

AMENDED IN ASSEMBLY APRIL 12, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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.~~ *An act to amend Section 10270.2 of, and to add Section 10270.2.5 to, the Insurance Code, relating to insurance.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2084, as amended, Solorio. ~~Insurance: nonadmitted insurer: surplus line brokers: disclosure.~~ *Blanket insurance.*

Existing law provides that blanket insurance is that form of insurance providing coverage for specified circumstances and insuring by describing all persons within a class of persons defined in a policy issued to a master policyholder, and not by specifically naming the persons covered. Under existing law, the permitted types of blanket insurance are those where the blanket policy is issued to specified entities, including, but not limited to, a volunteer fire company providing benefits to members only in the event of accident incurred while performing actions incident to such membership and a proprietor or sponsor of an organized camping institution providing benefits to campers or persons responsible for their support for death or dismemberment resulting from accident, or for hospital, medical, surgical, or nursing expenses resulting from accident or sickness related to the camper's specified connection with the camping institution.

This bill would revise and recast those above entities to instead include (1) a volunteer or governmental fire department, emergency medical services company, or similar volunteer or governmental

organization providing benefits to members or participants only in the event of accident incurred while performing actions incident to an activity or operation sponsored or supervised by the department, company, or organization and (2) a sports team or camp, as specified, providing benefits to participants, campers, and other specified persons responsible for their support for death or dismemberment resulting from accident, or for hospital, medical, surgical, or nursing expenses resulting from specified accident or sickness related to the participants, campers, or other specified person's connection with the sports team or camp, as specified.

This bill would additionally specify other permitted types of blanket insurance issued to specified entities that include, but are not limited to, (1) an employer providing accident benefits to any group of workers, dependents, or guests, limited by reference to specified hazards incident to activities or operations of the employer, (2) any common carrier or any operator, owner, or lessor of a means of transportation providing accident benefits to any specified group of persons who may become lessees or passengers limited by reference to travel status, and (3) an entertainment production company providing accident benefits to any group of participants, volunteers, audience members, contestants, employees, or independent contractors while engaged in any activity or operation of the entertainment production company.

Existing law prohibits a person from transacting any class of insurance business in this state without first being an admitted insurer. Under existing law, admission is secured by procuring a certificate of authority from the Insurance Commissioner. Existing law authorizes the above-described blanket policies, among others, to provide that the cost of the insurance coverage is required to be paid by either the policyholder, or the individuals insured or their parents or guardians, payable through the policyholder. Existing law prohibits a blanket policy from being issued until approved as to substance and form by the commissioner.

This bill would extend these provisions to the newly established permitted types of blanket insurance described above. The bill would also authorize the commissioner to add to the list of entities that may be eligible to purchase blanket insurance for any risk or class of risks, relating to accident benefits which may be properly eligible for blanket insurance, as specified.

~~(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-no*.

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

- 1 SECTION 1. Section 10270.2 of the Insurance Code is amended
- 2 to read:
- 3 10270.2. Blanket insurance is that form of insurance providing
- 4 coverage for specified circumstances and insuring by description
- 5 all or nearly all persons within a class of persons defined in a policy
- 6 issued to a master policyholder, and not by specifically naming
- 7 the persons covered (by certificate or otherwise, although a
- 8 statement of the coverage provided may be given, or required by
- 9 the policy to be given to persons eligible). The permitted types of

1 blanket insurance are those where the blanket policy is issued to
 2 any of the following:

3 (a) A volunteer *or governmental fire-company department,*
 4 *emergency medical services company, or similar volunteer or*
 5 *governmental organization* providing benefits to members *or*
 6 *participants* only in the event of accident incurred while performing
 7 actions incident to ~~such membership~~ *an activity or operation*
 8 *sponsored or supervised by the department, company, or*
 9 *organization.*

10 (b) A college, school, or other institution of learning, a school
 11 district or districts or school jurisdictional unit, or to the head,
 12 principal, or governing board of any such educational unit who or
 13 which shall be deemed the policyholder; providing benefits to
 14 students without necessarily any restriction as to activity, time, or
 15 place, or to teachers or employees while performing actions
 16 incident to special duties, such as at camps, at summer playgrounds,
 17 or during tours or excursions; and providing benefits to such
 18 students, teachers, or employees, and spouses and dependents of
 19 such students, teachers, and employees, for death or
 20 dismemberment resulting from accident or for hospital, medical,
 21 surgical, drug, or nursing expenses resulting from accident or
 22 sickness.

23 (c) A ~~proprietor or sponsor of an organized camping institution,~~
 24 *sports team, camp, or sponsor; or proprietor thereof,* who shall
 25 be deemed the policyholder, providing benefits to *sports team*
 26 *participants or campers, employees, officials, or supervisors,* or
 27 persons responsible for their support for death or dismemberment
 28 resulting from accident, or for hospital, medical, surgical, or
 29 nursing expenses resulting from accident to ~~such those participants,~~
 30 *campers, employees, officials, or supervisors, or persons*
 31 *responsible for their support,* or arising out of sickness of ~~such~~
 32 *those participants, campers, employees, officials, or supervisors,*
 33 *or persons responsible for their support,* provided the accident or
 34 the first manifestation of such sickness occurs while ~~such those~~
 35 *participants, campers, employees, officials, or supervisors, or*
 36 *persons responsible for their support* are in or on the buildings or
 37 premises of the *sports team or camp-institution,* or being
 38 transported between their homes and the *sports team or camp*
 39 ~~institution,~~ or while at any other place as an incident to *sports*

1 *team-sponsored or camp-sponsored activities or while being*
2 *transported to, from, or between such those places.*

3 (d) To a newspaper, farm paper, magazine, or other periodical
4 publication, which shall be deemed the policyholder, providing
5 benefits for independent contractors, such as *carriers*, newsboys,
6 dealers, distributors, wholesalers, or others engaged in the sale,
7 distribution, collecting for, or other activities pertaining to, the
8 marketing and delivery of such publications, including attendance
9 at a coaching school or participation as a member of a trip
10 organized, supervised, and sponsored as a reward for meritorious
11 service, on account of loss resulting from accident or sickness,
12 such benefit to be payable to such independent contractors or to
13 their parents, guardians, or other persons responsible for their
14 support.

15 When the premium for the insurance is paid by the person
16 insured, he may, upon request, obtain from the insurer in certificate
17 form a copy of the policy.

18 (e) Any religious, charitable, recreational, educational, athletic
19 or civic organization, or branch thereof, which shall be deemed
20 the policyholder, providing benefits to *any group of* members,
21 employees, or participants for death or dismemberment or for
22 hospital, medical, surgical, or nursing expenses all resulting from
23 accident incurred incident to specific hazards pertaining to any
24 activity or activities or operations sponsored or supervised by *or*
25 *on the premises of* such policyholder.

26 (f) To a policy issued on application of an employer, a majority
27 of the employees in this state of an employer, or both, to pay the
28 benefits afforded by a voluntary plan of unemployment
29 compensation disability insurance. Notwithstanding the provisions
30 of Section 10113, such policies may incorporate by reference any
31 of the appropriate provisions of Part 2 (commencing with Section
32 2601) of Division 1 of the Unemployment Insurance Code and the
33 authorized regulations of the Director of Employment
34 Development.

35 (g) *An employer, who shall be deemed the policyholder,*
36 *providing accident benefits to any group of workers, dependents,*
37 *or guests, limited by reference to specified hazards incident to*
38 *activities or operations of the policyholder.*

39 (h) *Any common carrier or any operator, owner, or lessor of a*
40 *means of transportation, who shall be deemed the policyholder,*

1 *providing accident benefits to any group of persons who may*
 2 *become lessees or passengers limited by reference to their travel*
 3 *status on that common carrier or that means of transportation.*

4 *(i) An entertainment production company, who shall be deemed*
 5 *the policyholder, providing accident benefits to any group of*
 6 *participants, volunteers, audience members, contestants,*
 7 *employees, or independent contractors while engaged in any*
 8 *activity or operation of the policyholder.*

9 *(j) A bank or other financial institution, a parent holding*
 10 *company of a bank or other financial institution, or to the trustee,*
 11 *trustees, or agent designated by one or more banks, financial*
 12 *institutions, or parent holding company of a bank or other financial*
 13 *institution providing accident benefits to debtors, guarantors,*
 14 *purchasers, credit card holders, checking account holders,*
 15 *mortgagors, and other customers.*

16 A “blanket policy” is any disability policy of the nature herein
 17 described sold to any of the entities described in subdivision (a),
 18 (b), (c), (d), (e), ~~(f)~~, (g), (h), (i), or (j), of this section and
 19 providing coverage for any group of persons within permitted
 20 categories defined in the policy. Policies referred to in subdivision
 21 (f) shall comply with the provisions of this section specifically
 22 referring thereto. Policies referred to in subdivision (a), (b), (c),
 23 (d), ~~(e)~~, (g), (h), (i), or (j) may provide that the cost of the
 24 insurance coverage shall be borne by either the policyholder, or
 25 the individuals insured or their parents or guardians, payable
 26 through the policyholder. In the absence of a policy provision
 27 excluding coverage for otherwise covered individuals who have
 28 not individually enrolled with the policyholder and undertaken to
 29 pay all or a specified portion of the premium allocable to such
 30 individual, such policy shall provide the described insurance for
 31 all who fall within the categories of covered individuals defined
 32 in the policy. Such policy may, but is not required to, contain
 33 provisions requiring a minimum number of participating persons
 34 or a minimum percentage of participation before the policy is
 35 effective. In the absence of such a provision coverage shall not be
 36 denied any individual otherwise eligible on those grounds.

37 No policies described in subdivision (a), (b), (c), (d), ~~(e)~~, (g),
 38 (h), (i), or (j), of this section shall be issued until approved as to
 39 substance and form by the commissioner. The commissioner may
 40 after notice and hearing promulgate such reasonable rules and

1 regulations, relating to the substance, form, and issuance of such
2 policies, as are necessary or desirable to preserve, insofar as
3 applicable, standards as respects substance, form, and issuance
4 comparable to the standards in such respects prescribed by this
5 chapter and applicable to other types of disability policies, and to
6 further the purpose or purposes for which such policies are to be
7 issued.

8 No policies described in subdivision (f) shall be issued until
9 approved as to form by the commissioner. The commissioner may
10 after notice and hearing promulgate such reasonable rules and
11 regulations, relating to the form and issuance of such policies, as
12 do not affect the substance of the coverage, and as are necessary
13 or desirable to preserve, insofar as applicable, standards as respects
14 form and issuance comparable to the standards in such respects
15 prescribed by this chapter and applicable to other types of disability
16 policies, and to further the purpose or purposes for which such
17 policies are to be issued. Notwithstanding the provisions of Section
18 10113, such policies may incorporate by reference any of the
19 appropriate provisions of Part 2 (commencing with Section 2601)
20 of Division 1 of the Unemployment Insurance Code and the
21 authorized regulations of the Director of Employment
22 Development.

23 *SEC. 2. Section 10270.2.5 is added to the Insurance Code, to*
24 *read:*

25 *10270.2.5. In addition to the permitted types of blanket*
26 *insurance issued to entities described in Section 10270.2, the*
27 *commissioner may, in his or her discretion, add other entities that*
28 *may be eligible to purchase blanket insurance for any risk or class*
29 *of risks, relating to accident benefits which may be properly*
30 *eligible for blanket insurance. The discretion of the commissioner*
31 *may be exercised on an individual risk basis or class of risks*
32 *relating to accident benefits, or both.*

33 ~~SECTION 1. Section 1764.1 of the Insurance Code is amended~~
34 ~~to read:~~

35 ~~1764.1. (a) (1) Every nonadmitted insurer, in the case of~~
36 ~~insurance to be purchased by a home state insured pursuant to~~
37 ~~Section 1760, and surplus line broker, in the case of any insurance~~
38 ~~with a nonadmitted carrier for a home state insured to be transacted~~
39 ~~by the surplus line broker, shall be responsible to ensure that, at~~
40 ~~the time of accepting an application for an insurance policy, other~~

1 than a renewal of that policy, issued by a nonadmitted insurer, the
 2 signature of the applicant on the disclosure statement set forth in
 3 subdivision (b) is obtained. In fulfillment of this responsibility,
 4 the nonadmitted insurer and the surplus line broker may rely, if it
 5 is reasonable under all the circumstances to do so, on the disclosure
 6 statement received from a licensee involved in the transaction as
 7 prima facie evidence that the disclosure statement and appropriate
 8 signature from the applicant have been obtained. The surplus line
 9 broker shall maintain a copy of the signed disclosure statement in
 10 his or her records for a period of at least five years. These records
 11 shall be made available to the commissioner and the insured upon
 12 request. This disclosure shall be signed by the applicant, and is
 13 not subject to any limited power of attorney agreement between
 14 the applicant and an agent or broker, or a surplus line broker. The
 15 disclosure statement shall be in boldface 16-point type on a
 16 freestanding document. In addition, every policy issued by a
 17 nonadmitted insurer and every certificate evidencing the placement
 18 of insurance shall contain, or have affixed to it by the insurer or
 19 surplus line broker, the disclosure statement set forth in subdivision
 20 (b) in boldface 16-point type on the front page of the policy.

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

26 (b) The following notice shall be provided to home state insureds
 27 and home state insured applicants for insurance as provided by
 28 subdivision (a), and shall be printed in English and in the language
 29 principally used by the surplus line broker and nonadmitted insurer
 30 to advertise, solicit, or negotiate the sale and purchase of surplus
 31 line insurance. The surplus line broker and nonadmitted insurer
 32 shall use the appropriate bracketed language for application and
 33 issued policy disclosures:

34
 35
 36
 37

“NOTICE:

38 1. THE INSURANCE POLICY THAT YOU [HAVE
 39 PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING
 40 ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE

1 STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED
2 “NONADMITTED” OR “SURPLUS LINE” INSURERS.

3 ~~2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL~~
4 ~~SOLVENCY REGULATION AND ENFORCEMENT THAT~~
5 ~~APPLY TO CALIFORNIA LICENSED INSURERS.~~

6 ~~3. THE INSURER DOES NOT PARTICIPATE IN ANY OF~~
7 ~~THE INSURANCE GUARANTEE FUNDS CREATED BY~~
8 ~~CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL~~
9 ~~NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF~~
10 ~~THE INSURER BECOMES INSOLVENT AND IS UNABLE~~
11 ~~TO MAKE PAYMENTS AS PROMISED.~~

12 ~~4. THE INSURER SHOULD BE LICENSED EITHER AS A~~
13 ~~FOREIGN INSURER IN ANOTHER STATE IN THE UNITED~~
14 ~~STATES OR AS A NON-UNITED STATES (ALIEN) INSURER.~~
15 ~~YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE~~
16 ~~AGENT, BROKER, OR “SURPLUS LINE” BROKER OR~~
17 ~~CONTACT THE CALIFORNIA DEPARTMENT OF~~
18 ~~INSURANCE AT THE FOLLOWING TOLL-FREE~~
19 ~~TELEPHONE NUMBER _____. ASK WHETHER OR NOT THE~~
20 ~~INSURER IS LICENSED AS A FOREIGN OR NON-UNITED~~
21 ~~STATES (ALIEN) INSURER AND FOR ADDITIONAL~~
22 ~~INFORMATION ABOUT THE INSURER. YOU MAY ALSO~~
23 ~~CONTACT THE NAIC’S INTERNET WEB SITE AT~~
24 ~~WWW.NAIC.ORG.~~

25 ~~5. FOREIGN INSURERS SHOULD BE LICENSED BY A~~
26 ~~STATE IN THE UNITED STATES AND YOU MAY CONTACT~~
27 ~~THAT STATE’S DEPARTMENT OF INSURANCE TO OBTAIN~~
28 ~~MORE INFORMATION ABOUT THAT INSURER.~~

29 ~~6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE~~
30 ~~INSURER SHOULD BE LICENSED BY A COUNTRY~~
31 ~~OUTSIDE OF THE UNITED STATES AND SHOULD BE ON~~
32 ~~THE NAIC’S INTERNATIONAL INSURERS DEPARTMENT~~
33 ~~(IID) LISTING OF APPROVED NONADMITTED~~
34 ~~NON-UNITED STATES INSURERS. ASK YOUR AGENT,~~
35 ~~BROKER, OR “SURPLUS LINE” BROKER TO OBTAIN MORE~~
36 ~~INFORMATION ABOUT THAT INSURER.~~

37 ~~7. CALIFORNIA MAINTAINS A LIST OF APPROVED~~
38 ~~SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER~~
39 ~~IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST~~
40 ~~AT THE INTERNET WEB SITE OF THE CALIFORNIA~~

1 DEPARTMENT OF INSURANCE:
2 WWW.INSURANCE.CA.GOV.

3 8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE
4 INSURANCE POLICY YOU HAVE PURCHASED BE BOUND
5 IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE
6 WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR
7 BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE
8 WITHIN TWO BUSINESS DAYS, AND YOU DID NOT
9 RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR
10 YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME
11 EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS
12 POLICY WITHIN FIVE DAYS OF RECEIVING THIS
13 DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM
14 WILL BE PRORATED AND ANY BROKER'S FEE CHARGED
15 FOR THIS INSURANCE WILL BE RETURNED TO YOU."

16
17 (e) When a contract is issued to an industrial insured, neither
18 the nonadmitted insurer nor the surplus line broker is required to
19 provide the notice required in this section except on the
20 confirmation of insurance, the certificate of placement, or the
21 policy, whichever is first provided to the insured, nor is the insurer
22 or surplus line broker required to obtain the insured's signature.
23 The producer shall ensure that the notice affixed to the confirmation
24 of insurance, certificate of placement, or the policy is provided to
25 the insured. The producer shall insert the current toll-free telephone
26 number of the Department of Insurance as provided in paragraph
27 5 of the notice.

- 28 (1) An industrial insured is an insured:
- 29 (A) That employs at least 50 employees on average during the
- 30 prior 12 months; and
- 31 (B) That has aggregate annual premiums for insurance for all
- 32 risks other than workers' compensation and health coverage
- 33 totaling no less than fifty thousand dollars (\$50,000); or
- 34 (C) That obtains insurance through the services of a full-time
- 35 employee acting as an insurance manager or a continuously retained
- 36 insurance consultant. A "continuously retained insurance
- 37 consultant" does not include: (i) an agent or broker through whom
- 38 the insurance is being placed, (ii) a subagent or subproducer
- 39 involved in the transaction, or (iii) an agent or broker that is a

1 ~~business organization employing or contracting with a person~~
2 ~~mentioned in clauses (i) and (ii).~~

3 ~~(2) The surplus line broker shall be responsible to ensure that~~
4 ~~the applicant is an industrial insured. A surplus line broker who~~
5 ~~reasonably relies on information provided in good faith by the~~
6 ~~applicant, whether directly or through the producer, shall be~~
7 ~~deemed to be in compliance with this requirement.~~

8 ~~(d) For purposes of compliance with the requirement of~~
9 ~~subdivision (a) that the signature of the applicant be obtained, the~~
10 ~~following shall apply:~~

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

15 ~~(2) In the case of commercial lines coverage, or personal~~
16 ~~insurance coverage subject to Section 675 and any umbrella~~
17 ~~coverage associated therewith, where an applicant requires that~~
18 ~~insurance coverage be bound immediately, either because existing~~
19 ~~coverage will lapse within two business days of the time the~~
20 ~~insurance is bound or because the applicant is required to have~~
21 ~~coverage in place within two business days, and the applicant~~
22 ~~cannot meet in person with the agent or broker to sign the~~
23 ~~disclosure form, the agent or broker may obtain the signature of~~
24 ~~the applicant within five days of binding coverage, provided that~~
25 ~~the applicant may cancel the insurance so placed within five days~~
26 ~~of receiving the disclosure form from the agent or broker. The~~
27 ~~cancellation shall be on a pro rata basis, and the applicant shall be~~
28 ~~entitled to the rescission or return of any broker's fees charged for~~
29 ~~the placement. When a policy is canceled, the broker shall inform~~
30 ~~the applicant that the broker's fee must be returned and that the~~
31 ~~premium must be prorated.~~

32 ~~(e) Notwithstanding subdivision (a), this section shall not apply~~
33 ~~to insurance issued or delivered in this state by a nonadmitted~~
34 ~~Mexican insurer by and through a surplus line broker affording~~
35 ~~coverage exclusively in the Republic of Mexico on property located~~
36 ~~temporarily or permanently in, or operations conducted temporarily~~
37 ~~or permanently within, the Republic of Mexico.~~

38 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
39 ~~Section 6 of Article XIII B of the California Constitution because~~
40 ~~the only costs that may be incurred by a local agency or school~~

1 ~~district will be incurred because this act creates a new crime or~~
2 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
3 ~~for a crime or infraction, within the meaning of Section 17556 of~~
4 ~~the Government Code, or changes the definition of a crime within~~
5 ~~the meaning of Section 6 of Article XIII B of the California~~
6 ~~Constitution.~~

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