

Assembly Bill No. 1307

CHAPTER 721

An act to amend Sections 685, 834, 1531, 1774, and 12976.5 of, to amend and renumber Section 1776.8 of, to add Section 1775.9 to, and to repeal and add Section 1775.2 of, the Insurance Code, and to amend Sections 12421, 12422, 12423, 12427, 12428, 12429, 12431, 12433, 12434, 12602, 12951, 12977, 12983, and 12984 of, and to add Section 12983.1 to, the Revenue and Taxation Code, relating to insurance.

[Approved by Governor October 9, 1995. Filed
with Secretary of State October 10, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1307, Cunneen. Surplus line broker: annual statements.

(1) Existing law requires that on and after January 1, 1995, each insurer ("person") and other entities that pay insurance taxes whose annual taxes exceed \$20,000 make payment by electronic funds transfer. Existing law imposes a penalty of 10% of the taxes due on any person required to remit taxes by electronic funds transfer who remits those taxes by means other than an appropriate electronic funds transfer.

This bill would make certain clarifying and related changes in those provisions, including changing a reference from "person" to insurer, and, among other things, it would provide that payment is deemed complete on the date the electronic funds transfer is initiated if settlement occurs on or before, rather than before, the banking day following the date the transfer is initiated.

(2) Existing law requires an application for a permit to issue or sell securities to be filed in the office of the Insurance Commissioner.

This bill would specify the size of paper required to make that filing. A failure to comply with this provision is a crime. The bill in expanding the definition of an existing crime would thus impose a state-mandated local program.

(3) Existing law requires, on or before the first day of April, a surplus line broker to file an annual statement with the commissioner containing an account of the business transmitted, or business done, as defined, by the surplus line broker for the prior year. The date on which the surplus line broker prepares a bill or invoice for payment of all or a part of premiums due is considered the date on which business was done, subject to certain provisions on installment payment of premiums. Existing law provides that if a premium is billed and payable in installments, the invoice date of the first installment shall be no more than 60 days after the policy effective date and no more than 60 days after the insurance was placed with

a nonadmitted insurer, and thereafter each installment shall be no more than one installment period after the invoice date of the immediately preceding installment.

This bill would instead require the filing of that annual statement to be on or before the first day of March, annually, and would revise the reporting requirements regarding receipt of installment premiums to provide that the amount of gross premium to be reported, if premiums are billed and payable in installments, shall be the amount of the installment premium, subject to specified conditions.

(4) Existing law requires on or before March 1st of each year, the commissioner to notify by mail certain surplus line brokers that they are required to make specified monthly tax payments with the notice the commissioner is required to mail installment payment forms, as specified.

This bill would delete those provisions and, instead, require on or before February 1st of each year, the commissioner to mail payment forms, as specified. It would also specify that certain deficiency assessment appeal provisions with respect to insurers are applicable to surplus line brokers.

(5) The bill would also make various other provisions relating to the payments of tax by an insurer applicable to surplus line brokers, as specified.

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.

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

SECTION 1. Section 685 of the Insurance Code is amended to read:

685. (a) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon California insurers, or upon the agents or representatives of those insurers, that are in excess of the taxes, licenses and other fees, in the aggregate, or that are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of those insurers, of that other state or country under the statutes of this state, so long as the laws of the other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties, deposit



requirements or other material obligations, prohibitions, or restrictions, of whatever kind, shall be imposed upon the insurers, or upon the agents or representatives of those insurers, of the other state or country doing business or seeking to do business in California. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of the other state or country on California insurers or their agents or representatives shall be deemed to be imposed by that state or country within the meaning of this article.

(b) On and after January 1, 1994, and before January 1, 1995, every insurer whose annual taxes exceed fifty thousand dollars (\$50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every insurer whose annual taxes exceed twenty thousand dollars (\$20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.

(c) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) (1) Any insurer required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the department finds that an insurer's failure to make payment by an appropriate electronic funds transfer in accordance with subdivision (b) is due to reasonable cause or circumstances beyond the insurer's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that insurer shall be relieved of the penalty provided in paragraph (1).

(3) Any insurer seeking to be relieved of the penalty provided in paragraph (1) shall file with the department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

SEC. 1.5. Section 834 of the Insurance Code is amended to read:

834. The application for a permit to issue or sell securities shall be verified as provided in the Code of Civil Procedure for the verification of pleadings, and shall be filed on 8¹/₂ x 11 inch size paper in the office of the commissioner. In the application the applicant shall set forth:

- (a) The names and addresses of its officers.
- (b) The location of its office.
- (c) An itemized account of its financial condition, including the amount and character of its assets and liabilities.



(d) A detailed statement of the plan upon which it proposes to transact business.

(e) A copy of any security it proposes to issue.

(f) A copy of any contract it proposes to make concerning the same.

(g) A copy of any prospectus or advertisement, or other description of such securities, then prepared by it for distribution or publication.

(h) Such additional information concerning the company, its condition and affairs as the commissioner requires.

SEC. 2. Section 1531 of the Insurance Code is amended to read:

1531. (a) On and after January 1, 1994, and before January 1, 1995, every exchange and its corporate attorney in fact that is considered a single unit whose annual taxes exceed fifty thousand dollars (\$50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every exchange and its corporate attorney in fact that is considered a single unit whose annual taxes exceed twenty thousand dollars (\$20,000) shall make payment by electronic funds transfer. The exchange and its corporate attorney in fact considered as a single unit shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any exchange and its corporate attorney in fact considered as a single unit required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the department finds that the failure of an exchange and its corporate attorney in fact, considered as a single unit, to make payment by an appropriate electronic funds transfer in accordance with subdivision (a) is due to reasonable cause or circumstances beyond the exchange's and its corporate attorney in fact's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that exchange and its corporate attorney in fact shall be relieved of the penalty provided in paragraph (1).

(3) Any exchange and its corporate attorney in fact seeking to be relieved of the penalty provided in paragraph (1) shall file with the department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.



SEC. 3. Section 1774 of the Insurance Code is amended to read:

1774. (a) On or before the first day of March of each year the surplus line broker shall file with the commissioner a sworn statement of all business transacted under his or her surplus line license during the last preceding calendar year. Such statement shall contain an account of the business done by the surplus line broker for the prior year.

(b) For purposes of this chapter, “business done” or “business transacted” under a surplus line broker’s license means all insurance regarding which that surplus line broker is required to file a confidential written report with the commissioner or the commissioner’s designee pursuant to subdivision (a) of Section 1763. If two or more persons licensed as surplus line brokers are involved in placing a policy, only the one who is responsible for negotiating, effecting the placement, remitting the premium to the nonadmitted insurer or its representatives and filing the confidential written report pursuant to subdivision (a) of Section 1763, shall be considered transacting under his or her surplus line broker’s license.

(c) The date on which the surplus line broker transacting a policy prepares a bill or invoice for payment of all or part of the premiums due, shall be considered the date on which that business was done or transacted, subject to paragraph (d). This date shall be shown on the face of the bill or invoice and shall be referred to as the “invoice date.”

(d) (1) The invoice date shall be no more than 60 days after the policy effective date and no more than 60 days after the insurance was placed with a nonadmitted insurer, except as provided in paragraph (2) of this section.

(2) For purposes of this chapter, the amount of gross premium to be reported, if premiums are billed and payable in installments, shall be the amount of the installment premium, provided the amount and due date of each installment, or the basis for determining each installment, is identifiable in the policy or an endorsement, and either of the following conditions is satisfied:

(A) Installments under the policy are not billed more frequently than once per month.

(B) If more than one installment is billed in any month, the commissioner determines, in his or her discretion, that the installment billing method used does not unduly burden the commissioner’s ability to accurately determine the amount of premium paid by the insured.

SEC. 4. Section 1775.2 of the Insurance Code is repealed.

SEC. 5. Section 1775.2 is added to the Insurance Code, to read:

1775.2. On or before February 1 of each year, the commissioner shall mail to every surplus line broker the installment payment forms prescribed by the commissioner to accompany surplus line tax remittances if monthly installment payments are required by Section



1775.1. Failure to secure those forms shall not relieve any broker from making or paying monthly installment payments.

SEC. 6. Section 1775.9 is added to the Insurance Code, to read:

1775.9. (a) If the commissioner determines that the amount of tax reported by the surplus line broker is less than the tax disclosed by the commissioner's examination, the commissioner shall permit the surplus line broker to provide additional information demonstrating that the surplus line broker owes a lesser amount. If within 60 days, or such additional time as the commissioner deems appropriate, the commissioner and the surplus line broker cannot agree on the amount owed, the commissioner shall propose in writing to the State Board of Equalization a deficiency assessment for the difference pursuant to subdivision (b) of Section 12422 of the Revenue and Taxation Code.

(b) Article 3 (commencing with Section 12421) of Chapter 4 of, and Article 1 (commencing with Section 12951) and Article 2 (commencing with Section 12977) of Chapter 7 of, Part 7 of Division 2 of the Revenue and Taxation Code shall apply to surplus line brokers, except where inconsistent with the provisions of this chapter, in which case this chapter shall govern.

SEC. 7. Section 1776.8 of the Insurance Code is amended and renumbered to read:

1775.8. (a) On and after January 1, 1994, and before January 1, 1995, every surplus line broker whose annual taxes for business done in calendar year 1992 or whose quarterly taxes for business done in calendar year 1993 exceed fifty thousand dollars (\$50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every surplus line broker whose annual taxes for business done in calendar year 1993 or in any calendar year thereafter exceed twenty thousand dollars (\$20,000) shall make payment by electronic funds transfer. The surplus line broker shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any surplus line broker required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the department finds that a surplus line broker's failure to make payment by an appropriate electronic funds transfer in accordance with subdivision (a) is due to reasonable cause or



circumstances beyond the surplus line broker's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that surplus line broker shall be relieved of the penalty provided in paragraph (1).

(3) Any surplus line broker seeking to be relieved of the penalty provided in paragraph (1) shall file with the department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

SEC. 8. Section 12976.5 of the Insurance Code is amended to read:

12976.5. (a) On and after January 1, 1994, and before January 1, 1995, every insurer whose annual taxes exceed fifty thousand dollars (\$50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every insurer whose annual taxes exceed twenty thousand dollars (\$20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any insurer required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the department finds that an insurer's failure to make payment by an appropriate electronic funds transfer in accordance with subdivision (a) is due to reasonable cause or circumstances beyond the insurer's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that insurer shall be relieved of the penalty provided in paragraph (1).

(3) Any insurer seeking to be relieved of the penalty provided in paragraph (1) shall file with the department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

SEC. 9. Section 12421 of the Revenue and Taxation Code is amended to read:

12421. As soon as practicable after an insurer's or surplus line broker's return is filed, the commissioner shall examine it, together with any information within his or her possession or that may come into his or her possession, and he or she shall determine the correct amount of tax of the insurer or surplus line broker.

SEC. 10. Section 12422 of the Revenue and Taxation Code is amended to read:



12422. (a) If the commissioner determines that the amount of tax disclosed by the insurer's tax return and assessed by the board is less than the amount of tax disclosed by his or her examination, he or she shall propose in writing to the board a deficiency assessment for the difference. The proposal shall set forth the basis for the deficiency assessment and the details of its computation.

(b) If the commissioner determines that the amount of tax disclosed by the surplus line broker's tax return is less than the amount of tax disclosed by his or her examination, he or she shall propose in writing to the board a deficiency assessment for the difference. The proposal shall set forth the basis for the deficiency assessment and the details of its computation.

SEC. 11. Section 12423 of the Revenue and Taxation Code is amended to read:

12423. If an insurer or surplus line broker fails to file a return, the commissioner may require a return by mailing notice to the insurer or surplus line broker to file a return by a specified date or he or she may without requiring a return, or upon no return having been filed pursuant to the demand therefor, make an estimate of the amount of tax due for the calendar year or years in respect to which the insurer or surplus line broker failed to file the return. The estimate shall be made from any available information which is in the commissioner's possession or may come into his or her possession, and the commissioner shall propose in writing to the board a deficiency assessment for the amount of the estimated tax. The proposal shall set forth the basis of the estimate and the details of the computation of the tax.

SEC. 12. Section 12427 of the Revenue and Taxation Code is amended to read:

12427. The board shall promptly notify the insurer or surplus line broker of a deficiency assessment made against the insurer or surplus line broker.

SEC. 13. Section 12428 of the Revenue and Taxation Code is amended to read:

12428. An insurer or surplus line broker against whom a deficiency assessment is made under Section 12424 or 12425 may petition for redetermination of the deficiency assessment within 30 days after service upon the insurer or surplus line broker of the notice thereof, by filing with the board a written petition setting forth the grounds of objection to the deficiency assessment and the correction sought. At the time the petition is filed with the board a copy of the petition shall be filed with the commissioner.

If a petition for redetermination is not filed within the period prescribed by this section, the deficiency assessment becomes final and due and payable at the expiration of that period.

SEC. 14. Section 12429 of the Revenue and Taxation Code is amended to read:



12429. If a petition for redetermination of a deficiency assessment is filed within the time allowed under Section 12428, the board shall reconsider the deficiency assessment and, if the insurer or surplus line broker has so requested in the petition, shall grant an oral hearing for the presentation of evidence and argument before the board or its authorized representative. The board shall give the petitioner and the commissioner at least 20 days' notice of the time and place of hearing. The hearing may be continued from time to time as may be necessary.

SEC. 15. Section 12431 of the Revenue and Taxation Code is amended to read:

12431. The order or decision of the board upon a petition for redetermination of a deficiency assessment becomes final 30 days after service on the insurer or surplus line broker of a notice thereof, and any resulting deficiency assessment is due and payable at the time the order or decision becomes final.

SEC. 16. Section 12433 of the Revenue and Taxation Code is amended to read:

12433. If before the expiration of the time prescribed in Section 12432 for giving of a notice of deficiency assessment the insurer or surplus line broker has consented in writing to the giving of the notice after such time, the notice may be given at any time prior to the expiration of the time agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

SEC. 17. Section 12434 of the Revenue and Taxation Code is amended to read:

12434. Any notice required by this article shall be placed in a sealed envelope, with postage paid, addressed to the insurer or surplus line broker at his or her address as it appears in the records of the commissioner or the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

SEC. 18. Section 12602 of the Revenue and Taxation Code is amended to read:

12602. (a) On and after January 1, 1994, and before January 1, 1995, each insurer whose annual taxes exceed fifty thousand dollars (\$50,000) shall make payment by electronic funds transfer, as defined by Section 45 of the Insurance Code. On and after January 1, 1995,



each insurer whose annual taxes exceed twenty thousand dollars (\$20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 of the Insurance Code for completing the electronic funds transfer.

(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(c) (1) Any insurer required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.

(2) If the Department of Insurance finds that an insurer's failure to make payment by an appropriate electronic funds transfer in accordance with subdivision (a) is due to reasonable cause or circumstances beyond the insurer's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that insurer shall be relieved of the penalty provided in paragraph (1).

(3) Any insurer seeking to be relieved of the penalty provided in paragraph (1) shall file with the Department of Insurance a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

SEC. 19. Section 12951 of the Revenue and Taxation Code is amended to read:

12951. If any amount has been illegally assessed, the board shall set forth that fact in its records, certify the amount determined to be assessed in excess of the amount legally assessed and the insurer or surplus line broker against whom the assessment was made, and authorize the cancellation of the amount upon the records of the Controller and the board. The board shall mail a notice to the insurer or surplus line broker of any cancellation authorized. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 20. Section 12977 of the Revenue and Taxation Code is amended to read:

12977. (a) If the board determines that any tax, interest, or penalty has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records of the board, certify the amount of the taxes, interest, or penalties collected in excess of what was legally due, and from whom



they were collected or by whom paid, and certify the excess to the Controller for credit or refund.

(b) The Controller upon receipt of a certification for credit or refund shall credit the excess on any amounts then due and payable from the insurer or surplus line broker under this part and refund the balance.

(c) Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 21. Section 12983 of the Revenue and Taxation Code is amended to read:

12983. Interest shall be allowed upon the amount of any overpayment of tax by an insurer pursuant to this part at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, “monthly period” means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the claimant is notified in writing that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 22. Section 12983.1 is added to the Revenue and Taxation Code, to read:

12983.1. Interest shall be allowed upon the amount of any overpayment of tax by a surplus line broker pursuant to this part at the rate of 1 percent per calendar month or fraction thereof, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, “monthly period” means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the claimant is notified in writing that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.



(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 23. Section 12984 of the Revenue and Taxation Code is amended to read:

12984. (a) If the board determines that any overpayment has been made intentionally or made not incident to a bona fide and orderly discharge of a liability reasonably assumed by the insurer or surplus line broker to be imposed by law, no interest shall be allowed on the overpayment.

(b) If any insurer or surplus line broker which has filed a claim for refund requests the board to defer action on its claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the insurer or surplus line broker requests the board to defer action on the claim.

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

