



**RICARDO LARA**  
CALIFORNIA INSURANCE COMMISSIONER

September 17, 2019

[Name and Address Redacted]

**SUBJECT:** Application of California Insurance Code sections 677 and 678 to Non-Admitted Insurers

Dear [Redacted]:

The California Department of Insurance (the “Department”) received a request for a legal opinion regarding the issue set forth below. The following legal opinion is issued pursuant to California Insurance Code section 12921.9.<sup>1</sup>

**I. Issue Presented**

Do the policy cancellation and nonrenewal provisions in California Insurance Code sections 677 and 678 (the “Relevant Statutes”) apply to policies of insurance on risks located or resident in California that are issued to California home state insureds by nonadmitted<sup>2</sup> insurers and that insure any of the contingencies specified in Insurance Code section 675?

**II. Summary Conclusion**

For the reasons set forth in detail below, unless excepted from the application of the Relevant Statutes pursuant to Insurance Code section 679.6, the Relevant Statutes apply to policies of insurance, other than automobile insurance and workers’ compensation insurance, on risks located or resident in this state that are issued to California home state insureds by nonadmitted insurers and that insure any of the contingencies specified in Insurance Code section 675.

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<sup>1</sup> All references herein to the Insurance Code shall mean the California Insurance Code.

<sup>2</sup> “Nonadmitted” in relation to a person, means not entitled to transact insurance business in this state, whether by reason of failure to comply with conditions precedent thereto, or by reason of inability to comply. Cal. Ins. Code §25.

### III. Background

Insurance Code section 675 provides in relevant part that “[E]xcept as provided in Sections 676.8 and 679.6, this chapter shall apply “to policies of insurance, other than automobile insurance and workers’ compensation insurance on risks located or resident in this state which are issued and take effect or which are renewed after the effective date of this chapter and insuring any of the following contingencies [set forth in Insurance Code section 675].” (*Cal. Ins. Code §675.*)

Insurance Code section 677 provides in relevant part that “[a]ll notices of cancellation shall be in writing, mailed to the named insured . . . , with respect to policies in effect after the time limits specified in Section 676 . . . .” (*Cal. Ins. Code §677.*)

Insurance Code section 678 provides in relevant part that “[A]t least 45 days prior to policy expiration, an insurer shall deliver to the named insured or mail to the named insured at the address shown in the policy . . . either an offer of renewal of the policy . . . a notice of nonrenewal . . . . (d) This section [678] applies only to policies of insurance specified in Section 675.” (e) This section shall become operative on January 1, 2019. (*Cal. Ins. Code §678.*)

Insurance Code section 679.6 provides in relevant part that “[T]he commissioner, may, after hearing exempt from the provisions of this chapter [11]<sup>3</sup> insurance in respect to any risks or class of risk eligible under Section 1763 for placement with nonadmitted insurers by and through licensed surplus lines brokers upon a finding by him that application of this chapter [11] would diminish or tend to diminish the availability, substantially increase the cost of such insurance.” (*Cal. Ins. Code §679.6.*)

### IV. Discussion

Two categories of insurance carriers provide property and casualty insurance in California: insurers licensed by the Department and “surplus line insurers.” Licensed insurers, also known as “admitted insurers,” are permitted to have a presence in California, have full access to the insurance market, and are statutorily “entitled to transact insurance business” in California. (*Cal. Ins. Code § 24.*)

On the other hand, surplus lines or “nonadmitted” insurers, are not licensed by the Department and are not permitted to have a presence in California or transact business in the state. (*Cal. Ins. Code §25.*) Although a nonadmitted insurer is generally precluded from transacting insurance business in California, a nonadmitted insurer may issue policies to California “home state insureds”<sup>4</sup> when: (a) the insurance to be provided is statutorily sanctioned as appropriate for nonadmitted insurers; (b) the coverage sought to be provided is generally not available from an

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<sup>3</sup> All references herein to “Chapter 11” shall mean Division 1, Part 1, Chapter 11 of the Insurance Code.

<sup>4</sup> “Home state insured” means a person whose home state is California and who has received a certificate or evidence of coverage as set forth in Insurance Code section 1764 or a policy as issued by an eligible surplus lines insurer, or a person who is an applicant therefor. (*Cal. Ins. Code §1760.1(f).*)

admitted insurer; and (c) the Insurance Commissioner has determined that the nonadmitted insurer is of satisfactory financial stability and reputation to protect the public interest. (*See, Cal. Ins. Code §§ 1760.1(f), 1763, 1765.1.*)

Similarly, certain provisions of the Insurance Code apply only to nonadmitted insurers (e.g., §700, subd. (b) [unlawful transaction of insurance business] ), certain sections apply to admitted and nonadmitted insurers alike (e.g., §§ 250–287 [insurable events and interests], §331 [concealment entitles injured party to rescind insurance], §352 [rules of interpretation for policies]), and there are also provisions that apply to certain admitted insurers but not others (e.g., §1100.1 [“Every admitted incorporated insurer....”], §1210 [“Any domestic incorporated insurer....”], §1211.5 [“Any domestic incorporated life insurer....”] ).

Whether a statute regulating the business of insurance applies to an insurer or to a policy in a given case is not determined exclusively based upon whether the insurer is admitted or nonadmitted. Rather, as with any statute, the scope of a provision governing insurance should be determined with reference to the whole system of law of which it is a part so that all provisions may be harmonized and have effect. (*Bowland v. Municipal Court (1976) 18 Cal.3d 479, 489; Select Base Materials v. Board of Equal. (1959) 51 Cal.2d 640, 645.*)

It has long been settled that ‘the business of insurance is affected with a public interest’ (*Carpenter v. Pacific Mut. Life Ins. Co. (1937) 10 Cal.2d 307, 329*) and that there is a duty upon the Insurance Commissioner of this state ‘to protect the rights of all insurance policyholders.’ (*Caminetti v. State Mut. Life Ins. Co. (1942) 52 Cal.App.2d 321, 324.*)

The broad language of the Relevant Statutes referring generally to “policies of insurance” (*Cal. Ins. Code §675(a)*), “all notices of cancellation” (*Cal. Ins. Code §677(a)*), and “at least 45 days prior to policy expiration, an insurer shall deliver to the named insured or mail to the named insured [an offer of renewal or a notice of nonrenewal of the policy]” (*Cal. Ins. Code §678(a)*) without limitation, indicates a legislative intent to exercise plenary power of regulation over insurance cancellations and renewals in this state to protect the people of California. Indeed, California's entire insurance regulatory scheme for over a century has been premised upon the clear objective to protect the people of California and the insurance industry is regulated primarily for the benefit of those who make use of the services the industry offers. (*People v. United National Life Insurance Company, (1967) 66 Cal. 2d 577, 600; Stafford v. Realty Bond Service Corporation (1952) 39 Cal.2d 797, 805.*)

The objective sought to be achieved by a statute as well as the evil to be prevented is of prime consideration in its interpretation (*Rock Creek, etc., Dist. v. County of Calaveras (1946) 29 Cal.2d 7, 9; Freedland v. Greco (1955) 45 Cal.2d 462, 467*) and ‘a statute must be construed with reference to the object to be accomplished.’ (*In re Petraeus (1939) 12 Cal.2d 579, 583; Golden & Co. v. Justice's Court of Woodland TP., (1914) 23 Cal. App. 778, 794.*)

“[I]n the interpretation of statutes, when two constructions appear possible, this court follows the rule of favoring that which leads to the more reasonable result.” (*Metropolitan Water Dist. v. Adams, (1948) 32 Cal.2d 620, 630.*) To the extent an examination of the statutory language

leaves uncertainty, it is appropriate to consider “the consequences that will flow from a particular interpretation.” (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1165.) Where more than one statutory construction is arguably possible, the policy of the California Supreme Court “has long been to favor the construction that leads to the more reasonable result.” (*Webster v. Superior Court* (1988) 46 Cal.3d 338, 343.) This policy derives largely from the presumption that the California Legislature intends reasonable results consistent with its apparent purpose. *Harris, supra*, at pp. 1165–1166.

Thus, it is appropriate to select the statutory construction of the Relevant Statutes that comports most closely with the California Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results. (*People v. Jenkins* (1995) 10 Cal.4th 234, 246; *People v. Simon* (1995) 9 Cal.4th 493, 517; *Fields v. Eu* (1976) 18 Cal.3d 322, 328.) The California Supreme Court will not adopt “[a] narrow or restricted meaning” of statutory language “if it would result in an evasion of the evident purpose of [a statute], when a permissible, but broader, meaning would prevent the evasion and carry out that purpose.” (*Copley Press, Inc. v. Superior Court*, (2006) 39 Cal. 4<sup>th</sup> 1272; *In re Reineger* (1920) 184 Cal. 97, 103.)

After the enactment of Assembly Bill No. 165 that added Chapter 11 (commencing with Insurance Code section 675) to Part 1 of Division 1 of the Insurance Code, the Department issued Bulletin 70-9 (1970) to answer certain questions regarding the interpretation of AB 165. Bulletin 70-9 provides in relevant part that “the Act (i.e., AB 165) applies to all types of policies of insurance other than automobile insurance and workmen’s compensation insurance, on risks located or resident in this state which are issued and take effect or which are renewed after the effective date of the Chapter, and which insure any of the contingencies specified in the legislation.” Bulletin 70-9 also expressly provides that “the legislation is remedial in nature and was enacted in the public interest and is therefore to be liberally construed to the end of fostering its objectives, and whenever the meaning is doubtful it must be liberally construed so as to extend the remedy.” (*Cal. Ins. Bul No. 70-9*.) Similarly, the Enrolled Bill Memorandum to the California Governor with respect to AB 165 provides that “[t]his bill is part of the Governor’s Consumer Protection Program.”

Based on the legislative history of AB 165 and Department Bulletin 70-9, the apparent legislative purpose of the Relevant Statutes is to protect California consumers by requiring insurers to provide to the named insured advance notice of expiration, termination, cancellation or nonrenewal of a policy of insurance with enough time to renew such coverage or to acquire other coverage thereby protecting the people of California.

Restricting the application of the Relevant Statutes only to admitted insurers would impair the efficacy of such statutes and thwart their objective by protecting policyholders from arbitrary policy cancellations and nonrenewals by admitted insurers, while failing to impose any restrictions on nonrenewals and cancellations by nonadmitted insurers thereby failing to protect California consumers from precisely the same abuses by insurers not admitted in California. Moreover, unless the nonrenewal and cancellation provisions of the Relevant Statutes apply to policies on risks located or resident in California issued to California home state insureds by

nonadmitted insurers and covering any of the contingencies specified in Insurance Code section 675, the nonrenewal and cancellation of such policies would be substantially unregulated in California. (*See, e.g., Greene v. Safeco Ins. Co. (1983) 140 Cal. App. 3d 535, 538.*)

If the California Legislature intended the nonrenewal and cancellation provisions of the Relevant Statutes to be inapplicable to nonadmitted insurers, it could have crafted a statutory exemption for nonadmitted insurers or clarified the language of the Relevant Statutes to provide that they do not apply to policies issued by nonadmitted insurers. For example, in 1986, the California Legislature enacted Insurance Code section 675.5(d)(f) expressly providing that the term commercial insurance does not include “surplus lines insurance, which is nonadmitted insurance as defined in subdivision (m) of Section 1760.1.” Moreover, when the California Legislature intended to limit the application of a section of Chapter 11 to admitted insurers, it so specified. (*See, e.g., Insurance Code sections 676.7 and 676.75.*) In the absence of any similar language limiting the application of the Relevant Statutes to policies issued by admitted insurers, the necessary inference is that no such limitation was intended. (*See, AIU Insurance Company v. Gillespie (1990) 222 Cal App. 3d 1155, 1162.*)

Furthermore, Insurance Code section 679.6 provides that the “the commissioner may, after hearing, exempt from the provisions of this chapter” insurance in respect to any risks or class of risk that is eligible under Section 1763 for placement with nonadmitted insurers by and through a licensed surplus lines broker upon a finding by him that application of [Chapter 11] would diminish or tend to diminish the availability, or substantially increase the cost, of such insurance.” Of course, the Commissioner would not need to exempt any policies subject to Chapter 11 placed with nonadmitted insurers unless such policies are subject to the provisions of Chapter 11, including but not limited to, the Relevant Statutes.<sup>5</sup>

Additionally, although “insurer” is not specifically defined in the Relevant Statutes, the California Unfair Practices Act (*Cal. Ins. Code §790 et seq.*) applies to “Lloyds insurers,” to “surplus lines brokers,” and to “all other persons engaged in the business of insurance.” (*Cal. Ins. Code § 790.01.*) The Unfair Practices Act governs unfair and deceptive insurance practices in California by defining or providing for the determination of, all such practices in this State that constitute unfair methods of competition or unfair or deceptive acts and by prohibiting the trade practices so defined or determined. (*Cal. Ins. Code §790.*) The application of the Unfair Practices Act to, among others, nonadmitted insurers, is a further indication of a legislative intent to protect California consumers from unfair and deceptive trade practices of both admitted and nonadmitted insurers.<sup>6</sup> Accordingly, to interpret the Relevant Statutes not to apply to nonadmitted insurers would be inconsistent with the system of law of which they are a part and

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<sup>5</sup> In a April 15, 1971 letter from John R. Maloney on behalf of the California Surplus Lines Association to Assemblyman Robert Beverly, the author of A.B. 165, stating that the “sole purpose (of adding Insurance Code 679.6) “is to provide some machinery for granting relief with respect to hard-to-place risks, where the effect of the new law (Chapter 11) . . . would make them even harder to place or substantially increase the premium charges.” The reference to the possible negative effect of Chapter 11 on the California surplus lines market implies that the author of A.B. 165 and the California Surplus Lines Association believed that Chapter 11 applies to nonadmitted insurers.

<sup>6</sup> Insurance Code section 23 defines “insurer” as “The person who undertakes to indemnify another by insurance is the insurer . . .” which broadly includes nonadmitted insurers.

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would be inconsistent with the object to be accomplished. (*Bowland v. Municipal Court* (1976) 18 Cal.3d 479, 489; *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645.)

## V. Conclusion

The Relevant Statutes do not distinguish between admitted insurers and nonadmitted insurers. Instead, the Relevant Statutes apply generally to certain policies of insurance covering risks located or resident in this state issued to California home state insureds and insuring any of the contingencies set forth in Insurance Code section 675. Based on the legislative history of the Relevant Statutes, it is likely the California Legislature intended the Relevant Statutes to protect California insurance consumers by requiring all insurers, both admitted and nonadmitted, to provide to the named insured advance notice of expiration, termination, cancellation or nonrenewal of a policy of insurance with enough time for renewal of that coverage or acquisition of replacement coverage thereby protecting the people of California.

An interpretation of the Relevant Statutes to apply only to admitted insurers would impair the efficacy of the Relevant Statutes and thwart their objective by protecting policyholders from arbitrary policy cancellations and nonrenewals by admitted insurers, while failing to impose any restrictions on nonrenewals and cancellations by nonadmitted insurers, thereby failing to protect California consumers from precisely the same abuses by insurers not admitted in California. As a result, unless the nonrenewal and cancellation provisions of the Relevant Statutes apply to policies on risks located or resident in California issued to California home state insureds by nonadmitted insurers and insuring any of the contingencies specified in Insurance Code section 675, the nonrenewal and cancellation of such policies would be substantially unregulated in California contrary to the intent of the California Legislature.

Accordingly, unless exempted by the Commissioner pursuant to Insurance Code section 679.6, the cancellation and nonrenewal provisions of the Relevant Statutes should apply to all policies of insurance, other than automobile insurance and workers' compensation insurance, on risks located or resident in California that are issued to California home state insureds by nonadmitted insurers and that insure any of the contingencies specified in Insurance Code section 675.

We trust the foregoing is responsive to your request. If, however, you have additional questions or require further information, please contact the undersigned directly.

Very truly yours,



Kenneth B. Schnoll  
General Counsel & Deputy Commissioner