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AMENDMENTS TO **AB 453**

Offerred by James L Wadhams on April 4, 2003 to the **Assembly Commerce and Labor Committee**

On behalf of The Nevada Surplus Lines Association and Michial Taylor

NRS 685A.080 Evidence of insurance; changes; penalty.

1. Upon placing a surplus lines coverage, the broker shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer, or, if such a policy is not then available, the surplus lines broker's certificate executed by the broker or a cover note [~~endorsed by the broker~~.] Such a certificate or [~~endorsed~~] cover note must show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and insurer and must state that the broker has verified that the insurance described has been granted or issued. If the direct risk is assumed by more than one insurer, the certificate must state the name and address and proportion of the entire direct risk assumed by each such insurer.

2. A broker shall not issue any such certificate or any cover note, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer, unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that the insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

3. If after the issuance and delivery of any such certificate there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by an insurer as stated in the broker's original certificate, or in any other material respect as to the insurance evidenced by the certificate, the broker shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

4. If a policy issued by the insurer is not available upon placement of the insurance and the broker has issued and delivered his certificate as provided in this section, upon request therefor by the insured the broker shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the broker's certificate theretofore issued.

5. Any surplus lines broker who knowingly or negligently issues a false certificate of insurance or who fails promptly to notify the insured of any material change with respect to the insurance by delivery to the insured of a substitute certificate as provided in subsection 3 is subject to the penalty provided by NRS 679A.180 or to any greater applicable penalty otherwise provided by law.

ASSEMBLY COMMERCE & LABOR 1 of 7
DATE: 4/04/03 ROOM: 4100 EXHIBIT G
SUBMITTED BY: James Wadhams

NRS 685A.090 Endorsement of contract. Every insurance contract procured and delivered as a surplus lines coverage pursuant to this chapter [~~must be countersigned by the broker who procured it, and~~]must have conspicuously stamped upon it:

> This insurance contract is issued pursuant to the Nevada insurance laws by an insurer neither licensed by nor under the supervision of the division of insurance of the department of business and industry of the State of Nevada. If the insurer is found insolvent, a claim under this contract is not covered by the Nevada Insurance Guaranty Association Act.
>
> An affidavit will be filed with the State of Nevada as required by law. (Name and license number of surplus lines broker)

Sec. 39 additional change:

NRS 685A.120 1. No person [~~in this state~~] may act as, hold himself out as, or be a surplus lines broker with respect to subjects of insurance resident, located or to be performed in this state or elsewhere unless he is licensed as such by the commissioner pursuant to this chapter. . . . . .

NRS 685A.180 Tax on surplus lines.

1. On or before March 1 of each year each broker shall pay to the commissioner a tax on surplus lines coverages written by him in unauthorized insurers during the preceding calendar year at the same rate of tax as imposed by law on the premiums of similar coverages written by authorized insurers. If a broker has paid any taxes pursuant to NRS 685A.175, he shall deduct the total paid from the tax due and pay the remainder, if any.

2. For the purposes of this section, the "premium" on surplus lines coverages includes:

(a) The gross amount charged by the insurer for the insurance, less any return premium;

(b) Any fee allowed by NRS 685A.155;

(c) Any policy fee;

(d) Any membership fee;

(e)Any inspection fee; and

[~~(e)~~] ***(f)*** Any other fees or assessments charged by the insurer as consideration for the insurance.

Premium does not include any additional amount charged for state or federal tax, ***or*** filing affidavits or reports of coverage[~~, inspection fee or the communication expenses of the broker~~].

3. If a contract for surplus lines insurance covers risks or exposures only partially in this state, the tax so payable must be computed on that portion of the premium properly allocable to the risks or exposures located in this state. The commissioner may adopt regulations which establish standards for allocating premiums for risks located in this state in the same manner as premiums are allocated pursuant to NRS 680B.030.

4. The commissioner shall promptly deposit all taxes collected by him pursuant to this section with the state treasurer, to the credit of the state general fund.

5. A broker who receives a credit for tax paid shall refund to each insured the amount of the credit attributable to the insured when the insurer pays a return premium or within 30 days, whichever is earlier.

Amend Section 56 as follows

687B.350

(a) An insurer shall not renew a policy on different terms, including different rates, unless the insurer notifies the insured in writing of the different terms or rates at least (30) **60** days before ~~[those terms or rates become effective.]~~ ***the expiration of the policy.*** If the insurer ~~[offers or purports to]~~ ***fails to provide adequate and timely notice, the insurer shall*** renew the policy ~~[but on different terms, including different rates, the policyholder may, for 30 days after he receives notice of the changes in the policy, cancel the policy. If he elects to cancel, the insurer shall refund to him the excess of the premium paid by him above the pro rata premium for the expired portion of the new term.]~~ ***at the expiring terms and rates:***

1. For a period that is equal to the expiring term if the agreed term is 1 year or less; or

2. For 1 year if the agreed term is more than 1 year.

(b) For a policy of industrial insurance, rate is defined in NRS686B.1761. Rate does not include the loss cost portion of the rate as filed by the advisory organization and approved by the Commissioner or the experience modification factor that applies to a specific policyholder.

NRS 695C.055 Applicability of certain other provisions.

1. The provisions of NRS 449.465, 679B.700, subsections 2, 4, 18, 19 and 32 of NRS 680B.010, ~~NRS 680B.025~~ NRS 680B.020 to 680B.060, inclusive, and chapter 695G of NRS apply to a health maintenance organization.

2. For the purposes of subsection 1, unless the context requires that a provision apply only to insurers, any reference in those sections to "insurer" must be replaced by "health maintenance organization."

Sec. 84 NRS 697.320 is hereby amended to read as follows:

1. A bail agent may accept collateral security in connection with a bail transaction if the collateral security is reasonable in relation to the face amount of the bond. The bail agent shall not transfer ***the collateral to any person other than a bail agent licensed pursuant to this chapter or a surety insurer holding a valid certificate of authority issued by the Commissioner. The collateral must not be transported or otherwise removed from this state. Any person who receives the collateral:***

(a) Shall be deemed to hold the collateral in a fiduciary capacity to the same extent as the bail agent; and

(b) Shall retain, return, and otherwise possess the collateral in accordance with the provisions of this[~~-section-~~] ***chapter.***

2. The collateral security must be received by the bail agent in his fiduciary capacity, and before any forfeiture of bail must be kept separate and apart from any other funds or assets of the licensee. Any collateral received must be returned to the person who deposited it with the bail agent or any assignee other than the bail agent as soon as the obligation, the satisfaction of which was secured by the collateral, is discharged and all fees owed to the bail agent have been paid. ***The bail agent or any surety insurer custody of the collateral shall, immediately after the bail agent or surety insurer receives a request for return of the collateral from the person who deposited the collateral, determine whether it has received notice that the obligation is discharged.*** If the collateral is deposited to secure the obligation of a bond, it must be returned ~~within 30 days~~ ***immediately*** after ***receipt of a request for return of collateral and notice of*** the entry of any order by an authorized official by virtue of which liability under the bond is terminated or upon payment of all fees owed to the bail agent, whichever is later. A certified copy of the minute order from the court wherein the bail or undertaking was ordered exonerated shall be deemed prima facie evidence of exoneration or termination of liability.

3. If a bail agent ***receives as collateral in a bail transaction, whether on his own or another person's behalf, any document conveying title to real property, the bail agent shall not accept the document unless it indicates on its face that it is executed as part of a security transaction. If the document is recorded, the bail agent or any surety insurer having possession of the document shall, immediately after the bail agent or surety insurer receives a request for return of the collateral from the person who executed the document:***

(a) Determine whether it has received notice that the obligation for which the document was accepted is discharged; and

(b) If the obligation has been discharged, reconvey the real property by delivering a deed or other document of conveyance to the

person or to his heirs, legal representative or successor in interest. The deed or other document of conveyance must be prepared in such a manner that it may be recorded.

4. If the amount of any collateral received in a bail transaction exceeds the amount of any bail forfeited by the defendant for whom the collateral was accepted, the bail agent or any [~~assignee~~] surety insurer having custody of the collateral shall, immediately after the bail is forfeited, return to the person who deposited the collateral the amount by which the collateral exceeds the amount of the bail forfeited. Any collateral retuned to a person pursuant to this subsection is subject to claim for fees, if any, owed to the bail agent returning the collateral.

5. If a bail agent accepts collateral, he shall give a written receipt for the collateral. The receipt must include in detail a full account of the collateral received.

NRS 697.270 Registration of bail agents.

A bail agent shall not ~~become a surety on~~ ***act as an attorney-in-fact for an insurer on*** an undertaking unless he has registered in the office of the sheriff and with the clerk of the district court in which the agent resides, and he may register in the same manner in any other county. Any bail agent shall file a certified copy of his appointment by power of attorney from each insurer which he represents as agent with each of such officers. The bail agent shall register and file a certified copy of renewed power of attorney annually on July 1. The clerk of the district court and the sheriff shall not permit the registration of a bail agent unless the agent is licensed by the commissioner.

NRS 697.300 Collections and charges permitted.

1. A bail agent shall not, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following purposes:

(a) To pay the premium at the rates established by the insurer, in accordance with chapter 686B of NRS, or to pay the charges for the bail bond filed in connection with the transaction at the rates filed in accordance with the provisions of this code. The rates must be [~~not less than 10 percent or more than~~]15 percent of the amount of the bond or $50, whichever is greater.

(b) To provide collateral.

(c) To reimburse himself for actual expenses incurred in connection with the transaction. Such expenses are limited to:

(1) Guard fees.

(2) Notary public fees, recording fees, expenses incurred for necessary

long distance telephone calls and charges for telegrams.

(3) Travel expenses incurred more than 25 miles from the agent's principal place of business. Such expenses:

(I) May be billed at the rate provided for state officers and employees generally; and

(II) May not be charged in areas where bail agents advertise a local telephone number.

(4) Expenses incurred to verify underwriting information.

(5) Any other actual expenditure necessary to the transaction which is not usually and customarily incurred in connection with bail transactions.

(d) To reimburse himself, or have a right of action against the principal or any indemnitor, for actual expenses incurred in good faith, by reason of breach by the defendant of any of the terms of the written agreement under which and pursuant to which the undertaking of bail or bail bond was written. If there is no written agreement, or an incomplete writing, the surety may, at law, enforce its equitable rights against the principal and his indemnitors, in exoneration. Such reimbursement or right of action must not exceed the principal sum of the bond or undertaking, plus any reasonable expenses that may be verified by receipt in a total amount of not more than the principal sum of the bond or undertaking, incurred in good faith by the surety, its agents, licensees and employees by reason of the principal's breach.

2. This section does not prevent the full and unlimited right of a bail agent to execute undertaking of bail on behalf of a nonresident agent of the surety he represents. The licensed resident bail agent is entitled to a minimum countersignature fee of $5, with a maximum countersignature fee of $100, plus expenses incurred in accordance with paragraphs (c) and (d) of subsection 1. Such countersignature fees may be charged in addition to the premium of the undertaking.

NRS 178.512 Setting aside forfeiture: Conditions; grounds. The court shall not set aside a forfeiture unless:

1. The surety submits an application to set it aside on the ground that the defendant:

(a) Has appeared before the court since the date of the forfeiture and has presented a satisfactory excuse for his absence ***or that the surety did not in any way cause or aid the absence of the defendant***;

(b) Was dead before the date of the forfeiture but the surety did not know and could not reasonably have known of his death before that date;

(c) Was unable to appear before the court before the date of the forfeiture because of his illness or his insanity, but the surety did not know and could not reasonably have known of his illness or insanity before that date;

(d) Was unable to appear before the court before the date of the forfeiture because he was being detained by civil or military authorities, but the surety did not know and could not reasonably have known of his detention before that date; or

(e) Was unable to appear before the court before the date of the forfeiture because he was deported, but the surety did not know and could not reasonably have known of his deportation before that date,
and the court, upon hearing the matter, determines that one or more of the grounds described in this subsection exist and that the surety did not in any way cause or aid the absence of the defendant; and
2. The court determines that justice does not require the enforcement of the forfeiture.