

**PROGRAM DIVISION  
BULLETIN**

2004-44

October 21, 2004

**California Surplus Lines**

California has approved AB-2490 which amends California Insurance Code Section 1764.1, regarding notice required to be given applicants for surplus lines insurance.



"California SPL  
Law.pdf"

A summary of this is attached.

It applies to All Commercial Lines, auto, general liability, inland marine property and umbrella.

Notice D-1 Form (1/1999) is to be signed prior to the purchase of surplus lines coverage.

Notice D-2 Form (1/1999) is to be affixed to every policy issued by a non-admitted insurer and every certificate evidencing the placement of insurance and must contain, or have affixed on the front by the insurer or surplus lines broker, this disclosure statement in 16-point bold type.

The D-2 is required for the renewal of a policy.



"California SPL  
documents.pdf"

If you have any questions please contact your program manager.

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**LEXINGTON INSURANCE COMPANY**

**PROGRAM DIVISION**

100 Summer Street/19th Floor, Boston, MA 02110  
phone 617-330-1100 / fax 617-330-8595

## NOTICE

1. THE INSURANCE POLICY THAT YOU ARE APPLYING TO PURCHASE IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED “NON-ADMITTED” 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. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE SURPLUS LINE INSURERS APPROVED BY THE INSURANCE COMMISSIONER. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST.
5. 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: 1-800-927-4357.

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DATE

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INSURED

## NOTICE

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## New Law Bulletin

**September 27, 2004**

**No. 04-504\***

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<b>State:</b>	California
<b>Topic:</b>	Surplus Lines
<b>Lines Affected:</b>	Auto-Commercial, Commercial-All, General Liability, Inland Marine-Commercial, Property-Commercial, Umbrella-Commercial
<b>Effective Date:</b>	Multiple effective dates
<b>Bill Number:</b>	AB-2490
<b>PCI Legislative Contact:</b>	Sam Sorich, 916-449-1370 <a href="mailto:samuel.sorich@pciaa.net">samuel.sorich@pciaa.net</a>
<b>PCI Legislative Analyst:</b>	Michael S. Krauch, 847-553-3832 <a href="mailto:michael.krauch@pciaa.net">michael.krauch@pciaa.net</a>

### Executive Summary

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AB-2490 was approved on July 5, 2004, and has multiple effective dates. This law amends California Insurance Code Section 1764.1, regarding notice required to be given to applicants for surplus lines insurance.

### Significant Provisions

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#### **California Insurance Code Section 1764.1: Provisions Effective Until January 1, 2008**

This law amends California Insurance Code Section 1764.1, regarding notice required to be given to applicants for surplus lines insurance. In addition to other requirements, this law directs surplus lines brokers to provide a disclosure statement regarding placement of surplus lines insurance to applicants for surplus lines coverage. The disclosure must contain language as specified by this law and the applicant must sign it. Additionally, the disclosure must indicate that if, under specified circumstances, an applicant's surplus lines coverage is bound immediately, but the applicant did not receive the required disclosure and request for signature until after coverage became effective, the applicant may cancel the policy within five days of receiving the disclosure. Under such circumstances, all premiums paid will be prorated and broker fees charged for the insurance will be returned. Unless a statute enacted before January 1, 2008 deletes or extends the effective date of this law, these provisions will remain in effect until January 1, 2008.

#### **California Insurance Code Section 1764.1: Provisions Effective on and After January 1, 2008**

This law requires nonadmitted insurers and surplus lines brokers to obtain a signed disclosure regarding placement of surplus lines insurance from applicants for surplus lines coverage. If reasonable under the circumstances, nonadmitted insurers or surplus lines brokers may rely on signed disclosure statements received from any licensee involved in the transaction. Such statements will be deemed prima facie evidence that the disclosure statement and applicant's signature have been obtained. Surplus lines brokers must maintain a copy of the signed statement in their records for a period of five years and make the records available to the commissioner and the insured upon request.

Surplus lines disclosures must be signed by the applicant for coverage and are not subject to any limited power of attorney agreement between the applicant and an agent, broker, or surplus lines broker. Moreover, every policy or certificate of insurance issued by nonadmitted insurers must contain, or have affixed to it, the disclosure statement required by this law. Applicants who have not received and signed the disclosure form as required may cancel the coverage so placed. Under such circumstances, premiums will be refunded pro rata and applicants will be entitled to the return of all broker's fees charged for placement of the cancelled insurance.

The notice required by this law must be in the prescribed form and contain language specified by this law. In addition to other provisions, the notice must indicate a nonadmitted or surplus lines insurer is issuing the insurance being purchased. The notice must indicate that such insurers are not licensed in California and are not subject to financial solvency regulation and enforcement applying to California licensed insurers. It also must inform the applicant that surplus lines and nonadmitted insurers do not participate in any California insurance guarantee fund and such funds will not be available to pay claims or protect an insured's assets if the insurer becomes insolvent and unable to make promised payments. In addition, the notice must instruct applicants seeking additional information about a surplus lines insurer to ask questions of their insurance agent, broker, surplus lines broker, or the California Department of Insurance. The notice must also provide a toll-free number for the California Department of Insurance.

If a contract is issued to an industrial insured, neither the nonadmitted insurer, nor the surplus lines broker need provide notice or obtain the insured's signature as otherwise required by this law, except on confirmation of insurance or issuance of a policy or certificate of insurance, whichever is first provided to the insured. Producers must ensure notice is affixed to the confirmation, certificate, or policy of insurance provided to the insured and insert the current toll-free telephone number for the Department of Insurance. Additionally, surplus lines brokers are responsible for ensuring applicants are industrial insureds as defined by this law. Surplus lines brokers will be deemed in compliance with this requirement if they reasonably rely on information provided in good faith by the applicant, whether such information is provided directly or through a producer.

If an insurance transaction is not conducted in person, an applicant's signature may be obtained via facsimile or comparable electronic transmittal. If under circumstances specified by this law, an applicant for commercial coverage requires coverage to be bound immediately the agent or broker may obtain the signature within five days of binding coverage if an in person meeting is not immediately possible. Under such circumstances, the applicant may cancel coverage so placed within five days of receipt of the disclosure form. Upon cancellation of coverage the agent must inform the applicant that premiums and broker fees will be refunded according to applicable provisions of this law.

These provisions do not apply to specified insurance coverage issued or delivered in California by nonadmitted Mexican insurers. This includes coverage afforded exclusively in the Republic of Mexico on property or operations temporarily or permanently located there.

The term "industrial insured" is defined within the text of this law.

## **Additional Information**

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### **To Obtain Law Text**

Law text and other pertinent documents are now available electronically. A copy of the law text corresponding to this bulletin may be obtained via the PCI Web site. To obtain text, select the **State** tab located under **Jurisdiction** on the PCI home page. Select the state on the U.S. map or click on the state link. Next select the bill number from the box under **Current Year Bill Search** and click on the "**View Bill**" link to view the text of the bill.

## **Legislative Activity Report**

This new law is referenced in the PCI Legislative Activity Report, *Surplus Lines*. The PCI Legislative Activity Reports are available on the PCI Web site. To access the reports, select the **By Title** tab located under **Publication** menu on the PCI home page. Select the Publication Category, **Bulletins**. In the box entitled **Select a Publication**, select either Legislative Activity Report by Subject or Legislative Activity Report by State.

*\*Note: New Law Bulletins (NLB) numbered with an "04" prefix were published in 2004. An 04 series bulletin may report on legislation introduced, tracked and enacted in 2003.*

