

ASSEMBLY BILL

No. 2084

Introduced by Assembly Member Solorio

February 23, 2012

An act to amend Section 1764.1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2084, as introduced, Solorio. Insurance: nonadmitted insurer: surplus line brokers: disclosure.

(1) Existing law requires every nonadmitted insurer, in the case of insurance to be purchased by a home state insured, and every surplus line broker, in the case of any insurance with a nonadmitted carrier for a home state insured to be transacted by the surplus line broker, to obtain, at the time of accepting an application for an insurance policy, other than a renewal of that policy, the signature of the applicant on a disclosure statement. An industrial insured is not required to receive the disclosure except on confirmation of insurance, the certificate of placement, or the policy. An industrial insured is defined as, among other things, having 25 or more employees on average during the prior 12 months and having aggregate annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than \$25,000. A violation of this requirement is a crime punishable by imprisonment in a county jail as either a misdemeanor or a felony or by a fine of not more than \$10,000, or by both that imprisonment and fine.

This bill would change the definition of industrial insured by increasing the number of employees an industrial insured is required to have to 50 and by increasing the industrial insured's aggregate annual

premiums for insurance for all risks other than workers' compensation and health coverage to no less than \$50,000. Because this bill would expand the scope of an existing crime, it would create a state-mandated local program.

(2) 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.

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

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

1 SECTION 1. Section 1764.1 of the Insurance Code is amended
2 to read:
3 1764.1. (a) (1) Every nonadmitted insurer, in the case of
4 insurance to be purchased by a home state insured pursuant to
5 Section 1760, and surplus line broker, in the case of any insurance
6 with a nonadmitted carrier for a home state insured to be transacted
7 by the surplus line broker, shall be responsible to ensure that, at
8 the time of accepting an application for an insurance policy, other
9 than a renewal of that policy, issued by a nonadmitted insurer, the
10 signature of the applicant on the disclosure statement set forth in
11 subdivision (b) is obtained. In fulfillment of this responsibility,
12 the nonadmitted insurer and the surplus line broker may rely, if it
13 is reasonable under all the circumstances to do so, on the disclosure
14 statement received from a licensee involved in the transaction as
15 prima facie evidence that the disclosure statement and appropriate
16 signature from the applicant have been obtained. The surplus line
17 broker shall maintain a copy of the signed disclosure statement in
18 his or her records for a period of at least five years. These records
19 shall be made available to the commissioner and the insured upon
20 request. This disclosure shall be signed by the applicant, and is
21 not subject to any limited power of attorney agreement between
22 the applicant and an agent or broker, or a surplus line broker. The
23 disclosure statement shall be in boldface 16-point type on a
24 freestanding document. In addition, every policy issued by a
25 nonadmitted insurer and every certificate evidencing the placement
26 of insurance shall contain, or have affixed to it by the insurer or

1 surplus line broker, the disclosure statement set forth in subdivision
2 (b) in boldface 16-point type on the front page of the policy.

3 (2) In a case in which the applicant has not received and
4 completed the signed disclosure form required by this section, he
5 or she may cancel the insurance so placed. The cancellation shall
6 be on a pro rata basis as to premium, and the applicant shall be
7 entitled to the return of any broker’s fees charged for the placement.

8 (b) The following notice shall be provided to home state insureds
9 and home state insured applicants for insurance as provided by
10 subdivision (a), and shall be printed in English and in the language
11 principally used by the surplus line broker and nonadmitted insurer
12 to advertise, solicit, or negotiate the sale and purchase of surplus
13 line insurance. The surplus line broker and nonadmitted insurer
14 shall use the appropriate bracketed language for application and
15 issued policy disclosures:

16
17
18 “NOTICE:

19
20 1. THE INSURANCE POLICY THAT YOU [HAVE
21 PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING
22 ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE
23 STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED
24 “NONADMITTED” OR “SURPLUS LINE” INSURERS.

25 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL
26 SOLVENCY REGULATION AND ENFORCEMENT THAT
27 APPLY TO CALIFORNIA LICENSED INSURERS.

28 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF
29 THE INSURANCE GUARANTEE FUNDS CREATED BY
30 CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL
31 NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF
32 THE INSURER BECOMES INSOLVENT AND IS UNABLE
33 TO MAKE PAYMENTS AS PROMISED.

34 4. THE INSURER SHOULD BE LICENSED EITHER AS A
35 FOREIGN INSURER IN ANOTHER STATE IN THE UNITED
36 STATES OR AS A NON-UNITED STATES (ALIEN) INSURER.
37 YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE
38 AGENT, BROKER, OR “SURPLUS LINE” BROKER OR
39 CONTACT THE CALIFORNIA DEPARTMENT OF
40 INSURANCE AT THE FOLLOWING TOLL-FREE

1 TELEPHONE NUMBER____. ASK WHETHER OR NOT THE
 2 INSURER IS LICENSED AS A FOREIGN OR NON-UNITED
 3 STATES (ALIEN) INSURER AND FOR ADDITIONAL
 4 INFORMATION ABOUT THE INSURER. YOU MAY ALSO
 5 CONTACT THE NAIC’S INTERNET WEB SITE AT
 6 WWW.NAIC.ORG.

7 5. FOREIGN INSURERS SHOULD BE LICENSED BY A
 8 STATE IN THE UNITED STATES AND YOU MAY CONTACT
 9 THAT STATE’S DEPARTMENT OF INSURANCE TO OBTAIN
 10 MORE INFORMATION ABOUT THAT INSURER.

11 6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE
 12 INSURER SHOULD BE LICENSED BY A COUNTRY
 13 OUTSIDE OF THE UNITED STATES AND SHOULD BE ON
 14 THE NAIC’S INTERNATIONAL INSURERS DEPARTMENT
 15 (IID) LISTING OF APPROVED NONADMITTED
 16 NON-UNITED STATES INSURERS. ASK YOUR AGENT,
 17 BROKER, OR “SURPLUS LINE” BROKER TO OBTAIN MORE
 18 INFORMATION ABOUT THAT INSURER.

19 7. CALIFORNIA MAINTAINS A LIST OF APPROVED
 20 SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER
 21 IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST
 22 AT THE INTERNET WEB SITE OF THE CALIFORNIA
 23 DEPARTMENT OF INSURANCE :
 24 WWW.INSURANCE.CA.GOV.

25 8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE
 26 INSURANCE POLICY YOU HAVE PURCHASED BE BOUND
 27 IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE
 28 WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR
 29 BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE
 30 WITHIN TWO BUSINESS DAYS, AND YOU DID NOT
 31 RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR
 32 YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME
 33 EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS
 34 POLICY WITHIN FIVE DAYS OF RECEIVING THIS
 35 DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM
 36 WILL BE PRORATED AND ANY BROKER’S FEE CHARGED
 37 FOR THIS INSURANCE WILL BE RETURNED TO YOU.”

38
 39 (c) When a contract is issued to an industrial insured, neither
 40 the nonadmitted insurer nor the surplus line broker is required to

1 provide the notice required in this section except on the
2 confirmation of insurance, the certificate of placement, or the
3 policy, whichever is first provided to the insured, nor is the insurer
4 or surplus line broker required to obtain the insured's signature.
5 The producer shall ensure that the notice affixed to the confirmation
6 of insurance, certificate of placement, or the policy is provided to
7 the insured. The producer shall insert the current toll-free telephone
8 number of the Department of Insurance as provided in paragraph
9 5 of the notice.

10 (1) An industrial insured is an insured:

11 (A) ~~Which~~ *That* employs at least ~~25~~ 50 employees on average
12 during the prior 12 months; and

13 (B) ~~Which~~ *That* has aggregate annual premiums for insurance
14 for all risks other than workers' compensation and health coverage
15 totaling no less than ~~twenty-five thousand dollars (\$25,000)~~ *fifty*
16 *thousand dollars (\$50,000)*; or

17 (C) ~~Which~~ *That* obtains insurance through the services of a
18 full-time employee acting as an insurance manager or a
19 continuously retained insurance consultant. A "continuously
20 retained insurance consultant" does not include: (i) an agent or
21 broker through whom the insurance is being placed, (ii) a subagent
22 or subproducer involved in the transaction, or (iii) an agent or
23 broker that is a business organization employing or contracting
24 with a person mentioned in clauses (i) and (ii).

25 (2) The surplus line broker shall be responsible to ensure that
26 the applicant is an industrial insured. A surplus line broker who
27 reasonably relies on information provided in good faith by the
28 applicant, whether directly or through the producer, shall be
29 deemed to be in compliance with this requirement.

30 (d) For purposes of compliance with the requirement of
31 subdivision (a) that the signature of the applicant be obtained, the
32 following shall apply:

33 (1) If the insurance transaction is not conducted at an in-person,
34 face-to-face meeting, the applicant's signature on the disclosure
35 form may be transmitted by the applicant to the agent or broker
36 via facsimile or comparable electronic transmittal.

37 (2) In the case of commercial lines coverage, or personal
38 insurance coverage subject to Section 675 and any umbrella
39 coverage associated therewith, where an applicant requires that
40 insurance coverage be bound immediately, either because existing

1 coverage will lapse within two business days of the time the
2 insurance is bound or because the applicant is required to have
3 coverage in place within two business days, and the applicant
4 cannot meet in person with the agent or broker to sign the
5 disclosure form, the agent or broker may obtain the signature of
6 the applicant within five days of binding coverage, provided that
7 the applicant may cancel the insurance so placed within five days
8 of receiving the disclosure form from the agent or broker. The
9 cancellation shall be on a pro rata basis, and the applicant shall be
10 entitled to the rescission or return of any broker's fees charged for
11 the placement. When a policy is canceled, the broker shall inform
12 the applicant that the broker's fee must be returned and that the
13 premium must be prorated.

14 (e) Notwithstanding subdivision (a), this section shall not apply
15 to insurance issued or delivered in this state by a nonadmitted
16 Mexican insurer by and through a surplus line broker affording
17 coverage exclusively in the Republic of Mexico on property located
18 temporarily or permanently in, or operations conducted temporarily
19 or permanently within, the Republic of Mexico.

20 SEC. 2. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.