

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2956

Introduced by Assembly Member Coto

February 22, 2008

An act to ~~add Section 1623.5 to~~ amend Sections 1623, 1704, 1731, and 1732 of, and to add Section 1623.1 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2956, as amended, Coto. Insurance: agents and brokers.

Existing law provides that an insurance agent is a person authorized by and on behalf of an insurer to transact all classes of insurance, except life insurance. Existing law provides that an insurance broker is a person who, for compensation and on behalf of another person, transacts insurance other than life insurance with, but not on behalf of, an insurer.

This bill would ~~provide that a determination as to whether a licensee is acting as an insurance agent or insurance broker in a particular transaction shall be determined by the totality of the circumstances of the transaction.~~ *establish a rebuttable presumption, subject to exception, that a person is acting as an insurance broker if the application shows that the person is acting as an insurance broker and is licensed to act as an insurance broker in the state in which the application is submitted. The bill would specify the grounds for rebutting the presumption.*

Existing law provides that 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.

This bill would additionally require the notice to specify the scope of the agency appointment.

Existing law provides that a person licensed as a broker-agent shall be deemed to be acting as an insurance agent in the transaction of insurance placed with those insurers for whom a notice of appointment has been filed, as specified.

This bill would additionally provide that the person would also be deemed to be acting within the express scope of the notice.

The bill would make additional conforming changes, and would state the intent of the Legislature and findings of the Legislature regarding insurance brokers.

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

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

1 SECTION 1. (a) *It is the intent of the Legislature that this act*
2 *foster a competitive marketplace for all insurance products and*
3 *services.*

4 (b) *The Legislature finds and declares that it is in the best*
5 *interest of consumers of insurance products to encourage and*
6 *maintain a variety of different insurance delivery systems that will*
7 *compete for consumers on price and service. In order to achieve*
8 *this goal, it is important to remove any ambiguity in the law*
9 *defining insurance brokers, provide circumstances wherein a*
10 *licensee can be presumed to be acting in the capacity of a broker,*
11 *and set forth circumstances where the presumption may be*
12 *rebutted.*

13 SEC. 2. *Section 1623 of the Insurance Code is amended to*
14 *read:*

15 1623. An insurance broker is a person who, for compensation
16 and on behalf of another person, transacts insurance other than life
17 insurance with, but not on behalf of, an *admitted* insurer. Every
18 application for insurance submitted by an insurance broker to an
19 *admitted* insurer shall show that the person is acting as an insurance
20 broker. ~~If the application shows that the person is acting as an~~
21 ~~insurance broker and is licensed as an insurance broker in the state~~
22 ~~in which the application is submitted, it shall be presumed, for~~
23 ~~licensing purposes only, that the person is acting as an insurance~~
24 ~~broker. It shall be presumed that the person is acting as an~~

1 insurance broker if the application shows that the person is acting
2 as an insurance broker and is licensed to act as an insurance
3 broker in the state in which the application is submitted. The
4 presumption shall not apply to those transactions in which fees
5 are charged unless the nature and the amount of all fees and the
6 fact of any insurer compensation is disclosed in an agreement
7 covering the transaction signed by the applicant. In the event that
8 any transaction involves both a retail broker and a wholesale
9 intermediary broker, the wholesale intermediary broker shall
10 satisfy its disclosure obligation under this section if it provides
11 written disclosure to the retail broker of the nature and amount
12 of its fees, and the fact of any insurer compensation it receives.
13 Nothing in this section is intended to affect any rights or remedies
14 otherwise available under the law.

15 *SEC. 3. Section 1623.1 is added to the Insurance Code, to*
16 *read:*

17 *1623.1. (a) The presumption set forth in Section 1623 may*
18 *be rebutted only in conformity with the provisions of subdivisions*
19 *(b) and (c).*

20 *(b) The presumption of broker status may be rebutted if, on the*
21 *basis of the totality of the circumstances, there is clear and*
22 *convincing evidence that the broker-agent is performing essential*
23 *insurer functions on behalf of the insurer, such as establishing*
24 *underwriting criteria, binding insurance coverage without prior*
25 *authorization of an insurer, appointing agents, or investigating*
26 *and paying claims.*

27 *(c) In determining whether the presumption set forth in Section*
28 *1623 has been rebutted in any particular case, no consideration*
29 *may be given to acts that merely benefit an insurer, including, but*
30 *not limited to the following:*

31 *(1) Actions authorized by Section 1732.*

32 *(2) Interpretation or application of underwriting or*
33 *preunderwriting criteria established by the insurer.*

34 *(3) Incidental use of an insurer's name or mark in advertising*
35 *or marketing.*

36 *(4) Contractual provisions permitting an insurer to train*
37 *brokers, or regulate or control broker conduct other than essential*
38 *insurer functions.*

39 *(5) Referral by the insurer of brokers to consumers, or*
40 *consumers to brokers.*

1 (6) *Payment by an insurer of any compensation to a broker that*
2 *has been disclosed to the consumer in conformity with Section*
3 *1623.*

4 (7) *A frequent or regular business relationship between the*
5 *broker and the insurer.*

6 SEC. 4. *Section 1704 of the Insurance Code is amended to*
7 *read:*

8 1704. (a) Life agents, travel agents, and fire and casualty
9 insurance agents shall not act as an agent of an insurer unless the
10 insurer has filed with the commissioner a notice of appointment,
11 executed by the insurer, appointing the licensee as the insurer's
12 agent, *and specifying the scope of the agency appointment.* Every
13 fire and casualty broker-agent acting in the capacity of an insurance
14 solicitor shall have filed on his or her behalf with the commissioner
15 a notice executed by an insurance agent or insurance broker
16 appointing and agreeing to employ the solicitor as an employee
17 within this state. Additional notices of appointment may be filed
18 by other insurers before the license is issued and thereafter as long
19 as the license remains in force. The authority to transact insurance
20 given to a licensee by an insurer or fire and casualty broker-agent,
21 as the case may be, by appointment shall be effective as of the date
22 the notice of appointment is signed. That authority to transact shall
23 apply to transactions occurring after that date and for the purpose
24 of determining the insurer's or fire and casualty broker-agent's
25 liability for acts of the appointed licensee. No notice of
26 appointment of a life agent, fire and casualty broker-agent, or travel
27 insurance agent shall be filed under this subdivision unless the
28 licensee being appointed has consented to that filing. Each
29 appointment made under this subdivision shall by its terms continue
30 in force until:

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

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

37 (b) Upon the termination of all appointments, or all
38 endorsements naming the licensee on the license of an organization
39 licensee, and the cancellation of the bond required pursuant to
40 Section 1662 if acting as a broker, the permanent license shall not

1 be canceled, but shall become inactive. It may be renewed pursuant
2 to Section 1718. It may be reactivated at any time prior to its
3 expiration by the filing of a new appointment pursuant to this
4 section, Section 1707, and Section 1751.3, or the filing of a new
5 bond pursuant to Section 1662. An inactive license shall not permit
6 its holder to transact any insurance for which a valid, active license
7 is required.

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

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

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

22 (f) A notice of appointment appointing a solicitor may be filed
23 by a second or subsequent fire and casualty broker-agent. The
24 broker-agent seeking to appoint the solicitor shall enter into an
25 agreement with all other fire and casualty broker-agents with whom
26 the insurance solicitor has an existing appointment. The agreement
27 shall govern how the broker-agents will determine on which fire
28 and casualty broker-agent's behalf the solicitor is working when
29 dealing with individuals who are customers of none of the fire and
30 casualty broker-agents with whom the solicitor has an appointment.
31 If the agreement does not identify which broker-agent or
32 broker-agents are liable for the act of the solicitor, all fire and
33 casualty broker-agents with whom the solicitor is appointed at the
34 time of the act shall be jointly and severally liable for that act.

35 *SEC. 5. Section 1731 of the Insurance Code is amended to*
36 *read:*

37 1731. A person licensed as a broker-agent shall be deemed to
38 be acting as an insurance agent in the transaction of insurance
39 placed with those insurers for whom a notice of appointment has
40 been filed with the Insurance Commissioner in accordance with

1 Section 1704 and is then in force, *and shall be deemed to be acting*
2 *within the express scope of that notice.*

3 *SEC. 6. Section 1732 of the Insurance Code is amended to*
4 *read:*

5 *1732. A Notwithstanding Sections 1623 and 1623.1, a person*
6 *licensed as a fire and casualty broker-agent acting as an insurance*
7 *broker may act as an insurance agent in collecting and transmitting*
8 *premium or return premium funds and delivering policies and other*
9 *documents evidencing insurance.*

10 ~~SECTION 1. Section 1623.5 is added to the Insurance Code,~~
11 ~~to read:~~

12 ~~1623.5. A determination as to whether a licensee is acting as~~
13 ~~an insurance agent or insurance broker in a particular transaction~~
14 ~~shall be determined by the totality of the circumstances of the~~
15 ~~transaction.~~