

Assembly Bill No. 245

CHAPTER 102

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

[Approved by Governor July 21, 1997. Filed with
Secretary of State July 21, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

AB 245, 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. The bill would require the originating licensee to use due care and diligence in the collection, preparation, and transmission of the information to the 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, if it is reasonable under all the circumstances to do so, on the disclosure statement received from any licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained.

(3) The bill would incorporate additional amendments to Section 1764.1 of the Insurance Code proposed by AB 816, contingent upon the prior enactment of that bill.

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

SECTION 1. Section 1763.2 is added to the Insurance Code, to read:

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

(b) For any information involved in any insurance transaction described in subdivision (a), or involved in the eligibility of the risk for placement with a surplus line broker, the originating licensee shall use due care and diligence in the collection, preparation, and transmission of the information to the surplus line broker.

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

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a resident of this state pursuant to Section 1760, and surplus line broker, in the case of any insurance with a nonadmitted carrier to be transacted by the surplus line broker, shall be responsible to ensure that, at the time of accepting an application for any insurance policy issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. In fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may rely, if it is reasonable under all the circumstances to do so, on the disclosure statement received from any licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

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

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



“NOTICE:

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

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED INSURERS.

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

4. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR “SURPLUS LINE” BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE, AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: ____.”

(c) When a contract is issued to an industrial insured neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured’s signature. The producer shall ensure that the notice affixed to the confirmation of insurance, certificate of placement, or the policy is provided to the insured. The producer shall insert the current toll-free telephone number of the Department of Insurance as provided in paragraph 4 of the notice.

(1) An industrial insured is an insured:

(A) Which employs at least 25 employees on average during the prior 12 months; and

(B) Which has aggregate annual premiums for insurance for all risks other than workers’ compensation and health coverage totaling no less than twenty-five thousand dollars (\$25,000); or

(C) Which obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A “continuously retained insurance consultant” does not include: (i) Any agent or broker through whom the insurance is being placed, (ii) any subagent or subproducer involved in the transaction, or (iii) any agent or broker which is a business organization employing or contracting with any person mentioned in clauses (i) and (ii).



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

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

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

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

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

SEC. 3. Section 1764.1 of the Insurance Code is amended to read:

1764.1. (a) (1) Every nonadmitted insurer, in the case of insurance to be purchased by a resident of this state pursuant to Section 1760, and surplus line broker, in the case of any insurance with a nonadmitted carrier to be transacted by the surplus line broker, shall be responsible to ensure that, at the time of accepting an application for any insurance policy issued by a nonadmitted insurer, the signature of the applicant on the disclosure statement set forth in subdivision (b) is obtained. In fulfillment of this responsibility, the nonadmitted insurer and the surplus line broker may reasonably rely on the disclosure statement received from any licensee involved in the transaction as prima facie evidence that the disclosure statement and appropriate signature from the applicant have been obtained. The surplus line broker shall maintain a copy of the signed disclosure statement in his or her records for a period of at least five years. These records shall be made available to the commissioner and the insured upon request. This disclosure shall be



signed by the applicant, and is not subject to any limited power of attorney agreement between the applicant and an agent or broker, or a surplus line broker. The disclosure statement shall be in boldface 16-point type on a freestanding document. In addition, every policy issued by a nonadmitted insurer and every certificate evidencing the placement of insurance shall contain, or have affixed to it by the insurer or surplus line broker, the disclosure statement set forth in subdivision (b) in boldface 16-point type on the front page of the policy.

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

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

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

2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED INSURERS.

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

4. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR “SURPLUS LINE” BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE, AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: ____.”

(c) When a contract is issued to an industrial insured neither the nonadmitted insurer nor the surplus line broker is required to provide the notice required in this section except on the confirmation



of insurance, the certificate of placement, or the policy, whichever is first provided to the insured, nor is the insurer or surplus line broker required to obtain the insured's signature. The producer shall ensure that the notice affixed to the confirmation of insurance, certificate of placement, or the policy is provided to the insured. The producer shall insert the current toll-free telephone number of the Department of Insurance as provided in paragraph 4 of the notice.

(1) An industrial insured is an insured:

(A) Which employs at least 25 employees on average during the prior 12 months; and

(B) Which has aggregate annual premiums for insurance for all risks other than workers' compensation and health coverage totaling no less than twenty-five thousand dollars (\$25,000); or

(C) Which obtains insurance through the services of a full-time employee acting as an insurance manager or a continuously retained insurance consultant. A "continuously retained insurance consultant" does not include: (i) Any agent or broker through whom the insurance is being placed, (ii) any subagent or subproducer involved in the transaction, or (iii) any agent or broker which is a business organization employing or contracting with any person mentioned in clauses (i) and (ii).

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

SEC. 4. Section 3 of this bill incorporates amendments to Section 1764.1 of the Insurance Code proposed by both this bill and Assembly Bill 816. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1998, (2) each bill amends Section 1764.1 of the Insurance Code, and (3) this bill is enacted after Assembly Bill 816, in which case Section 2 of this bill shall not become operative.

