



Legal Beat

By Mark B. Robinson and John A. Sebastinelli

NEW FINES FOR MINOR VIOLATIONS OF INSURANCE CODE

California Governor Arnold Schwarzenegger has signed a bill which allows the California Department of Insurance ("Department") to issue monetary citations against insurance brokers and agents for minor violations of the *California Insurance Code*. Assembly Bill 2044 will go into effect on January 1, 2009 and amends *Insurance Code* §1746.

Existing Law

Under the existing law, when the Department is aware of a minor violation of the *Insurance Code*, the Department has three (3) options: (i) take a formal legal action by filing an accusation for revocation or lesser sanction against the licensee; (ii) issue a verbal or written warning to the licensee to cease and desist from the violative conduct; or (iii) take no action.

New Law

The new law will grant the Department the authority to issue citations that would assess predetermined penalties to licensees committing minor violations of the *Insurance Code*. If the licensee pays the predetermined fine, the licensee will admit to the committed violation and agree to correct the violation in the future.

The purpose of this law is to permit discipline of licensees that is more rigorous than a mere warning, but would not require a full-dress legal proceeding, such as an accusation and subsequent administrative hearing. Additionally, the law will provide greater consumer protection than the current, less flexible statutes offer.

The Nuts and Bolts of the New Law

Section 1746 sets forth a statutory scheme from which the Department can issue citations. The Department may issue a citation for violation of certain sections of the *Insurance Code* identified in Section 1746(g), such as: (i) failure of a limited liability company to provide proof of errors and omissions insurance as required by *Insurance Code* §1647.5; (ii) failure to comply with the true and fictitious name requirements of *Insurance Code* §1724.5; (iii) failure to prominently display a license as required by *Insurance Code* §1725; (iv) failure to maintain business records as required by *Insurance Code* §1727; (v) failure to notify the Department of a change of address as required by *Insurance Code* §1729; (vi) failure to inform the Department of a change in background information as required by *Insurance Code* §1729.2; or (vi) improper use of corporate or firm name on stationery or advertisements as set forth in *Insurance Code* §1729.5. In the event the Department elects to proceed on any of the above-mentioned violations the Department must notify the licensee of the violation and the licensee will have twenty-one (21) calendar days (which may be extended to forty-five (45) days in the event of illness, injury or vacation) to establish to the Department's satisfaction that the violation has been corrected.

If after the licensee responds or after forty-five (45) calendar days have passed, the Department determines that the licensee has corrected the violation, the Department may issue a citation and order to the licensee, in lieu of proceeding under *Insurance Code* §§1668 or 1738 to impose a more severe sanction.

The monetary penalties range from \$200.00 to \$500.00 depending on the particular violation. The Department may double the fine listed for a single violation if it was committed within three (3) years of the commission of the same violation for which the licensee was previously notified.

In addition to the issuance of a citation for violation of the above-referenced *Insurance Code* sections, the Department may also issue a citation if the licensee has made a minor misstatement in an application for a new license or application to renew an existing license. Section 1746(a)(3) defines a minor misstatement as "an incorrect statement on one of the insurance license application background~~s~~ questions that does not affect the licensee's ability to satisfy his or her duties under the license or his or her suitability for licensure."

Similarly, the Department must notify the licensee requesting justification for the minor misstatement and allow the licensee twenty-one (21) calendar days (or forty-five (45) calendar days for illness, injury or vacation) in which to provide justification in writing. The fine for the commission of a minor statement is \$300.00.

Section 1746(d) allows the Commissioner to proceed with more severe sanctions pursuant to Sections 1668 or 1738 for violation of the aforementioned code sections or minor misstatements on the application in certain situations delineated in the statute.

A citation and order shall become final twenty-one (21) days after the date of the notice, unless the licensee requests an administrative hearing utilizing the standard administrative hearing procedures.

If a licensee has exhausted all administrative remedies under Section 1746 and has still failed to pay the penalty imposed by a citation and order, the Department may suspend, refuse to issue, or refuse to renew a license without an additional hearing.

In the event a licensee receives a citation notice, it is imperative that the licensee promptly provide the Department with a detailed response or seek the advice of insurance regulatory legal counsel to address the citation.

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