

AMENDED IN ASSEMBLY APRIL 24, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2956**

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**Introduced by Assembly Member Coto**

February 22, 2008

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An act to amend Sections ~~1623, 1704, 1731, 1621, 1623,~~ 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 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.~~

*This bill would instead provide that an insurance agent is a person who transacts insurance other than life, disability, or health insurance, on behalf of an admitted insurance company. The bill would state that it is presumed that a person is acting as an insurance broker if the person is licensed to act as an insurance broker, maintains a specified bond, and discloses specific information to the consumer. The bill would provide that the presumption of broker status may be rebutted based on the totality of the circumstances.*

*Under existing law, a person licensed as a fire and casualty broker-agent acting as an insurance broker may act as an insurance agent in collecting and transmitting premium or return premium funds and delivering policies and other documents evidencing insurance.*

*This bill, instead, would provide that a person acting as an insurance broker may, on behalf of an insurance company, collect and transmit premium or return premium and deliver policies and other documents evidencing insurance. The bill would state that performance of those functions shall not be construed to mean that the person is an insurance agent.*

~~The bill would make additional conforming changes, and would also 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~~

1 ~~compete for consumers on price and service for the benefit of~~  
2 ~~consumers.~~ In order to achieve this goal, it is important to remove  
3 any ambiguity in the law defining insurance brokers; *and* provide  
4 circumstances wherein a licensee can be presumed to be acting in  
5 the capacity of a broker; ~~and set forth circumstances where the~~  
6 ~~presumption may be rebutted.~~

7 *SEC. 2. Section 1621 of the Insurance Code is amended to*  
8 *read:*

9 1621. An insurance agent is a person ~~authorized by and on~~  
10 ~~behalf of an insurer to transact all classes of insurance, except life~~  
11 ~~insurance who transacts insurance, including 24-hour care~~  
12 ~~coverage as defined in Section 1749.02, other than life, disability,~~  
13 ~~or health insurance, on behalf of an admitted insurance company.~~  
14 The term “insurance agent” as used in this chapter does not include  
15 a life agent as defined in this article.

16 ~~SEC. 2.~~

17 *SEC. 3. Section 1623 of the Insurance Code is amended to*  
18 *read:*

19 1623. (a) An insurance broker is a person who, for  
20 compensation and on behalf of another person, transacts insurance  
21 other than life insurance with, but not on behalf of, an admitted  
22 insurer. ~~Every application for insurance submitted by an insurance~~  
23 ~~broker to an admitted insurer shall show that the person is acting~~  
24 ~~as an insurance broker.~~ It shall be presumed that the person is  
25 acting as an insurance broker if ~~the application shows that the~~  
26 ~~person is acting as an insurance broker and is licensed to act as an~~  
27 ~~insurance broker in the state in which the application is submitted.~~  
28 ~~The presumption shall not apply to those transactions in which~~  
29 ~~fees are charged unless the nature and the amount of all fees and~~  
30 ~~the fact of any insurer compensation is disclosed in an agreement~~  
31 ~~covering the transaction signed by the applicant. In the event that~~  
32 ~~any transaction involves both a retail broker and a wholesale~~  
33 ~~intermediary broker, the wholesale intermediary broker shall satisfy~~  
34 ~~its disclosure obligation under this section if it provides written~~  
35 ~~disclosure to the retail broker of the nature and amount of its fees,~~  
36 ~~and the fact of any insurer compensation it receives. Nothing in~~  
37 ~~this section is intended to affect any rights or remedies otherwise~~  
38 ~~available under the law.~~ *person is licensed to act as an insurance*  
39 *broker, maintains the bond required by this chapter, and discloses,*  
40 *in a written agreement signed by the consumer, all of the following:*

1 (1) That the person is transacting insurance on behalf of the  
2 consumer.

3 (2) A description of the basic services the person will perform  
4 as a broker.

5 (3) The amount of all broker fees being charged by the person.

6 (4) If applicable, the fact that the person may be entitled to  
7 receive compensation from the insurer, directly or indirectly, for  
8 the consumer's purchase of insurance as a consequence of the  
9 transaction.

10 (b) If a transaction involves both a retail broker and a wholesale  
11 intermediary broker, the wholesale intermediary broker shall be  
12 deemed to have satisfied its disclosure obligations under this  
13 section if it provides written disclosure to the retail broker of the  
14 criteria set forth in paragraphs (2), (3), and (4) of subdivision (a).

15 (c) The presumption of broker status may be rebutted based on  
16 the totality of the circumstances.

17 SEC. 3. Section 1623.1 is added to the Insurance Code, to read:

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

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

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

32 (1) ~~Actions authorized by Section 1732.~~

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

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

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

1 ~~(5) Referral by the insurer of brokers to consumers, or~~  
2 ~~consumers to brokers.~~

3 ~~(6) Payment by an insurer of any compensation to a broker that~~  
4 ~~has been disclosed to the consumer in conformity with Section~~  
5 ~~1623.~~

6 ~~(7) A frequent or regular business relationship between the~~  
7 ~~broker and the insurer.~~

8 SEC. 4. ~~Section 1704 of the Insurance Code is amended to~~  
9 ~~read:~~

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

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

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

39 ~~(b) Upon the termination of all appointments, or all~~  
40 ~~endorsements naming the licensee on the license of an organization~~

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

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

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

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

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

37 SEC. 5. Section 1731 of the Insurance Code is amended to  
38 read:

39 1731. A person licensed as a broker-agent shall be deemed to  
40 be acting as an insurance agent in the transaction of insurance

1 placed with those insurers for whom a notice of appointment has  
2 been filed with the Insurance Commissioner in accordance with  
3 Section 1704 and is then in force, and shall be deemed to be acting  
4 within the express scope of that notice.

5 ~~SEC. 6.~~

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

8 ~~1732. Notwithstanding Sections 1623 and 1623.1, a person~~  
9 ~~licensed as a fire and casualty broker-agent acting as an insurance~~  
10 ~~broker may act as an insurance agent in collecting and transmitting~~

11 *1732. A person acting as an insurance broker may, on behalf*  
12 *of an insurance company, collect and transmit premium or return*  
13 *premium funds and delivering and deliver policies and other*  
14 *documents evidencing insurance. Performance of those functions*  
15 *shall not be construed for any purpose to mean that the person is*  
16 *an insurance agent.*