

ASSEMBLY BILL

No. 1053

Introduced by Assembly Member Cooley

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1053, as introduced, Cooley. Insurance: nonadmitted insurer: surplus line brokers: disclosure.

(1) Existing law requires every nonadmitted insurer and every surplus line broker, as applicable, 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, as specified. An industrial insured is not required to receive the disclosure except on confirmation of insurance. 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 the state prison, or in a county jail for not exceeding one year or by a fine of not more than \$10,000, or by both.

This bill would change the definition of industrial insured 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 change the definition of a crime, it is 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 a limited power of attorney agreement between the
22 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
27 surplus line broker, the disclosure statement set forth in subdivision
28 (b) in boldface 16-point type on the front page of the policy.

29 (2) In a case in which the applicant has not received and
30 completed the signed disclosure form required by this section, he

1 or she may cancel the insurance so placed. The cancellation shall
2 be on a pro rata basis as to premium, and the applicant shall be
3 entitled to the return of any broker's fees charged for the placement.

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

12
13 "NOTICE:

14
15 1. THE INSURANCE POLICY THAT YOU [HAVE
16 PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING
17 ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE
18 STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED
19 "NONADMITTED" OR "SURPLUS LINE" INSURERS.

20 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL
21 SOLVENCY REGULATION AND ENFORCEMENT THAT
22 APPLY TO CALIFORNIA LICENSED INSURERS.

23 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF
24 THE INSURANCE GUARANTEE FUNDS CREATED BY
25 CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL
26 NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF
27 THE INSURER BECOMES INSOLVENT AND IS UNABLE
28 TO MAKE PAYMENTS AS PROMISED.

29 4. THE INSURER SHOULD BE LICENSED EITHER AS A
30 FOREIGN INSURER IN ANOTHER STATE IN THE UNITED
31 STATES OR AS A NON-UNITED STATES (ALIEN) INSURER.
32 YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE
33 AGENT, BROKER, OR "SURPLUS LINE" BROKER OR
34 CONTACT THE CALIFORNIA DEPARTMENT OF
35 INSURANCE AT THE FOLLOWING TOLL-FREE
36 TELEPHONE NUMBER _____. ASK WHETHER OR NOT THE
37 INSURER IS LICENSED AS A FOREIGN OR NON-UNITED
38 STATES (ALIEN) INSURER AND FOR ADDITIONAL
39 INFORMATION ABOUT THE INSURER. YOU MAY ALSO

1 CONTACT THE NAIC'S INTERNET WEB SITE AT
2 WWW.NAIC.ORG.

3 5. FOREIGN INSURERS SHOULD BE LICENSED BY A
4 STATE IN THE UNITED STATES AND YOU MAY CONTACT
5 THAT STATE'S DEPARTMENT OF INSURANCE TO OBTAIN
6 MORE INFORMATION ABOUT THAT INSURER.

7 6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE
8 INSURER SHOULD BE LICENSED BY A COUNTRY
9 OUTSIDE OF THE UNITED STATES AND SHOULD BE ON
10 THE NAIC'S INTERNATIONAL INSURERS DEPARTMENT
11 (IID) LISTING OF APPROVED NONADMITTED
12 NON-UNITED STATES INSURERS. ASK YOUR AGENT,
13 BROKER, OR "SURPLUS LINE" BROKER TO OBTAIN MORE
14 INFORMATION ABOUT THAT INSURER.

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

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

34
35 (c) When a contract is issued to an industrial insured, neither
36 the nonadmitted insurer nor the surplus line broker is required to
37 provide the notice required in this section except on the
38 confirmation of insurance, the certificate of placement, or the
39 policy, whichever is first provided to the insured, nor is the insurer
40 or surplus line broker required to obtain the insured's signature.

1 The producer shall ensure that the notice affixed to the confirmation
2 of insurance, certificate of placement, or the policy is provided to
3 the insured. The producer shall insert the current toll-free telephone
4 number of the Department of Insurance as provided in paragraph
5 4 of the notice.

6 (1) An industrial insured is an insured that does both of the
7 following:

8 (A) Employs at least 25 employees on average during the prior
9 12 months.

10 (B) Has aggregate annual premiums for insurance for all risks
11 other than workers' compensation and health coverage totaling no
12 less than ~~twenty-five thousand dollars (\$25,000)~~ *fifty thousand*
13 *dollars (\$50,000)* or obtains insurance through the services of a
14 full-time employee acting as an insurance manager or a
15 continuously retained insurance consultant. A "continuously
16 retained insurance consultant" does not include: ~~(i) an agent or~~
17 ~~broker through whom the insurance is being placed, (ii) a subagent~~
18 ~~or subproducer involved in the transaction, or (iii) an agent or~~
19 ~~broker that is a business organization employing or contracting~~
20 ~~with a person mentioned in clauses (i) and (ii).~~ *any of the following:*

21 *(i) An agent or broker through whom the insurance is being*
22 *placed.*

23 *(ii) A subagent or subproducer involved in the transaction.*

24 *(iii) An agent or broker that is a business organization*
25 *employing or contracting with a person mentioned in clauses (i)*
26 *and (ii).*

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

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

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

39 (2) In the case of commercial lines coverage, or personal
40 insurance coverage subject to Section 675 and any umbrella

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

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

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