary of the depository institution at which insurance products or annuities are sold or offered for sale, the fact that:

(A) The approval of an extension of credit to the consumer by the depository institution or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the depository institution or a subsidiary of the depository institution.

(B) The consumer is free to purchase the insurance product or annuity from another source.

762. (a) In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person shall disclose to the consumer, except to the extent the disclosure would not be accurate, all of the following:

(1) That the insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the depository institution or an affiliate of the depository institution.

(2) That the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation or any other agency of the United States, the depository institution, or, if applicable, an affiliate of the depository institution.

(3) In the case of an insurance product or annuity that involves an investment risk, that there is investment risk associated with the product, including the possible loss of value.

(b) In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold,



a covered person shall disclose that the depository institution may not condition an extension of credit on either of the following:

(1) The consumer's purchase of an insurance product or annuity from the depository institution or any of its affiliates.

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) (1) The disclosures required by subdivision (a) shall be provided orally and in writing during any solicitation of an insurance product or annuity to a consumer. The disclosures required by subdivision (b) shall also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold.

(2) If a sale of an insurance product or annuity is conducted by mail, a covered person is not required to make the oral disclosures required by subdivision (a). If a covered person takes an application for credit by mail, the covered person is not required to make the oral disclosures required by subdivision (b).

(3) If the sale of an insurance product or annuity is conducted by telephone, a covered person shall provide the written disclosure required by subdivision (a) by mail within three business days, beginning on the first business day after the sale, but excluding Sundays and the legal public holidays specified in subsection (a) of Section 6103 of Title 5 of the United States Code.

(4) Subject to the requirements of subsection (c) of Section 101 of the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)), a covered person may provide the written disclosures required by subdivisions (a) and (b) through electronic media instead of paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, through printing or storing electronically by downloading. Any disclosures required by subdivision (a) or (b) that are provided by electronic media are not required to be provided orally.

(5) The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For example, a covered person may use the following disclosures in visual



media, including television, broadcasting, ATM screens, billboards, signs, posters, and written advertisements and promotional materials, as appropriate and consistent with subdivisions (a) and (b):

(A) “NOT A DEPOSIT.”

(B) “NOT FDIC-INSURED.”

(C) “NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY.”

(D) “NOT GUARANTEED BY THE BANK (OR SAVINGS ASSOCIATION).”

(E) “MAY GO DOWN IN VALUE.”

(6) (A) A covered person shall provide the disclosures required by subdivisions (a) and (b) in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include all of the following:

(i) A plain language heading to call attention to the disclosure.

(ii) A typeface and type size that are easy to read.

(iii) Wide margins and ample line spacing.

(iv) Boldface or italics for key words.

(v) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

The disclosures required by subdivisions (a) and (b) shall be in the same language as principally used in any oral solicitation leading to the execution of the purchase by the consumer of the insurance product or annuity.

(B) A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required.

(C) With respect to disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) A covered person shall obtain from the consumer, at the time the consumer receives the disclosures required by



subdivisions (a) and (b), or at the time of initial purchase by the consumer of the insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A covered person may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under subdivisions (a) and (b) are provided in connection with a transaction that is conducted by telephone, a covered person shall do the following:

(A) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given.

(B) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) The disclosures described in subdivision (a) are required in advertisements and promotional material for insurance products or annuities unless the advertisements or promotional material are of a general nature describing or listing the services or products offered by the depository institution.

763. (a) A depository institution shall, to the extent practicable, keep the area where the depository institution conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance products or annuity sales activities occur, and clearly delineate and distinguish, with appropriate signage, those areas from the areas where the depository institution's retail deposit-taking activities occur.

(b) Any person who accepts deposits from the public in an area where those transactions are routinely conducted in the depository institution may refer a customer who seeks to purchase an insurance product or an annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

764. A depository institution may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed as required by this code with regard to the specific products being sold or recommended.



765. The commissioner may adopt reasonable regulations necessary to administer this article.

SEC. 3. Section 1628 of the Insurance Code is amended to read:

1628. As used in this chapter, an “organization” means any legal entity other than a natural person. Where reference is made to a natural person named on an organization license, the reference shall be to a person who is named to exercise the power and perform the duties under an organization license. The natural person named on the organizational license shall meet the qualifications required for the type of license sought by the organization.

SEC. 4. Section 1637 of the Insurance Code is amended to read:

1637. An organization may hold any license or licenses necessary to act in the following capacities under this chapter and no others:

- (a) A license to act as a life agent.
- (b) A license to act as a fire and casualty broker-agent.
- (c) A license to act as a cargo shipper’s agent.
- (d) A license to act as a personal lines licensee.
- (e) A license to act as a credit insurance agent.
- (f) A license to act as a rental car agent.
- (g) A nonresident license to act as a limited lines licensee pursuant to subdivision (i) of Section 1639.

SEC. 5. Section 1638.5 is added to the Insurance Code, to read:

1638.5. Unless denied licensure pursuant to Article 6 (commencing with Section 1666), a nonresident person shall receive a production agency license if he or she meets the following requirements:

- (a) The person is currently licensed and in good standing in the state, territory of the United States, or province of Canada in which he or she is licensed as a resident producer.
- (b) The person has submitted the proper request for licensure and has paid the fees required by Section 1750.5.
- (c) The person has submitted or transmitted to the Insurance Commissioner the application for licensure that the person submitted to the state, territory of the United States, or province of Canada in which he or she is licensed as a resident, or submitted



or transmitted to the commissioner, a completed National Association of Insurance Commissioners (NAIC) Uniform Nonresident Application.

(d) The state, territory of the United States, or province of Canada in which the person holds a resident producer license awards nonresident producer licenses to residents of this state on the same basis.

SEC. 6. Section 1639 of the Insurance Code is amended to read:

1639. The following types of licenses under this chapter may be issued to nonresidents:

(a) A fire and casualty broker-agent if the nonresident is duly licensed to transact more than one class of insurance, other than life insurance, disability insurance, title insurance, or life and disability insurance, under the laws of the state or province of Canada where he or she maintains a resident license to transact insurance.

(b) A personal lines broker-agent if the nonresident is duly licensed to transact those lines of insurance described in Section 1625.5, under the laws of the state, territory of the United States, or province of Canada where the resident license is maintained.

(c) A life agent if the nonresident possesses a resident license in another state, territory of the United States, or province of Canada to transact life insurance or disability insurance.

(d) A nonresident life agent may be granted authority to transact variable contracts if he or she has been granted that authority by the state where the resident license is maintained.

(e) A surplus line broker and a special lines surplus broker if the nonresident holds that type of license in the state or territory of the United States where the resident license is maintained.

(f) A credit insurance agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(g) A rental car agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(h) A cargo shipper's agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.



(i) A limited lines license if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained. As used in this section, “limited lines license” means any authority granted by the resident state that restricts the authority of the license to less than the total authority granted by any of the types of licenses identified in this section.

SEC. 7. Section 1639.1 is added to the Insurance Code, to read:

1639.1. (a) The class or classes of insurance which a nonresident person is licensed to transact under his or her resident license shall be determined according to the definitions of classes of insurance in Sections 101 to 120, inclusive. A certificate from the insurance regulatory authority of the nonresident’s home state may be accepted as evidence of the applicant’s license status and the capacity or capacities in which he or she is licensed. The Insurance Commissioner may also verify the producer’s licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(b) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within 30 days of the change of legal residence. No fee or license application is required.

(c) The license authority granted to the nonresident shall not exceed the class or classes of insurance granted by the license issued under the laws of the state, territory of the United States, or province of Canada where the resident license is maintained.

SEC. 8. Section 1647 of the Insurance Code is repealed.

SEC. 9. Section 1648 of the Insurance Code is repealed.

SEC. 10. Section 1649 of the Insurance Code is repealed.

SEC. 11. Section 1656 of the Insurance Code is amended to read:

1656. Every applicant for an organizational license shall provide the names of all persons who may exercise the power and perform the duties under the license.

SEC. 12. Section 1659 of the Insurance Code is repealed.

SEC. 13. Section 1662 of the Insurance Code is amended to read:



1662. A fire and casualty broker-agent shall, prior to acting in the capacity of an insurance broker, file and continuously maintain in force the bond required by this article. Any authority to act as broker shall automatically terminate immediately upon there being no bond in force.

SEC. 14. Section 1679 of the Insurance Code is amended to read:

1679. A nonresident applicant for a license shall be subject to the same qualifying examination as is required of a resident applicant. Such examination may be administered to an eligible nonresident applicant through the insurance authority of the state, territory of the United States, or province of Canada of his or her residence; provided, however, that the commissioner may, in his or her discretion, enter into a reciprocal arrangement with the officer having supervision of the insurance business in any other state, territory of the United States, or province of Canada whose qualification standards for the applicant to be examined are substantially the same as or in excess of those of this state, to accept, in lieu of the examination of an applicant residing therein, a certificate of such officer to the effect that the applicant is licensed in that state, territory of the United States, or province of Canada in a capacity similar to that for which a license is sought in this state and has complied with its qualification standards in respect to the following:

- (a) Experience or training,
- (b) Reasonable familiarity with the broad principles of insurance licensing and regulatory laws and with the provisions, terms and conditions of the insurance which the applicant proposes to transact, and
- (c) A fair and general understanding of the obligations and duties of a holder of the license sought.
- (d) The provisions of this section shall not apply to a nonresident applicant who resides in a jurisdiction that grants reciprocity to California residents in accordance with Section 1638.5.

SEC. 15. Section 1704 of the Insurance Code is amended to read:

1704. (a) Life agents, travel agents, and fire and casualty insurance agents shall not act as an agent of an insurer unless the insurer has filed with the commissioner a notice of appointment,



executed by the insurer, appointing the licensee as the insurer's agent. Every fire and casualty broker-agent acting in the capacity of an insurance solicitor shall have filed on his or her behalf with the commissioner a notice executed by an insurance agent or insurance broker appointing and agreeing to employ the solicitor as an employee within this state. Additional notices of appointment may be filed by other insurers before the license is issued and thereafter as long as the license remains in force. The authority to transact insurance given to a licensee by an insurer or fire and casualty broker-agent, as the case may be, by appointment shall be effective as of the date the notice of appointment is signed. That authority to transact shall apply to transactions occurring after that date and for the purpose of determining the insurer's or fire and casualty broker-agent's liability for acts of the appointed licensee. No notice of appointment of a life agent, fire and casualty broker-agent, or travel insurance agent shall be filed under this subdivision unless the licensee being appointed has consented to that filing. Each appointment made under this subdivision shall by its terms continue in force until:

(1) The cancellation or expiration of the license applied for or held at the time the appointment was filed.

(2) The filing of a notice of termination by the insurer or employing fire and casualty broker-agent, or by the appointed life agent, fire and casualty broker-agent, travel insurance agent, or insurance solicitor.

(b) Upon the termination of all appointments, or all endorsements naming the licensee on the license of an organization licensee, and the cancellation of the bond required pursuant to Section 1662 if acting as a broker, the permanent license shall not be canceled, but shall become inactive. It may be renewed pursuant to Section 1718. It may be reactivated at any time prior to its expiration by the filing of a new appointment pursuant to this section, Section 1707, and Section 1751.3, or the filing of a new bond pursuant to Section 1662. An inactive license shall not permit its holder to transact any insurance for which a valid, active license is required.

(c) Upon the termination of all appointments of a person licensed under a certificate of convenience, such certificate shall be canceled and shall be returned by its lawful custodian to the commissioner.



(d) A fire and casualty broker-agent appointing an insurance solicitor pursuant to this section, if a natural person, must be the holder of a permanent license to act as a fire and casualty broker-agent or the holder of a certificate of convenience so to act issued pursuant to either subdivision (a) or (b) of Section 1685. If the fire and casualty broker-agent is an organization, it must be the holder of a permanent license.

(e) The filing of an incomplete or deficient action notice with the department shall require the filing of an amended, complete action notice, together with the payment of the fee therefor specified in subdivision (n) of Section 1751.

(f) No notice of appointment appointing a solicitor shall be filed with the commissioner unless a notice of termination of appointment has been filed with the commissioner for any previously filed notice of appointment of solicitor.

SEC. 16. Section 1714 of the Insurance Code is repealed.

SEC. 17. Section 1750.5 of the Insurance Code is amended to read:

1750.5. The fee for filing an application for a nonresident license described in Section 1639, and renewal thereof or changes in outstanding licenses, shall be the same amount that is established in this code for a resident license of the same type, except that if the applicant's state, territory of the United States, commonwealth, or Canadian province of residence has fees for any nonresident insurance license greater than for a like resident license the fee for filing an application for a nonresident license shall not be less than the amount a California resident would be required to pay to obtain a like license for a like term in the applicant's state, territory of the United States, commonwealth, or Canadian province of residence.

The fee for filing an application for a nonresident limited lines license described in Section 1639, and renewal thereof or changes in outstanding licenses, shall be the same amount that is established in this code for a resident fire and casualty broker-agent license. This section shall not be construed to require a countersignature on a policy or contract, or the payment of a countersignature fee.

SEC. 18. Section 1765.2 of the Insurance Code is amended to read:



1765.2. (a) A license under this chapter may be issued to an individual or any legal business entity. If issued to a business entity or individual that maintains more than one surplus line office in this state, it shall name the natural person or persons located at each surplus line office maintained in this state by the licensee who is or are to be responsible for the proper discharge at each office of all duties placed upon the licensee acting as a surplus line broker or who transacts insurance with the public as distinguished from insurance producers. Each natural person shall meet all of the requirements for the license.

(b) Every application for a license filed by a corporation shall contain the names and addresses of all stockholders owning 10 percent or more of the corporation's stock, and of all officers and directors of the corporation. Every licensed corporation shall file a written notice with the commissioner of all changes, except address changes, of its stockholders who own 10 percent or more of the corporation's stock and of all officers and directors of the corporation.

SEC. 19. Section 1767 of the Insurance Code is amended to read:

1767. A resident surplus line broker at all times shall maintain in good faith an office in this state and if he or she maintains more than one surplus line office in this state, he or she shall designate one of them as his or her principal surplus line office in this state and shall notify the commissioner of that designation. He or she shall report to the commissioner the addresses of all surplus line offices maintained by him or her in this state and any change in location of any of those offices. A nonresident surplus line broker at all times shall maintain in good faith an office in the state or territory of the United States in which he or she is licensed as a resident surplus line broker, and if he or she maintains more than one surplus line office in that state, he or she shall designate one of them as his or her principal surplus line office in that state and shall notify the commissioner of the designation. A resident licensee shall report to the commissioner the addresses of all surplus line offices maintained in this state and any change in location of any of those offices. Nonresident licensees shall report to the commissioner the addresses of all surplus line offices maintained in the state or territory of the United States in which the



resident surplus line license is maintained and any change in location of any of those offices.

SEC. 20. Section 1768 of the Insurance Code is amended to read:

1768. A resident surplus line broker shall keep in this state complete records of the business transacted by him or her with nonadmitted insurers under his or her license as a surplus line broker. A nonresident surplus line broker shall keep in the state where he or she is licensed as a resident surplus line broker complete records of the business transacted by him or her with nonadmitted insurers under his or her California nonresident surplus line broker license. After notice and hearing, the commissioner shall promulgate reasonable rules and regulations specifying the manner and type of records to be maintained by surplus line brokers and the location or locations where those records shall be kept.

SEC. 21. Section 1781.3 of the Insurance Code is amended to read:

1781.3. (a) No person, firm, association, or corporation shall act as a reinsurance intermediary-broker in this state unless licensed as follows:

(1) If the reinsurance intermediary-broker maintains an office, (either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation) in this state, the reinsurance intermediary-broker shall be a licensed producer in this state.

(2) If the reinsurance intermediary-broker does not maintain an office in this state, the reinsurance intermediary-broker shall be a licensed producer in this state or another state having a law substantially similar to this chapter or shall be licensed in this state as a nonresident reinsurance intermediary.

(3) Unless denied licensure pursuant to subdivision (e), a nonresident person shall receive a reinsurance intermediary-broker license if all of the following requirements are met:

(A) The person is currently licensed and in good standing in the state, territory of the United States, or province of Canada where he or she is licensed as a resident reinsurance intermediary-broker.

(B) The person has submitted the proper request for licensure and has paid the fees required by paragraph (3) of subdivision (d).



(C) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the state, territory of the United States, or province of Canada where he or she is licensed as a resident, or submitted or transmitted to the commissioner a completed National Association of Insurance Commissioners Uniform Nonresident Application.

(D) The state, territory of the United States, or province of Canada where the person holds a resident reinsurance intermediary-broker license awards nonresident reinsurance intermediary-broker licenses to residents of this state on the same basis.

(b) No person, firm, association, or corporation shall act as a reinsurance intermediary-manager:

(1) For a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state.

(2) In this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state.

(3) In another state for a nondomestic admitted insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or in another state having a law substantially similar to this chapter or the person is licensed in this state as a nonresident reinsurance intermediary.

(4) Unless denied licensure pursuant to subdivision (e), a nonresident person shall receive a reinsurance intermediary-manager license if all of the following requirements are met:

(A) The person is currently licensed and in good standing in the state, territory of the United States, or province of Canada where he or she is licensed as a resident reinsurance intermediary-manager.

(B) The person has submitted the proper request for licensure and has paid the fees required by paragraph (3) of subdivision (d).

(C) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the state, territory of the United States, or province



of Canada where he or she is licensed as a resident, or submitted or transmitted to the commissioner a completed National Association of Insurance Commissioners Uniform Nonresident Application.

(D) The state, territory of the United States, or province of Canada where the person holds a resident reinsurance intermediary-manager license awards nonresident reinsurance intermediary-manager licenses to residents of this state on the same basis.

(c) The commissioner may require a reinsurance intermediary-manager subject to subdivision (b) to do both of the following:

(1) File a fidelity bond issued by an admitted surety in an amount determined by the commissioner for the protection of the reinsurer.

(2) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(d) (1) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the applicable requirements of this chapter. This license, when issued to a firm or association, authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all these persons shall be named in the application and any supplements thereto. This license, when issued to a corporation, authorizes all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all these persons shall be named in the application and any supplements thereto.

(2) If the applicant for a reinsurance intermediary license is a nonresident, it shall be a condition precedent to receiving or holding a license that (A) the applicant shall designate the commissioner as his or her agent for service of process in the manner, and with the same legal effect, provided for by this chapter for designation of service of process upon unauthorized insurers and (B) the applicant shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the applicant as a nonresident reinsurance intermediary may be served. A licensee subject to this paragraph shall promptly notify the commissioner



in writing of every change in its designated agent for service of process, and any change shall not become effective until acknowledged by the commissioner.

(3) Any application for licensure as a reinsurance intermediary under this subdivision shall be made on a form prescribed by the commissioner and shall be accompanied by an application fee of two hundred fifty dollars (\$250).

(e) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, any person named on the application, or any member, principal, officer, or director of the applicant, is determined by the commissioner not to be trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of a reinsurance intermediary license, or has failed to comply with any prerequisite for the issuance of such a license. Upon written request therefor, the commissioner shall furnish the applicant with a summary of the basis for refusal to issue a reinsurance intermediary license, which document shall not be subject to inspection as a public record.

(f) Licensed attorneys at law when acting in their professional capacity as such shall be exempt from this section.

(g) A reinsurance intermediary-manager, when acting in that capacity and in compliance with this chapter, shall not be required to separately comply with Article 5.4 (commencing with Section 769.80) of Chapter 1 (if added by Senate Bill 1039 of the 1991–92 Regular Session) in order to engage in conduct authorized by both this chapter and that article.

SEC. 22. Section 10234.93 of the Insurance Code is amended to read:

10234.93. (a) Every insurer of long-term care in California shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Submit to the commissioner within six months of the effective date of this act, a list of all agents or other insurer representatives authorized to solicit individual consumers for the



sale of long-term care insurance. These submissions shall be updated at least semiannually.

(4) Provide the following training and require that each agent or other insurer representative authorized to solicit individual consumers for the sale of long-term care insurance shall satisfactorily complete the following training requirements which shall be part of, and not in addition to, the continuing education requirements in Section 1749.3:

(A) For licensees issued a license after January 1, 1992, eight hours of training in each of the first four 12-month periods beginning from the date of original license issuance and thereafter and eight hours of training prior to each license renewal.

(B) For licensees issued a license before January 1, 1992, eight hours of training prior to each license renewal.

Licensees shall complete the initial training requirements of this section prior to being authorized to solicit individual consumers for the sale of long-term care insurance.

The training required by this section shall consist of topics related to long-term care services and long-term care insurance, including, but not limited to, California regulations and requirements, available long-term care services and facilities, changes or improvements in services or facilities, and alternatives to the purchase of private long-term care insurance. On or before July 1, 1998, the following additional training topics shall be required: differences in eligibility for benefits and tax treatment between policies intended to be federally qualified and those not intended to be federally qualified, the effect of inflation in eroding the value of benefits and the importance of inflation protection, and NAIC consumer suitability standards and guidelines.

(5) Display prominently on page one of the policy or certificate and the outline of coverage: “Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.”

(6) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.



(7) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subdivision.

(8) Every insurer shall provide to a prospective applicant, at the time of solicitation, written notice that the Health Insurance Counseling and Advocacy Program (HICAP) provides health insurance counseling to senior California residents free of charge. Every agent shall provide the name, address, and telephone number of the local HICAP program and the statewide HICAP number, 1-800-434-0222.

(9) Provide a copy of the long-term care insurance shoppers guide developed by the California Department of Aging to each prospective applicant prior to the presentation of an application or enrollment form for insurance.

(b) In addition to other unfair trade practices, including those identified in this code, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a



crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2002

Governor

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