



BULLETIN #542

December 18, 1992

BULLETIN TO ALL MEMBERS:

RE: ASSEMBLY BILL 2608 - CHANGES IN THE CONDITIONS FOR EXPORTATION UNDER INSURANCE CODE SECTION 1763

This bulletin is intended to inform the Membership of important changes in the California Surplus Line Law which will go into effect January 1, 1993. Assembly Bill 2608 which was enacted during the 1992 legislative session, amends California Insurance Code Section 1763, significantly changing the conditions for surplus line exportation of risks located in California. The principal provisions of new Section 1763 are summarized below.

A. Conditions for Exportation

AB 2608 deletes the word "majority" from Section 1763 and permits exportation only if the insurance cannot be procured from admitted insurers "that actually write the particular type of insurance in this state". The Department has informally advised the Association that "type" of insurance means those lines of insurance required to be reported in the annual statement filed by admitted insurers and the following sub-lines: private passenger automobile liability, private passenger automobile physical damage, commercial automobile liability and commercial automobile physical damage.

The bill does not change the prohibition in Section 1763 against exporting risks for the purpose of obtaining a rate lower than the lowest rate which can be obtained from any admitted insurer, unless the rate is filed with and not disapproved by the Commissioner. Such "lower rate" filings are discussed further below.

B. Diligent Search

The bill requires a "diligent search" of the admitted market. While the search may be performed by the surplus line broker or retail producer, in either case, the surplus line broker "is responsible to ensure" that a diligent search is made.

C. Three Declinations - Prima Facie Evidence of a Diligent Search

Declinations from three admitted insurers actually writing the particular type of insurance in this state, or a statement establishing that fewer than three admitted insurers actually write the coverage, constitutes "prima facie" evidence that a diligent search has been performed. The declinations must be filed on the standardized form prescribed by the Commissioner, as discussed below.

D. Filings

Two new mandatory forms -- a confidential report of placement and a standardized diligent search report -- must be filed for each placement. These forms replace the existing SLA-101 form. The "lower rate" filing in existing Section 1763 also remains as an optional filing. Each of these three filings is described below in greater detail:

1. Confidential Report of Placement

For each placement of insurance, the surplus line broker must file a confidential report that has been prescribed by the Department. A copy is attached for your use.

2. Standardized Diligent Search Report

A standardized form prescribed by the Department must also be filed for each placement. This report must specify the diligent search efforts and the results of those efforts. In order to serve as prima facie evidence of compliance, this form must indicate declinations from at least three admitted insurers actually writing the particular type of insurance, or the fact that fewer than three admitted insurers actually write the particular coverage. Please note that the Commissioner expects the entire form to be completed. After reviewing this form, and particularly the responses to questions 7(A) and 8(B), the Commissioner may require further or additional search efforts on similar placements in the future. This standardized form replaces the SLA-101 form. A copy is attached for your use. Each surplus line broker is expected to print or reproduce the attached for the licensee's use.

The person signing the form must be the California licensee -- either the retail producer or surplus line broker -- who actually conducted the diligent search or who supervised the person(s) doing the search. If two or more licensees conduct a diligent search of admitted insurers, then each licensee must complete a Diligent Search Report (CDI Form SL-2). All such reports should be attached to the CDI SL-1. Disciplinary action may be taken against the person signing the form for any negligent or intentional misrepresentation in the form, even if such misrepresentation is caused by the person(s) actually conducting the search.

3. Lower Rate Filing (Optional)

Section 1763(c) conclusively presumes that placement of a risk with a nonadmitted insurer at a rate or premium lower than the lowest available from any admitted insurer is a violation unless the surplus line broker files a specified statement with the Commissioner. Section 1763(c) specifies the required contents for such statements; however, the Department has not prescribed a standard form to be used and we do not anticipate one. If the Commissioner does not disapprove the placement within five days, the insurance may thereafter remain in effect.

E. When and Where to File Reports

The Confidential Report of Placement and Diligent Search Report must be filed with the Stamping

Office within 60 days of days of placing the insurance. A lower rate filing must be filed directly with the Department of Insurance at the time the insurance attaches. This filing should be made with the Surplus Line Enforcement Unit of the Department located at 45 Fremont Street, San Francisco, California 94105.

Since the legislation is effective on January 1, 1993, the Confidential Report of Placement and Diligent Search Report must be submitted for all coverage effective after that date UNLESS coverage was actually negotiated and bound prior to January 1, 1993. No Confidential Report of Placement and Diligent Search Report need be submitted if coverage was actually negotiated and bound prior to year end. Rather, the surplus line broker must submit the current SLA-101 form along with a statement indicating that the policy was actually negotiated and bound prior to January 1, 1993.

With respect to notices of renewal as required by law which are mailed to insureds prior to January 1, 1993 and accepted after that date, the surplus line broker must submit the current SLA-101 form along with a statement indicating that notice of renewal as required by law was mailed prior to January 1, 1993 and the surplus line broker must file with the Department of Insurance a Confidential Report of Placement. Under such circumstances there is no need to file a Diligent Search Report in connection with such renewals.

James S. Pugh
Assistant Manager

JSP/imb
Enclosures

AMENDED IN SENATE AUGUST 17,1992
AMENDED IN SENATE AUGUST 17,1992
AMENDED IN SENATE JULY 13,1992
AMENDED IN ASSEMBLY APRIL 8,1992
AMENDED IN ASSEMBLY MARCH 17,1992
CALIFORNIA LEGISLATURE-1991-92 REGULAR SESSION
ASSEMBLY BILL No. 2608

Introduced by Assembly Member Barbara Friedman
February 11, 1992

An act to amend Section 1763 of the Insurance Code, relating to insurance. LEGISLATIVE
COUNSEL'S DIGEST

AB 2608, as amended, B. Friedman. Insurance: surplus lines. Existing law generally requires insurance to be transacted only with admitted insurers. However, under existing law, a surplus line broker may solicit and place insurance with nonadmitted insurers but the insurance must not be able to be procured from a majority of the insurers admitted for the particular class or classes of insurance that the surplus

line broker is attempting to place. Under existing law, if the insurance cannot be so procured from admitted insurers, it may be procured from nonadmitted insurers if it is not placed for the purpose of procuring a rate lower than the lowest rate of an admitted insurer. Existing law contains provisions for filings related to the rate at which insurance was obtained. This bill would instead require the insurance placed with nonadmitted insurers to be unavailable from insurers admitted in this state for that class of insurance. It would require each surplus lines broker to be responsible to ensure that a diligent search is made among insurers that are admitted to transact and are actually

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writing the particular type of insurance in this state before procuring the insurance from a nonadmitted insurer. It would require each surplus lines broker to file with the commissioner, a written report, that shall be kept confidential, except as specified, regarding insurance placed with a nonadmitted insurer, and would require the report to include specified information. It would also require each surplus lines broker to file a standardized form setting forth the diligent efforts to place the coverage with admitted insurers and the results of these efforts.

The bill would provide that the insurance shall not be placed with a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate that will be accepted by any admitted insurer except that the bill would provide that it is prima facie evidence that a diligent search among admitted insurers has been made if the standardized form that is filed establishes that 3 admitted insurers that actually write the particular type of insurance in this state have declined the risk, or that fewer than 3 admitted insurers actually write the particular type of insurance. The bill would provide for review by the commissioner. The bill would make related changes.

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 of the Insurance Code is amended to read:
2. 1763. (a) A surplus line broker may solicit and place insurance, other
3. than as excepted in Section 1761, with nonadmitted insurers only if
4. that insurance can not be procured from insurers admitted for the
5. particular class or classes of insurance and that actually write the
6. particular type of insurance in this state. Each surplus lines broker
7. shall be responsible to ensure that a diligent search is made among
8. insurers that are admitted to transact and are actually writing the
9. particular type of insurance in this state before procuring the

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1. insurance from a nonadmitted insurer. Each surplus lines broker shall
2. file with the commissioner or his or her designee, within 60 days of
3. placing any insurance with a nonadmitted insurer, a written report,
4. that shall be kept confidential, regarding the insurance. This report
5. shall include the name and address of the insured, the identity of the

6. insurer or insurers, a description of the subject and location of the
7. risk, the amount of premium charged for the insurance, a copy of the
8. declarations page of the policy or a copy of the surplus line broker's
9. certificate or binder evidencing the placement of insurance, and other
10. pertinent information that the commissioner may reasonably require.
11. In addition, each surplus lines broker shall file a standardized form to
12. be prescribed by the commissioner setting forth the diligent efforts to
13. place the coverage with admitted insurers and the results of these
14. efforts. The form shall be signed by a person licensed under this code
15. who has made the diligent search required by this section or who
16. supervised an unlicensed person or persons who actually conducted
17. the search. The insurance shall not be placed with a nonadmitted
18. insurer for the purpose of procuring a rate lower than the lowest rate
19. that will be accepted by any admitted insurer except as provided by
20. subdivision (c). The commissioner may make and publish reasonable
21. rules and regulations, consistent with this chapter, in respect to
22. transactions governed thereby and the basis or bases for his
23. determinations hereunder.

24. (b) It shall be prima facie evidence that a diligent search among
25. admitted insurers has been made if the standardized form filed as
26. required by subdivision (a) establishes that three admitted insurers
27. that actually write the particular type of insurance in this state have
28. declined the risk, or that fewer than three admitted insurers actually
29. write the particular type of insurance. The commissioner, or his or her
30. designee, may review the form for the accuracy of the information
31. provided on it, including, but not limited to whether the listed insurers

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32. actually write that type of insurance, and whether the three insurers
33. declined the risk. The commissioner may take disciplinary action
34. against the person signing the form for any misrepresentation made in
35. the form due to the negligence of or the result of an intentional act by that
36. person or the person or persons who actually conducted the search. Those
37. actions may include any action authorized to be taken against a licensed
38. person by this code. Nothing in this subdivision shall preclude the
39. commissioner or his or her designee from directing the surplus line broker
40. to conduct a further or additional search among admitted insurers for
41. similar placements in the future.

42. (c) It shall be conclusively presumed that insurance is placed in
43. violation of this section if the insurance is actually placed with a
44. nonadmitted insurers at a lower rate of premium or lower premium than
45. the lowest rate of premium or the lowest premium that could be obtained

46. from an admitted insurer unless, at the time the insurance attaches,
 47. there is filed with the commissioner a statement describing the insurance,
 48. specifying the rate and the nearest procurable rates from admitted insurers.
 49. The statement shall include an explanation of the reasons that the
 50. insurance must be placed with a nonadmitted insurer even though it is
 51. available from an admitted insurer. Unless the commissioner, or his
 52. or her designee, within five days after that filing notifies the filing broker
 53. that in his or her opinion the placing of the insurance constitutes a
 54. violation of this section, the broker may thereafter maintain in effect that
 55. insurance. If within that five-day period the commissioner notifies the
 56. surplus line broker that the insurance is in violation of this section and
 57. orders the broker to effect termination of that insurance within 10 days
 58. from the notice, and the broker fails or refuses to effect that termination,
 59. that failure or refusal is a violation of this section.
 60. (d) Statements filed under this section are not subject to public
 61. inspection unless the commissioner determines that the public interest
 62. or the welfare of the filing broker requires that any statement be made
 63. public

CONFIDENTIAL
 REPORT OF SURPLUS LINE PLACEMENT

PLEASE REFER TO THE INSTRUCTIONS ON THE BACK OF THIS FORM. THIS FORM MUST BE ACCOMPANIED BY A DILIGENT SEARCH REPORT AND A COPY OF THE DECLARATIONS PAGE OR CERTIFICATE OR BINDER. (CALIFORNIA INSURANCE CODE § 1763(A).)

1. _____ hereby submits that he/she is:

(A) A duly licensed surplus line broker, license number _____.

or (B) that he/she is a transactor on the surplus line license of

 (Name of Organization)
 license number _____.

and (C) that he/she or said organizational licensee was engaged by the insured, or the insured's broker, named herein to obtain insurance against certain risk as described in this report.

2. (A) Name of Insured

 (B) Address of Insured

 (Street and Number)

 (City) (State) (Zip Code)

(C) Description of the Risk _____

(D) Location of the Risk _____
(Street and Number)

(City) (State) (Zip Code)

(E) Name of Nonadmitted Insurer(s) With Whom the Risk Was Placed (Include an attachment if additional space is needed)

Name Premium Charged Type of Insurance Placed*

*Enter appropriate code number for type of insurance placed. See Codes attached.

SIGNATURE OF PERSON NAMED ON LINE 1 DATE

SL-1(12/92)

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INSTRUCTIONS

Line 2(E): This section must be completed in its entirety. Do not simply refer to attached declaration pages or certificate.

WHAT MUST ACCOMPANY THE REPORT: This report must be accompanied by a copy of the declarations page or certificate or binder, and a diligent search report Form SL.-2. Note: The surplus line broker submitting this form is responsible to ensure that a diligent search is made among admitted insurers and that the risk meets the conditions for surplus line exportation.

(California. Insurance Code § 1763(a).)

WHEN TO FILE: This report must be filed by the surplus line broker within 60 days of placing the insurance with a nonadmitted insurer. (California Insurance Code (1763(a).)

WHERE TO FILE: This report must be submitted to The Surplus Line Association of California as designee for the California Insurance Commissioner.

LOWER RATE FILINGS: This report may not be used to file a risk placed with a nonadmitted insurer when such insurance is procured at a lower rate of premium or lower premium than the lowest rate or premium available from an admitted insurer. Please contact the Department of Insurance or The Surplus Line Association of California for information regarding the procedures applicable to such "lower rate" filings.

SL-1(12/92)

CODE TYPE OF INSURANCE

050 Auto Liability-Private
051 Auto Liability-Commercial
100 Auto Physical Damage-Private
101 Auto Physical Damage-Commercial
150 Crime
151 Crime-Kidnap & Ransom
200 Combined Auto Liability & P.D. - Private
201 Combined Auto Liab. & P.D. - Commercial
300 Excess Liability (Incl. Umb.)
350 Fidelity, Surety & Bonds - Bonds
351 Fidelity, Surety & Bonds - Fidelity
400 Fire - Sgl. Farm Dwelling, Duplex
401 Fire - Commercial
402 Fire - Homeowners
403 Fire - Homeowners Multiple Peril
404 Fire - Farm owners Multiple Peril
450 Inland Marine
500 General Liability
501 Gen. Liability - Pollution Legal Liability
502 General Liability - Product Tampering ...
510 Aviation
550 Errors & Omissions - AR others
551 Errors & Omissions - Dir. & Off.
600 Malpractice - AU Other
606 Malpractice - Hospitals
650 Miscellaneous
651 Miscellaneous - Glass
652 Miscellaneous - Boiler & Machinery
653 Miscellaneous - Nuclear Risks
655 Miscellaneous - Political Risks
700 Accident
701 Accident - Disability Income
702 Accident - Group Health Insurance
703 Accident - Individual Health Insurance
800 Garage Liability (May Include GKLL)
980 Excess Workers Compensation
990 Commercial Property - all Risk
994 Commercial Property - Sp. M. Peril
996 Commercial Property - DIC
997 Commercial Property - Earthquake

INSTRUCTIONS

Line 1(A) and 1(B): If you are licensed and authorized to act in two or more capacities (e.g. as a broker and a surplus line broker), then please circle the one that describes the capacity in which you are acting in this transaction.

Line 7(A): Please provide a complete response. Note: the Insurance Commissioner or his designee may require the surplus line broker to conduct a further or additional search among admitted insurers for similar placements in the future. (California Insurance Code Section 1763(b)) An incomplete response on line 7(A) may unnecessarily result in a request for a further search to be conducted.

IMPORTANT: Persons who are licensed only as an agent may only submit a risk to admitted insurers that have appointed them as their agent. Agents are not authorized to offer a risk to admitted insurers for which they are not appointed agents. A search which is limited to only those companies that have appointed the agent may not necessarily constitute a diligent search of the admitted market.

WHAT TO FILE: This report must be filed as an attachment to the Report of Placement. (CDI Form SL-1).

WHERE TO FILE: The SL-1 and this report are to be filed by the surplus line broker with The Surplus Line Association of California within 60 days of placement of coverage with nonadmitted insurer(s).

MULTIPLE LICENSEES CONDUCTING SEARCH: If two or more licensees conduct a diligent search of admitted insurers, then each licensee must complete a diligent search report (CDI Form SL-2). All such reports should be attached to the SL-1.

SL-2 (12/92)

DILIGENT SEARCH REPORT

Please Refer to the Instructions on Page 4 of This Form.

1. _____ hereby submits that he/she is:

(A) Duly licensed and authorized to act as (agent, broker, surplus line broker), license (Circle One)

number _____;

or (B) that he/she is an endorsee on the organizational license of _____

(Name of Organization)

and is duly licensed and authorized to act as (agent, broker, surplus line broker), license number (Circle One)

and (C) that he/she or said organizational licensee was engaged by the insured, or -the insured's broker, named herein to obtain insurance against certain risk as described in this report.

2. (A) Name of Insured

(B) Address of Insured

(Street and Number)

(City) (State) (Zip Code)

(C) Description of the Risk _____

(D) Location of the Risk _____

(Street and Number)

(City) (State) (Zip Code)

3. Type of Insurance coverage _____ (See Codes Attached)

(Enter Appropriate Code Number)

4. If Private Passenger Automobile liability Insurance is identified on line 3, does the insured qualify as a 'Good Driver' under Section 1861.025 of the California Insurance Code? Check one.

(Yes) (No) (Not Applicable)

5. If Health Insurance is identified on line 3, does the insured qualify as a "Small Employer" under Section 10700(x) of the California Insurance Code? Check one.

(Yes) (No) (Not Applicable)

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6. (A) Was this insurance placed pursuant to Section 125 et. seq. of the California Insurance Code governing transactions with risk purchasing groups authorized by the

Federal Liability Risk Retention Act of 1986 - _____

(Yes) (No)

(B) If the answer to 6(A) is yes, give the name and address of the purchasing group of which the insured is a member _____

7. (A) Describe the diligent efforts made to place this coverage with admitted insurers (include an attachment if additional space is needed)

(B) Did you determine that fewer than 3 admitted insurers actually write this particular type of insurance?

(Yes) (No)

(C) If yes, please describe how you made this determination.

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8. - (A) Was the risk described on line 2 submitted by you or by someone under your supervision to at least three (3) insurers that are admitted in California and actually writing that particular type of insurance?

(Yes) (No)

(B) If yes, complete the following:

ADMITTED COMPANIES DECLINING THE RISK

- Name of Company
- Name of Company
- Representative*
- and Telephone
- Number
- Declination Code**
- Mo. and Year of
- Declination

*Identify whether the representative is an employee or agent.
** Codes:

- 1 - Company's capacity reached
- 2 - underwriting reason
- 3 - refused to state
- 4 - other

The undersigned licensee hereby certifies that this report is true and correct and that this risk is not being placed with a nonadmitted insurer for the sole purpose of securing a rate or premium lower than the lowest rate or premium available from an admitted insurer.

Signature of Licensee Who Performed or Supervised the Search Date
SL-2 (12/92)

CODE TYPE OF INSURANCE

- 050 Auto Liability-Private
- 051 Auto Liability-Commercial
- 100 Auto Physical Damage-Private
- 101 Auto Physical Damage-Commercial
- 150 Crime
- 151 Crime-Kidnap & Ransom
- 200 Combined Auto Liability & P.D. - Private
- 201 Combined Auto Liab. & P.D. - Commercial
- 300 Excess Liability (Incl. Umb.)
- 350 Fidelity, Surety & Bonds - Bonds
- 351 Fidelity, Surety & Bonds - Fidelity
- 400 Fire - Sgl. Fam. Dwelling, Duplex
- 401 Fire - Commercial
- 402 Fire - Homeowners
- 403 Fire - Homeowners Multiple Peril
- 404 Fire - Farm owners Multiple Peril
- 450 Inland Marine
- 500 General Liability
- 501 Gen. Liability - Pollution Legal Liability
- 502 General Liability - Product Tampering
- 510 Aviation
- 550 Errors & Omissions - All others
- 551 Errors & Omissions - Dir. & Off.
- 600 Malpractice - AR Other
- 606 Malpractice - Hospitals
- 650 Miscellaneous
- 651 Miscellaneous - Glass
- 652 Miscellaneous - Boiler & Machinery
- 653 Miscellaneous - Nuclear Risks

655 Miscellaneous - Political Risks

700 Accident

701 Accident - Disability Income

702 Accident - Group Health Insurance

703 Accident - Individual Health Insurance

800 Garage Liability (May Include GKLL)

980 Excess Workers Compensation

990 Commercial Property - all Risk

994 Commercial Property - Sp. M. Peril

996 Commercial Property - DIC

997 Commercial Property - Earthquake