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Insurance

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Insurance

Insurance; charter-party carriers—special license plates

Public Utilities Code §§ 5385.6, 5386.1, 5387.5, 5392.5 (new); 5371.4, 5387 (amended); Vehicle Code §§ 5011.5, 5011.6 (new).
AB 727 (Moore); 1994 STAT. Ch. 109
(Effective June 24, 1994)

Under existing law, a charter-party carrier,¹ upon receiving an operating permit or certificate,² must have adequate liability insurance.³ Chapter 109 prohibits local governments or agencies from requiring that any party holding a valid permit from the California Public Utilities Commission (CPUC) carry any insurance not mandated by the CPUC.⁴

Chapter 109 requires charter-party carriers to equip limousines⁵ with special license plates issued by the Department of Motor Vehicles.⁶ Chapter 109 also requires the CPUC to issue a permit or certificate for limousine service.⁷ These provisions will become operative on July 1, 1995.⁸

1. See CAL. PUB. UTIL. CODE § 5360 (West 1994) (defining charter-party carrier of passengers to mean every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in California).

2. See *id.* § 5371 (West 1994) (requiring charter-party carriers of passengers to first obtain a certificate that public convenience and necessity require the operation of the carrier). Certain specific transportation services defined in California Public Utilities Code § 5384 may only be conducted under authority of a permit issued by the commission. *Id.*; see also *id.* § 5384 (West 1994) (identifying the persons to whom the California Public Utilities Commission will issue permits).

3. *Id.* § 5387 (amended by Chapter 109); see *id.* § 5391 (West 1994) (requiring that the charter-party carrier of passengers maintain adequate protection against liability which is imposed by law, including payment of damages for personal bodily injuries, as well as death resulting therefrom, protection against a total liability for bodily injuries to, or death of, more than one person as a result of any one accident, and protection against damage or destruction of property); see also *id.* § 451 (West Supp. 1994) (requiring that all charges demanded or received by any public utility, or by any two or more public utilities, for any product of commodity furnished or to be furnished or any service rendered or to be rendered be just and reasonable). Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. *Id.* See generally *id.* §§ 5351-5420 (West 1994) (setting forth the powers and duties of the California Public Utilities Commission in regard to charter-party carriers).

4. *Id.* § 5392.5 (amended by Chapter 109); see *id.* 5371.4(b) (enacted by Chapter 109) (providing that the governing body of any airport may not impose requirements on charter-party carriers operating limousines that are more burdensome than those imposed by the CPUC).

5. See *id.* § 5371.4(h) (West 1994) (defining limousine to include any luxury sedan, of either standard or extended length, with a seating capacity of not more than nine passengers including the driver, used in the transportation of passengers for hire on a prearranged basis to or from airports within this state).

6. *Id.* § 5385.6(a) (enacted by Chapter 109).

7. *Id.* § 5385.6(b) (enacted by Chapter 109); see CAL. VEH. CODE §§ 5011.5, 5011.6 (enacted by Chapter 109) (requiring that the California Department of Motor Vehicles to issue special license plates to charter-party carriers).

8. CAL. PUB. UTIL. CODE § 5385.6(e) (enacted by Chapter 109); see *id.* (stating that the California Public Utilities Code § 5385.6 becomes effective July 1, 1995).

Furthermore, Chapter 109 requires any charter-party carrier operating a limousine to display permit or license numbers in any oral or written advertisement.⁹ This requirement will become operative on July 1, 1995.¹⁰

Under existing law, it is unlawful for a charter-party carrier of passengers to operate a vehicle on public highways¹¹ without first complying with the preexisting identification requirements.¹² Chapter 109, in addition, makes it unlawful to operate a passenger carrying charter-party carrier without meeting the requirements for the display of an identifying decal or special license plates.¹³ This prohibition will become operative on July 1, 1995.¹⁴

INTERPRETIVE COMMENT

Chapter 109 was enacted to address the danger of limousines, which may be functioning with substandard equipment and without insurance, from operating without a permit.¹⁵ Chapter 109 also addresses the problem of the use of counterfeit permit decals by requiring the use of special plates which would be more difficult to counterfeit.¹⁶

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9. *Id.* § 5386.1 (enacted by Chapter 109).

10. *Id.*

11. *See id.* § 5358 (West 1994) (defining public highways to include every public street, road, or highway in the state).

12. *Id.* § 5385 (West 1994); *see id.* (prohibiting charter-party carriers of passengers from operating any motor vehicle on any public highway without displaying on the vehicle a distinctive identifying symbol in the form prescribed by the commission, showing the classification to which the carrier belongs); *Golden Sedan Serv., Inc. v. Airport Limousine Serv., Inc.*, 121 Cal. App. 3d 359, 364, 175 Cal. Rptr. 317, 320 (1981) (explaining the necessity of having a certificate of public convenience and necessity).

13. CAL. PUB. UTIL. CODE § 5387 (enacted by Chapter 109).

14. *Id.*

15. SENATE COMMITTEE ON ENERGY & PUBLIC UTILITIES, COMMITTEE ANALYSIS OF AB 727, at 2 (Apr. 19, 1994); *see "Bandit Limo" Crackdown*, L.A. TIMES, Apr. 13, 1989, at Metro 2 (reporting that illegal operators account for as many as 40% of the limousines serving the Los Angeles airport). These drivers, without the proper permits, were cited for illegally operating a limousine, a misdemeanor, punishable by up to one year in jail and a \$500 fine. *Id.*; *see also Orange County Digest/Local News in Brief: Countywide; 2 Limousine Companies, Shuttle Service Sued*, L.A. TIMES, Apr. 22, 1989, Metro 2 (reporting that prosecutors were seeking \$250,000 in civil penalties against each limousine company that violated public utility regulations by operating without permits and failing to carry insurance).

16. SENATE COMMITTEE ON ENERGY & PUBLIC UTILITIES, COMMITTEE ANALYSIS OF AB 727, at 2 (Apr. 19, 1994); *see Eric Brazil, Angry Taxi Drivers Demand Crackdown on Outlaw Limos; "They Steal Our Orders, Threaten Us,"* S.F. EXAM., Apr. 12, 1994, at A6 (detailing the lack of enforcement, by the CPUC, of the permit requirement for limousine operators).

Insurance; nonadmitted insurers

Insurance Code § 1780.68 (repealed); §§ 1766, 1772 (new); §§ 922.5, 1763, 1764.1, 1764.7, 1765.1, 1769, 1779 (amended).
SB 959 (Johnston); 1994 STAT. Ch. 980

Under existing law, surplus line brokers¹ may solicit and place insurance² with nonadmitted³ insurers⁴ only if, after a diligent search, it is found that insurance cannot be obtained from insurers admitted in California to write the particular type of insurance sought where the phrase “type of insurance” is not defined by the code.⁵ Chapter 980 amends the Insurance Code to include a definition of “type of insurance” as the hazard or combination of hazards covered by an insurance contract.⁶

Existing law further requires that nonadmitted insurers and surplus line brokers provide disclosure statements, signed by the applicants, to policyholders and applicants for insurance, other than industrial insureds,⁷ with information regarding the insurer’s nonadmitted or surplus line broker status, the inapplicability to the insurer of California licensing laws regarding financial solvency⁸ and reserves,⁹ and the availability of further information.¹⁰

1. See 39 CAL. JUR. 3D, *Insurance Companies* § 137 (1977) (stating that, although the phrase surplus line brokers is not defined in the California Insurance Code, the regulations concerning their activities indicate that they are insurance brokers whose business is the placing of insurance with companies not authorized to do business in California).

2. See CAL. INS. CODE § 22 (West 1993) (defining insurance as a contract that undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event).

3. See *id.* §§ 24-25 (West 1993) (defining an admitted or nonadmitted person as one who either is or is not entitled to conduct insurance business in the state due to the failure or inability to comply with conditions precedent to such entitlement). See generally *id.* §§ 680-1110 (West 1993 & Supp. 1994) (containing the general regulations governing the insurance business).

4. See *id.* § 23 (West 1993) (defining insurer as one who indemnifies another by insurance).

5. *Id.* § 1763(a) (amended by Chapter 980); see *id.* § 1763(b) (amended by Chapter 980) (providing that *prima facie* evidence of a diligent search is present where three admitted insurers who write the particular type of insurance sought have declined the risk or fewer than three admitted insurers actually write the particular type of insurance sought); see also 39 CAL. JUR. 3D, *Insurance Companies* § 138 (Supp. 1994) (stating that it is the responsibility of the surplus line broker to ensure that a diligent search has been conducted).

6. CAL. INS. CODE § 1763(e) (amended by Chapter 980).

7. See *id.* § 1764.1(c)(1)(A)-(C) (amended by Chapter 980) (defining industrial insured as an insured who has employed an average of at least 25 employees over the previous 12 months, has annual premiums totaling \$ 25,000 or more for all risks other than workers’ compensation and health coverage, and who employs a full-time insurance manager or continuously retained consultant).

8. See *id.* §§ 985 (West 1993) (defining insolvency as the impairment of an insurer’s minimum paid-in capital requirements); see also *id.* §§ 1010-1062 (West 1993 & Supp. 1994) (describing the proceedings available in the event of insurer insolvency).

9. See *id.* § 700.1 (West 1993) (describing the capital requirements for all classes of insurance that must be maintained by admitted insurers); see also *id.* § 922.5(d)(1) (amended by Chapter 980) (allowing certain alien reinsurers to receive accreditation so long as they maintain financial surpluses of at least \$100 million, submit to California’s authority to examine books and records, and bear the cost of such examinations).

Chapter 980 adds the requirement that a surplus line broker maintain a copy of the disclosure statement for at least five years following the time of accepting any insurance policy¹¹ application.¹² This copy must be made available to the insurance commissioner¹³ or the insured on request.¹⁴

Financial solvency requirements for alien reinsurers¹⁵ accredited by the California Insurance Commissioner are subject, under Chapter 980, to the same regulation and control by domiciliary regulators as unincorporated insurers.¹⁶ Chapter 980 additionally provides that applicants may cancel their insurance on a pro rata basis or be reimbursed for any broker's fees if they have not received, completed, and signed the required disclosure form.¹⁷

Chapter 980 prohibits surplus line brokers from placing coverage with nonadmitted insurers unless they meet certain enumerated requirements regarding domicile, purpose of the policy, financial stability, reputation, and capital reserves.¹⁸ However, Chapter 980 provides for coverage of insureds by

10. *Id.* § 1764.1(b)-(c) (amended by Chapter 980); *see id.* § 1764.1(a) (amended by Chapter 980) (prescribing the appearance of the disclosure statement as well as requiring the signature of the applicant and the inclusion of a toll-free telephone number for the Department of Insurance).

11. *See id.* § 380 (West 1993) (defining an insurance policy as a written instrument setting forth a contract of insurance).

12. *Id.* § 1764.1(a)(1) (amended by Chapter 980).

13. *See id.* §§ 12900-12906 (West 1993 & Supp. 1994) (defining the appointment, qualifications, and office of the insurance commissioner); *see also id.* §§ 12919-13500 (West 1993 & Supp. 1994) (defining the powers and duties of the insurance commissioner).

14. *Id.* § 1764.1(a)(1) (amended by Chapter 980).

15. *See id.* § 1781.2(i) (West 1993) (defining reinsurers as any person, firm, association, or corporation admitted in California as an insurer with the authority of reinsurance); *see also id.* § 620 (West 1993) (defining reinsurance as a contract by which an insurer procures a third person to insure him or her against loss or liability by reason of the original insurance).

16. *Id.* § 922.5(b)(2) (amended by Chapter 980); *see id.* (requiring alien reinsurers to maintain guaranteed surpluses of \$100 million, to subject themselves to the same regulation and control by domiciliary regulators as unincorporated members, and prohibiting alien reinsurers from engaging in any business other than underwriting).

17. *Id.* § 1764.1(d)(2) (amended by Chapter 980).

18. *Id.* § 1765.1 (amended by Chapter 980); *see id.* (allowing surplus line brokers to place coverage with nonadmitted insurers domiciled in Mexico whose policies cover liability arising from motor vehicles, boats, or aircraft); *see also id.* § 1765.1(a)(1) (amended by Chapter 980) (allowing coverage with nonadmitted insurers whose financial stability, reputation, and integrity have been established through evidence submitted to the insurance commissioner by the surplus line broker); *id.* § 1765.1(a)(2) (amended by Chapter 980) (allowing coverage with nonadmitted insurers maintaining capital and surplus held in acceptable assets of at least \$15 million or \$50 million for an insurance exchange created by state law unless the capital and surplus is otherwise found acceptable by the commissioner); *id.* § 1765.1(b)(1) (amended by Chapter 980) (requiring that an insurer not domiciled in the United States must, in order to be eligible as a surplus line insurer, maintain an irrevocable trust account in a qualified domestic financial institution of at least \$5.4 million, or \$100 million for groups of incorporated or unincorporated underwriters, consisting of various assets acceptable to the commissioner); *id.* § 1765.1(b)(3)-(g) (amended by Chapter 980) (allowing coverage with nonadmitted insurers who have transacted insurance for the three immediately preceding years or have been exempted or placed on the list of eligible surplus line brokers by the commissioner); *id.* § 1765.1(h)-(j) (amended by Chapter 980) (requiring that nonadmitted insurers provide, upon request by the insurance commissioner, additional information regarding financial stability, reputation, and integrity; providing that the commissioner require annual submissions by nonadmitted insurers to ensure compliance with the requirements of SB 959; and providing for the assessment of fees to cover the costs of administering and enforcing the provisions of Chapter 980).

nonadmitted insurers under certain circumstances.¹⁹ Chapter 980 additionally provides a list of circumstances under which the placing of insurance with nonadmitted insurers is still prohibited.²⁰

Existing law also requires that those who have obtained insurance from nonadmitted insurers must, upon written request from the insurance commissioner, produce specified evidence of the policy along with a disclosure of the insurance premium for the policy.²¹ Failure to comply with this requirement is a crime and subjects the noncomplying insurer to criminal sanctions as well as a \$200 fine.²² Chapter 980 increases the amount of this fine to \$1000.²³

Chapter 980 exempts from its provisions, motor vehicle insurance issued or delivered by nonadmitted Mexican insurers through surplus line brokers offering coverage exclusively in Mexico.²⁴

INTERPRETIVE COMMENT

Chapter 980 was enacted to address the writing of potentially worthless insurance policies in California by unauthorized insurers before preemptive action could be taken by the State.²⁵ Chapter 980 was intended to ensure that nonadmitted insurers doing business in California have adequate resources to pay claims arising in the state.²⁶ It also addresses the need for adequate reserves by requiring affirmative findings of financial stability before nonadmitted insurers are added to the list of approved carriers.²⁷

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19. *Id.* § 1765.1(k) (amended by Chapter 980); *see id.* (allowing placement of insurance with nonadmitted insurers if multiple insurers are necessary to provide coverage, at least 80% of the risk is written by admitted insurers or eligible nonadmitted insurers on the list, insurers not on the commissioner's list of approved insurers do not disproportionately represent the lower segment of the coverage, the surplus line broker submits required documentation for nonlisted insurers, and the insured has aggregate annual premiums of at least \$100,000 excluding workers' compensation).

20. *Id.* § 1765.1(k)(2) (amended by Chapter 980); *see id.* (providing that California Insurance Code § 1765.1(k)(1) does not apply to: (1) Unlisted insurers objected to by the insurance commissioner; (2) insurance including coverage for employer-sponsored medical, surgical, hospital, or other medical expense benefits payable by the insurer to the employee; (3) insurance that is mandatory; (4) insureds that are groups of employers not under common ownership or control and maintained primarily to provide insurance benefits to employees; or (5) unlisted insurers representing a disproportionate portion of the lower layers of coverage).

21. *Id.* § 1779 (amended by Chapter 980).

22. 1935 Cal. Stat. ch. 145, sec. 1779, at 588 (amending CAL. INS. CODE § 1779); *see* CAL. INS. CODE § 1776 (West 1993) (providing that willful failure to report any insurance on subject matters located within the state constitutes a misdemeanor).

23. CAL. INS. CODE § 1779 (amended by Chapter 980).

24. *Id.* §§ 1763(f), 1764.1(e), 1765.1 (amended by Chapter 980).

25. *Garamendi Backs Prior-Authorization Legislation; Supports Johnston Bill Requiring Unlicensed Insurers to Get OK'd Before Selling Insurance in California*, BUS. WIRE, Mar. 8, 1993, at 1; *see id.* (quoting a statement by California Insurance Commissioner, John Garamendi, that the purpose of SB 959 was to prevent "rip-offs" of policyholders).

26. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 959, at 3 (May 20, 1993).

27. *Id.*

