

AMENDED IN SENATE AUGUST 7, 2008

AMENDED IN SENATE JUNE 24, 2008

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 1621, 1623, and 1732 of 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 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~~ *is rebutted if specified facts exist, or based on the totality of the circumstances, as defined.*

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 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 for the~~  
7 ~~benefit of consumers. In order to achieve this goal, it is important~~  
8 ~~to remove any ambiguity in the law defining insurance brokers~~  
9 ~~and provide circumstances wherein a licensee can be presumed to~~  
10 ~~be acting in the capacity of a broker.~~

11     ~~SEC. 2.~~

12     ~~SECTION 1.~~ Section 1621 of the Insurance Code is amended  
13 to read:

14     1621. An insurance agent is a person who transacts insurance,  
15 including 24-hour care coverage as defined in Section 1749.02,  
16 other than life, disability, or health insurance, on behalf of an  
17 admitted insurance company. The term “insurance agent” as used  
18 in this chapter does not include a life agent as defined in this article.

19     ~~SEC. 3.~~

20     ~~SEC. 2.~~ Section 1623 of the Insurance Code is amended to  
21 read:

22     1623. (a) An insurance broker is a person who, for  
23 compensation and on behalf of another person, transacts insurance

1 other than life insurance with, but not on behalf of, an admitted  
2 insurer. It shall be presumed that the person is acting as an  
3 insurance broker if the person is licensed to act as an insurance  
4 broker, maintains the bond required by this chapter, and discloses,  
5 in a written agreement signed by the consumer, all of the following:

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

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

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

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

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

20 ~~(e) The presumption of broker status may be rebutted based on  
21 the totality of the circumstances.~~

22 ~~(d) "Totality of the circumstances" means that a trier of fact  
23 determines whether the broker-agent was either an agent acting  
24 on behalf of the insurer or a broker acting on behalf of a third  
25 person. In making this determination, the trier of fact reviews all  
26 facts and circumstances, and is not limited in its review to any  
27 particular fact or factors, or required to give greater weight to any  
28 particular circumstance.~~

29 *(c) The presumption of broker status is rebutted as to any  
30 transaction in the admitted market in which any of the following  
31 is present:*

32 *(1) The licensee is appointed, pursuant to Section 1704, as an  
33 agent of the insurer for the particular class or type of insurance  
34 being transacted.*

35 *(2) The licensee has a written agreement with an insurer  
36 containing express terms that authorize the licensee to obligate  
37 the insurer without first obtaining notification from the insurer  
38 that the insurer has accepted, conditionally or unconditionally,  
39 the submitted risk.*

1 (3) *The licensee is authorized, pursuant to a written agreement*  
2 *with an insurer, to appoint other licensees as agents of the insurer,*  
3 *pursuant to Section 1704.*

4 (4) *The licensee is authorized, pursuant to a written agreement*  
5 *with an insurer, to pay claims on behalf of the insurer.*

6 (d) *In all other cases, the presumption of broker status is*  
7 *rebutted based on the totality of the circumstances indicating that*  
8 *the broker-agent is acting on behalf of the insurer.*

9 (e) *For purposes of this section, “totality of the circumstances”*  
10 *means evidence indicating whether a broker-agent was acting on*  
11 *behalf of the insurer or was acting on behalf of a third person. In*  
12 *determining the totality of circumstances, all relevant facts and*  
13 *circumstances shall be reviewed and the review is not limited to*  
14 *any particular fact or factors and this section does not require*  
15 *that any particular circumstance receive greater or lesser weight.*

16 ~~SEC. 4.~~

17 SEC. 3. Section 1732 of the Insurance Code is amended to  
18 read:

19 1732. A person acting as an insurance broker may, on behalf  
20 of an insurance company, collect and transmit premium or return  
21 premium and deliver policies and other documents evidencing  
22 insurance. Performance of those functions shall not be construed  
23 for any purpose to mean that the person is an insurance agent.