

AMENDED IN SENATE AUGUST 10, 2010

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

Introduced by Assembly Member Gaines

February 12, 2010

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 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.

The bill would incorporate additional changes to Section 1765.1 of the Insurance Code, proposed by AB 1708 of the 2009–10 Regular Session, to be operative only if both bills are chaptered and become effective on or before January 1, 2011, and this bill is chaptered last.

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

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

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

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

25 (C) In the case of a syndicate that is part of a group consisting
26 of incorporated individual insurers, or a combination of both
27 incorporated and unincorporated insurers, that at all times maintains
28 a trust fund of not less than one hundred million dollars
29 (\$100,000,000) in a qualified United States financial institution
30 as security to the full amount thereof for the United States surplus
31 line policyholders and beneficiaries of direct policies of the group,
32 including all policyholders and beneficiaries of direct policies of
33 the syndicate, and the full balance in the trust fund is available to
34 satisfy the liabilities of each member of the group of those
35 syndicates, incorporated individual insurers or other unincorporated
36 insurers, without regard to their individual contributions to that
37 trust fund, and the trust complies with the terms of and conditions
38 specified in paragraph (1) of subdivision (b), the syndicate is
39 excepted from the capital and surplus requirements of subparagraph
40 (A) of paragraph (2). The incorporated members of the group shall

1 not be engaged in any business other than underwriting as a
2 member of the group and shall be subject to the same level of
3 solvency regulation and control by the group's domiciliary
4 regulator as are the unincorporated members.

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

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

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

1 aggregate policyholder surplus of ten billion dollars
2 (\$10,000,000,000), the group is excepted from the capital and
3 surplus requirements of subdivision (a).

4 (c) Has caused to be provided to the commissioner the following
5 documents:

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

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

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

18 (C) If the insurer is an alien:

19 (i) A certified copy of the trust agreement referenced in
20 subdivision (b).

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

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

25 (i) Financial documents shall be certified.

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

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

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

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

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

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

12 (ii) Financial documents should be expressed in United States
13 dollars, but may be expressed in another currency if the exchange
14 rate for the other currency as of the date of the document is also
15 provided.

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

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

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

33 (F) The commissioner may accept, in lieu of a document
34 described above, any certified or verified financial or regulatory
35 document, statement, or report if the commissioner finds that it
36 possesses reliability and financial detail substantially equal to or
37 greater than the document for which it is proposed to be a
38 substitute.

39 (G) If one of the financial documents required to be submitted
40 under subparagraphs (A) and (B) is dated within 12 months of

1 submission, but the other document is not so dated, the licensee
2 may use the outdated document if it is accompanied by a
3 supplement. The supplement must meet the same requirements
4 which apply to the supplemented document, and must update the
5 outdated document to a date within the prescribed time period,
6 preferably to the same date as the nonsupplemented document.

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

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

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

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

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

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

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

39 (d) (1) Has provided any additional information or
40 documentation required by the commissioner that is relevant to

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

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

37 (e) Has established that:

38 (1) All documents required by subdivisions (c) and (d) have
39 been filed. Each of the documents appear after review to be

1 complete, clear, comprehensible, unambiguous, accurate, and
2 consistent.

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

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

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

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

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

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

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

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

33 (5) The information filed pursuant to paragraph (5) of
34 subdivision (c) or otherwise filed with or available to the
35 commissioner, including reports received from California
36 policyholders, shall indicate that the insurer makes reasonably
37 prompt payment of claims in this state or elsewhere.

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

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

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

31 (2) If the commissioner determines that an insurer's immediate
32 removal from the list is necessary to protect the public or an insured
33 or prospective insured of the insurer, or, in the case of an
34 application by an insurer to be placed on the list which is being
35 denied by the commissioner, the commissioner may issue an order
36 pursuant to paragraph (1) without prior notice and hearing. At the
37 time an order is served pursuant to this paragraph to an insurer on
38 the list, the commissioner shall also issue and serve upon the
39 insurer a statement of the reasons that immediate removal is
40 necessary. Any order issued pursuant to this paragraph shall include

1 a notice stating the time and place of a hearing on the order, which
2 shall be not less than 20 days nor more than 30 days after the notice
3 is served.

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

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

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

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

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

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

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

11 (B) At least 80 percent of the risk is placed with admitted
12 insurers or insurers that appear on the list of eligible nonadmitted
13 insurers.

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

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

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

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

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

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

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

7 (E) Unlisted insurers represent a disproportionate portion of the
8 lower layers of the coverage.

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

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

25 (l) As used in this section:

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

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

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

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

39 (5) “Insurer” means (unless the context indicates otherwise)
40 “nonadmitted” insurers that are either “foreign” or “alien” insurers,

1 as those terms are defined in Sections 25, 27, and 1580, and
2 syndicates whose members consist of individual incorporated
3 insurers who are not engaged in any business other than
4 underwriting as a member of the group and individual
5 unincorporated insurers, provided all the members are subject to
6 the same level of solvency regulation and control by the group's
7 domiciliary regulator. The term "insurer" includes all nonadmitted
8 insurers selling insurance to or through purchasing groups as
9 defined in the Liability Risk Retention Act of 1986 (15 U.S.C.
10 Sec. 3901 et seq.) and the California Risk Retention Act of 1991
11 (Chapter 1.5 (commencing with Section 125) of Part 1), except
12 insurers that are risk retention groups as defined by those acts.

13 (6) "ISI" means Insurance Solvency International.

14 (7) "Licensee" means a surplus line broker as defined in Section
15 47.

16 (8) "NAIC" means the National Association of Insurance
17 Commissioners or its successor organization.

18 (9) "NAIIO" means the Nonadmitted Alien Insurer Information
19 Office of the NAIC or its successor office.

20 (10) "State" means any state of the United States; the District
21 of Columbia; a commonwealth, or a territory.

22 (11) "Verified" means a document or copy accompanied by an
23 originally signed statement, dated not more than 60 days before
24 submission, from a responsible executive or official who has
25 authority to provide the statement and knowledge whereof he or
26 she speaks, attesting either under oath before a notary public, or
27 under penalty of perjury under California law, that the assertions
28 made in the document are true.

29 (m) With respect to a nonadmitted insurer that is listed as an
30 authorized surplus line insurer as of December 31, 1994, pursuant
31 to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the
32 California Code of Regulations, this section shall not be effective
33 until the subsequent expiration of the listing of that insurer. Nothing
34 in the bill that amended this section during the 1994 portion of the
35 1993–94 Regular Session is intended to repeal or imply there is
36 not authority to adopt, or to have adopted, or to continue in force,
37 any regulation, or part thereof, with respect to surplus line
38 insurance which is not clearly inconsistent with it.

39 (n) An insurer domiciled in California may have common
40 directors with an affiliated nonadmitted insurer provided these

1 common directors do not constitute the majority of the voting
2 authority of the nonadmitted insurer and do not perform any
3 management functions for the nonadmitted insurer in California.

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

8 (A) Computer operations that are unrelated to the underwriting
9 process, which may include such activities as development and
10 maintenance of application software, databases, and servers;
11 procurement of information technology and services; network
12 operations; and Web site development and support.

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

16 (C) Human resources, provided that any decisions relating to
17 the hiring, firing, disciplinary actions, or compensation of any
18 employee, officer, or both, of the nonadmitted insurer shall be
19 made directly by the nonadmitted insurer.

20 (D) Claims adjusting, as described in Section 14021, except
21 that all claims notices, claims-related decisions, including those
22 relating to setting reserves and claims acceptance, claims payments,
23 and settlements shall be made directly by the affiliated nonadmitted
24 insurer.

25 (E) Managing investments such as buying, maintaining, and
26 selling financial investment instruments, except that decisions
27 relating to investment goals, risk assumptions such as capital
28 preservation and protection of investment principle, determining
29 liquidity needs, and diversification ratios shall be made by the
30 affiliated nonadmitted insurer.

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

34 *SEC. 1.5. Section 1765.1 of the Insurance Code is amended to*
35 *read:*

36 1765.1. No surplus line broker shall place any coverage with
37 a nonadmitted insurer unless the insurer is domiciled in the
38 Republic of Mexico and the placement covers only liability arising
39 out of the ownership, maintenance, or use of a motor vehicle,
40 aircraft, or boat in the Republic of Mexico, or, at the time of

1 placement, the nonadmitted insurer meets the following
2 requirements:

3 (a) (1) Has established its financial stability, reputation, and
4 integrity, for the class of insurance the broker proposes to place,
5 by satisfactory evidence submitted to the commissioner through
6 a surplus line broker.

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

9 (A) Has capital and surplus that together total at least ~~fifteen~~
10 ~~million dollars (\$15,000,000)~~ *forty-five million dollars*
11 *(\$45,000,000)*. “Capital” shall be as defined in Section 36.
12 “Surplus” shall be defined as assets exceeding the sum of liabilities
13 for losses reported, expenses, taxes, and all other indebtedness and
14 reinsurance of outstanding risks as provided by law and paid-in
15 capital in the case of an insurer issuing or having outstanding shares
16 of capital stock. The type of assets to be used in calculating capital
17 and surplus shall be as follows: at least ~~fifteen million dollars~~
18 ~~(\$15,000,000)~~ *twenty-five million dollars (\$25,000,000)* shall be
19 in the form of cash, or securities of the same character and quality
20 as specified in Sections 1170 to 1182, inclusive, or in readily
21 marketable securities listed on regulated United States’ national
22 or principal regional securities exchanges. The remaining assets
23 shall be in the form just described, or in the form of investments
24 of substantially the same character and quality as described in
25 Sections 1190 to 1202, inclusive. In calculating capital and surplus
26 under this section, the term “same character and quality” shall
27 permit, but not require, the commissioner to approve assets
28 maintained in accordance with the laws of another state or country.
29 The commissioner shall be guided by any limitations, restrictions,
30 or other requirements of this code or the National Association of
31 Insurance Commissioners’ Accounting Practices and Procedures
32 Manual in determining whether assets substantially similar to those
33 described in Sections 1190 to 1202, inclusive, qualify. The
34 commissioner shall retain the discretion to disapprove or disallow
35 any asset that is not of a sound quality, or that he or she deems to
36 create an unacceptable risk of loss to the insurer or to policyholders.
37 Letters of credit will not qualify as assets in the calculation of
38 surplus. ~~If less than fifteen million dollars (\$15,000,000), the~~
39 ~~commissioner has~~ *the capital and surplus together total less than*
40 *forty-five million dollars (\$45,000,000), the commissioner shall*

1 *have* affirmatively found that the capital and surplus is adequate
2 to protect California policyholders. The commissioner shall
3 consider, on determining whether to make this finding, factors
4 such as quality of management, the capital and surplus of any
5 parent company, the underwriting profit and investment income
6 trends, and the record of claims payment and claims handling
7 practices of the nonadmitted insurer. *If a nonadmitted insurer that*
8 *is on the list of eligible surplus line insurers, as provided in*
9 *subdivision (f), does not meet the capital and surplus requirements*
10 *on January 1, 2011, that insurer shall have at least thirty million*
11 *dollars (\$30,000,000) of capital and surplus as of December 31,*
12 *2011, and at least forty-five million dollars (\$45,000,000) of capital*
13 *and surplus as of December 31, 2013.*

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)~~ *twenty-five million dollars (\$25,000,000)* shall be
25 in the form of cash, or securities of the same character and quality
26 as specified in Sections 1170 to 1182, inclusive, or in readily
27 marketable securities listed on regulated United States’ national
28 or principal regional securities exchanges. The remaining assets
29 shall be in the form just described, or in the form of investments
30 of substantially the same character and quality as described in
31 Sections 1190 to 1202, inclusive. In calculating capital and surplus
32 under this section, the term “same character and quality” shall
33 permit, but not require, the commissioner to approve assets
34 maintained in accordance with the laws of another state or country.
35 The commissioner shall be guided by any limitations, restrictions,
36 or other requirements of this code or the National Association of
37 Insurance Commissioners’ Accounting Practices and Procedures
38 Manual in determining whether assets substantially similar to those
39 described in Sections 1190 to 1202, inclusive, qualify. The
40 commissioner shall retain the discretion to disapprove or disallow

1 any asset that is not of a sound quality, or that he or she deems to
2 create an unacceptable risk of loss to the insurer or to policyholders.
3 Letters of credit shall not qualify as assets in the calculation of
4 surplus. ~~In the case of an Insurance Exchange which maintains~~
5 ~~funds for the protection of all Insurance Exchange policyholders,~~
6 ~~each~~ *Each* individual syndicate seeking to accept surplus line
7 placements of risks resident, located, or to be performed in this
8 state shall maintain minimum capital and surplus of not less than
9 ~~six million four hundred thousand dollars (\$6,400,000).~~ Each
10 individual syndicate shall increase the capital and surplus required
11 by this paragraph by one million dollars (\$1,000,000) each year
12 until it attains a capital and surplus of fifteen million dollars
13 (\$15,000,000). ~~In the case of Insurance Exchanges that do not~~
14 ~~maintain funds for the protection of all Insurance Exchange~~
15 ~~policyholders, each individual syndicate seeking to accept surplus~~
16 ~~line placement of risks resident, located, or to be performed in this~~
17 ~~state shall meet the capital and surplus requirements of~~
18 ~~subparagraph (A) of this paragraph~~ *forty-five million dollars*
19 *(\$45,000,000).*

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

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

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

25 (3) In the case of a group of incorporated insurers under common
26 administration that maintains a trust fund of not less than one
27 hundred million dollars (\$100,000,000) in a qualified United States
28 financial institution for the payment of claims of its United States
29 policyholders, their assigns, or successors in interest and that
30 complies with the terms and conditions of paragraph (1) that has
31 continuously transacted an insurance business outside the United
32 States for at least three years, that is in good standing with its
33 domiciliary regulator, whose individual insurer members maintain
34 standards and a financial condition reasonably comparable to
35 admitted insurers, that submits to this state's authority to examine
36 its books and bears the expense of examination, and that has an
37 aggregate policyholder surplus of ten billion dollars
38 (\$10,000,000,000), the group is excepted from the capital and
39 surplus requirements of subdivision (a).

1 (c) Has caused to be provided to the commissioner the following
2 documents:

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

6 (A) A copy of an annual statement, prepared in the form
7 prescribed by the NAIC. For an alien insurer, in lieu of an annual
8 statement, a licensee may submit a form as set forth by regulation
9 and as prepared by the insurer, and, if listed by the IID, a copy of
10 the complete information as required in the application for listing
11 by the IID.

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

15 (C) If the insurer is an alien:

16 (i) A certified copy of the trust agreement referenced in
17 subdivision (b).

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

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

22 (i) Financial documents shall be certified.

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

26 (iii) An audited financial report shall be prepared by an
27 independent certified public accountant or accounting firm in good
28 standing with the American Institute of Certified Public
29 Accountants and in all states where licensed to practice; and be
30 prepared in conformity with statutory accounting practices
31 prescribed, or otherwise permitted, by the insurance regulator of
32 the insurer's domiciliary jurisdiction.

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

37 (v) An audited financial report shall be prepared in a form and
38 using language and groupings substantially the same as the relevant
39 sections of the insurer's annual statement filed with its domiciliary
40 jurisdiction, and presenting comparatively the amounts as of

1 December 31 of the most recent calendar year and the amounts as
2 of December 31 of the preceding year.

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

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

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

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

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

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

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

36 (G) If one of the financial documents required to be submitted
37 under subparagraphs (A) and (B) is dated within 12 months of
38 submission, but the other document is not so dated, the licensee
39 may use the outdated document if it is accompanied by a
40 supplement. The supplement must meet the same requirements

1 which apply to the supplemented document, and must update the
2 outdated document to a date within the prescribed time period,
3 preferably to the same date as the nonsupplemented document.

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

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

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

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

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

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

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

36 (d) (1) Has provided any additional information or
37 documentation required by the commissioner that is relevant to
38 the financial stability, reputation, and integrity of the nonadmitted
39 insurer. In making a determination concerning financial stability,
40 reputation, and integrity of the nonadmitted insurer, the

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

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

34 (e) Has established that:

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

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

- 1 (A) Seeks to stop it from transacting insurance.
2 (B) Relates to conservation, liquidation, or other receivership.
3 (C) Relates to revocation or suspension of its license.
4 (3) The documents affirm that the insurer has actively transacted
5 insurance for the three years immediately preceding the filing made
6 under this section, unless an exemption is granted. As used in this
7 paragraph, “insurer” does not include a syndicate of underwriting
8 entities. The commissioner may grant an exemption if the licensee
9 has applied for exemption and demonstrates either of the following:
10 (A) The insurer meets the condition for any exception set forth
11 in subdivision (a), (b), or (c) of Section 716.
12 (B) If the insurer has been actively transacting insurance for at
13 least 12 months, and the licensee demonstrates that the exemption
14 is warranted because the insurer’s current financial strength,
15 operating history, business plan, ownership and control,
16 management experience, and ability, together with any other
17 pertinent factors, make three years of active insurance transaction
18 unnecessary to establish sufficient reputation.
19 (4) The documents confirm that the insurer holds a license to
20 issue insurance policies (other than reinsurance) to residents of
21 the jurisdiction that granted the license unless an exemption is
22 granted. The commissioner may grant an exemption if the licensee
23 has applied for an exemption and demonstrates that the exemption
24 is warranted because the insurer proposes to issue in California
25 only commercial coverage, and is wholly owned and actually
26 controlled by substantial and knowledgeable business enterprises
27 that are its policyholders and that effectively govern the insurer’s
28 destiny in furtherance of their own business objectives.
29 (5) The information filed pursuant to paragraph (5) of
30 subdivision (c) or otherwise filed with or available to the
31 commissioner, including reports received from California
32 policyholders, shall indicate that the insurer makes reasonably
33 prompt payment of claims in this state or elsewhere.
34 (6) The information available to the commissioner shall not
35 indicate that the insurer offers in California a licensee products or
36 rates that violate any provision of this code.
37 (f) Has been placed on the list of eligible surplus line insurers
38 by the commissioner. The commissioner shall establish a list of
39 all surplus line insurers that have met the requirements of
40 subdivisions (a) to (e), inclusive, and shall publish a master list at

1 least semiannually. Any insurer receiving approval as an eligible
2 surplus line insurer shall be added by addendum to the list at the
3 time of approval, and shall be incorporated into the master list at
4 the next date of publication. If an insurer appears on the most
5 recent list, it shall be presumed that the insurer is an eligible surplus
6 line insurer, unless the ~~commissioner~~ *commissioner*, or his or her
7 ~~designee~~ *designee*, has mailed or causes to be mailed notice to all
8 surplus line brokers that the commissioner has withdrawn the
9 insurer's eligibility. Upon receipt of notice, the surplus line broker
10 shall make no further placements with the insurer. Nothing in this
11 subdivision shall limit the commissioner's discretion to withdraw
12 an insurer's eligibility.

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

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

1 (3) Notwithstanding paragraphs (1) and (2), in any case where
2 the commissioner is basing a decision to remove an insurer from
3 the list, or deny an application to be placed on the list, on the failure
4 of the insurer or applicant to comply with, ~~meet~~ *meet*, or maintain
5 any of the objective criteria established by this section, or by
6 regulation adopted pursuant to this section, the commissioner may
7 so specify this fact in the order, and no hearing shall be required
8 to be held on the order.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (D) The insured is a multiple employer welfare arrangement,
38 as defined in Section 1002(40)(A) of Title 29 of the United States
39 Code, or any other arrangement among two or more employers
40 that are not under common ownership or control, which is

1 established or maintained for the primary purpose of providing
2 insurance benefits to the employees of two or more employers.

3 (E) Unlisted insurers represent a disproportionate portion of the
4 lower layers of the coverage.

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

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

21 (I) As used in this section:

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

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

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

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

35 (5) “Insurer” means (unless the context indicates otherwise)
36 “nonadmitted” insurers that are either “foreign” or “alien” insurers,
37 as those terms are defined in Sections 25, 27, and 1580, and
38 syndicates whose members consist of individual incorporated
39 insurers who are not engaged in any business other than
40 underwriting as a member of the group and individual

1 unincorporated insurers, provided all the members are subject to
2 the same level of solvency regulation and control by the group’s
3 domiciliary regulator. The term “insurer” includes all nonadmitted
4 insurers selling insurance to or through purchasing groups as
5 defined in the Liability Risk Retention Act of 1986 (15 U.S.C.
6 Sec. 3901 et seq.) and the California Risk Retention Act of ~~1990~~
7 *1991* (Chapter 1.5 (commencing with Section 125) of Part ~~1~~ of
8 ~~Division 1~~), except insurers that are risk retention groups as defined
9 by those acts.

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

11 (7) “Licensee” means a surplus line broker as defined in Section
12 47.

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

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

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

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

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

36 (n) *An insurer domiciled in California may have common*
37 *directors with an affiliated nonadmitted insurer provided these*
38 *common directors do not constitute the majority of the voting*
39 *authority of the nonadmitted insurer and do not perform any*
40 *management functions for the nonadmitted insurer in California.*

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

5 (A) Computer operations that are unrelated to the underwriting
6 process, which may include such activities as development and
7 maintenance of application software, databases, and servers;
8 procurement of information technology and services; network
9 operations; and Web site development and support.

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

13 (C) Human resources, provided that any decisions relating to
14 the hiring, firing, disciplinary actions, or compensation of any
15 employee, officer, or both, of the nonadmitted insurer shall be
16 made directly by the nonadmitted insurer.

17 (D) Claims adjusting, as described in Section 14021, except
18 that all claims notices, claims-related decisions, including those
19 relating to setting reserves and claims acceptance, claims
20 payments, and settlements shall be made directly by the affiliated
21 nonadmitted insurer.

22 (E) Managing investments such as buying, maintaining, and
23 selling financial investment instruments, except that decisions
24 relating to investment goals, risk assumptions such as capital
25 preservation and protection of investment principle, determining
26 liquidity needs, and diversification ratios shall be made by the
27 affiliated nonadmitted insurer.

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

31 SEC. 2. Section 1.5 of this bill incorporates amendments to
32 Section 1765.1 of the Insurance Code proposed by both this bill
33 and AB 1708. It shall only become operative if (1) both bills are
34 enacted and become effective on or before January 1, 2011, (2)
35 each bill amends Section 1765.1 of the Insurance Code, and (3)
36 this bill is enacted after AB 1708, in which case Section 1 of this
37 bill shall not become operative.

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