

ASSEMBLY BILL

No. 245

Introduced by Assembly Member Cunneen

February 11, 1997

An act to amend Section 1764.1 of, and to add Section 1763.2 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 245, as introduced, Cunneen. Insurance: surplus line brokers.

(1) Existing law generally requires insurance transacted in the state to be provided by an admitted insurer. However, existing law permits the sale of insurance from nonadmitted insurers in certain cases if various requirements are met, including insurance that cannot be obtained from admitted insurers. Existing law generally requires insurance from nonadmitted insurers to be transacted by surplus line brokers.

This bill would provide that a licensed surplus line broker may originate surplus lines business, or may accept that business from any other originating licensee. It would provide that no originating licensee may knowingly misrepresent to the surplus line broker any material fact involved in any insurance transaction, or involved in the eligibility of the risk for placement with a surplus line broker.

(2) Existing law requires every nonadmitted insurer or surplus line broker, for any insurance with a nonadmitted carrier, to make a specified disclosure to the policyholder and applicant.

This bill would provide that, in fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may rely on the disclosure statement received from any other licensee as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained.

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 1763.2 is added to the Insurance
2 Code, to read:

3 1763.2. A licensed surplus line broker may originate
4 surplus lines business, or may accept that business from
5 any other originating licensee duly licensed for the type
6 or types of insurance involved, and may compensate
7 those licensees therefor.

8 (b) No originating licensee shall knowingly
9 misrepresent to the surplus line broker any material fact
10 involved in any insurance transaction described in
11 subdivision (a), or involved in the eligibility of the risk for
12 placement with a surplus line broker.

13 SEC. 2. Section 1764.1 of the Insurance Code is
14 amended to read:

15 1764.1. (a) (1) Every nonadmitted insurer, in the
16 case of insurance to be purchased by a resident of this
17 state pursuant to Section 1760, and surplus line broker, in
18 the case of any insurance with a nonadmitted carrier to
19 be transacted by the surplus line broker, shall be
20 responsible to ensure that, at the time of accepting an
21 application for any insurance policy issued by a
22 nonadmitted insurer, the signature of the applicant on
23 the disclosure statement set forth in subdivision (b) is
24 obtained. *In fulfillment of this responsibility, the*
25 *nonadmitted insurer and the surplus line broker may rely*
26 *on the disclosure statement received from any other*
27 *licensee as prima facie evidence that the disclosure*
28 *statement and appropriate signature from the applicant*
29 *have been obtained.* The surplus line broker shall



1 maintain a copy of the signed disclosure statement in his
2 or her records for a period of at least five years. These
3 records shall be made available to the commissioner and
4 the insured upon request. This disclosure shall be signed
5 by the applicant, and is not subject to any limited power
6 of attorney agreement between the applicant and an
7 agent or broker, or a surplus line broker. The disclosure
8 statement shall be in boldface 16-point type on a
9 freestanding document. In addition, every policy issued
10 by a nonadmitted insurer and every certificate
11 evidencing the placement of insurance shall contain, or
12 have affixed to it by the insurer or surplus line broker, the
13 disclosure statement set forth in subdivision (b) in
14 boldface 16-point type on the front page of the policy.

15 (2) In any case where the applicant has not received
16 and completed the signed disclosure form required by
17 this section, he or she may cancel the insurance so placed.
18 The cancellation shall be on a pro rata basis as to
19 premium, and the applicant shall be entitled to the return
20 of any broker's fees charged for the placement.

21 (b) The following notice shall be provided to
22 policyholders and applicants for insurance as provided by
23 subdivision (a), and shall be printed in English and in the
24 language principally used by the surplus line broker and
25 nonadmitted insurer to advertise, solicit, or negotiate the
26 sale and purchase of surplus line insurance. The surplus
27 line broker and nonadmitted insurer shall use the
28 appropriate bracketed language for application and
29 issued policy disclosures:

30
31
32

“NOTICE:

33 1. THE INSURANCE POLICY THAT YOU [HAVE
34 PURCHASED] [ARE APPLYING TO PURCHASE] IS
35 BEING ISSUED BY AN INSURER THAT IS NOT
36 LICENSED BY THE STATE OF CALIFORNIA. THESE
37 COMPANIES ARE CALLED “NONADMITTED” OR
38 “SURPLUS LINE” INSURERS.

39 2. THE INSURER IS NOT SUBJECT TO THE
40 FINANCIAL SOLVENCY REGULATION AND



1 ENFORCEMENT WHICH APPLIES TO CALIFORNIA
2 LICENSED INSURERS.

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

10 4. FOR ADDITIONAL INFORMATION ABOUT
11 THE INSURER YOU SHOULD ASK QUESTIONS OF
12 YOUR INSURANCE AGENT, BROKER, OR "SURPLUS
13 LINE" BROKER OR CONTACT THE CALIFORNIA
14 DEPARTMENT OF INSURANCE, AT THE
15 FOLLOWING TOLL-FREE TELEPHONE NUMBER:
16 ____."

17
18 (c) When a contract is issued to an industrial insured
19 neither the nonadmitted insurer nor the surplus line
20 broker is required to provide the notice required in this
21 section except on the confirmation of insurance, the
22 certificate of placement, or the policy, whichever is first
23 provided to the insured, nor is the insurer or surplus line
24 broker required to obtain the insured's signature. The
25 producer shall ensure that the notice affixed to the
26 confirmation of insurance, certificate of placement, or
27 the policy is provided to the insured. The producer shall
28 insert the current toll-free telephone number of the
29 Department of Insurance as provided in paragraph 4 of
30 the notice.

- 31 (1) An industrial insured is an insured:
- 32 (A) Which employs at least 25 employees on average
- 33 during the prior 12 months; and
- 34 (B) Which has aggregate annual premiums for
- 35 insurance for all risks other than workers' compensation
- 36 and health coverage totaling no less than twenty-five
- 37 thousand dollars (\$25,000); or
- 38 (C) Which obtains insurance through the services of a
- 39 full-time employee acting as an insurance manager or a
- 40 continuously retained insurance consultant. A



1 “continuously retained insurance consultant” does not
2 include: (i) Any agent or broker through whom the
3 insurance is being placed, (ii) any subagent or
4 subproducer involved in the transaction, or (iii) any
5 agent or broker which is a business organization
6 employing or contracting with any person mentioned in
7 clauses (i) and (ii).

8 (2) The surplus line broker shall be responsible to
9 ensure that the applicant is an industrial insured. A
10 surplus line broker who reasonably relies on information
11 provided in good faith by the applicant, whether directly
12 or through the producer, shall be deemed to be in
13 compliance with this requirement.

14 (d) In the case of commercial insurance coverages, for
15 purposes of compliance with the requirement of
16 subdivision (a) that the signature of the applicant be
17 obtained, the following shall apply:

18 (1) Where the insurance transaction is not conducted
19 at an in-person, face-to-face meeting, the applicant’s
20 signature on the disclosure form may be transmitted by
21 the applicant to the agent or broker via facsimile or
22 comparable electronic transmittal.

23 (2) Where an applicant requires that insurance
24 coverage be bound immediately, either because existing
25 coverage will lapse within two business days of the time
26 the insurance is bound or because the applicant is
27 required to have coverage in place within two business
28 days, and the applicant cannot meet in person with the
29 agent or broker to sign the disclosure form, the agent or
30 broker may obtain the signature of the applicant within
31 five days of binding coverage, provided that the applicant
32 may cancel the insurance so placed within five days of
33 receiving the disclosure form from the agent or broker.
34 The cancellation shall be on a pro rata basis, and the
35 applicant shall be entitled to the rescission or return of
36 any broker’s fees charged for the placement.

37 (e) Notwithstanding subdivision (a), this section shall
38 not apply to insurance issued or delivered in this state by
39 a nonadmitted Mexican insurer by and through a surplus
40 line broker affording coverage exclusively in the



- 1 Republic of Mexico on property located temporarily or
- 2 permanently in, or operations conducted temporarily or
- 3 permanently within, the Republic of Mexico.

O

