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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (Division 1 enacted by Stats. 1935, Ch. 145.)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (Part 2 enacted by Stats. 1935, Ch. 145.)

CHAPTER 6.1. Surplus Line Advisory Organization [1780.50 - 1780.67] (Chapter 6.1 added by Stats. 1993, Ch. 1007, Sec. 1.)

1780.50. (a) The Legislature finds and declares that consumers in the State of California have insurance needs which cannot always be met through the admitted insurance market. For this reason, many insurance consumers need access to insurance underwritten by nonadmitted insurers, as permitted by law. To help ensure that insurance consumers have access to financially sound and reputable nonadmitted insurers, it is in the public interest to authorize a surplus line advisory organization within the State of California to perform certain duties delegated by the Insurance Commissioner, as provided in this chapter.

(b) The Legislature further finds and declares that it is in the public interest for the surplus line advisory organization authorized under this chapter to be composed of surplus line brokers or persons involved in the business of surplus line insurance. The advisory organization's activities shall constitute an integral part of the business of insurance. The advisory organization will facilitate the state's ability to monitor and regulate the transfer of risk on a sound basis through surplus line brokers to nonadmitted insurers in accordance with Chapter 6 (commencing with Section 1760) and may perform certain functions in this state's system of monitoring and regulating the persons and entities involved in this state in the surplus line segment of the insurance industry.

(c) The Legislature further finds and declares that the authorization of a surplus line advisory organization to perform the duties delegated by the Insurance Commissioner, as provided in this chapter, will further the policies of the State of California expressed in the findings set forth in this section. The oversight, supervision, and examination by the Insurance Commissioner provided for in this chapter are intended to subject the activities of the advisory organization to active state supervision.

(d) The Legislature further finds and declares that, as it is the obligation and duty of the elected Insurance Commissioner to regulate the business of insurance in the State of California, it is in the public interest to grant the Insurance Commissioner the authority and discretion to utilize the expertise and knowledge of a surplus line advisory organization to assist in carrying out that responsibility, as provided in this chapter.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.51. (a) As used in this chapter, "surplus line advisory organization" shall mean the organization authorized to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto.

(b) All references in this chapter to "advisory organization" shall mean "surplus line advisory organization."

(c) As used in this chapter, the term "surplus line law" shall refer to Chapter 6 (commencing with Section 1760).

(d) All references in this chapter to the "commissioner" shall mean the Insurance Commissioner of the State of California.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.52. (a) The surplus line advisory organization shall be deemed a joint arrangement established by statute to assure the availability of insurance on a sound basis under paragraph (2) of subdivision (b) of Section 1861.03.

(b) All surplus line brokers licensed under the surplus line law shall be deemed to be members of the advisory organization.

(c) Any member of the National Association of Registered Agents and Brokers, licensed as a surplus line broker in his, her, or its home state of residence or business and paying the applicable California license fee, shall be deemed to be members of the advisory organization. This subdivision shall not be effective unless and until the advisory organization recognizes in writing the National Association of Registered Agents and Brokers is incorporated and operating under its board-adopted bylaws.

(Amended by Stats. 2017, Ch. 477, Sec. 2. (AB 1641) Effective January 1, 2018.)

1780.53. The commissioner shall remain fully responsible for supervising the implementation and administration of the surplus line law and for all regulatory decisions and initiatives in connection therewith, and nothing in this chapter shall be deemed or construed to diminish or impair the commissioner's authority and responsibility.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.54. To be authorized to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto, an organization must satisfy the requirements of this section.

(a) The organization must be a private, nonprofit organization that has all the following qualifications:

- (1) Experience in professional surplus line brokerage, advisory, and regulatory activity in California or whose members possess that experience.
- (2) The administrative capability and recordkeeping facilities to process all surplus line filings in California.
- (3) The data processing capability and the necessary personnel to perform appropriate security review of all nonadmitted insurers.
- (4) The capability to perform the duties that may be delegated by the commissioner under this chapter and to exercise the authority incidental thereto.

(b) An organization that has the qualifications described in subdivision (a) must file with the commissioner all of the following:

- (1) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation.
- (2) A copy of its bylaws, if any.
- (3) A current list of its members.
- (4) The name and address of a resident of this state as agent for service of process.
- (5) A plan of operation identifying the duties set forth in Section 1780.56 that the organization proposes to perform and describing how the organization will perform those duties.
- (6) Any other documents, evidence, or information necessary to show that the organization complies with the provisions of this chapter.

(c) The advisory organization shall file with the commissioner every material change in the documents required by subdivision (b), including every amendment to its plan of operation required by subdivision (d).

(d) The advisory organization's plan of operation shall be amended whenever necessary to conform to and effectuate the purposes of any amendments to this chapter or to the surplus line law or the regulations pertaining thereto. Further, the plan of operation shall be amended in response to any written request reasonably made by the commissioner to improve the advisory organization's effectiveness in performing the duties delegated by the commissioner under this chapter. The commissioner's requests under this subdivision shall be consistent with technical and economic feasibility and established techniques or practices for performing the types of activities encompassed by the duties delegated by the commissioner.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.55. (a) Within 120 days after the filing of the documents required by subdivision (b) of Section 1780.54, the commissioner shall notify the organization in writing of the commissioner's determination to approve or disapprove the organization's qualifications and its plan of operation and which, if any, of the duties identified in the plan of operation the commissioner has determined to delegate to the organization. The commissioner and the organization shall confer to resolve any and all issues that the commissioner may raise concerning the organization's qualifications, its plan of operation, or which duties should be delegated to the organization. Any determination by the commissioner to disapprove the organization's qualifications or plan of operation or not to delegate one or more of the duties identified in the plan of operation shall be accompanied by a statement of the commissioner's reasons therefor.

(b) The commissioner may provisionally approve the organization's qualifications and plan of operation and may provisionally delegate one or more of the duties identified in the plan of operation pending the commissioner's determinations under subdivision (a).

(c) Upon approval of the organization's qualifications and plan of operation and upon delegation to the organization of one or more of the duties identified in the plan of operation, the organization shall commence operations as the advisory organization under this chapter, consistent with the duties delegated by the commissioner. In the event of provisional approval and delegation pursuant to

subdivision (b), the organization shall operate as the advisory organization under this chapter during the period of, and consistent with, the provisional approval and delegation by the commissioner.

(d) Any amendment to the advisory organization's plan of operation that is required by subdivision (d) of Section 1780.54 shall be approved or disapproved pursuant to the procedures set forth in this section.

(e) The time periods set forth in this section may be extended by consent of the organization and the commissioner.

(f) The decision whether to delegate or withdraw one or more of the duties identified in the plan of operation is committed to the commissioner's sound discretion. The commissioner may, upon not less than one year's notice to the advisory organization, withdraw one or more functions that have been delegated to the advisory organization in order that any one or more functions so withdrawn may be performed by the Department of Insurance.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.56. (a) The commissioner may delegate one or more of the following duties to a qualified surplus line advisory organization under this chapter:

(1) To receive, review, and record all documents required by law, regulation, or order to be filed with the commissioner or his or her designee with respect to foreign and alien nonadmitted insurers and any insurance placed with nonadmitted insurers, except that the advisory organization shall not receive documents submitted pursuant to subdivision (c) of Section 1763. The review under this subdivision shall be for completeness, accuracy, and any other matters the commissioner reasonably may direct the advisory organization to review. The advisory organization shall notify the filing surplus line broker in writing of any filing that the advisory organization determines to be incomplete or inaccurate, and shall request the filing broker to correct the problem. The advisory organization may, or as directed by the commissioner shall, notify the commissioner of incomplete or inaccurate filings.

(2) To conduct a security review and analysis as directed by the commissioner, and to provide to the commissioner, and if directed by the commissioner, to the NAIC, a report on any nonadmitted insurer based on that review and analysis. The review and analysis under this subdivision shall take account of any matters the commissioner reasonably may direct the advisory organization to review and any other matters the advisory organization considers necessary or appropriate.

(3) To make confidential recommendations to the commissioner and, if directed by the commissioner, to the NAIC, as to the suitability of any foreign or alien nonadmitted insurer to insure property or risks located or persons residing in this state or whether any foreign or alien nonadmitted insurer should be eligible or ineligible or approved pursuant to Section 1765.2. The advisory organization's recommendations shall be based on any review and analysis that it performs under this chapter and on any additional information that may come to the advisory organization's attention or that the commissioner reasonably may request the advisory organization to consider.

(4) To report to the commissioner and other appropriate authorities instances of actual fraudulent or illegal insurance activity in the surplus line market that come to the advisory organization's attention and any facts that come to the advisory organization's attention that, in the reasonable judgment of the advisory organization, may indicate the presence of fraudulent or illegal insurance activity in the surplus line market or potential risk of harm to consumers of surplus line insurance.

(5) To maintain and report information necessary or that reasonably may be requested by the commissioner for the calculation and collection of premium taxes on surplus line insurance premiums.

(6) To respond to any request by the commissioner for comments on any proposed legislation or regulation affecting the placement of insurance pursuant to the surplus line law.

(7) To receive and disseminate to its members information relating to surplus line insurance, to educate its members about the surplus line law and the regulations pertaining thereto, and to perform any specific educational activities that the commissioner reasonably may request.

(8) To communicate with organizations of admitted insurers with respect to the proper use of the surplus line market.

(9) To enter into written arrangements with the commissioner whereby the advisory organization will perform any other functions that, in the judgment of the commissioner and the advisory organization, will help the commissioner provide effective and cost-efficient supervision of the surplus line market.

(b) If the commissioner delegates to the advisory organization one or more of the duties set forth in subdivision (a), the advisory organization also shall be authorized to assess a stamping fee for each policy, declarations page, cover note, or other premium bearing document submitted to the advisory organization. The stamping fee shall be established from time to time by the governing body of the advisory organization, shall reflect all reasonable costs associated with the services provided by the advisory

organization, and may be reviewed by the commissioner for reasonableness as part of the commissioner's examination of the advisory organization. Except as otherwise provided in this subdivision, the stamping fee may not exceed three-fourths of 1 percent of the premium for the insurance. Any proposed increase in the stamping fee above three-fourths of 1 percent shall be filed with the commissioner along with a written explanation of the reason for the increase, and the increase shall take effect upon the expiration of 60 days after the date of filing unless the commissioner disapproves it within that time. Within 60 days after the date of filing, the commissioner may provisionally approve the proposed increase, in which event the increase shall take effect immediately. The proposed increase shall be deemed fully approved upon the expiration of 120 days after the date of filing unless the commissioner disapproves the proposed increase within that time. The stamping fee shall be paid by the surplus line broker, provided, however, that the surplus line broker shall be allowed to receive and collect the stamping fee from the insured.

(c) Nothing in this chapter shall affect any delegation by the commissioner pursuant to the surplus line law, provided, however, that once the commissioner delegates one or more of the duties set forth in this section and the advisory organization commences operations under this chapter, no other organization may simultaneously perform the same duties under this chapter or exercise the authority incidental thereto.

(d) The advisory organization may cease performing the duties delegated by the commissioner under this chapter and exercising the authority incidental thereto at any time upon 180 days' written notice to the commissioner. The commissioner may require the advisory organization to continue performing the duties under this chapter for up to an additional 180 days, and the commissioner shall be entitled, following receipt of notice from the advisory organization under this subdivision, to obtain copies of all unprivileged files, documents, and records maintained by the advisory organization on behalf of the commissioner under this chapter.

(e) The commissioner's findings, determinations, rules, rulings, and orders under this chapter shall apply only to the advisory organization's right to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto. Nothing in this chapter shall be deemed or construed to affect the advisory organization's right to exist and function as a private, nonprofit organization, with all powers attendant thereto, and to engage in lawful activities other than under the authority of this chapter.

(Amended by Stats. 2011, Ch. 83, Sec. 31. (AB 315) Effective July 15, 2011. Operative July 21, 2011, by Sec. 34 of Stats. 2011, Ch. 83.)

1780.57. If the commissioner delegates to the surplus line advisory organization one or more of the duties set forth in Section 1780.56, the advisory organization also shall be authorized to exercise the authority, in connection with those duties and incidental thereto:

(a) To facilitate and encourage compliance by its members with the laws of California and the rules and regulations of the commissioner relating to surplus line insurance.

(b) To maintain files for all documents received under this chapter and any other files the commissioner reasonably may direct the advisory organization to maintain.

(c) To provide comments on any proposed legislation or regulation.

(d) To make contracts necessary or appropriate to effect the purposes of this chapter and to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto.

(e) To employ and retain whatever persons are necessary to perform the duties delegated by the commissioner under this chapter and to exercise the authority incidental thereto.

(f) To perform any other acts necessary or appropriate to monitor the surplus line business and to effect the purposes of this chapter as well as the surplus line law and the regulations pertaining thereto, consistent with the duties delegated by the commissioner under this chapter.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.58. (a) The surplus line advisory organization shall be subject to the supervision of the commissioner, including, but not limited to, the powers of the commissioner pursuant to Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1, and Article 1 (commencing with Section 12919) of Chapter 2 of Division 3.

(b) The advisory organization shall prepare and submit an annual report on the performance of its duties under this chapter in the form and manner required by the commissioner and may advise the commissioner from time to time concerning any other matters relevant to its duties or the regulation of the surplus line market.

(c) The commissioner shall, at least once every three years, make or cause to be made an examination of the advisory organization, including the reasonableness of its costs. The examination may be made by independent auditors retained for that purpose by the commissioner. The reasonable cost of the examination shall be paid to the commissioner or, if the commissioner retains independent auditors for that purpose, directly to the independent auditors, by the advisory organization upon presentation by the commissioner, or by the independent auditors, of a detailed account of the cost. The commissioner shall furnish two copies of the examination report to the advisory organization.

(d) Within 20 days of receiving the commissioner's examination report, the advisory organization may request a hearing on the report or on any facts or recommendations contained therein by mailing written notice to the commissioner specifying the matters to be considered at the hearing. The commissioner shall hold a hearing within 60 days on those aspects of the examination report and on any other aspects of the report that the commissioner designates for consideration.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.59. (a) If, as a result of the commissioner's examination of the surplus line advisory organization or otherwise, there is good cause to believe that the advisory organization does not comply with any provision of this chapter or with any written request reasonably made by the commissioner pursuant to the provisions of this chapter, the commissioner shall give notice in writing to the advisory organization, stating in what manner and to what extent noncompliance is alleged to exist and specifying a reasonable time, not less than 10 days thereafter, in which the noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the advisory organization unless a hearing is held under Section 1780.60.

(b) For purposes of this chapter, noncompliance includes any material failure by the advisory organization to perform adequately the duties delegated by the commissioner under this chapter or exercise properly the authority incidental thereto.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.60. (a) If there is good cause to believe that the surplus line advisory organization's noncompliance with any provision of this chapter is willful, or if within the period prescribed by the commissioner in the notice required by subdivision (a) of Section 1780.59 the advisory organization does not make the changes necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that noncompliance does not exist, then the commissioner may hold a hearing in connection therewith, provided that within a reasonable period of time, which shall not be less than 30 days before the date of the hearing, the commissioner shall mail written notice specifying the matters to be considered at the hearing to the advisory organization. The notice shall conform to the requirements for an accusation as prescribed by Section 11503 of the Government Code. If no notice has been given as provided in subdivision (a) of Section 1780.59, notice shall be given as to the manner and extent of noncompliance that is alleged to exist. The hearing shall not include any subjects not specified in the notices required by subdivision (a) of Section 1780.59 or this section, except that if the hearing relates to or is based upon any aspect of the commissioner's examination report on the advisory organization, the hearing shall also include any other aspect of the report that the advisory organization designates for consideration.

(b) In the event the commissioner reasonably determines that the advisory organization is engaged in fraudulent activity or malfeasance in the performance of the duties delegated by the commissioner under this chapter or in the exercise of the authority incidental thereto or otherwise is in violation of or noncompliance with any provision of this chapter, and that conduct has resulted, or is likely to result, in a significant, adverse, and immediate effect on the public or the commissioner's ability to regulate the surplus line business that, because of the emergency nature of the effect on the public or the commissioner's ability to regulate the surplus line business, cannot reasonably be remedied under the other provisions of this chapter, the commissioner may issue an order, without prior hearing, directing the advisory organization to cease and desist from the conduct or suspending or revoking all or part of the advisory organization's authorization to perform the duties delegated by the commissioner under this chapter, in addition to imposing any other penalty provided for in this code. An order under this subdivision may, if necessary, also direct the advisory organization to preserve documents and records and to grant immediate access by the commissioner's authorized representatives to the advisory organization's premises to examine and make copies of any and all unprivileged documents and records of the advisory organization maintained on behalf of the commissioner pursuant to this chapter. Within five days after issuing an order under this subdivision, the commissioner shall issue the notice and shall thereafter hold the hearing under subdivision (a) of this section, provided, however, that:

(1) The notice shall include a statement of the factual bases for issuance of the order under this subdivision.

(2) The notice shall be delivered to the advisory organization's offices within one day of issuance.

(3) The advisory organization shall be granted a hearing upon 10 days' written request to the commissioner or upon the hearing date set by the commissioner, whichever is earlier.

(4) Within 10 days following the hearing under this subdivision, the commissioner shall confirm, modify, or withdraw the summary order issued prior to hearing under this subdivision.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.61. If, after a hearing pursuant to subdivision (d) of Section 1780.58 or subdivision (a) of Section 1780.60, the commissioner finds:

(a) That the advisory organization has violated or failed to comply with any provision of this chapter, the commissioner may issue an order to the advisory organization, specifying in what respect the violation or noncompliance exists and stating when, within a reasonable period of time, the violation or noncompliance shall cease.

(b) That the advisory organization has failed to comply with a final order of the commissioner under subdivision (a) within the time prescribed by the commissioner's order or by any extension thereof which the commissioner may grant, the commissioner may issue an order suspending or revoking all or part of the advisory organization's authorization to perform the duties delegated by the commissioner under this chapter, in addition to imposing any other penalty provided for in this chapter.

(c) That the advisory organization has willfully engaged in any fraudulent or dishonest act or practice, the commissioner may issue an order suspending or revoking all or part of the advisory organization's authorization to perform the duties delegated by the commissioner under this chapter, in addition to imposing any other penalty provided for in this code.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.62. Except as otherwise provided in this chapter, the proceedings required or authorized by subdivision (d) of Section 1780.58 and by Sections 1780.60 and 1780.61 shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all the powers granted therein. Hearings shall be conducted by administrative law judges chosen under Section 11502 of the Government Code or appointed by the commissioner.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.63. (a) Any finding, determination, rule, ruling, or order made by the commissioner under this chapter shall be subject to review by the courts of this state, and proceedings on review shall be conducted in accordance with the provisions of the Code of Civil Procedure. In proceedings on review, the court shall apply the substantial evidence standard set forth in subdivision (c) of Section 1094.5 of the Code of Civil Procedure.

(b) Notwithstanding any other provision of law to the contrary, a petition for judicial review of any finding, determination, rule, ruling, or order of the commissioner may be filed within 30 days after the effective date thereof. Upon application by the advisory organization, a court may for good cause stay or enjoin the effect of any finding, determination, rule, ruling, or order of the commissioner issued pursuant to this chapter.

(c) The advisory organization shall have legal standing to bring and defend actions, in the name of the advisory organization, in administrative and judicial proceedings, with all powers attendant thereto.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.64. (a) If the surplus line advisory organization, or any of its officers, committee members, agents, or employees, fails to comply with a final order of the commissioner under this chapter, the advisory organization or the person shall be liable to the state in an amount not exceeding one hundred dollars (\$100), but if the failure is willful, the advisory organization or the person shall be liable to the state in an amount not exceeding five thousand dollars (\$5,000) for the failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the State of California to enforce collection. These penalties may be in addition to any other penalties provided by law.

(b) A willful violation of any provision of this chapter by any person is a misdemeanor.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.65. Any action by the surplus line advisory organization may be reviewed by the commissioner upon petition by any person adversely affected thereby, but only after all applicable remedies available under the advisory organization's constitution, articles, and bylaws, if any, have been exhausted.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.66. (a) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the surplus line advisory organization, or its members, officers, committee members, agents, or employees, or the Department of Insurance, the commissioner, or employees or representatives of the Department of Insurance, for any action taken or omitted by any of them in the performance of their duties or the exercise of their authority under this chapter, unless it can be shown that any of the parties specified in this subdivision acted in bad faith. The performance of any duty to the advisory organization delegated by the commissioner under this chapter or the exercise of any authority incidental thereto is an official duty of the advisory organization. Nothing in this subdivision shall be deemed or construed to grant any immunity, or any defense to liability, to a surplus line broker for that broker's failure to comply with the surplus line law or the regulations pertaining thereto.

(b) The advisory organization's communications with the commissioner and other appropriate authorities pursuant to its performance of the duties delegated by the commissioner under this chapter or its exercise of the authority incidental thereto shall be considered

communications by an interested person to another interested person under the provisions of subdivision (c) of Section 47 of the Civil Code and shall be deemed confidential communications as defined in Section 12919.

(c) The immunities and privileges afforded by this section shall not affect the availability of any other immunities or privileges afforded by law and shall not affect any of the rights of hearing and review under, or any other provisions of, this chapter.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)

1780.67. (a) No person shall serve on the governing body of the surplus line advisory organization if in the past 10 years that person has been disciplined for violating the insurance laws or regulations of this state. The commissioner may waive this provision if the prior violation is not material to the person's fitness to serve.

(b) At least 30 days prior to the election of its governing body, the advisory organization shall advise the commissioner of the names of the persons nominated for election to the governing body. If, prior to the election, the commissioner objects on reasonable grounds to the fitness to serve of any nominee or nominees, the nominee or nominees shall not qualify for that election.

(c) The advisory organization shall select and determine the terms of employment of its employees. The name and qualifications of any candidate for the permanent full-time position of executive director, manager, or chief operating officer of the advisory organization shall be submitted for the commissioner's review. If, within 30 days after the submission of the candidate's name and qualifications to the commissioner, the commissioner disapproves on reasonable grounds that candidate's fitness to serve, the candidate shall not serve as the executive director, manager, or chief operating officer of the advisory organization.

(Added by Stats. 1993, Ch. 1007, Sec. 1. Effective January 1, 1994.)