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October 20, 2008

BULLETIN #1164

RE: AB 2956 - DISTINCTION BETWEEN AGENT & BROKER - CHAPTER 304, STATUTES OF 2008

Enclosed is a copy of Assembly Bill 2956 (Coto) as signed by the Governor on September 25, 2008. The bill becomes effective on January 1, 2009.

AB 2956 This bill codifies the traditional “totality of the circumstances” test for determining whether an insurance professional is acting as a broker or as an agent. This is subject to several specific criteria with which a broker must comply to gain the presumption that it is acting as a broker, and several specific criteria that may be used to rebut the presumption that a licensee is acting as a broker. This legislation is applicable to transactions in the “admitted” market only and thus, surplus line brokers remain governed by Part 2, Chapter 6 (Sections 1760 et seq. of the CA code).

The legislation was necessary because insurance producers need clear guidelines to determine which activities constitute agency and which constitute brokerage. The bill includes a disclosure requirement from retail brokers to insureds and from wholesale brokers to the originating producers in order for the statutory “presumption of broker” to apply. The wholesale intermediary broker disclosure must be in writing to the retail producer and include a description of the basic services the wholesaler will perform as a broker, the amount of all broker fees being charged by the wholesaler, and, if applicable, the fact that the wholesaler may be entitled to receive compensation from the insurer, directly or indirectly, for the consumer’s purchase of insurance as a consequence of the transaction. The legislation further protects wholesale intermediary brokers from being construed as agents by allowing them to collect, transmit premium or return premium and deliver policies and other documents evidencing insurance without being construed to be an insurance agent.

Sincerely,

Theodore M. Pierce
Executive Director

Assembly Bill No. 2956

CHAPTER 304

An act to amend Sections 1621, 1623, and 1732 of the Insurance Code, relating to insurance.

[Approved by Governor September 25, 2008. Filed with
Secretary of State September 25, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2956, Coto. Insurance: agents and brokers.

Existing law provides that an insurance agent is a person authorized by and on behalf of an insurer to transact all classes of insurance, except life insurance. Existing law provides that an insurance broker is a person who, for compensation and on behalf of another person, transacts insurance other than life insurance with, but not on behalf of, an insurer.

This bill would instead provide that an insurance agent is a person who transacts insurance other than life, disability, or health insurance, on behalf of an admitted insurance company. The bill would state that it is presumed that a person is acting as an insurance broker if the person is licensed to act as an insurance broker, maintains a specified bond, and discloses specific information to the consumer. The bill would provide that the presumption of broker status is rebutted if specified facts exist, or based on the totality of the circumstances, as defined.

Under existing law, a person licensed as a fire and casualty broker-agent acting as an insurance broker may act as an insurance agent in collecting and transmitting premium or return premium funds and delivering policies and other documents evidencing insurance.

This bill, instead, would provide that a person acting as an insurance broker may, on behalf of an insurance company, collect and transmit premium or return premium and deliver policies and other documents evidencing insurance. The bill would state that performance of those functions shall not be construed to mean that the person is an insurance agent.

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

SECTION 1. Section 1621 of the Insurance Code is amended to read:

1621. An insurance agent is a person who transacts insurance, including 24-hour care coverage as defined in Section 1749.02, other than life, disability, or health insurance, on behalf of an admitted insurance company. The term "insurance agent" as used in this chapter does not include a life agent as defined in this article.

SEC. 2. Section 1623 of the Insurance Code is amended to read:

1623. (a) An insurance broker is a person who, for compensation and on behalf of another person, transacts insurance other than life insurance with, but not on behalf of, an admitted insurer. It shall be presumed that the person is acting as an insurance broker if the person is licensed to act as an insurance broker, maintains the bond required by this chapter, and discloses, in a written agreement signed by the consumer, all of the following:

- (1) That the person is transacting insurance on behalf of the consumer.
- (2) A description of the basic services the person will perform as a broker.
- (3) The amount of all broker fees being charged by the person.
- (4) If applicable, the fact that the person may be entitled to receive compensation from the insurer, directly or indirectly, for the consumer's purchase of insurance as a consequence of the transaction.

(b) If a transaction involves both a retail broker and a wholesale intermediary broker, the wholesale intermediary broker shall be deemed to have satisfied its disclosure obligations under this section if it provides written disclosure to the retail broker of the criteria set forth in paragraphs (2), (3), and (4) of subdivision (a).

(c) The presumption of broker status is rebutted as to any transaction in the admitted market in which any of the following is present:

- (1) The licensee is appointed, pursuant to Section 1704, as an agent of the insurer for the particular class or type of insurance being transacted.

- (2) The licensee has a written agreement with an insurer containing express terms that authorize the licensee to obligate the insurer without first obtaining notification from the insurer that the insurer has accepted, conditionally or unconditionally, the submitted risk.

- (3) The licensee is authorized, pursuant to a written agreement with an insurer, to appoint other licensees as agents of the insurer, pursuant to Section 1704.

- (4) The licensee is authorized, pursuant to a written agreement with an insurer, to pay claims on behalf of the insurer.

(d) In all other cases, the presumption of broker status is rebutted based on the totality of the circumstances indicating that the broker-agent is acting on behalf of the insurer.

(e) For purposes of this section, "totality of the circumstances" means evidence indicating whether a broker-agent was acting on behalf of the insurer or was acting on behalf of a third person. In determining the totality of circumstances, all relevant facts and circumstances shall be reviewed and the review is not limited to any particular fact or factors and this section does not require that any particular circumstance receive greater or lesser weight.

SEC. 3. Section 1732 of the Insurance Code is amended to read:

1732. A person acting as an insurance broker may, on behalf of an insurance company, collect and transmit premium or return premium and deliver policies and other documents evidencing insurance. Performance

of those functions shall not be construed for any purpose to mean that the person is an insurance agent.

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