

AMENDED IN ASSEMBLY APRIL 26, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1837

Introduced by Assembly Member Gaines

February 12, 2010

An act to amend Section ~~700~~ 1765.1 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1837, as amended, Gaines. Insurance transactions: nonadmitted insurers.

Existing law limits the ability of a surplus line broker to place any coverage with a nonadmitted insurer, as specified. In order for a nonadmitted insurer to qualify for coverage it must demonstrate financial stability, as defined.

This bill would authorize an insurer domiciled in California to have common directors with an affiliated nonadmitted insurer provided the common directors do not perform any management functions for the nonadmitted insurer in California. The bill would also authorize an insurer domiciled in California to perform specified administrative services on behalf of an affiliated nonadmitted insurer that has qualified as an eligible surplus line insurer.

~~Existing law prohibits persons from transacting any class of insurance within this state without first being admitted for that class and makes a violation of that prohibition a crime.~~

~~This bill would authorize a nonadmitted insurer that is affiliated with a California domestic insurer to receive administrative services rendered~~

~~in this state by its domestic affiliate so long as the nonadmitted insurer provides the Insurance Commissioner with a description of the administrative services to be rendered by the domestic affiliate and the services do not violate specified prohibitions.~~

~~The bill would also authorize the nonadmitted insurer and its domestic affiliate to have common directors and officers so long as the nonadmitted insurer maintains a resident operating manager in its home state who is responsible for and carries out all management functions in its home state.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1765.1 of the Insurance Code is amended
2 to read:

3 1765.1. No surplus line broker shall place any coverage with
4 a nonadmitted insurer unless the insurer is domiciled in the
5 Republic of Mexico and the placement covers only liability arising
6 out of the ownership, maintenance, or use of a motor vehicle,
7 aircraft, or boat in the Republic of Mexico, or, at the time of
8 placement, the nonadmitted insurer meets the following
9 requirements:

10 (a) (1) Has established its financial stability, reputation, and
11 integrity, for the class of insurance the broker proposes to place,
12 by satisfactory evidence submitted to the commissioner through
13 a surplus line broker.

14 (2) Meets one of the following requirements with respect to its
15 financial stability:

16 (A) Has capital and surplus that together total at least fifteen
17 million dollars (\$15,000,000). “Capital” shall be as defined in
18 Section 36. “Surplus” shall be defined as assets exceeding the sum
19 of liabilities for losses reported, expenses, taxes, and all other
20 indebtedness and reinsurance of outstanding risks as provided by
21 law and paid-in capital in the case of an insurer issuing or having
22 outstanding shares of capital stock. The type of assets to be used
23 in calculating capital and surplus shall be as follows: at least fifteen
24 million dollars (\$15,000,000) shall be in the form of cash, or
25 securities of the same character and quality as specified in Sections
26 1170 to 1182, inclusive, or in readily marketable securities listed

1 on regulated United States' national or principal regional securities
2 exchanges. The remaining assets shall be in the form just described,
3 or in the form of investments of substantially the same character
4 and quality as described in Sections 1190 to 1202, inclusive. In
5 calculating capital and surplus under this section, the term "same
6 character and quality" shall permit, but not require, the
7 commissioner to approve assets maintained in accordance with
8 the laws of another state or country. The commissioner shall be
9 guided by any limitations, restrictions, or other requirements of
10 this code or the National Association of Insurance Commissioners'
11 Accounting Practices and Procedures Manual in determining
12 whether assets substantially similar to those described in Sections
13 1190 to 1202, inclusive, qualify. The commissioner shall retain
14 the discretion to disapprove or disallow any asset that is not of a
15 sound quality, or that he or she deems to create an unacceptable
16 risk of loss to the insurer or to policyholders. Letters of credit will
17 not qualify as assets in the calculation of surplus. If less than fifteen
18 million dollars (\$15,000,000), the commissioner has affirmatively
19 found that the capital and surplus is adequate to protect California
20 policyholders. The commissioner shall consider, on determining
21 whether to make this finding, factors such as quality of
22 management, the capital and surplus of any parent company, the
23 underwriting profit and investment income trends, and the record
24 of claims payment and claims handling practices of the
25 nonadmitted insurer.

26 (B) In the case of an "Insurance Exchange" created and
27 authorized under the laws of individual states, maintains capital
28 and surplus of not less than fifty million dollars (\$50,000,000) in
29 the aggregate. "Capital" shall be as defined in Section 36. "Surplus"
30 shall be defined as assets exceeding the sum of liabilities for losses
31 reported, expenses, taxes, and all other indebtedness and
32 reinsurance of outstanding risks as provided by law and paid-in
33 capital in the case of an insurer issuing or having outstanding shares
34 of capital stock. The type of assets to be used in calculating capital
35 and surplus shall be as follows: at least fifteen million dollars
36 (\$15,000,000) shall be in the form of cash, or securities of the same
37 character and quality as specified in Sections 1170 to 1182,
38 inclusive, or in readily marketable securities listed on regulated
39 United States' national or principal regional securities exchanges.
40 The remaining assets shall be in the form just described, or in the

1 form of investments of substantially the same character and quality
2 as described in Sections 1190 to 1202, inclusive. In calculating
3 capital and surplus under this section, the term “same character
4 and quality” shall permit, but not require, the commissioner to
5 approve assets maintained in accordance with the laws of another
6 state or country. The commissioner shall be guided by any
7 limitations, restrictions, or other requirements of this code or the
8 National Association of Insurance Commissioners’ Accounting
9 Practices and Procedures Manual in determining whether assets
10 substantially similar to those described in Sections 1190 to 1202,
11 inclusive, qualify. The commissioner shall retain the discretion to
12 disapprove or disallow any asset that is not of a sound quality, or
13 that he or she deems to create an unacceptable risk of loss to the
14 insurer or to policyholders. Letters of credit shall not qualify as
15 assets in the calculation of surplus. In the case of an Insurance
16 Exchange which maintains funds for the protection of all Insurance
17 Exchange policyholders, each individual syndicate seeking to
18 accept surplus line placements of risks resident, located, or to be
19 performed in this state shall maintain minimum capital and surplus
20 of not less than six million four hundred thousand dollars
21 (\$6,400,000). Each individual syndicate shall increase the capital
22 and surplus required by this paragraph by one million dollars
23 (\$1,000,000) each year until it attains a capital and surplus of
24 fifteen million dollars (\$15,000,000). In the case of Insurance
25 Exchanges that do not maintain funds for the protection of all
26 Insurance Exchange policyholders, each individual syndicate
27 seeking to accept surplus line placement of risks resident, located,
28 or to be performed in this state shall meet the capital and surplus
29 requirements of subparagraph (A) of this paragraph.

30 (C) In the case of a syndicate that is part of a group consisting
31 of incorporated individual insurers, or a combination of both
32 incorporated and unincorporated insurers, that at all times maintains
33 a trust fund of not less than one hundred million dollars
34 (\$100,000,000) in a qualified United States financial institution
35 as security to the full amount thereof for the United States surplus
36 line policyholders and beneficiaries of direct policies of the group,
37 including all policyholders and beneficiaries of direct policies of
38 the syndicate, and the full balance in the trust fund is available to
39 satisfy the liabilities of each member of the group of those
40 syndicates, incorporated individual insurers or other unincorporated

1 insurers, without regard to their individual contributions to that
2 trust fund, and the trust complies with the terms of and conditions
3 specified in paragraph (1) of subdivision (b), the syndicate is
4 excepted from the capital and surplus requirements of subparagraph
5 (A) of paragraph (2). The incorporated members of the group shall
6 not be engaged in any business other than underwriting as a
7 member of the group and shall be subject to the same level of
8 solvency regulation and control by the group's domiciliary
9 regulator as are the unincorporated members.

10 (b) (1) In addition, to be eligible as a surplus line insurer, an
11 insurer not domiciled in one of the United States or its territories
12 shall have in force in the United States an irrevocable trust account
13 in a qualified United States financial institution, for the protection
14 of United States policyholders, of not less than five million four
15 hundred thousand dollars (\$5,400,000) and consisting of cash,
16 securities acceptable to the commissioner which are authorized
17 pursuant to Sections 1170 to 1182, inclusive, readily marketable
18 securities acceptable to the commissioner that are listed on a
19 regulated United States national or principal regional security
20 exchange, or clean and irrevocable letters of credit acceptable to
21 the commissioner and issued by a qualified United States financial
22 institution. The trust agreement shall be in a form acceptable to
23 the commissioner. The funds in the trust account may be included
24 in any calculation of capital and surplus, except letters of credit,
25 which shall not be included in any calculation.

26 (2) In the case of a syndicate seeking eligibility under
27 subparagraph (C) of paragraph (2) of subdivision (a), the syndicate
28 shall, in addition to the requirements of that subparagraph, at a
29 minimum, maintain in the United States a trust account in an
30 amount satisfactory to the commissioner that is not less than the
31 amount required by the domiciliary state of the syndicate's trust.
32 The trust account shall comply with the terms and conditions
33 specified in paragraph (1).

34 (3) In the case of a group of incorporated insurers under common
35 administration that maintains a trust fund of not less than one
36 hundred million dollars (\$100,000,000) in a qualified United States
37 financial institution for the payment of claims of its United States
38 policyholders, their assigns, or successors in interest and that
39 complies with the terms and conditions of paragraph (1) that has
40 continuously transacted an insurance business outside the United

1 States for at least three years, that is in good standing with its
2 domiciliary regulator, whose individual insurer members maintain
3 standards and a financial condition reasonably comparable to
4 admitted insurers, that submits to this state's authority to examine
5 its books and bears the expense of examination, and that has an
6 aggregate policyholder surplus of ten billion dollars
7 (\$10,000,000,000), the group is excepted from the capital and
8 surplus requirements of subdivision (a).

9 (c) Has caused to be provided to the commissioner the following
10 documents:

11 (1) The financial documents as specified below, each showing
12 the insurer's condition as of a date not more than 12 months prior
13 to submission:

14 (A) A copy of an annual statement, prepared in the form
15 prescribed by the NAIC. For an alien insurer, in lieu of an annual
16 statement, a licensee may submit a form as set forth by regulation
17 and as prepared by the insurer, and, if listed by the IID, a copy of
18 the complete information as required in the application for listing
19 by the IID.

20 (B) A copy of an audited financial report on the insurer's
21 condition that meets the standards of subparagraph (D) for foreign
22 insurers or subparagraph (E) for alien insurers.

23 (C) If the insurer is an alien:

24 (i) A certified copy of the trust agreement referenced in
25 subdivision (b).

26 (ii) A verified copy of the most recent quarterly statement or
27 list of the assets in the trust.

28 (D) Financial reports filed pursuant to this section by foreign
29 insurers shall conform to the following standards:

30 (i) Financial documents shall be certified.

31 (ii) An audited financial report shall constitute a supplement to
32 the insurer's annual statement, as required by the annual statement
33 instructions issued by the NAIC.

34 (iii) An audited financial report shall be prepared by an
35 independent certified public accountant or accounting firm in good
36 standing with the American Institute of Certified Public
37 Accountants and in all states where licensed to practice; and be
38 prepared in conformity with statutory accounting practices
39 prescribed, or otherwise permitted, by the insurance regulator of
40 the insurer's domiciliary jurisdiction.

1 (iv) An audited financial report shall include information on the
2 insurer's financial position as of the end of the most recent calendar
3 year, and the results of its operations, cashflows, and changes in
4 capital and surplus for the year then ended.

5 (v) An audited financial report shall be prepared in a form and
6 using language and groupings substantially the same as the relevant
7 sections of the insurer's annual statement filed with its domiciliary
8 jurisdiction, and presenting comparatively the amounts as of
9 December 31 of the most recent calendar year and the amounts as
10 of December 31 of the preceding year.

11 (E) Financial reports filed pursuant to this section by alien
12 insurers shall conform to the following standards:

13 (i) Except as provided in clause (ii) of subparagraph (C),
14 financial documents should be ~~certified~~, if *certified*. If certification
15 of a financial document is not available, the document shall be
16 verified.

17 (ii) Financial documents should be expressed in United States
18 dollars, but may be expressed in another ~~currency~~, *currency* if the
19 exchange rate for the other currency as of the date of the document
20 is also provided.

21 (iii) The responses provided pursuant to subparagraph (A) of
22 paragraph (1) on the form submitted in lieu of an annual statement
23 should follow the most recent ISI Guide to Alien Reporting Format,
24 "Standard Definitions of Accounting Items." Responses that do
25 not agree with a standard definition shall be fully explained in the
26 form.

27 (iv) An audited financial report shall be prepared by an
28 independent licensed auditor in the insurer's domiciliary
29 jurisdiction or in any state.

30 (v) An audited financial report shall be prepared in accord with
31 either (I) Generally Accepted Auditing Standards that prescribe
32 Generally Accepted Accounting Principles, or (II) International
33 Accounting Standards as published and revised from time to time
34 by the International Auditing Guidelines published by the
35 International Auditing Practice Committee of the International
36 Federation of Accountants; and shall include financial statement
37 notes and a summary of significant accounting practices.

38 (F) The commissioner may accept, in lieu of a document
39 described above, any certified or verified financial or regulatory
40 document, statement, or report if the commissioner finds that it

1 possesses reliability and financial detail substantially equal to or
2 greater than the document for which it is proposed to be a
3 substitute.

4 (G) If one of the financial documents required to be submitted
5 under subparagraphs (A) and (B) is dated within 12 months of
6 submission, but the other document is not so dated, the licensee
7 may use the outdated document if it is accompanied by a
8 supplement. The supplement must meet the same requirements
9 which apply to the supplemented document, and must update the
10 outdated document to a date within the prescribed time period,
11 preferably to the same date as the nonsupplemented document.

12 (2) A certified copy of the insurer's license issued by its
13 domiciliary jurisdiction, plus a certification of good standing,
14 certificate of compliance, or other equivalent certificate, from
15 either that jurisdiction or, if the jurisdiction does not issue those
16 certificates, from any state where it is licensed.

17 (3) Information on the insurer's agent in California for service
18 of process, including the agent's full name and address. The agent's
19 address must include a street address where the agent can be
20 reached during normal business hours.

21 (4) The complete street address, mailing address, and telephone
22 number of the insurer's principal place of business.

23 (5) A certified or verified explanation, report, or other statement,
24 from the insurance regulatory office or official of the insurer's
25 domiciliary jurisdiction, concerning the insurer's record regarding
26 market conduct and consumer complaints; or, if that information
27 cannot be obtained from that jurisdiction, then any other
28 information that the licensee can procure to demonstrate a good
29 reputation for payment of claims and treatment of policyholders.

30 (6) A verified statement, from the insurer or licensee, on whether
31 the insurer or any affiliated entity is currently known to be the
32 subject of any order or proceeding regarding conservation,
33 liquidation, or other receivership; or regarding revocation or
34 suspension of a license to transact insurance in any jurisdiction;
35 or otherwise seeking to stop the insurer from transacting insurance
36 in any jurisdiction. The statement shall identify the proceeding by
37 date, jurisdiction, and relief or sanction sought; and shall attach a
38 copy of the relevant order.

39 (7) A certified copy of the most recent report of examination
40 or an explanation if the report is not available.

1 (8) A list of all California surplus line brokers authorized by
2 the insurer to issue policies on its behalf, and any additions to or
3 deletions from that list.

4 (d) (1) Has provided any additional information or
5 documentation required by the commissioner that is relevant to
6 the financial stability, reputation, and integrity of the nonadmitted
7 insurer. In making a determination concerning financial stability,
8 reputation, and integrity of the nonadmitted insurer, the
9 commissioner shall consider any analyses, findings, or conclusions
10 made by the National Association of Insurance Commissioners
11 (NAIC) in its review of the insurer for purposes of inclusion on
12 or exclusion from the list of authorized nonadmitted insurers
13 maintained by the NAIC. The commissioner may, but shall not be
14 required to, rely on, adopt, or otherwise accept any analyses,
15 findings, or conclusions of the NAIC, as the commissioner deems
16 appropriate. In the case of a syndicate seeking eligibility under
17 subparagraph (C) of paragraph (2) of subdivision (a), the
18 commissioner may, but shall not be required to, rely on, adopt, or
19 otherwise accept any analyses, findings, or conclusions of any
20 state, as the commissioner deems appropriate, as long as that state,
21 in its method of regulation and review, meets the requirements of
22 paragraph (2).

23 (2) The regulatory body of the state shall regularly receive and
24 review the following: (A) an audited financial statement of the
25 syndicate, prepared by a certified or chartered public accountant;
26 (B) an opinion of a qualified actuary with regard to the syndicate's
27 aggregate reserves for payment of losses or claims and payment
28 of expenses of adjustment or settlement of losses or claims; (C) a
29 certification from the qualified United States financial institution
30 that acts as the syndicate's trustee, respecting the existence and
31 value of the syndicate's trust fund; and (D) information concerning
32 the syndicate's or its manager's operating history, business plan,
33 ownership and control, experience and ability, together with any
34 other pertinent factors, and any information indicating that the
35 syndicate or its manager make reasonably prompt payment of
36 claims in this state or elsewhere. The regulatory body of the state
37 shall have the authority, either by law or through the operation of
38 a valid and enforceable agreement, to review the syndicate's assets
39 and liabilities and audit the syndicate's trust account, and shall

1 exercise that authority with a frequency and in a manner
2 satisfactory to the commissioner.

3 (e) Has established that:

4 (1) All documents required by subdivisions (c) and (d) have
5 been filed. Each of the documents appear after review to be
6 complete, clear, comprehensible, unambiguous, accurate, and
7 consistent.

8 (2) The documents affirm that the insurer is not subject in any
9 jurisdiction to an order or proceeding that:

10 (A) Seeks to stop it from transacting insurance.

11 (B) Relates to conservation, liquidation, or other receivership.

12 (C) Relates to revocation or suspension of its license.

13 (3) The documents affirm that the insurer has actively transacted
14 insurance for the three years immediately preceding the filing made
15 under this section, unless an exemption is granted. As used in this
16 paragraph, “insurer” does not include a syndicate of underwriting
17 entities. The commissioner may grant an exemption if the licensee
18 has applied for exemption and demonstrates either of the following:

19 (A) The insurer meets the condition for any exception set forth
20 in subdivision (a), (b), or (c) of Section 716.

21 (B) If the insurer has been actively transacting insurance for at
22 least 12 months, and the licensee demonstrates that the exemption
23 is warranted because the insurer’s current financial strength,
24 operating history, business plan, ownership and control,
25 management experience, and ability, together with any other
26 pertinent factors, make three years of active insurance transaction
27 unnecessary to establish sufficient reputation.

28 (4) The documents confirm that the insurer holds a license to
29 issue insurance policies (other than reinsurance) to residents of
30 the jurisdiction that granted the license unless an exemption is
31 granted. The commissioner may grant an exemption if the licensee
32 has applied for an exemption and demonstrates that the exemption
33 is warranted because the insurer proposes to issue in California
34 only commercial coverage, and is wholly owned and actually
35 controlled by substantial and knowledgeable business enterprises
36 that are its policyholders and that effectively govern the insurer’s
37 destiny in furtherance of their own business objectives.

38 (5) The information filed pursuant to paragraph (5) of
39 subdivision (c) or otherwise filed with or available to the
40 commissioner, including reports received from California

1 policyholders, shall indicate that the insurer makes reasonably
2 prompt payment of claims in this state or elsewhere.

3 (6) The information available to the commissioner shall not
4 indicate that the insurer offers in California a licensee products or
5 rates that violate any provision of this code.

6 (f) Has been placed on the list of eligible surplus line insurers
7 by the commissioner. The commissioner shall establish a list of
8 all surplus line insurers that have met the requirements of
9 subdivisions (a) to (e), inclusive, and shall publish a master list at
10 least semiannually. Any insurer receiving approval as an eligible
11 surplus line insurer shall be added by addendum to the list at the
12 time of approval, and shall be incorporated into the master list at
13 the next date of publication. If an insurer appears on the most
14 recent list, it shall be presumed that the insurer is an eligible surplus
15 line insurer, unless the commissioner, or his or her designee, has
16 mailed or causes to be mailed notice to all surplus line brokers that
17 the commissioner has withdrawn the insurer's eligibility. Upon
18 receipt of notice, the surplus line broker shall make no further
19 placements with the insurer. Nothing in this subdivision shall limit
20 the commissioner's discretion to withdraw an insurer's eligibility.

21 (g) (1) Except as provided by paragraph (2), whenever the
22 commissioner has reasonable cause to believe, and determines
23 after a public hearing, that any insurer on the list established
24 pursuant to subdivision (f), (A) is in an unsound financial condition,
25 (B) does not meet the eligibility requirements under subdivisions
26 (a) to (e), inclusive, (C) has violated the laws of this state, or (D)
27 without justification, or with a frequency so as to indicate a general
28 business practice, delays the payment of just claims, the
29 commissioner may issue an order removing the insurer from the
30 list. Notice of hearing shall be served upon the insurer or its agent
31 for service of process stating the time and place of the hearing and
32 the conduct, condition, or ground upon which the commissioner
33 would make his or her order. The hearing shall occur not less than
34 ~~20 days, days~~ nor more than 30 days after notice is served upon
35 the insurer or its agent for service of process.

36 (2) If the commissioner determines that an insurer's immediate
37 removal from the list is necessary to protect the public or an insured
38 or prospective insured of the insurer, or, in the case of an
39 application by an insurer to be placed on the list which is being
40 denied by the commissioner, the commissioner may issue an order

1 pursuant to paragraph (1) without prior notice and hearing. At the
2 time an order is served pursuant to this paragraph to an insurer on
3 the list, the commissioner shall also issue and serve upon the
4 insurer a statement of the reasons that immediate removal is
5 necessary. Any order issued pursuant to this paragraph shall include
6 a notice stating the time and place of a hearing on the order, which
7 shall be not less than 20~~days~~, *days* nor more than 30 days after
8 the notice is served.

9 (3) Notwithstanding paragraphs (1) and (2), in any case where
10 the commissioner is basing a decision to remove an insurer from
11 the list, or deny an application to be placed on the list, on the failure
12 of the insurer or applicant to comply with, meet, or maintain any
13 of the objective criteria established by this section, or by regulation
14 adopted pursuant to this section, the commissioner may so specify
15 this fact in the order, and no hearing shall be required to be held
16 on the order.

17 (4) Notwithstanding paragraphs (1) and (2), the commissioner
18 may, without prior notice or hearing, remove from the list
19 established pursuant to subdivision (f) any insurer that has failed
20 or refused to timely provide documents required by this section,
21 or any regulations adopted to implement this section. In the case
22 of removal pursuant to this paragraph, the commissioner shall
23 notify all surplus line brokers of the action.

24 (h) In addition to any other statements or reports required by
25 this chapter, the commissioner may also address to any licensee a
26 written request for full and complete information respecting the
27 financial stability, reputation, and integrity of any nonadmitted
28 insurer with whom the licensee has dealt or proposes to deal in the
29 transaction of insurance business. The licensee so addressed shall
30 promptly furnish in written or printed form so much of the
31 information requested as he or she can produce together with a
32 signed statement identifying the same and giving reasons for
33 omissions, if any. After due examination of the information and
34 accompanying statement, the commissioner may, if he or she
35 believes it to be in the public interest, order the licensee in writing
36 to place no further insurance business on property located or
37 operations conducted within or on the lives of persons who are
38 residents of this state with the nonadmitted insurer on behalf of
39 any person. Any placement in the nonadmitted insurer made by a
40 licensee after receipt of that order is a violation of this chapter.

1 The commissioner may issue an order when documents submitted
2 pursuant to subdivisions (c) and (d) do not meet the criteria of
3 subdivisions (a) to (e), inclusive, or when the commissioner obtains
4 documents on an insurer and the insurer does not meet the criteria
5 of subdivisions (a) to (e), inclusive.

6 (i) The commissioner shall require, at least annually, the
7 submission of records and statements as are reasonably necessary
8 to ensure that the requirements of this section are maintained.

9 (j) The commissioner shall establish by regulation a schedule
10 of fees to cover costs of administering and enforcing this chapter.

11 (k) (1) Insurance may be placed on a limited basis with insurers
12 not on the list established pursuant to this section if all of the
13 following conditions are met:

14 (A) The use of multiple insurers is necessary to obtain coverage
15 for 100 percent of the risk.

16 (B) At least 80 percent of the risk is placed with admitted
17 insurers or insurers that appear on the list of eligible nonadmitted
18 insurers.

19 (C) The placing surplus line broker submits to the commissioner,
20 or his or her designee, copies of all documentation relied upon by
21 the surplus line broker to make the broker's determination that the
22 financial stability, reputation, and integrity of the unlisted insurer
23 or insurers, are adequate to safeguard the interest of the insured
24 under the policy. This documentation, and any other documentation
25 regarding the unlisted insurer requested by the commissioner, shall
26 be submitted no more than 30 days after the insurance is placed
27 with the unlisted insurer for the initial placement by that broker
28 with the particular unlisted insurer, and annually thereafter for as
29 long as the broker continues to make placements with the unlisted
30 insurer pursuant to this paragraph.

31 (D) The insured has aggregate annual premiums for all risks
32 other than workers' compensation or health coverage totaling no
33 less than one hundred thousand dollars (\$100,000).

34 (2) Insurance may not be placed pursuant to paragraph (1) if
35 any of the following applies:

36 (A) The unlisted insurer has for any reason been objected to by
37 the commissioner pursuant to this section, removed from the list,
38 or denied placement on the list.

1 (B) The insurance includes coverage for employer-sponsored
2 medical, surgical, hospital, or other health or medical expense
3 benefits payable to the employee by the insurer.

4 (C) The insurance is mandatory under the laws of the federal
5 government, this state, or any political subdivision thereof, and
6 includes any portion of limits of coverage mandated by those laws.

7 (D) The insured is a multiple employer welfare arrangement,
8 as defined in Section 1002(40)(A) of Title 29 of the United States
9 Code, or any other arrangement among two or more employers
10 that are not under common ownership or control, which is
11 established or maintained for the primary purpose of providing
12 insurance benefits to the employees of two or more employers.

13 (E) Unlisted insurers represent a disproportionate portion of the
14 lower layers of the coverage.

15 (3) Nothing in this section is intended to alter any duties of a
16 surplus line broker pursuant to subdivision (b) of Section 1765 or
17 other laws of this state to safeguard the interests of the insured
18 under the policy in recommending or placing insurance with a
19 nonadmitted insurer.

20 (4) Placements authorized by this subdivision are intended to
21 provide sophisticated insurance purchasers with a means to obtain
22 necessary commercial insurance coverage from nonadmitted
23 insurers not listed by the commissioner in situations where it is
24 not commercially possible to fully obtain that coverage from either
25 admitted or listed insurers. This subdivision shall not be deemed
26 to permit surplus line brokers to place with nonadmitted insurers
27 common commercial or personal line coverages for insureds that
28 can be placed with insurers that are admitted or listed pursuant to
29 this section, whether the insured is an individual insured, or a group
30 created primarily for the purpose of purchasing insurance.

31 (l) As used in this section:

32 (1) “Certified” means an originally signed or sealed statement,
33 dated not more than 60 days before submission, made by a public
34 official or other person, attached to a copy of a document, that
35 attests that the copy is a true copy of the original, and that the
36 original is in the custody of the person making the statement.

37 (2) “Domiciliary jurisdiction” means the state, nation, or
38 subdivision thereof under the laws of which an insurer is
39 incorporated or otherwise organized.

1 (3) “Domiciliary state of the syndicate’s trust” means the state
2 in which the syndicate’s trust fund is principally maintained and
3 administered for the benefit of the syndicate’s policyholders in the
4 United States.

5 (4) “IID” means the International Insurers Department.

6 (5) “Insurer” means (unless the context indicates otherwise)
7 “nonadmitted” insurers that are either “foreign” or “alien” insurers,
8 as those terms are defined in Sections 25, 27, and 1580, and
9 syndicates whose members consist of individual incorporated
10 insurers who are not engaged in any business other than
11 underwriting as a member of the group and individual
12 unincorporated insurers, provided all the members are subject to
13 the same level of solvency regulation and control by the group’s
14 domiciliary regulator. The term “insurer” includes all nonadmitted
15 insurers selling insurance to or through purchasing groups as
16 defined in the Liability Risk Retention Act of 1986 (15 U.S.C.
17 Sec. 3901 et seq.) and the California Risk Retention Act of ~~1990~~
18 ~~1991~~ (Chapter 1.5 (commencing with Section 125) of Part ~~1~~ of
19 ~~Division 1~~), except insurers that are risk retention groups as defined
20 by those acts.

21 (6) “ISI” means Insurance Solvency International.

22 (7) “Licensee” means a surplus line broker as defined in Section
23 47.

24 (8) “NAIC” means the National Association of Insurance
25 Commissioners or its successor organization.

26 (9) “NAIIO” means the Nonadmitted Alien Insurer Information
27 Office of the NAIC or its successor office.

28 (10) “State” means any state of the United States; the District
29 of Columbia; a commonwealth, or a territory.

30 (11) “Verified” means a document or copy accompanied by an
31 originally signed statement, dated not more than 60 days before
32 submission, from a responsible executive or official who has
33 authority to provide the statement and knowledge whereof he or
34 she speaks, attesting either under oath before a notary public, or
35 under penalty of perjury under California law, that the assertions
36 made in the document are true.

37 (m) With respect to a nonadmitted insurer that is listed as an
38 authorized surplus line insurer as of December 31, 1994, pursuant
39 to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the
40 California Code of Regulations, this section shall not be effective

1 until the subsequent expiration of the listing of that insurer. Nothing
 2 in the bill that amended this section during the 1994 portion of the
 3 1993–94 Regular Session is intended to repeal or imply there is
 4 not authority to adopt, or to have adopted, or to continue in force,
 5 any regulation, or part thereof, with respect to surplus line
 6 insurance which is not clearly inconsistent with it.

7 *(n) Notwithstanding anything to the contrary in this code, an*
 8 *insurer domiciled in California may have common directors with*
 9 *an affiliated nonadmitted insurer provided the common directors*
 10 *do not perform any management functions for the nonadmitted*
 11 *insurer in California.*

12 *(o) (1) An insurer domiciled in California may perform the*
 13 *following administrative services on behalf of an affiliated*
 14 *nonadmitted insurer that has qualified as an eligible surplus line*
 15 *insurer pursuant to this section:*

16 *(A) Computer operations that are unrelated to the underwriting*
 17 *process.*

18 *(B) Clerical and administrative staffing support.*

19 *(C) Human resources.*

20 *(D) Claims adjusting except that all claims notices, decisions,*
 21 *and payments shall be made directly by the affiliated nonadmitted*
 22 *insurer.*

23 *(2) Nothing in this section permits the nonadmitted insurer to*
 24 *conduct any activity through its affiliate that constitutes the*
 25 *transaction of insurance or a violation of Section 700 or 703.*

26 ~~SECTION 1. Section 700 of the Insurance Code is amended~~
 27 ~~to read:~~

28 ~~700. (a) A person shall not transact any class of insurance~~
 29 ~~business in this state without first being admitted for that class.~~
 30 ~~Except for the State Compensation Insurance Fund as authorized~~
 31 ~~by Sections 11770 and 11778 to 11780.5, inclusive, admission is~~
 32 ~~secured by procuring a certificate of authority from the~~
 33 ~~commissioner. The certificate shall not be granted until the~~
 34 ~~applicant conforms to the requirements of this code and of the laws~~
 35 ~~of this state prerequisite to its issue.~~

36 ~~(b) The unlawful transaction of insurance business in this state~~
 37 ~~in willful violation of the requirement for a certificate of authority~~
 38 ~~is a public offense punishable by imprisonment in the state prison,~~
 39 ~~or in a county jail not exceeding one year, or by a fine not~~
 40 ~~exceeding one hundred thousand dollars (\$100,000), or by both~~

1 that fine and imprisonment, and shall be enjoined by a court of
2 competent jurisdiction on petition of the commissioner.

3 (e) ~~After the issuance of a certificate of authority, the holder~~
4 ~~shall continue to comply with the requirements as to its business~~
5 ~~set forth in this code and in the other laws of this state, including,~~
6 ~~but not limited to, Chapter 5 (commencing with Section 1621),~~
7 ~~with regard to employees or contractors who solicit, negotiate, or~~
8 ~~effect insurance.~~

9 (d) ~~Where a hearing is held under this section the proceedings~~
10 ~~shall be conducted in accordance with Chapter 5 (commencing~~
11 ~~with Section 11500) of Part 1 of Division 3 of Title 2 of the~~
12 ~~Government Code, and the commissioner shall have all the powers~~
13 ~~granted therein.~~

14 (e) ~~The commissioner shall either issue or deny an application~~
15 ~~for a certificate of authority within 180 calendar days after the date~~
16 ~~of the application.~~

17 (f) ~~The commissioner and his or her authorized representative~~
18 ~~shall be prohibited from seeking a waiver to extend the 180~~
19 ~~calendar day period specified in subdivision (e), nor shall the~~
20 ~~applicant be permitted to waive that period.~~

21 (g) (1) ~~A nonadmitted insurer which is affiliated with a~~
22 ~~California domestic insurer may receive administrative services~~
23 ~~rendered in California by its California domestic insurer affiliate~~
24 ~~so long as the nonadmitted insurer provides the commissioner with~~
25 ~~a description of the administrative services to be rendered in~~
26 ~~California by the California domestic insurer affiliate and the~~
27 ~~services do not violate this section and Section 703.~~

28 (2) ~~A nonadmitted insurer and its California domestic insurer~~
29 ~~affiliate may have common directors and officers so long as the~~
30 ~~nonadmitted insurer maintains a resident operating manager in its~~
31 ~~home state who is responsible for and carries out all management~~
32 ~~functions in its home state.~~