

AMENDED IN ASSEMBLY MAY 20, 2010

AMENDED IN ASSEMBLY APRIL 26, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1837**

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**Introduced by Assembly Member Gaines**

February 12, 2010

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An act to amend Section 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~~ *those* common directors do not *constitute the majority of the voting authority of the nonadmitted insurer and 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, *claims adjusting, and investment management* services on behalf of an affiliated nonadmitted insurer that has qualified as an eligible surplus line insurer.

Vote: majority. Appropriation: no. Fiscal committee: 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  
27 on regulated United States’ national or principal regional securities  
28 exchanges. The remaining assets shall be in the form just described,  
29 or in the form of investments of substantially the same character  
30 and quality as described in Sections 1190 to 1202, inclusive. In  
31 calculating capital and surplus under this section, the term “same  
32 character and quality” shall permit, but not require, the  
33 commissioner to approve assets maintained in accordance with  
34 the laws of another state or country. The commissioner shall be  
35 guided by any limitations, restrictions, or other requirements of  
36 this code or the National Association of Insurance Commissioners’  
37 Accounting Practices and Procedures Manual in determining  
38 whether assets substantially similar to those described in Sections

1 1190 to 1202, inclusive, qualify. The commissioner shall retain  
2 the discretion to disapprove or disallow any asset that is not of a  
3 sound quality, or that he or she deems to create an unacceptable  
4 risk of loss to the insurer or to policyholders. Letters of credit will  
5 not qualify as assets in the calculation of surplus. If less than fifteen  
6 million dollars (\$15,000,000), the commissioner has affirmatively  
7 found that the capital and surplus is adequate to protect California  
8 policyholders. The commissioner shall consider, on determining  
9 whether to make this finding, factors such as quality of  
10 management, the capital and surplus of any parent company, the  
11 underwriting profit and investment income trends, and the record  
12 of claims payment and claims handling practices of the  
13 nonadmitted insurer.

14 (B) In the case of an “Insurance Exchange” created and  
15 authorized under the laws of individual states, maintains capital  
16 and surplus of not less than fifty million dollars (\$50,000,000) in  
17 the aggregate. “Capital” shall be as defined in Section 36. “Surplus”  
18 shall be defined as assets exceeding the sum of liabilities for losses  
19 reported, expenses, taxes, and all other indebtedness and  
20 reinsurance of outstanding risks as provided by law and paid-in  
21 capital in the case of an insurer issuing or having outstanding shares  
22 of capital stock. The type of assets to be used in calculating capital  
23 and surplus shall be as follows: at least fifteen million dollars  
24 (\$15,000,000) shall be in the form of cash, or securities of the same  
25 character and quality as specified in Sections 1170 to 1182,  
26 inclusive, or in readily marketable securities listed on regulated  
27 United States’ national or principal regional securities exchanges.  
28 The remaining assets shall be in the form just described, or in the  
29 form of investments of substantially the same character and quality  
30 as described in Sections 1190 to 1202, inclusive. In calculating  
31 capital and surplus under this section, the term “same character  
32 and quality” shall permit, but not require, the commissioner to  
33 approve assets maintained in accordance with the laws of another  
34 state or country. The commissioner shall be guided by any  
35 limitations, restrictions, or other requirements of this code or the  
36 National Association of Insurance Commissioners’ Accounting  
37 Practices and Procedures Manual in determining whether assets  
38 substantially similar to those described in Sections 1190 to 1202,  
39 inclusive, qualify. The commissioner shall retain the discretion to  
40 disapprove or disallow any asset that is not of a sound quality, or

1 that he or she deems to create an unacceptable risk of loss to the  
2 insurer or to policyholders. Letters of credit shall not qualify as  
3 assets in the calculation of surplus. In the case of an Insurance  
4 Exchange which maintains funds for the protection of all Insurance  
5 Exchange policyholders, each individual syndicate seeking to  
6 accept surplus line placements of risks resident, located, or to be  
7 performed in this state shall maintain minimum capital and surplus  
8 of not less than six million four hundred thousand dollars  
9 (\$6,400,000). Each individual syndicate shall increase the capital  
10 and surplus required by this paragraph by one million dollars  
11 (\$1,000,000) each year until it attains a capital and surplus of  
12 fifteen million dollars (\$15,000,000). In the case of Insurance  
13 Exchanges that do not maintain funds for the protection of all  
14 Insurance Exchange policyholders, each individual syndicate  
15 seeking to accept surplus line placement of risks resident, located,  
16 or to be performed in this state shall meet the capital and surplus  
17 requirements of subparagraph (A) of this paragraph.

18 (C) In the case of a syndicate that is part of a group consisting  
19 of incorporated individual insurers, or a combination of both  
20 incorporated and unincorporated insurers, that at all times maintains  
21 a trust fund of not less than one hundred million dollars  
22 (\$100,000,000) in a qualified United States financial institution  
23 as security to the full amount thereof for the United States surplus  
24 line policyholders and beneficiaries of direct policies of the group,  
25 including all policyholders and beneficiaries of direct policies of  
26 the syndicate, and the full balance in the trust fund is available to  
27 satisfy the liabilities of each member of the group of those  
28 syndicates, incorporated individual insurers or other unincorporated  
29 insurers, without regard to their individual contributions to that  
30 trust fund, and the trust complies with the terms of and conditions  
31 specified in paragraph (1) of subdivision (b), the syndicate is  
32 excepted from the capital and surplus requirements of subparagraph  
33 (A) of paragraph (2). The incorporated members of the group shall  
34 not be engaged in any business other than underwriting as a  
35 member of the group and shall be subject to the same level of  
36 solvency regulation and control by the group's domiciliary  
37 regulator as are the unincorporated members.

38 (b) (1) In addition, to be eligible as a surplus line insurer, an  
39 insurer not domiciled in one of the United States or its territories  
40 shall have in force in the United States an irrevocable trust account

1 in a qualified United States financial institution, for the protection  
2 of United States policyholders, of not less than five million four  
3 hundred thousand dollars (\$5,400,000) and consisting of cash,  
4 securities acceptable to the commissioner which are authorized  
5 pursuant to Sections 1170 to 1182, inclusive, readily marketable  
6 securities acceptable to the commissioner that are listed on a  
7 regulated United States national or principal regional security  
8 exchange, or clean and irrevocable letters of credit acceptable to  
9 the commissioner and issued by a qualified United States financial  
10 institution. The trust agreement shall be in a form acceptable to  
11 the commissioner. The funds in the trust account may be included  
12 in any calculation of capital and surplus, except letters of credit,  
13 which shall not be included in any calculation.

14 (2) In the case of a syndicate seeking eligibility under  
15 subparagraph (C) of paragraph (2) of subdivision (a), the syndicate  
16 shall, in addition to the requirements of that subparagraph, at a  
17 minimum, maintain in the United States a trust account in an  
18 amount satisfactory to the commissioner that is not less than the  
19 amount required by the domiciliary state of the syndicate's trust.  
20 The trust account shall comply with the terms and conditions  
21 specified in paragraph (1).

22 (3) In the case of a group of incorporated insurers under common  
23 administration that maintains a trust fund of not less than one  
24 hundred million dollars (\$100,000,000) in a qualified United States  
25 financial institution for the payment of claims of its United States  
26 policyholders, their assigns, or successors in interest and that  
27 complies with the terms and conditions of paragraph (1) that has  
28 continuously transacted an insurance business outside the United  
29 States for at least three years, that is in good standing with its  
30 domiciliary regulator, whose individual insurer members maintain  
31 standards and a financial condition reasonably comparable to  
32 admitted insurers, that submits to this state's authority to examine  
33 its books and bears the expense of examination, and that has an  
34 aggregate policyholder surplus of ten billion dollars  
35 (\$10,000,000,000), the group is excepted from the capital and  
36 surplus requirements of subdivision (a).

37 (c) Has caused to be provided to the commissioner the following  
38 documents:

- 1 (1) The financial documents as specified below, each showing  
2 the insurer's condition as of a date not more than 12 months prior  
3 to submission:
- 4 (A) A copy of an annual statement, prepared in the form  
5 prescribed by the NAIC. For an alien insurer, in lieu of an annual  
6 statement, a licensee may submit a form as set forth by regulation  
7 and as prepared by the insurer, and, if listed by the IID, a copy of  
8 the complete information as required in the application for listing  
9 by the IID.
- 10 (B) A copy of an audited financial report on the insurer's  
11 condition that meets the standards of subparagraph (D) for foreign  
12 insurers or subparagraph (E) for alien insurers.
- 13 (C) If the insurer is an alien:
- 14 (i) A certified copy of the trust agreement referenced in  
15 subdivision (b).
- 16 (ii) A verified copy of the most recent quarterly statement or  
17 list of the assets in the trust.
- 18 (D) Financial reports filed pursuant to this section by foreign  
19 insurers shall conform to the following standards:
- 20 (i) Financial documents shall be certified.
- 21 (ii) An audited financial report shall constitute a supplement to  
22 the insurer's annual statement, as required by the annual statement  
23 instructions issued by the NAIC.
- 24 (iii) An audited financial report shall be prepared by an  
25 independent certified public accountant or accounting firm in good  
26 standing with the American Institute of Certified Public  
27 Accountants and in all states where licensed to practice; and be  
28 prepared in conformity with statutory accounting practices  
29 prescribed, or otherwise permitted, by the insurance regulator of  
30 the insurer's domiciliary jurisdiction.
- 31 (iv) An audited financial report shall include information on the  
32 insurer's financial position as of the end of the most recent calendar  
33 year, and the results of its operations, cashflows, and changes in  
34 capital and surplus for the year then ended.
- 35 (v) An audited financial report shall be prepared in a form and  
36 using language and groupings substantially the same as the relevant  
37 sections of the insurer's annual statement filed with its domiciliary  
38 jurisdiction, and presenting comparatively the amounts as of  
39 December 31 of the most recent calendar year and the amounts as  
40 of December 31 of the preceding year.

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

3 (i) Except as provided in clause (ii) of subparagraph (C),  
4 financial documents should be certified. If certification of a  
5 financial document is not available, the document shall be verified.

6 (ii) Financial documents should be expressed in United States  
7 dollars, but may be expressed in another currency if the exchange  
8 rate for the other currency as of the date of the document is also  
9 provided.

10 (iii) The responses provided pursuant to subparagraph (A) of  
11 paragraph (1) on the form submitted in lieu of an annual statement  
12 should follow the most recent ISI Guide to Alien Reporting Format,  
13 “Standard Definitions of Accounting Items.” Responses that do  
14 not agree with a standard definition shall be fully explained in the  
15 form.

16 (iv) An audited financial report shall be prepared by an  
17 independent licensed auditor in the insurer’s domiciliary  
18 jurisdiction or in any state.

19 (v) An audited financial report shall be prepared in accord with  
20 either (I) Generally Accepted Auditing Standards that prescribe  
21 Generally Accepted Accounting Principles, or (II) International  
22 Accounting Standards as published and revised from time to time  
23 by the International Auditing Guidelines published by the  
24 International Auditing Practice Committee of the International  
25 Federation of Accountants; and shall include financial statement  
26 notes and a summary of significant accounting practices.

27 (F) The commissioner may accept, in lieu of a document  
28 described above, any certified or verified financial or regulatory  
29 document, statement, or report if the commissioner finds that it  
30 possesses reliability and financial detail substantially equal to or  
31 greater than the document for which it is proposed to be a  
32 substitute.

33 (G) If one of the financial documents required to be submitted  
34 under subparagraphs (A) and (B) is dated within 12 months of  
35 submission, but the other document is not so dated, the licensee  
36 may use the outdated document if it is accompanied by a  
37 supplement. The supplement must meet the same requirements  
38 which apply to the supplemented document, and must update the  
39 outdated document to a date within the prescribed time period,  
40 preferably to the same date as the nonsupplemented document.

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

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

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

12 (5) A certified or verified explanation, report, or other statement,  
13 from the insurance regulatory office or official of the insurer's  
14 domiciliary jurisdiction, concerning the insurer's record regarding  
15 market conduct and consumer complaints; or, if that information  
16 cannot be obtained from that jurisdiction, then any other  
17 information that the licensee can procure to demonstrate a good  
18 reputation for payment of claims and treatment of policyholders.

19 (6) A verified statement, from the insurer or licensee, on whether  
20 the insurer or any affiliated entity is currently known to be the  
21 subject of any order or proceeding regarding conservation,  
22 liquidation, or other receivership; or regarding revocation or  
23 suspension of a license to transact insurance in any jurisdiction;  
24 or otherwise seeking to stop the insurer from transacting insurance  
25 in any jurisdiction. The statement shall identify the proceeding by  
26 date, jurisdiction, and relief or sanction sought; and shall attach a  
27 copy of the relevant order.

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

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

33 (d) (1) Has provided any additional information or  
34 documentation required by the commissioner that is relevant to  
35 the financial stability, reputation, and integrity of the nonadmitted  
36 insurer. In making a determination concerning financial stability,  
37 reputation, and integrity of the nonadmitted insurer, the  
38 commissioner shall consider any analyses, findings, or conclusions  
39 made by the National Association of Insurance Commissioners  
40 (NAIC) in its review of the insurer for purposes of inclusion on



1 or exclusion from the list of authorized nonadmitted insurers  
2 maintained by the NAIC. The commissioner may, but shall not be  
3 required to, rely on, adopt, or otherwise accept any analyses,  
4 findings, or conclusions of the NAIC, as the commissioner deems  
5 appropriate. In the case of a syndicate seeking eligibility under  
6 subparagraph (C) of paragraph (2) of subdivision (a), the  
7 commissioner may, but shall not be required to, rely on, adopt, or  
8 otherwise accept any analyses, findings, or conclusions of any  
9 state, as the commissioner deems appropriate, as long as that state,  
10 in its method of regulation and review, meets the requirements of  
11 paragraph (2).

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

31 (e) Has established that:

32 (1) All documents required by subdivisions (c) and (d) have  
33 been filed. Each of the documents appear after review to be  
34 complete, clear, comprehensible, unambiguous, accurate, and  
35 consistent.

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

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

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

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

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

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

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

16 (4) The documents confirm that the insurer holds a license to  
17 issue insurance policies (other than reinsurance) to residents of  
18 the jurisdiction that granted the license unless an exemption is  
19 granted. The commissioner may grant an exemption if the licensee  
20 has applied for an exemption and demonstrates that the exemption  
21 is warranted because the insurer proposes to issue in California  
22 only commercial coverage, and is wholly owned and actually  
23 controlled by substantial and knowledgeable business enterprises  
24 that are its policyholders and that effectively govern the insurer’s  
25 destiny in furtherance of their own business objectives.

26 (5) The information filed pursuant to paragraph (5) of  
27 subdivision (c) or otherwise filed with or available to the  
28 commissioner, including reports received from California  
29 policyholders, shall indicate that the insurer makes reasonably  
30 prompt payment of claims in this state or elsewhere.

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

34 (f) Has been placed on the list of eligible surplus line insurers  
35 by the commissioner. The commissioner shall establish a list of  
36 all surplus line insurers that have met the requirements of  
37 subdivisions (a) to (e), inclusive, and shall publish a master list at  
38 least semiannually. Any insurer receiving approval as an eligible  
39 surplus line insurer shall be added by addendum to the list at the  
40 time of approval, and shall be incorporated into the master list at

1 the next date of publication. If an insurer appears on the most  
2 recent list, it shall be presumed that the insurer is an eligible surplus  
3 line insurer, unless the commissioner, or his or her designee, has  
4 mailed or causes to be mailed notice to all surplus line brokers that  
5 the commissioner has withdrawn the insurer's eligibility. Upon  
6 receipt of notice, the surplus line broker shall make no further  
7 placements with the insurer. Nothing in this subdivision shall limit  
8 the commissioner's discretion to withdraw an insurer's eligibility.

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

24 (2) If the commissioner determines that an insurer's immediate  
25 removal from the list is necessary to protect the public or an insured  
26 or prospective insured of the insurer, or, in the case of an  
27 application by an insurer to be placed on the list which is being  
28 denied by the commissioner, the commissioner may issue an order  
29 pursuant to paragraph (1) without prior notice and hearing. At the  
30 time an order is served pursuant to this paragraph to an insurer on  
31 the list, the commissioner shall also issue and serve upon the  
32 insurer a statement of the reasons that immediate removal is  
33 necessary. Any order issued pursuant to this paragraph shall include  
34 a notice stating the time and place of a hearing on the order, which  
35 shall be not less than 20 days nor more than 30 days after the notice  
36 is served.

37 (3) Notwithstanding paragraphs (1) and (2), in any case where  
38 the commissioner is basing a decision to remove an insurer from  
39 the list, or deny an application to be placed on the list, on the failure  
40 of the insurer or applicant to comply with, meet, or maintain any

1 of the objective criteria established by this section, or by regulation  
2 adopted pursuant to this section, the commissioner may so specify  
3 this fact in the order, and no hearing shall be required to be held  
4 on the order.

5 (4) Notwithstanding paragraphs (1) and (2), the commissioner  
6 may, without prior notice or hearing, remove from the list  
7 established pursuant to subdivision (f) any insurer that has failed  
8 or refused to timely provide documents required by this section,  
9 or any regulations adopted to implement this section. In the case  
10 of removal pursuant to this paragraph, the commissioner shall  
11 notify all surplus line brokers of the action.

12 (h) In addition to any other statements or reports required by  
13 this chapter, the commissioner may also address to any licensee a  
14 written request for full and complete information respecting the  
15 financial stability, reputation, and integrity of any nonadmitted  
16 insurer with whom the licensee has dealt or proposes to deal in the  
17 transaction of insurance business. The licensee so addressed shall  
18 promptly furnish in written or printed form so much of the  
19 information requested as he or she can produce together with a  
20 signed statement identifying the same and giving reasons for  
21 omissions, if any. After due examination of the information and  
22 accompanying statement, the commissioner may, if he or she  
23 believes it to be in the public interest, order the licensee in writing  
24 to place no further insurance business on property located or  
25 operations conducted within or on the lives of persons who are  
26 residents of this state with the nonadmitted insurer on behalf of  
27 any person. Any placement in the nonadmitted insurer made by a  
28 licensee after receipt of that order is a violation of this chapter.  
29 The commissioner may issue an order when documents submitted  
30 pursuant to subdivisions (c) and (d) do not meet the criteria of  
31 subdivisions (a) to (e), inclusive, or when the commissioner obtains  
32 documents on an insurer and the insurer does not meet the criteria  
33 of subdivisions (a) to (e), inclusive.

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

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

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

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

6 (B) At least 80 percent of the risk is placed with admitted  
7 insurers or insurers that appear on the list of eligible nonadmitted  
8 insurers.

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

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

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

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

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

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

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

1 (E) Unlisted insurers represent a disproportionate portion of the  
2 lower layers of the coverage.

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

8 (4) Placements authorized by this subdivision are intended to  
9 provide sophisticated insurance purchasers with a means to obtain  
10 necessary commercial insurance coverage from nonadmitted  
11 insurers not listed by the commissioner in situations where it is  
12 not commercially possible to fully obtain that coverage from either  
13 admitted or listed insurers. This subdivision shall not be deemed  
14 to permit surplus line brokers to place with nonadmitted insurers  
15 common commercial or personal line coverages for insureds that  
16 can be placed with insurers that are admitted or listed pursuant to  
17 this section, whether the insured is an individual insured, or a group  
18 created primarily for the purpose of purchasing insurance.

19 (l) As used in this section:

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

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

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

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

33 (5) “Insurer” means (unless the context indicates otherwise)  
34 “nonadmitted” insurers that are either “foreign” or “alien” insurers,  
35 as those terms are defined in Sections 25, 27, and 1580, and  
36 syndicates whose members consist of individual incorporated  
37 insurers who are not engaged in any business other than  
38 underwriting as a member of the group and individual  
39 unincorporated insurers, provided all the members are subject to  
40 the same level of solvency regulation and control by the group’s

1 domiciliary regulator. The term “insurer” includes all nonadmitted  
2 insurers selling insurance to or through purchasing groups as  
3 defined in the Liability Risk Retention Act of 1986 (15 U.S.C.  
4 Sec. 3901 et seq.) and the California Risk Retention Act of 1991  
5 (Chapter 1.5 (commencing with Section 125) of Part 1), except  
6 insurers that are risk retention groups as defined by those acts.

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

8 (7) “Licensee” means a surplus line broker as defined in Section  
9 47.

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

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

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

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

23 (m) With respect to a nonadmitted insurer that is listed as an  
24 authorized surplus line insurer as of December 31, 1994, pursuant  
25 to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the  
26 California Code of Regulations, this section shall not be effective  
27 until the subsequent expiration of the listing of that insurer. Nothing  
28 in the bill that amended this section during the 1994 portion of the  
29 1993–94 Regular Session is intended to repeal or imply there is  
30 not authority to adopt, or to have adopted, or to continue in force,  
31 any regulation, or part thereof, with respect to surplus line  
32 insurance which is not clearly inconsistent with it.

33 ~~(n) Notwithstanding anything to the contrary in this code, an~~  
34 ~~insurer domiciled in California may have common directors with~~  
35 ~~an affiliated nonadmitted insurer provided the common directors~~  
36 ~~do not perform any management functions for the nonadmitted~~  
37 ~~insurer in California.~~

38 *(n) An insurer domiciled in California may have common*  
39 *directors with an affiliated nonadmitted insurer provided these*  
40 *common directors do not constitute the majority of the voting*

1 authority of the nonadmitted insurer and do not perform any  
2 management functions for the nonadmitted insurer in California.

3 (o) (1) An insurer domiciled in California may perform the  
4 following administrative services on behalf of an affiliated  
5 nonadmitted insurer that has qualified as an eligible surplus line  
6 insurer pursuant to this section:

7 ~~(A) Computer operations that are unrelated to the underwriting~~  
8 ~~process:~~

9 ~~(B) Clerical and administrative staffing support.~~

10 ~~(C) Human resources.~~

11 ~~(D) Claims adjusting except that all claims notices, decisions,~~  
12 ~~and payments shall be made directly by the affiliated nonadmitted~~  
13 ~~insurer.~~

14 (A) Computer operations that are unrelated to the underwriting  
15 process, which may include such activities as development and  
16 maintenance of application software, databases, and servers;  
17 procurement of information technology and services; network  
18 operations; and Web site development and support.

19 (B) Clerical and administrative staffing support, provided that  
20 this staff shall not have any contact or interaction with  
21 policyholders of the nonadmitted insurer.

22 (C) Human resources, provided that any decisions relating to  
23 the hiring, firing, disciplinary actions, or compensation of any  
24 employee, officer, or both, of the nonadmitted insurer shall be  
25 made directly by the nonadmitted insurer.

26 (D) Claims adjusting, as described in Section 14021, except  
27 that all claims notices, claims-related decisions, including those  
28 relating to setting reserves and claims acceptance, claims  
29 payments, and settlements shall be made directly by the affiliated  
30 nonadmitted insurer.

31 (E) Managing investments such as buying, maintaining, and  
32 selling financial investment instruments, except that decisions  
33 relating to investment goals, risk assumptions such as capital  
34 preservation and protection of investment principle, determining  
35 liquidity needs, and diversification ratios shall be made by the  
36 affiliated nonadmitted insurer.



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

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