

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 736

Introduced by Assembly Member Charles Calderon

February 17, 2011

An act to amend ~~Section~~ *Sections 1623, 1626, 1637, 1639, and 1874.90* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 736, as amended, Charles Calderon. Insurance: *licenses*: fraud prevention.

(1) *Existing law provides that an insurance broker is a person who, for compensation and on behalf of another person, transacts insurance but prohibits an insurance broker from transacting life, disability, or health insurance.*

This bill would remove the prohibition on transacting disability and health insurance.

(2) *Existing law authorizes a life licensee to act as a life agent and to hold certain types of insurance licenses, including life-only and accident and health.*

This bill would remove the restriction that a life licensee only be a life agent, and would authorize a life licensee transacting accident and health insurance to be an agent, or a broker, or both.

Existing

(3) *Existing law authorizes the Insurance Commissioner to declare any region of the state as an auto insurance fraud crisis area upon making a finding that auto insurance fraud is endemic to the area, as specified.*

This bill would require the commissioner to provide a copy of the declaration concerning a region's designation as a fraud crisis area to

the respective chairs of the Senate and Assembly standing committees with primary jurisdiction over matters of public policy involving insurance, as specified.

(4) *This bill would make conforming changes.*

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

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

1 SECTION 1. Section 1623 of the Insurance Code is amended
 2 to read:

3 1623. (a) An insurance broker is a person who, for
 4 compensation and on behalf of another person, transacts insurance
 5 other than life, ~~disability, or health~~ insurance with, but not on
 6 behalf of, an admitted insurer. It shall be presumed that the person
 7 is acting as an insurance broker if the person is licensed to act as
 8 an insurance broker, maintains the bond required by this chapter,
 9 and discloses, in a written agreement signed by the consumer, all
 10 of the following:

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

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

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

16 (4) If applicable, the fact that the person may be entitled to
 17 receive compensation from the insurer, directly or indirectly, for
 18 the consumer’s purchase of insurance as a consequence of the
 19 transaction.

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

25 (c) The presumption of broker status is rebutted as to any
 26 transaction in the admitted market in which any of the following
 27 is present:

28 (1) The licensee is appointed, pursuant to Section 1704, as an
 29 agent of the insurer for the particular class or type of insurance
 30 being transacted.

1 (2) The licensee has a written agreement with an insurer
2 containing express terms that authorize the licensee to obligate the
3 insurer without first obtaining notification from the insurer that
4 the insurer has accepted, conditionally or unconditionally, the
5 submitted risk.

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

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

11 (d) In all other cases, the presumption of broker status is rebutted
12 based on the totality of the circumstances indicating that the
13 broker-agent is acting on behalf of the insurer.

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

21 *SEC. 2. Section 1626 of the Insurance Code is amended to*
22 *read:*

23 1626. (a) A life licensee is a person authorized to act as a life
24 agent. Licenses to act as a life agent under this chapter shall be of
25 the following types in one or more of the following capacities:

26 (1) Life-only, which license shall entitle the licensee to transact
27 insurance coverage on human lives, including benefits of
28 endowment and annuities, and may include benefits in the event
29 of death or dismemberment by accident and benefits for disability
30 income.

31 (2) Accident and health, which license shall entitle the licensee
32 to transact insurance coverage for sickness, bodily injury, or
33 accidental death and may include benefits for disability income.

34 (b) An accident and health-agent licensee also is authorized to
35 transact 24-hour care coverage, as defined in Section 1749.02,
36 pursuant to subdivision ~~(d)~~ (f) of Section 1749 or subdivision (d)
37 of Section 1749.33.

38 (c) A life licensee authorized to transact accident and health
39 insurance may be an agent, or a broker, or both.

1 SEC. 3. Section 1637 of the Insurance Code is amended to
2 read:

3 1637. An organization may hold any license or licenses
4 necessary to act in the following capacities under this chapter and
5 no others:

- 6 (a) A license to act as a life-only agent.
- 7 (b) A license to act as an accident and health agent.
- 8 (c) A license to act as a property broker-agent.
- 9 (d) A license to act as a casualty broker-agent.
- 10 (e) A license to act as a cargo shipper’s agent.
- 11 (f) A license to act as a personal lines licensee.
- 12 (g) A license to act as a credit insurance agent.
- 13 (h) A license to act as a rental car agent.
- 14 (i) A nonresident license to act as a limited lines licensee
15 pursuant to subdivision (i) of Section 1639.
- 16 (j) A license to act as a self-service storage agent.
- 17 (k) A license to act as a limited lines automobile insurance agent.
- 18 (l) A license to act as an accident and health broker.

19 SEC. 4. Section 1639 of the Insurance Code is amended to
20 read:

21 1639. The following types of licenses under this chapter may
22 be issued to nonresidents:

- 23 (a) A property broker-agent or a casualty broker-agent if the
24 nonresident is duly licensed to transact those lines of insurance
25 described in Section 1625, under the laws of the state, territory of
26 the United States, or province of Canada where the resident license
27 is maintained.
- 28 (b) A personal lines broker-agent if the nonresident is duly
29 licensed to transact those lines of insurance described in Section
30 1625.5, under the laws of the state, territory of the United States,
31 or province of Canada where the resident license is maintained.
- 32 (c) A life-only agent ~~or~~, an accident and health agent, *or an*
33 *accident and health broker*, if the nonresident possesses a resident
34 license in another state, territory of the United States, or province
35 of Canada to transact life insurance or disability insurance.
- 36 (d) A nonresident life-only agent may be granted authority to
37 transact variable contracts if he or she has been granted that
38 authority by the state where the resident license is maintained.

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

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

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

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

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

20 (j) A self-service storage agent if the nonresident holds that type
21 of license in the state, territory of the United States, or province
22 of Canada where the resident license is maintained.

23 **SECTION 4.**

24 *SEC. 5.* Section 1874.90 of the Insurance Code is amended to
25 read:

26 1874.90. (a) The commissioner may declare any region of the
27 state as an auto insurance fraud crisis area upon making a finding
28 that auto insurance fraud is endemic to the area. That declaration
29 of an auto insurance fraud crisis area shall be in effect for not more
30 than two years, unless extended or renewed by the commissioner.
31 Auto insurance fraud is endemic to an area if the commissioner
32 determines that organized automobile fraud activity exists in the
33 area and contributes significantly to the cost of automobile
34 insurance in that area.

35 (b) Notwithstanding Section 10231.5 of the Government Code,
36 the commissioner shall, at any time he or she issues a declaration
37 pursuant to subdivision (a), provide a copy of the declaration
38 concerning a region's designation as a fraud crisis area to the
39 respective chairs of the Senate and Assembly standing committees
40 with primary jurisdiction over matters of public policy involving

- 1 insurance. The declaration shall include a summary of the key
- 2 findings that support the determination the insurance fraud is
- 3 endemic to the area.

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