

**ASSEMBLY BILL**

**No. 315**

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**Introduced by Assembly Member Solorio**

February 9, 2011

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An act to amend Section 2216.2 of the Business and Professions Code, to amend Sections 51003 and 51007 of the Financial Code, to amend Sections 675.5, 703, 703.1, 1620, 1760, 1760.5, 1760.7, 1761, 1763, 1763.1, 1764.1, 1764.2, 1764.3, 1765.1, 1765.2, 1765.3, 1765.4, 1766, 1768, 1774, 1775.1, 1775.3, 1775.4, 1775.5, and 1780.56 of, and to add Sections 1760.1, 1760.2, 1765.5, and 1774.1 to, the Insurance Code, and to amend Section 13210 of, and to add Section 13215 to, the Revenue and Taxation Code, relating to surplus line brokers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 315, as introduced, Solorio. Surplus line brokers.

Existing law limits the ability of a surplus line broker to place any coverage with a nonadmitted insurer, as specified.

This bill would revise and recast the provisions governing surplus line brokers and nonadmitted insurers to make them consistent with the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, including, but not limited to, the duties, responsibilities, and licensure of surplus line brokers, taxation of surplus line insurance, and the eligibility of nonadmitted insurers to do business in this state. Certain provisions of the act would become operative on July 21, 2011.

The bill would also make conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 2216.2 of the Business and Professions  
2 Code is amended to read:  
3 2216.2. (a) It is unprofessional conduct for a physician and  
4 surgeon to fail to provide adequate security by liability insurance,  
5 or by participation in an interindemnity trust, for claims by patients  
6 arising out of surgical procedures performed outside of a general  
7 acute care hospital as defined in subdivision (a) of Section 1250  
8 of the Health and Safety Code.  
9 (b) For purposes of this section, the board shall determine what  
10 constitutes adequate security.  
11 (c) Nothing in this section shall require an insurer admitted to  
12 transact liability insurance in this state to provide coverage to a  
13 physician and surgeon.  
14 (d) The security required by this section shall be acceptable  
15 only if provided by any one of the following:  
16 (1) An insurer admitted pursuant to Section 700 of the Insurance  
17 Code to transact liability insurance in this state.  
18 (2) An insurer ~~that appears on the list of eligible surplus line~~  
19 ~~insurers pursuant to subdivision (f) of~~ *is eligible pursuant to*  
20 Section 1765.1 of the Insurance Code.  
21 (3) A cooperative corporation authorized by Section 1280.7 of  
22 the Insurance Code.  
23 (4) An insurer licensed to transact liability insurance in at least  
24 one state of the United States.  
25 SEC. 2. Section 51003 of the Financial Code is amended to  
26 read:  
27 51003. (a) A person who engages in business as an exchange  
28 facilitator shall at all times comply with one or more of the  
29 following:  
30 (1) Maintain a fidelity bond or bonds in an amount not less than  
31 one million dollars (\$1,000,000), executed by an insurer authorized  
32 to do business in this state or an eligible surplus line insurer ~~that~~  
33 ~~is on the list of eligible surplus line insurers maintained by the~~  
34 ~~Insurance Commissioner pursuant to subdivision (f) of~~ *pursuant*  
35 *to* Section 1765.1 of the Insurance Code.

1 (2) Deposit an amount of cash or securities or irrevocable letters  
2 of credit in an amount not less than one million dollars  
3 (\$1,000,000) in an interest-bearing deposit account or a money  
4 market account with the financial institution of the person's choice.  
5 Interest on that amount shall accrue to the exchange facilitator.

6 (3) Deposit all exchange funds in a qualified escrow account or  
7 qualified trust, as those terms are defined under Treasury  
8 Regulation 1.1031(k)-1(g)(3), with a financial institution and  
9 provide that any withdrawals from that escrow account or trust  
10 require that person's and the client's written authorization.

11 (b) A person who engages in business as an exchange facilitator  
12 may maintain a bond or bonds or deposit an amount of cash or  
13 securities or irrevocable letters of credit in excess of the minimum  
14 required amounts.

15 (c) If the person engaging in business as an exchange facilitator  
16 is listed as a named insured on one or more fidelity bonds that total  
17 at least one million dollars (\$1,000,000), the requirements of this  
18 section shall be deemed satisfied.

19 SEC. 3. Section 51007 of the Financial Code is amended to  
20 read:

21 51007. (a) A person who engages in business as an exchange  
22 facilitator shall at all times comply with either of the following:

23 (1) Maintain a policy of errors and omissions insurance in an  
24 amount not less than two hundred fifty thousand dollars (\$250,000),  
25 executed by an insurer authorized to do business in this state or  
26 an eligible surplus line insurer ~~that is on the list of eligible surplus~~  
27 ~~line insurers maintained by the Insurance Commissioner pursuant~~  
28 ~~to subdivision (f) of~~ *pursuant to* Section 1765.1 of the Insurance  
29 Code.

30 (2) Deposit an amount of cash or securities or irrevocable letters  
31 of credit in an amount not less than two hundred fifty thousand  
32 dollars (\$250,000) in an interest-bearing deposit account or a  
33 money market account with the financial institution of the person's  
34 choice. Interest on that amount shall accrue to the exchange  
35 facilitator.

36 (b) A person who engages in business as an exchange facilitator  
37 may maintain insurance or deposit an amount of cash or securities  
38 or irrevocable letters of credit in excess of the minimum required  
39 amounts.

1 (c) If the person engaging in business as an exchange facilitator  
 2 is listed as a named insured on an errors and omissions policy of  
 3 at least two hundred fifty thousand dollars (\$250,000), the  
 4 requirements of this section shall be deemed satisfied.

5 SEC. 4. Section 675.5 of the Insurance Code is amended to  
 6 read:

7 675.5. (a) In addition to any policy of insurance specified in  
 8 Section 675, this chapter shall apply to policies of commercial  
 9 insurance issued or issued for delivery in this state which are issued  
 10 and take effect or are renewed on or after January 1, 1987.

11 (b) As used in this section, commercial insurance means  
 12 commercial multiperil, commercial property, commercial liability,  
 13 commercial special multiperil, commercial comprehensive  
 14 multiperil, errors and omissions liability, and professional liability  
 15 insurance, and any other insurance not included in subdivision (d)  
 16 which covers any of the following contingencies:

17 (1) Loss of or damage to real property used or owned by a  
 18 commercial or industrial enterprise.

19 (2) Loss of or damage to personal property, except personally  
 20 owned motor vehicles, used in the conduct of a commercial or  
 21 industrial enterprise.

22 (3) Legal liability of any person for loss of, damage to, or injury  
 23 to persons or property, arising from the conduct of a commercial  
 24 or industrial enterprise.

25 (c) As used in this section, the term commercial or industrial  
 26 enterprise includes a business operated for profit, a professional  
 27 practice, a nonprofit organization, or a governmental entity.

28 (d) As used in this section, the term commercial insurance does  
 29 not include any of the following:

30 (1) Worker’s compensation insurance.

31 (2) Insurance provided pursuant to the California FAIR plan or  
 32 the California automobile assigned risk plan.

33 (3) Disability insurance.

34 (4) Automobile insurance covered by Section 660 and property  
 35 insurance covered by Section 675.

36 (5) Ocean marine insurance.

37 (6) Fidelity and surety insurance.

38 (7) Surplus line insurance *is nonadmitted insurance as defined*  
 39 *in subdivision (m) of Section 1760.1.*

40 (8) Reinsurance.

1 (9) Any insurance, other than professional liability insurance  
2 for malpractice, errors, or omissions, for which premiums are  
3 determined on a retrospective rating basis.

4 (10) Nuclear liability insurance.

5 (11) Nuclear property insurance.

6 SEC. 5. Section 703 of the Insurance Code is amended to read:

7 703. Except when performed by a surplus line broker, the  
8 following acts are misdemeanors when done in this state:

9 (a) Acting as agent for a nonadmitted insurer in the transaction  
10 of insurance business in this state *for a home state insured as*  
11 *defined in subdivision (f) of Section 1760.1.*

12 (b) In any manner advertising a nonadmitted insurer in this state.

13 (c) In any other manner aiding a nonadmitted insurer to transact  
14 insurance business in this state *for a home state insured as defined*  
15 *in subdivision (f) of Section 1760.1.*

16 In addition to any penalty provided for commission of  
17 misdemeanors, a person violating any provision of this section  
18 shall forfeit to this state the sum of five hundred dollars (\$500),  
19 together with one hundred dollars (\$100) for each month or fraction  
20 thereof during which he or she continues the violation. This section  
21 shall not apply to advertising authorized by Section 703.1,  
22 subdivision (h) of Section 1760.5, or Section 1773.

23 SEC. 6. Section 703.1 of the Insurance Code is amended to  
24 read:

25 703.1. (a) Any nonadmitted insurer that is ~~on the list of eligible~~  
26 ~~surplus line insurers issued by the commissioner pursuant to~~  
27 ~~subdivision (f) of an eligible surplus line insurer pursuant to~~  
28 Section 1765.1 may advertise in all media, provided that all of the  
29 following apply: (1) the insurer's unlicensed status in California  
30 is disclosed in type of a size no smaller than any telephone number,  
31 address, or fax number appearing in the advertisement or  
32 solicitation, (2) the advertisement does not contain any assertion,  
33 representation, or statement with respect to the business of  
34 insurance or with respect to any person in the conduct of his or  
35 her insurance business, that is untrue, deceptive, or misleading,  
36 and that is known, or that by the exercise of reasonable care should  
37 be known, to be untrue, deceptive, or misleading, (3) the  
38 advertisement does not contain any information about the  
39 nonadmitted insurer's premiums or rates, and (4) no specific  
40 product shall be advertised in a newspaper of general circulation,

1 in a television or radio broadcast, or in a news magazine of general  
2 circulation.

3 (b) Any nonadmitted insurer that is not ~~on the list of eligible~~  
4 ~~surplus line insurers issued by the commissioner pursuant to~~  
5 ~~subdivision (f) of an eligible surplus line insurer pursuant to~~  
6 Section 1765.1 may advertise in all media, except for media that  
7 are targeted primarily at insureds or prospective insureds residing  
8 in California, provided that all of the conditions set forth in  
9 subdivision (a) are complied with and the advertisement does not  
10 contain any information about the insurer's specific products.

11 (c) A group of nonadmitted insurers may advertise to the same  
12 extent as a nonadmitted insurer, subject to the same requirements  
13 set forth in subdivision (a) or (b), as applicable.

14 (d) An eligible nonadmitted insurer that is a member of a group  
15 of insurers may include the name of the group in advertisements  
16 that are authorized by this section.

17 (e) The permission to advertise granted by this section shall not  
18 be deemed to authorize an insurer to do business in this state.

19 SEC. 7. Section 1620 of the Insurance Code is amended to  
20 read:

21 1620. (a) The provisions of the preceding sections of this  
22 article shall not apply to any action, suit or proceeding against any  
23 unauthorized foreign or alien insurer arising out of any contract  
24 of insurance effected in accordance with Section 1760, 1760.5,  
25 1763, or 1763.1, or, if the contract is governed by and complies  
26 with the laws of the state in which the contract was entered. The  
27 provisions of Section 1610 shall apply to any action, suit, or  
28 proceeding under this section unless the insurer has designated an  
29 agent in California for service of process or the contract contains  
30 a provision designating a resident of this state or any firm of which  
31 one member is a resident of this state to be its true and lawful  
32 attorney upon whom may be served all lawful process in any such  
33 action, suit or proceeding.

34 (b) In any such action, suit or proceeding arising out of any such  
35 contract of insurance, the court may require the insurer to file a  
36 bond, in an amount sufficient to secure the payment of any final  
37 judgment which may be rendered unless one or more of the  
38 following is applicable:

39 (1) The insurer makes a showing satisfactory to the court that  
40 it maintains in a state of the United States funds or securities in

1 trust or otherwise, sufficient and available to satisfy any such final  
2 judgment and that it will pay the judgment without requiring suit  
3 to be brought thereon in the state where the securities or funds are  
4 located.

5 (2) At the time the insurer files any pleading in any action, suit,  
6 or proceeding instituted against it, the insurer is ~~listed as~~ an eligible  
7 surplus line insurer in accordance with ~~subdivision (f) of~~ Section  
8 1765.1, unless by facts presented to the court there is created a  
9 reasonable doubt as to the present ability of the insurer to satisfy  
10 any final judgment in the action, suit, or proceeding. Upon request  
11 of a party or the court, the unauthorized foreign or alien insurer or  
12 reinsurer shall provide the court and the party requesting the bond  
13 with copies of documents relating to the financial condition of the  
14 insurer, including, but not limited to, copies of the insurer's most  
15 recent annual statement and audited financial report and, where  
16 applicable, a certified copy of the trust agreement required by  
17 subdivision (b) of Section ~~1765.1~~ 1765.2 and a verified copy of  
18 the most recent quarterly statement or list of assets in the trust.

19 (3) With respect to a contract of reinsurance issued in accordance  
20 with Section 1760.5, the reinsurer has complied with the provisions  
21 of this code necessary to permit the ceding insurer to take credit  
22 on its financial statement for the reinsurance as set forth in Section  
23 922.4 or 922.5.

24 SEC. 8. Section 1760 of the Insurance Code is amended to  
25 read:

26 1760. (a) ~~Any person~~ *A home state insured, as defined in*  
27 *subdivision (f) of Section 1760.1,* may negotiate and effect  
28 insurance to protect himself, herself, or itself against loss, damage,  
29 or liability with any nonadmitted insurer.

30 (b) ~~Every person~~ *home state insured* that effects insurance  
31 governed by this chapter shall pay the tax imposed by Part 7.5  
32 (commencing with Section 13201) of Division 2 of the Revenue  
33 and Taxation Code.

34 SEC. 9. Section 1760.1 is added to the Insurance Code, to read:

35 1760.1. For the purposes of this chapter, the following terms  
36 have the following definitions.

37 (a) "Certified" means an originally signed or sealed statement,  
38 dated not more than 60 days before submission, made by a public  
39 official or other person, attached to a copy of a document, that

1 attests that the copy is a true copy of the original, and that the  
2 original is in the custody of the person making the statement.

3 (b) “Commercial insured” means any person purchasing  
4 commercial insurance that, at the time of placement, meets all of  
5 the following requirements:

6 (1) The person employs or retains a qualified risk manager to  
7 negotiate insurance coverage.

8 (2) The person has paid aggregate nationwide commercial  
9 property and casualty insurance premiums in excess of one hundred  
10 thousand dollars (\$100,000) in the immediately preceding 12  
11 months.

12 (3) (A) The person meets at least one of the following criteria:

13 (i) The person possesses a net worth in excess of twenty million  
14 dollars (\$20,000,000), as that amount is adjusted pursuant to  
15 subparagraph (B).

16 (ii) The person generates annual revenues in excess of fifty  
17 million dollars (\$50,000,000), as that amount is adjusted pursuant  
18 to subparagraph (B).

19 (iii) The person employs more than 500 full-time or full-time  
20 equivalent employees per individual insured or is a member of an  
21 affiliated group employing more than 1,000 employees in the  
22 aggregate.

23 (iv) The person is a not-for-profit organization or public entity  
24 generating annual budgeted expenditures of at least thirty million  
25 dollars (\$30,000,000), as that amount is adjusted pursuant to  
26 subparagraph (B).

27 (v) The person is a municipality with a population in excess of  
28 50,000 persons.

29 (B) Effective on January 1, 2015, and each fifth January 1  
30 occurring thereafter, the dollar amounts in subparagraph (A) shall  
31 be adjusted to reflect the percentage change for that five-year  
32 period in the Consumer Price Index for All Urban Consumers  
33 published by the Bureau of Labor Statistics of the United States  
34 Department of Labor. The commissioner shall issue a bulletin to  
35 all surplus line brokers advising of any adjustments and may adopt  
36 the calculations of the NAIC or other entity in doing so.

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

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

5 (e) “Home state” means, except as provided in paragraph (2),  
6 any of the following, with respect to an insured or applicant:

7 (1) (A) The state in which the insured maintains its principal  
8 place of business or, in the case of an individual, the individual’s  
9 principal residence.

10 (B) If 100 percent of the insured risk is located outside the state  
11 referred to in subparagraph (A), the state to which the greatest  
12 percentage of the insured’s taxable premium for that insurance  
13 contract is allocated.

14 (2) “Principal place of business” means, with respect to  
15 subparagraph (A) of paragraph (1) determining the home state of  
16 the insured, (A) the state where the insured maintains its  
17 headquarters and where the insured’s high-level officers direct,  
18 control, and coordinate the business activities; or (B) if the  
19 insured’s high-level officers direct, control, and coordinate the  
20 business activities in more than one state, the state in which the  
21 greatest percentage of the insured’s taxable premium for that  
22 insurance contract is allocated; or (C) if the insured maintains its  
23 headquarters or the insured’s high-level officers direct, control,  
24 and coordinate the business activities outside any state, the state  
25 to which the greatest percentage of the insured’s taxable premium  
26 for that insurance contract is allocated.

27 (3) “Principal residence” means, with respect to determining  
28 the home state of the insured, (A) the state where the insured  
29 resides for the greatest number of days during a calendar year; or  
30 (B) if the insured’s principal residence is located outside any state,  
31 the state to which the greatest percentage of the insured’s taxable  
32 premium for that insurance contract is allocated.

33 (4) Affiliated Groups. If more than one insured from an affiliated  
34 group are named insureds on a single nonadmitted insurance  
35 contract, the term “home state” means the home state, as  
36 determined pursuant to subparagraph (A) of paragraph (1) of this  
37 subdivision, of the member of the affiliated group that has the  
38 largest percentage of premium attributed to it under such insurance  
39 contract.

1 (5) Group Insurance. When the group policyholder pays 100  
2 percent of the premium from its own funds, the term “home state”  
3 means the home state, as determined pursuant to subparagraph (A)  
4 of paragraph (1), of the group policyholder. When the group  
5 policyholder does not pay 100 percent of the premium from its  
6 own funds, the term “home state” means the home state, as  
7 determined pursuant to subparagraph (A) of paragraph (1), of the  
8 group member.

9 (f) “Home state insured” or “home state insured applicant”  
10 means a person whose home state is California and who has  
11 received a certificate or evidence of coverage as set forth in Section  
12 1764 or a policy as issued by an eligible surplus line insurer, or a  
13 person who is an applicant therefor.

14 (g) “IID” means the International Insurers Department of the  
15 National Association of Insurance Commissioners.

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

30 (i) “ISI” means Insurance Solvency International.

31 (j) “Licensee” means a surplus line broker as defined in Section  
32 47.

33 (k) “Multistate risk” means a risk covered by a nonadmitted  
34 insurer with insured exposures in more than one state.

35 (l) “NAIC” means the National Association of Insurance  
36 Commissioners or its successor organization.

37 (m) “Nonadmitted insurance” means any property and casualty  
38 insurance permitted to be placed directly or through a surplus line  
39 broker with a nonadmitted insurer eligible to accept such insurance.

1 (n) “Nonadmitted insurer” means an insurer not licensed or  
2 admitted to engage in the business of insurance in this state in  
3 conformity with Section 700; but does not include a risk retention  
4 group, as that term is defined in Sections 130(k) and 2(a)(4) of the  
5 federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec.  
6 3901(a)(4)).

7 (o) “State” means any state of the United States, the District of  
8 Columbia, the Commonwealth of Puerto Rico, Guam, the Northern  
9 Mariana Islands, the Virgin Islands, and American Samoa.

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

17 SEC. 10. Section 1760.2 is added to the Insurance Code, to  
18 read:

19 1760.2. The surplus line broker shall be responsible for  
20 determining whether an applicant for nonadmitted insurance is a  
21 California home state insured. A surplus line broker who  
22 reasonably relies on information provided in good faith by the  
23 applicant, whether directly or through the producer, shall be  
24 deemed to be in compliance with this requirement.

25 SEC. 11. Section 1760.5 of the Insurance Code is amended to  
26 read:

27 1760.5. (a) The provisions of this chapter limiting the insurance  
28 that may be placed with nonadmitted insurers and requiring any  
29 report thereof shall not apply to:

30 (1) Reinsurance of the liability of an admitted insurer.

31 (2) Insurance against perils of navigation, transit or  
32 transportation upon hulls, freights or disbursements, or other  
33 shipowner interests; upon goods, wares, merchandise, and all other  
34 personal property and interests therein, in the course of exportation  
35 from or importation into any country, or transportation coastwise,  
36 including transportation by land or water from point of origin to  
37 final destination and including war risks; and marine builder’s  
38 risks, drydocks and marine railways, including insurance of ship  
39 repairer’s liability, and protection and indemnity insurance, but  
40 excluding insurance covering bridges or tunnels.

1 (3) Aircraft or spacecraft insurance.

2 (4) Insurance on property or operations of railroads engaged in  
3 interstate commerce.

4 (b) The insurance specified in paragraphs (2), (3), and (4) of  
5 subdivision (a) may be placed with a nonadmitted insurer *for a*  
6 *home state insured* only by and through a special lines' surplus  
7 line broker. The license of a special lines' surplus line broker shall  
8 be applied for and procured and shall be subject to the same fees  
9 for filing on issuance in the same manner as the license of a surplus  
10 line broker, except that in lieu of the bond required by Section  
11 1765, there shall be delivered to the commissioner a bond in the  
12 form, amounts, and conditions specified in Sections 1663 and 1665  
13 for an insurance broker and only one fee shall be collected from  
14 one person for both licenses. The licensee in respect to the business  
15 shall be subject to all the provisions of this chapter except Sections  
16 1761, 1763, 1765.1, 1765.2, and 1775.5.

17 (c) The commissioner may address to any licensed special lines'  
18 surplus line broker a written request for full and complete  
19 information respecting the financial stability, reputation, and  
20 integrity of any nonadmitted insurer with whom the licensee has  
21 dealt or proposes to deal in the transaction of insurance specified  
22 in paragraphs (2), (3), or (4) of subdivision (a). The licensee so  
23 addressed shall promptly furnish in written or printed form so  
24 much of the information requested as he or she can produce  
25 together with a signed statement identifying the same and giving  
26 reasons for omissions, if any. After due examination of the  
27 information and accompanying statement, the commissioner may,  
28 if he or she believes it to be in the public interest, order in writing  
29 the licensee to place no further insurance business ~~on property~~  
30 ~~located or operations conducted within or on the lives of persons~~  
31 ~~who are residents of this state~~ *for home state insureds* with that  
32 nonadmitted insurer on behalf of any person. Any placement with  
33 that nonadmitted insurer made by a licensee after receipt of the  
34 order is a violation of this chapter. The commissioner may issue  
35 an order if he or she finds that a nonadmitted insurer with whom  
36 the licensee has dealt or proposes to deal in the transaction of  
37 insurance is in an unsound financial condition, is disreputable, or  
38 is lacking in integrity. The order shall also include notice of a  
39 hearing to be held at a time and place fixed therein, which shall

1 be not less than 20 nor more than 30 days from service of the order  
2 upon the licensee.

3 (d) The commissioner may, in respect to business written or  
4 placed under the provisions of this section, require information  
5 and reports thereof that the commissioner considers necessary,  
6 convenient, or advisable.

7 (e) Each placing of insurance in violation of this chapter is a  
8 misdemeanor.

9 (f) The commissioner may revoke, suspend, or deny any license  
10 granted pursuant to this code in accordance with the procedure  
11 provided in Article 13 (commencing with Section 1737) of Chapter  
12 5, or any certificate of authority granted pursuant to this code in  
13 accordance with the procedure provided in Section 704 whenever  
14 the commissioner finds that the licensee or holder of the certificate  
15 has committed a violation of this section.

16 (g) The premium for insurance placed by or through a special  
17 lines' surplus line broker pursuant to this section shall not be  
18 subject to the tax imposed upon the broker based upon gross  
19 premiums paid for insurance placed under authority conferred by  
20 the license, *unless the risk is a multistate risk and premium taxes*  
21 *are taxable and collectable pursuant to a tax compact agreement.*

22 (h) Special lines' surplus line brokers may advertise and solicit  
23 in conformity with Section 1773, except that they are not subject  
24 to the limitation that any nonadmitted insurer's name appearing  
25 in the advertisements or solicitations must be ~~authorized to accept~~  
26 ~~placements~~ *eligible* under Section 1765.1.

27 SEC. 12. Section 1760.7 of the Insurance Code is amended to  
28 read:

29 1760.7. In addition to the authority granted by Section 1760.5,  
30 the commissioner has the discretion to direct special lines' surplus  
31 line brokers to not place further business *for a home state insured*  
32 with an insurer whose eligibility has been withdrawn pursuant to  
33 Section 1765.1.

34 SEC. 13. Section 1761 of the Insurance Code is amended to  
35 read:

36 ~~1761. Except as provided in sections 1760 and 1760.5, a person~~  
37 ~~within this State shall not transact any insurance on property~~  
38 ~~located or operations conducted within, or on the lives or persons~~  
39 ~~of residents of this State with nonadmitted insurers, except by and~~

1 through a surplus line broker licensed under this chapter and upon  
2 the terms and conditions prescribed in this chapter.

3 1761. (a) Except as provided in Sections 1760 and 1760.5,  
4 and paragraphs (1) and (2) of subdivision (b), a person within this  
5 state shall not transact any insurance for a home state insured  
6 with nonadmitted insurers, except by and through a surplus line  
7 broker licensed under this chapter and upon the terms and  
8 conditions prescribed in this chapter.

9 (b) (1) An insurer domiciled in California may have common  
10 directors with an affiliated nonadmitted insurer provided these  
11 common directors do not constitute the majority of the voting  
12 authority of the nonadmitted insurer and do not perform any  
13 management functions for the nonadmitted insurer in California.

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

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

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

26 (C) Human resources, provided that any decisions relating to  
27 the hiring, firing, disciplinary actions, or compensation of any  
28 employee, officer, or both, of the nonadmitted insurer shall be  
29 made directly by the nonadmitted insurer.

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

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

1 (3) *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.*

4 SEC. 14. Section 1763 of the Insurance Code is amended to  
5 read:

6 1763. (a) A surplus line broker may solicit and place insurance  
7 *for a home state insured*, other than as excepted in Section 1761,  
8 with nonadmitted insurers only if that insurance can not be  
9 procured from insurers admitted for the particular class or classes  
10 of insurance and that actually write the particular type of insurance  
11 in this state. Each surplus line broker shall be responsible to ensure  
12 that a diligent search is made among insurers that are admitted to  
13 transact and are actually writing the particular type of insurance  
14 in this state before procuring the insurance *for a home state insured*  
15 from a nonadmitted insurer. Each surplus line broker shall file  
16 with the commissioner or his or her designee, within 60 days of  
17 placing any insurance *for a home state insured* with a nonadmitted  
18 insurer, a written report, that shall be kept confidential, regarding  
19 the insurance. This report shall include the name and address of  
20 the insured, *verification that the insured is a home state insured*,  
21 the identity of the insurer or insurers, a description of the subject  
22 and location of the risk, the amount of premium charged for the  
23 insurance, a copy of the declarations page of the policy or a copy  
24 of the surplus line broker's certificate or binder evidencing the  
25 placement of insurance, and other pertinent information that the  
26 commissioner may reasonably require. In addition, each surplus  
27 line broker shall file a standardized form to be prescribed by the  
28 commissioner setting forth the diligent efforts to place the coverage  
29 with admitted insurers and the results of these efforts. The form  
30 shall be signed by a person licensed under this code who has made  
31 the diligent search required by this section or who supervised an  
32 unlicensed person or persons who actually conducted the search.  
33 The insurance shall not be placed with a nonadmitted insurer for  
34 the purpose of procuring a rate lower than the lowest rate that will  
35 be accepted by any admitted insurer except as provided by  
36 subdivision (c). The commissioner may make and publish  
37 reasonable rules and regulations, consistent with this chapter, in  
38 respect to transactions governed thereby and the basis or bases for  
39 his or her determinations hereunder.

1 (b) It shall be prima facie evidence that a diligent search among  
2 admitted insurers has been made if the standardized form filed as  
3 required by subdivision (a) establishes that three admitted insurers  
4 that actually write the particular type of insurance in this state have  
5 declined the risk, or that fewer than three admitted insurers actually  
6 write the particular type of insurance. The commissioner, or his  
7 or her designee, may review the form for the accuracy of the  
8 information provided on it, including, but not limited to, whether  
9 the listed insurers actually write that type of insurance, and whether  
10 the three insurers declined the risk. The commissioner may take  
11 disciplinary action against the person signing the form for any  
12 misrepresentation made in the form due to the negligence of or  
13 the result of an intentional act by that person or the person or  
14 persons who actually conducted the search. Those actions may  
15 include any action authorized to be taken against a licensed person  
16 by this code. Nothing in this subdivision shall preclude the  
17 commissioner or his or her designee from directing the surplus  
18 line broker to conduct a further or additional search among  
19 admitted insurers for similar placements in the future.

20 (c) It shall be conclusively presumed that insurance is placed  
21 in violation of this section if the insurance is actually placed with  
22 a nonadmitted insurer at a lower rate of premium or lower premium  
23 than the lowest rate of premium or the lowest premium that could  
24 be obtained from an admitted insurer unless, at the time the  
25 insurance attaches, there is filed with the commissioner a statement  
26 describing the insurance, specifying the rate and the nearest  
27 procurable rates from admitted insurers. The statement shall include  
28 an explanation of the reasons that the insurance must be placed  
29 with a nonadmitted insurer even though it is available from an  
30 admitted insurer. Unless the commissioner, or his or her designee,  
31 within five days after that filing notifies the filing broker that in  
32 his or her opinion the placing of the insurance constitutes a  
33 violation of this section, the broker may thereafter maintain in  
34 effect that insurance. If within that five-day period the  
35 commissioner notifies the surplus line broker that the insurance is  
36 in violation of this section and orders the broker to effect  
37 termination of that insurance within 10 days from the notice, and  
38 the broker fails or refuses to effect that termination, that failure or  
39 refusal is a violation of this section.

1 (d) Statements filed under this section are not subject to public  
2 inspection unless the commissioner determines that the public  
3 interest or the welfare of the filing broker requires that any  
4 statement be made public.

5 (e) For purposes of this section, “type of insurance” means the  
6 hazard or combination of hazards covered by a contract of  
7 insurance.

8 (f) Notwithstanding subdivision (a), this section shall not apply  
9 to insurance issued or delivered in this state *to a home state insured*  
10 by a nonadmitted Mexican insurer by and through a surplus line  
11 broker affording coverage exclusively in the Republic of Mexico  
12 on property located temporarily or permanently in, or operations  
13 conducted temporarily or permanently within, the Republic of  
14 Mexico.

15 (g) This section does not apply to the extension of coverage by  
16 a nonadmitted insurer, of or for the same risks, and to the same  
17 insured under an existing surplus lines policy. Such an extension  
18 may not exceed 90 days in the aggregate during any 12-month  
19 period. The extension may not include a change in coverage, terms,  
20 and conditions, or limits. Any additional premium charged for the  
21 extension shall be determined pro rata, based on the same rate of  
22 premium as the existing surplus lines policy.

23 (h) (1) *The diligent search requirement set forth in subdivision*  
24 *(a) shall not apply to a commercial insured as defined in*  
25 *subdivision (b) of Section 1760.1 when both of the following occur:*

26 (A) *The surplus line broker procuring or placing the surplus*  
27 *line insurance has disclosed in writing to the commercial insured*  
28 *that surplus insurance may or may not be available from the*  
29 *admitted market that may provide greater protection with more*  
30 *regulatory oversight.*

31 (B) *The commercial insured has subsequently requested in*  
32 *writing that the surplus line broker procure or place surplus*  
33 *insurance from a nonadmitted insurer.*

34 (2) *The surplus line broker shall be responsible to ensure that*  
35 *the applicant is a commercial insured. A surplus line broker who*  
36 *reasonably relies on information provided in good faith by the*  
37 *applicant, whether directly or through a producer, shall be deemed*  
38 *to be in compliance with this requirement.*

39 SEC. 15. Section 1763.1 of the Insurance Code is amended to  
40 read:

1 1763.1. (a) The commissioner may by order declare ~~eligible~~  
2 *permissible* for placement *for a home state insured* with a  
3 nonadmitted insurer and exempt from all requirements of Section  
4 1763 except the filing of a confidential written report, any type of  
5 insurance coverage or risk for which he or she finds, after a public  
6 hearing, that there is not a reasonable or adequate market among  
7 admitted insurers. The commissioner or his or her designee shall  
8 maintain an export list showing all those exempt coverages and  
9 risks. A public hearing shall be held annually or more often at the  
10 commissioner's discretion and reasonable notice of a hearing shall  
11 be given to all interested parties including surplus line brokers,  
12 admitted insurers, trade associations representing admitted insurers,  
13 agents and brokers, and consumer groups. The hearing shall not  
14 be required to be conducted in accordance with Chapter 5  
15 (commencing with Section 11500) of Part 1 of Division 3 of Title  
16 2 of the Government Code. Any such order by the commissioner  
17 shall continue in effect until terminated by the commissioner.  
18 Where the commissioner receives written comments or testimony  
19 or otherwise determines, prior to a hearing that a type of insurance  
20 on the export list is more available in the admitted market the  
21 commissioner may remove the type of insurance from the list. The  
22 ~~eligibility~~ *permissibility* of any type of insurance to remain on the  
23 list is subject to an annual affirmative finding by the commissioner,  
24 however, when written comment or testimony is received prior to  
25 a hearing, the ~~eligibility~~ *permissibility* of that type of insurance to  
26 remain on the export list shall be reviewed at the next hearing and  
27 that type of insurance may not remain on the export list without  
28 an affirmative decision by the commissioner or his or her designee  
29 that there is not a reasonable or adequate market among admitted  
30 insurers. The commissioner or his or her designee shall notify all  
31 surplus line brokers of any removal. For purposes of this section,  
32 the commissioner shall not be authorized to include on the export  
33 list as ~~eligible~~ *permissible* for placement with a nonadmitted  
34 insurer, automobile or motor vehicle liability insurance, insurance  
35 on residential property, as defined under Section 10087, or any  
36 insurance written by the California FAIR plan.

37 (b) The surplus line advisory organization authorized by Chapter  
38 6.1 (commencing with Section 1780.50) shall pay the costs for a  
39 maximum of two public hearings per year held by the  
40 commissioner or his or her designee pursuant to this section.

1 (c) Except for the removal of a type of insurance from the export  
2 list pursuant to subdivision (a), nothing in this section shall  
3 authorize the commissioner to declare any type of insurance  
4 ~~ineligible~~ *impermissible* for exportation.

5 SEC. 16. Section 1764.1 of the Insurance Code is amended to  
6 read:

7 1764.1. (a) (1) Every nonadmitted insurer, in the case of  
8 insurance to be purchased by a ~~resident of this state~~ *home state*  
9 *insured* pursuant to Section 1760, and surplus line broker, in the  
10 case of any insurance with a nonadmitted carrier *for a home state*  
11 *insured* to be transacted by the surplus line broker, shall be  
12 responsible to ensure that, at the time of accepting an application  
13 for an insurance policy, other than a renewal of that policy, issued  
14 by a nonadmitted insurer, the signature of the applicant on the  
15 disclosure statement set forth in subdivision (b) is obtained. In  
16 fulfillment of this responsibility, the nonadmitted insurer and the  
17 surplus line broker may rely, if it is reasonable under all the  
18 circumstances to do so, on the disclosure statement received from  
19 a licensee involved in the transaction as prima facie evidence that  
20 the disclosure statement and appropriate signature from the  
21 applicant have been obtained. The surplus line broker shall  
22 maintain a copy of the signed disclosure statement in his or her  
23 records for a period of at least five years. These records shall be  
24 made available to the commissioner and the insured upon request.  
25 This disclosure shall be signed by the applicant, and is not subject  
26 to any limited power of attorney agreement between the applicant  
27 and an agent or broker, or a surplus line broker. The disclosure  
28 statement shall be in boldface 16-point type on a freestanding  
29 document. In addition, every policy issued by a nonadmitted insurer  
30 and every certificate evidencing the placement of insurance shall  
31 contain, or have affixed to it by the insurer or surplus line broker,  
32 the disclosure statement set forth in subdivision (b) in boldface  
33 16-point type on the front page of the policy.

34 (2) In a case in which the applicant has not received and  
35 completed the signed disclosure form required by this section, he  
36 or she may cancel the insurance so placed. The cancellation shall  
37 be on a pro rata basis as to premium, and the applicant shall be  
38 entitled to the return of any broker's fees charged for the placement.

39 (b) The following notice shall be provided to ~~policyholders~~  
40 *home state insureds* and *home state insured* applicants for insurance

1 as provided by subdivision (a), and shall be printed in English and  
2 in the language principally used by the surplus line broker and  
3 nonadmitted insurer to advertise, solicit, or negotiate the sale and  
4 purchase of surplus line insurance. The surplus line broker and  
5 nonadmitted insurer shall use the appropriate bracketed language  
6 for application and issued policy disclosures:

7  
8  
9

“NOTICE:

10

11 1. THE INSURANCE POLICY THAT YOU [HAVE  
12 PURCHASED] [ARE APPLYING TO PURCHASE] IS BEING  
13 ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE  
14 STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED  
15 “NONADMITTED” OR “SURPLUS LINE” INSURERS.

16 2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL  
17 SOLVENCY REGULATION AND ENFORCEMENT THAT  
18 APPLY TO CALIFORNIA LICENSED INSURERS.

19 3. THE INSURER DOES NOT PARTICIPATE IN ANY OF  
20 THE INSURANCE GUARANTEE FUNDS CREATED BY  
21 CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL  
22 NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF  
23 THE INSURER BECOMES INSOLVENT AND IS UNABLE  
24 TO MAKE PAYMENTS AS PROMISED.

25 ~~4. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE~~  
26 ~~SURPLUS LINE INSURERS APPROVED BY THE~~  
27 ~~INSURANCE COMMISSIONER. ASK YOUR AGENT OR~~  
28 ~~BROKER IF THE INSURER IS ON THAT LIST, OR VIEW~~  
29 ~~THAT LIST AT THE INTERNET WEB SITE OF THE~~  
30 ~~CALIFORNIA DEPARTMENT OF INSURANCE:~~  
31 ~~www.insurance.ca.gov.~~

32 ~~5. FOR ADDITIONAL INFORMATION ABOUT THE~~  
33 ~~INSURER, YOU SHOULD ASK QUESTIONS OF YOUR~~  
34 ~~INSURANCE AGENT, BROKER, OR “SURPLUS LINE”~~  
35 ~~BROKER OR CONTACT THE CALIFORNIA DEPARTMENT~~  
36 ~~OF INSURANCE, AT THE FOLLOWING TOLL-FREE~~  
37 ~~TELEPHONE NUMBER: \_\_\_\_\_.~~

38 *4. THE INSURER SHOULD BE LICENSED EITHER AS A*  
39 *FOREIGN INSURER IN ANOTHER STATE IN THE UNITED*  
40 *STATES OR AS A NON-UNITED STATES (ALIEN) INSURER.*

1 YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE  
2 AGENT, BROKER, OR “SURPLUS LINE” BROKER OR  
3 CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE  
4 AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER \_\_\_\_.  
5 ASK WHETHER OR NOT THE INSURER IS LICENSED AS A  
6 FOREIGN OR NON-UNITED STATES (ALIEN) INSURER AND  
7 FOR ADDITIONAL INFORMATION ABOUT THE INSURER.  
8 YOU MAY ALSO CONTACT THE NAIC’S INTERNET WEB SITE  
9 AT WWW.NAIC.ORG.

10 5. FOREIGN INSURERS SHOULD BE LICENSED BY A STATE  
11 IN THE UNITED STATES AND YOU MAY CONTACT THAT  
12 STATE’S DEPARTMENT OF INSURANCE TO OBTAIN MORE  
13 INFORMATION ABOUT THAT INSURER.

14 6. FOR NON-UNITED STATES (ALIEN) INSURERS, THE  
15 INSURER SHOULD BE LICENSED BY A COUNTRY OUTSIDE  
16 OF THE UNITED STATES AND SHOULD BE ON THE NAIC’S  
17 INTERNATIONAL INSURERS DEPARTMENT (IID) LISTING  
18 OF APPROVED NONADMITTED NON-UNITED STATES  
19 INSURERS. ASK YOUR AGENT, BROKER, OR “SURPLUS LINE”  
20 BROKER TO OBTAIN MORE INFORMATION ABOUT THAT  
21 INSURER.

22 7. CALIFORNIA MAINTAINS A LIST OF APPROVED  
23 SURPLUS LINE INSURERS. ASK YOUR AGENT OR BROKER  
24 IF THE INSURER IS ON THAT LIST, OR VIEW THAT LIST AT  
25 THE INTERNET WEB SITE OF THE CALIFORNIA  
26 DEPARTMENT OF INSURANCE: WWW.INSURANCE.CA.GOV.

27 ~~6.~~

28 8. IF YOU, AS THE APPLICANT, REQUIRED THAT THE  
29 INSURANCE POLICY YOU HAVE PURCHASED BE BOUND  
30 IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE  
31 WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR  
32 BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE  
33 WITHIN TWO BUSINESS DAYS, AND YOU DID NOT  
34 RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR  
35 YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME  
36 EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS  
37 POLICY WITHIN FIVE DAYS OF RECEIVING THIS  
38 DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM  
39 WILL BE PRORATED AND ANY BROKER’S FEE CHARGED  
40 FOR THIS INSURANCE WILL BE RETURNED TO YOU.”

1  
2 (c) When a contract is issued to an industrial insured neither the  
3 nonadmitted insurer nor the surplus line broker is required to  
4 provide the notice required in this section except on the  
5 confirmation of insurance, the certificate of placement, or the  
6 policy, whichever is first provided to the insured, nor is the insurer  
7 or surplus line broker required to obtain the insured’s signature.  
8 The producer shall ensure that the notice affixed to the confirmation  
9 of insurance, certificate of placement, or the policy is provided to  
10 the insured. The producer shall insert the current toll-free telephone  
11 number of the Department of Insurance as provided in paragraph  
12 5 of the notice.

- 13 (1) An industrial insured is an insured:  
14 (A) Which employs at least 25 employees on average during  
15 the prior 12 months; and  
16 (B) Which has aggregate annual premiums for insurance for all  
17 risks other than workers’ compensation and health coverage  
18 totaling no less than twenty-five thousand dollars (\$25,000); or  
19 (C) Which obtains insurance through the services of a full-time  
20 employee acting as an insurance manager or a continuously retained  
21 insurance consultant. A “continuously retained insurance  
22 consultant” does not include: (i) an agent or broker through whom  
23 the insurance is being placed, (ii) a subagent or subproducer  
24 involved in the transaction, or (iii) an agent or broker that is a  
25 business organization employing or contracting with a person  
26 mentioned in clauses (i) and (ii).

27 (2) The surplus line broker shall be responsible to ensure that  
28 the applicant is an industrial insured. A surplus line broker who  
29 reasonably relies on information provided in good faith by the  
30 applicant, whether directly or through the producer, shall be  
31 deemed to be in compliance with this requirement.

32 (d) For purposes of compliance with the requirement of  
33 subdivision (a) that the signature of the applicant be obtained, the  
34 following shall apply:

- 35 (1) If the insurance transaction is not conducted at an in-person,  
36 face-to-face meeting, the applicant’s signature on the disclosure  
37 form may be transmitted by the applicant to the agent or broker  
38 via facsimile or comparable electronic transmittal.  
39 (2) In the case of commercial lines coverage, or personal  
40 insurance coverage subject to Section 675 and any umbrella

1 coverage associated therewith, where an applicant requires that  
2 insurance coverage be bound immediately, either because existing  
3 coverage will lapse within two business days of the time the  
4 insurance is bound or because the applicant is required to have  
5 coverage in place within two business days, and the applicant  
6 cannot meet in person with the agent or broker to sign the  
7 disclosure form, the agent or broker may obtain the signature of  
8 the applicant within five days of binding coverage, provided that  
9 the applicant may cancel the insurance so placed within five days  
10 of receiving the disclosure form from the agent or broker. The  
11 cancellation shall be on a pro rata basis, and the applicant shall be  
12 entitled to the rescission or return of any broker's fees charged for  
13 the placement. When a policy is canceled, the broker shall inform  
14 the applicant that the broker's fee must be returned and that the  
15 premium must be prorated.

16 (e) Notwithstanding subdivision (a), this section shall not apply  
17 to insurance issued or delivered in this state by a nonadmitted  
18 Mexican insurer by and through a surplus line broker affording  
19 coverage exclusively in the Republic of Mexico on property located  
20 temporarily or permanently in, or operations conducted temporarily  
21 or permanently within, the Republic of Mexico.

22 SEC. 17. Section 1764.2 of the Insurance Code is amended to  
23 read:

24 1764.2. No surplus line broker shall issue any evidence of  
25 insurance or cause or purport to cause any risk to be insured by a  
26 nonadmitted insurer or advise any *home state* insured or *home*  
27 *state insured* applicant for insurance that coverage has been or will  
28 be obtained from a nonadmitted insurer unless:

29 (a) The broker has prior written authority from the nonadmitted  
30 insurer to cause the risk to be insured;

31 (b) The broker has received advice in the ordinary course of  
32 business that the coverage has been obtained; or

33 (c) A policy of insurance covering the insured for the risk has  
34 actually been issued by the nonadmitted insurer and delivered to  
35 the insured or his or her representative.

36 SEC. 18. Section 1764.3 of the Insurance Code is amended to  
37 read:

38 1764.3. If the surplus line broker acts in reliance on advice  
39 received in accordance with subdivision (b) of Section 1764.2, the  
40 broker shall deliver the policy to the *home state* insured or his or

1 her representative, and, if the delivery is not made within 30 days  
 2 after the date of the issuance of the certificate or upon which the  
 3 risk has been bound or the *home state* insured or *the home state*  
 4 *insured* applicant has been advised that coverage has been or will  
 5 be obtained, he or she shall deliver to the insured either of the  
 6 following:

7 (a) A photostatic copy of evidence that the insurance has been  
 8 bound.

9 (b) If the nonadmitted insurer is located outside the United  
 10 States, a cover note, placing slip or similar document evidencing  
 11 coverage issued or certified to by any broker located outside the  
 12 United States who actually placed that insurance with the  
 13 nonadmitted insurer.

14 SEC. 19. Section 1765.1 of the Insurance Code is amended to  
 15 read:

16 1765.1. No surplus line broker shall place any coverage with  
 17 a nonadmitted insurer *for a home state insured* unless the insurer  
 18 is domiciled in the Republic of Mexico and the placement covers  
 19 only liability arising out of the ownership, maintenance, or use of  
 20 a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at  
 21 the time of placement, the nonadmitted insurer meets ~~the following~~  
 22 *requirements the requirements of either subdivision (a) or (b)*:

23 ~~(a) (1) Has established its financial stability, reputation, and~~  
 24 ~~integrity, for the class of insurance the broker proposes to place,~~  
 25 ~~by satisfactory evidence submitted to the commissioner through~~  
 26 ~~a surplus line broker.~~

27 ~~(2) Meets one of the following requirements with respect to its~~  
 28 ~~financial stability:~~

29 ~~(A) Has capital and surplus that together total at least forty-five~~  
 30 ~~million dollars (\$45,000,000). “Capital” shall be as defined in~~  
 31 ~~Section 36. “Surplus” shall be defined as assets exceeding the sum~~  
 32 ~~of liabilities for losses reported, expenses, taxes, and all other~~  
 33 ~~indebtedness and reinsurance of outstanding risks as provided by~~  
 34 ~~law and paid-in capital in the case of an insurer issuing or having~~  
 35 ~~outstanding shares of capital stock. The type of assets to be used~~  
 36 ~~in calculating capital and surplus shall be as follows: at least~~  
 37 ~~twenty-five million dollars (\$25,000,000) shall be in the form of~~  
 38 ~~cash, or securities of the same character and quality as specified~~  
 39 ~~in Sections 1170 to 1182, inclusive, or in readily marketable~~  
 40 ~~securities listed on regulated United States’ national or principal~~

1 regional securities exchanges. The remaining assets shall be in the  
2 form just described, or in the form of investments of substantially  
3 the same character and quality as described in Sections 1190 to  
4 1202, inclusive. In calculating capital and surplus under this  
5 section, the term “same character and quality” shall permit, but  
6 not require, the commissioner to approve assets maintained in  
7 accordance with the laws of another state or country. The  
8 commissioner shall be guided by any limitations, restrictions, or  
9 other requirements of this code or the National Association of  
10 Insurance Commissioners’ Accounting Practices and Procedures  
11 Manual in determining whether assets substantially similar to those  
12 described in Sections 1190 to 1202, inclusive, qualify. The  
13 commissioner shall retain the discretion to disapprove or disallow  
14 any asset that is not of a sound quality, or that he or she deems to  
15 create an unacceptable risk of loss to the insurer or to policyholders.  
16 Letters of credit will not qualify as assets in the calculation of  
17 surplus. If the capital and surplus together total less than forty-five  
18 million dollars (\$45,000,000), the commissioner shall have  
19 affirmatively found that the capital and surplus is adequate to  
20 protect California policyholders. The commissioner shall consider,  
21 on determining whether to make this finding, factors such as quality  
22 of management, the capital and surplus of any parent company,  
23 the underwriting profit and investment income trends, and the  
24 record of claims payment and claims handling practices of the  
25 nonadmitted insurer. If a nonadmitted insurer that is on the list of  
26 eligible surplus line insurers, as provided in subdivision (f), does  
27 not meet the capital and surplus requirements on January 1, 2011,  
28 that insurer shall have at least thirty million dollars (\$30,000,000)  
29 of capital and surplus as of December 31, 2011, and at least  
30 forty-five million dollars (\$45,000,000) of capital and surplus as  
31 of December 31, 2013.

32 (B) In the case of an “Insurance Exchange” created and  
33 authorized under the laws of individual states, maintains capital  
34 and surplus of not less than fifty million dollars (\$50,000,000) in  
35 the aggregate. “Capital” shall be as defined in Section 36. “Surplus”  
36 shall be defined as assets exceeding the sum of liabilities for losses  
37 reported, expenses, taxes, and all other indebtedness and  
38 reinsurance of outstanding risks as provided by law and paid-in  
39 capital in the case of an insurer issuing or having outstanding shares  
40 of capital stock. The type of assets to be used in calculating capital

1 and surplus shall be as follows: at least twenty-five million dollars  
2 (\$25,000,000) shall be in the form of cash, or securities of the same  
3 character and quality as specified in Sections 1170 to 1182,  
4 inclusive, or in readily marketable securities listed on regulated  
5 United States' national or principal regional securities exchanges.  
6 The remaining assets shall be in the form just described, or in the  
7 form of investments of substantially the same character and quality  
8 as described in Sections 1190 to 1202, inclusive. In calculating  
9 capital and surplus under this section, the term "same character  
10 and quality" shall permit, but not require, the commissioner to  
11 approve assets maintained in accordance with the laws of another  
12 state or country. The commissioner shall be guided by any  
13 limitations, restrictions, or other requirements of this code or the  
14 National Association of Insurance Commissioners' Accounting  
15 Practices and Procedures Manual in determining whether assets  
16 substantially similar to those described in Sections 1190 to 1202,  
17 inclusive, qualify. The commissioner shall retain the discretion to  
18 disapprove or disallow any asset that is not of a sound quality, or  
19 that he or she deems to create an unacceptable risk of loss to the  
20 insurer or to policyholders. Letters of credit shall not qualify as  
21 assets in the calculation of surplus. Each individual syndicate  
22 seeking to accept surplus line placements of risks resident, located,  
23 or to be performed in this state shall maintain minimum capital  
24 and surplus of not less than forty-five million dollars (\$45,000,000).

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 (e) 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 HD, a copy of  
13 the complete information as required in the application for listing  
14 by the HD.

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    ~~(f) 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) “ID” 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) "NAHO" 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 (a) *If the insurer is domiciled in one of the states of the United  
35 States or its territories as defined in subdivision (o) of Section  
36 1760.1:*

37 (1) *Is licensed to write the type of insurance in its domiciliary  
38 jurisdiction; and*

39 (2) (A) *Has capital and surplus that together total forty-five  
40 million dollars (\$45,000,000).*

1 (B) *The requirements of subparagraph (A) may be satisfied by*  
2 *an insurer possessing less than forty-five million dollars*  
3 *(\$45,000,000) upon an affirmative finding of acceptability by the*  
4 *commissioner. The finding shall be based upon factors such as*  
5 *quality of management, capital and surplus of any parent company,*  
6 *company underwriting profit and investment income trends, market*  
7 *availability, and company record and reputation within the*  
8 *industry. The commissioner is prohibited from making an*  
9 *affirmative finding of acceptability when the foreign insurer's*  
10 *capital and surplus is less than four million five hundred thousand*  
11 *dollars (\$4,500,000); or*

12 (C) *If a foreign insurer that was listed as an eligible surplus*  
13 *line insurer as of January 1, 2011, and did not have the forty-five*  
14 *million dollars (\$45,000,000) of capital and surplus as of January*  
15 *1, 2011, that insurer shall have at least thirty million dollars*  
16 *(\$30,000,000) of capital and surplus as of December 31, 2011,*  
17 *and at least forty-five million dollars (\$45,000,000) of capital and*  
18 *surplus as of December 31, 2013.*

19 (b) *If the insurer is not domiciled in one of the states of the*  
20 *United States or its territories as defined in subdivision (o) of*  
21 *Section 1760.1, the insurer is listed on the Quarterly Listing of*  
22 *Alien Insurers maintained by the NAIC International Insurers*  
23 *Department (IID) and is licensed as an insurer in its domiciliary*  
24 *jurisdiction.*

25 (c) *Has caused to be provided to the commissioner the following:*

26 (1) *A certificate of capital and surplus issued by the insurer's*  
27 *domiciliary jurisdiction.*

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

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

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

39 (5) *Notice, if applicable, that the insurer or licensee is currently*  
40 *known to be the subject of any order or proceeding regarding*

1 conservation, liquidation, or other receivership; or regarding  
2 revocation or suspension of a license to transact insurance in any  
3 jurisdiction; or otherwise seeking to stop the insurer from  
4 transacting insurance in any jurisdiction. The notice shall identify  
5 the proceeding by date, jurisdiction, and relief or sanction sought,  
6 and shall attach a copy of the relevant order.

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

10 (d) Has provided any additional information or documentation  
11 required by the commissioner that pertains to the requirements of  
12 this section or the NAIC review of the insurer including for  
13 purposes of inclusion on or exclusion from the list of authorized  
14 nonadmitted insurers maintained by the NAIC.

15 (e) Has established that:

16 (1) All documents required by subdivisions (c) and (d) have  
17 been filed. Each of the documents appear after review to be  
18 complete, clear, comprehensible, unambiguous, accurate, and  
19 consistent.

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

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

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

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

25 (3) The documents confirm that the insurer holds a license to  
26 issue insurance policies, other than reinsurance, to residents of  
27 the jurisdiction that granted the license.

28 (4) The information available to the commissioner shall not  
29 indicate that the insurer offers to a home state insured products  
30 or rates that violate any provision of this code.

31 (f) If at any time the commissioner determines that an insurer  
32 is no longer eligible pursuant to subdivision (a) or (b), the  
33 commissioner may issue an order without prior notice and hearing.  
34 At the time an order is issued pursuant to this subdivision to an  
35 insurer, the commissioner shall notify all surplus line brokers of  
36 the order.

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

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

3     *(i) (1) Insurance may be placed on a limited basis with insurers*  
4 *not eligible pursuant to this section if all of the following conditions*  
5 *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 are eligible nonadmitted insurers.*

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

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

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

27     *(A) The ineligible insurer has for any reason been objected to*  
28 *by the commissioner pursuant to this section or become ineligible.*

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) Ineligible insurers represent a disproportionate portion of  
2 the 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 eligible pursuant  
17 to this section, whether the insured is an individual insured, or a  
18 group created primarily for the purpose of purchasing insurance.

19 (j) With respect to a nonadmitted insurer that is listed as an  
20 eligible surplus line insurer as of July 21, 2011, pursuant to the  
21 former Section 1765.1 as it read prior to July 21, 2011, this section  
22 shall not be effective until the subsequent expiration of the policies  
23 of that insurer in effect on July 21, 2011. Nothing in the bill that  
24 amended this section during the 2011 portion of the 2011–12  
25 Regular Session is intended to repeal or imply there is not authority  
26 to adopt, or to have adopted, or to continue in force, any  
27 regulation, or part thereof, with respect to surplus line insurance  
28 which is not clearly inconsistent with it.

29 SEC. 20. Section 1765.2 of the Insurance Code is amended to  
30 read:

31 ~~1765.2. (a) A license under this chapter may be issued to an~~  
32 ~~individual or any legal business entity. If issued to a business entity~~  
33 ~~or individual that maintains more than one surplus line office from~~  
34 ~~which it transacts that business with California residents, it shall~~  
35 ~~name the natural person or persons located at each such surplus~~  
36 ~~line office maintained by the licensee who is or are to be~~  
37 ~~responsible for the proper discharge at each office of all duties~~  
38 ~~placed upon the licensee acting as a surplus line broker and each~~  
39 ~~of these natural persons must be licensed as a surplus line broker.~~

1 ~~Each natural person shall meet all of the requirements for the~~  
2 ~~license.~~

3 ~~(b) Every application for a license filed by a corporation shall~~  
4 ~~contain the names and addresses of all stockholders owning 10~~  
5 ~~percent or more of the corporation's stock, and of all officers and~~  
6 ~~directors of the corporation. Every licensed corporation shall file~~  
7 ~~a written notice with the commissioner of all changes, except~~  
8 ~~address changes, of its stockholders who own 10 percent or more~~  
9 ~~of the corporation's stock and of all officers and directors of the~~  
10 ~~corporation.~~

11 *1765.2. A surplus line broker may place any coverage with a*  
12 *California approved nonadmitted insurer if the insurer is domiciled*  
13 *in the Republic of Mexico and the placement covers only liability*  
14 *arising out of the ownership, maintenance, or use of a motor*  
15 *vehicle, aircraft, or boat in the Republic of Mexico, or, if at the*  
16 *time of placement, the nonadmitted insurer meets the following*  
17 *requirements:*

18 *(a) (1) Has established its financial stability, reputation, and*  
19 *integrity, for the class of insurance the broker proposes to place,*  
20 *by satisfactory evidence submitted to the commissioner through a*  
21 *surplus line broker.*

22 *(2) Meets one of the following requirements with respect to its*  
23 *financial stability:*

24 *(A) Has capital and surplus that together total at least forty-five*  
25 *million dollars (\$45,000,000). "Capital" shall be as defined in*  
26 *Section 36. "Surplus" shall be defined as assets exceeding the sum*  
27 *of liabilities for losses reported, expenses, taxes, and all other*  
28 *indebtedness and reinsurance of outstanding risks as provided by*  
29 *law and paid-in capital in the case of an insurer issuing or having*  
30 *outstanding shares of capital stock. The type of assets to be used*  
31 *in calculating capital and surplus shall be as follows: at least*  
32 *twenty-five million dollars (\$25,000,000) shall be in the form of*  
33 *cash, or securities of the same character and quality as specified*  
34 *in Sections 1170 to 1182, inclusive, or in readily marketable*  
35 *securities listed on regulated United States' national or principal*  
36 *regional securities exchanges. The remaining assets shall be in*  
37 *the form just described, or in the form of investments of*  
38 *substantially the same character and quality as described in*  
39 *Sections 1190 to 1202, inclusive. In calculating capital and surplus*  
40 *under this section, the term "same character and quality" shall*

1 *permit, but not require, the commissioner to approve assets*  
2 *maintained in accordance with the laws of another state or country.*  
3 *The commissioner shall be guided by any limitations, restrictions,*  
4 *or other requirements of this code or the National Association of*  
5 *Insurance Commissioners' Accounting Practices and Procedures*  
6 *Manual in determining whether assets substantially similar to*  
7 *those described in Sections 1190 to 1202, inclusive, qualify. The*  
8 *commissioner shall retain the discretion to disapprove or disallow*  
9 *any asset that is not of a sound quality, or that he or she deems to*  
10 *create an unacceptable risk of loss to the insurer or to*  
11 *policyholders. Letters of credit will not qualify as assets in the*  
12 *calculation of surplus. If capital and surplus together total less*  
13 *than forty-five million dollars (\$45,000,000), the commissioner*  
14 *has affirmatively found that the capital and surplus is adequate*  
15 *to protect California policyholders. The commissioner shall*  
16 *consider, on determining whether to make this finding, factors*  
17 *such as quality of management, the capital and surplus of any*  
18 *parent company, the underwriting profit and investment income*  
19 *trends, and the record of claims payment and claims handling*  
20 *practices of the 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.*  
25 *"Surplus" shall be defined as assets exceeding the sum of liabilities*  
26 *for losses reported, expenses, taxes, and all other indebtedness*  
27 *and reinsurance of outstanding risks as provided by law and*  
28 *paid-in capital in the case of an insurer issuing or having*  
29 *outstanding shares of capital stock. The type of assets to be used*  
30 *in calculating capital and surplus shall be as follows: at least*  
31 *twenty-five million dollars (\$25,000,000) shall be in the form of*  
32 *cash, or securities of the same character and quality as specified*  
33 *in Sections 1170 to 1182, inclusive, or in readily marketable*  
34 *securities listed on regulated United States' national or principal*  
35 *regional securities exchanges. The remaining assets shall be in*  
36 *the form just described, or in the form of investments of*  
37 *substantially the same character and quality as described in*  
38 *Sections 1190 to 1202, inclusive. In calculating capital and surplus*  
39 *under this section, the term "same character and quality" shall*  
40 *permit, but not require, the commissioner to approve assets*

1 *maintained in accordance with the laws of another state or country.*  
2 *The commissioner shall be guided by any limitations, restrictions,*  
3 *or other requirements of this code or the National Association of*  
4 *Insurance Commissioners' Accounting Practices and Procedures*  
5 *Manual in determining whether assets substantially similar to*  
6 *those described in Sections 1190 to 1202, inclusive, qualify. The*  
7 *commissioner shall retain the discretion to disapprove or disallow*  
8 *any asset that is not of a sound quality, or that he or she deems to*  
9 *create an unacceptable risk of loss to the insurer or to*  
10 *policyholders. Letters of credit shall not qualify as assets in the*  
11 *calculation of surplus. Each individual syndicate seeking to accept*  
12 *surplus line placements of risks resident, located, or to be*  
13 *performed in this state shall maintain minimum capital and surplus*  
14 *of not less than six million four hundred thousand dollars*  
15 *(\$6,400,000). Each individual syndicate shall increase the capital*  
16 *and surplus required by this paragraph by one million dollars*  
17 *(\$1,000,000) each year until it attains a capital and surplus of*  
18 *forty-five million dollars (\$45,000,000).*

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

39 *(b) (1) In addition, to be approved as a surplus line insurer, an*  
40 *insurer not domiciled in one of the United States or its territories*

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

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

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

38 (c) Unless available from the NAIC or other public source, has  
39 caused to be provided to the commissioner the following  
40 documents:

1     *(I) 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*  
22 *to the insurer's annual statement, as required by the annual*  
23 *statement 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*  
32 *the insurer's financial position as of the end of the most recent*  
33 *calendar year, and the results of its operations, cashflows, and*  
34 *changes in 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*  
37 *relevant sections of the insurer's annual statement filed with its*  
38 *domiciliary jurisdiction, and presenting comparatively the amounts*  
39 *as of December 31 of the most recent calendar year and the*  
40 *amounts as 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 Insurance Solvency International  
13 Guide to Alien Reporting Format, “Standard Definitions of  
14 Accounting Items.” Responses that do not agree with a standard  
15 definition shall be fully explained in the 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  
8 agent's address must include a street address where the agent can  
9 be 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  
27 a copy of the relevant order.

28 (7) A certified copy of the most recent report of examination or  
29 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 NAIC in its review of the insurer for purposes of  
40 inclusion on or exclusion from the list of authorized nonadmitted

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

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

30 *(e) Has established that:*

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

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

37 *(A) Seeks to stop it from transacting insurance.*

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

39 *(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*  
3 *made under this section, unless an exemption is granted. As used*  
4 *in this paragraph, “insurer” does not include a syndicate of*  
5 *underwriting entities. The commissioner may grant an exemption*  
6 *if the licensee has applied for exemption and demonstrates either*  
7 *of the following:*

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

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

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

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

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

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

1 list at the time of approval, and shall be incorporated into the  
2 master list at the next date of publication. If an insurer appears  
3 on the most recent list, it shall be presumed that the insurer is an  
4 approved surplus line insurer, unless the commissioner or his or  
5 her designee has mailed or causes to be mailed notice to all surplus  
6 line brokers that the commissioner has withdrawn the insurer's  
7 approval. Upon receipt of notice, the surplus line broker shall no  
8 longer advertise that the insurer is approved. Nothing in this  
9 subdivision shall limit the commissioner's discretion to withdraw  
10 an insurer's approval.

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

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

39 (3) Notwithstanding paragraphs (1) and (2), in any case where  
40 the commissioner is basing a decision to remove an insurer from

1 *the list, or deny an application to be placed on the list, on the*  
2 *failure of the insurer or applicant to comply with, meet, or maintain*  
3 *any of the objective criteria established by this section, or by*  
4 *regulation adopted pursuant to this section, the commissioner may*  
5 *so specify this fact in the order, and no hearing shall be required*  
6 *to be held on the order.*

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

14 *(h) In addition to any other statements or reports required by*  
15 *this chapter, the commissioner may also address to any licensee*  
16 *a written request for full and complete information respecting the*  
17 *financial stability, reputation, and integrity of any nonadmitted*  
18 *insurer with whom the licensee has dealt or proposes to deal in*  
19 *the transaction of insurance business with a home state insured.*  
20 *The licensee so addressed shall promptly furnish in written or*  
21 *printed form so much of the information requested as he or she*  
22 *can produce together with a signed statement identifying the same*  
23 *and giving reasons for omissions, if any. After due examination*  
24 *of the information and accompanying statement, the commissioner*  
25 *may, if he or she believes it to be in the public interest, advise the*  
26 *licensee in writing that such insurer does not qualify as an*  
27 *approved insurer. Any placement in the nonadmitted insurer made*  
28 *by a licensee after receipt of that advisement shall be accompanied*  
29 *by a copy of such advisement. The commissioner may issue an*  
30 *advisement when documents submitted pursuant to subdivisions*  
31 *(c) and (d) do not meet the criteria of subdivisions (a) to (e)*  
32 *inclusive, or when the commissioner obtains documents on an*  
33 *insurer and the insurer does not meet the criteria of subdivisions*  
34 *(a) to (e), inclusive, and shall be authorized to not include or*  
35 *remove that insurer from the List of Approved Surplus Line*  
36 *Insurers.*

37 *(i) The commissioner shall require, at least annually, the*  
38 *submission of records and statements as are reasonably necessary*  
39 *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 SEC. 21. Section 1765.3 of the Insurance Code is amended to  
 4 read:

5 ~~1765.3. Any natural person applying for a license to act as a~~  
 6 ~~surplus line broker shall prove his or her competency by showing~~  
 7 ~~he or she holds an existing license to act as a fire and casualty~~  
 8 ~~broker-agent, which requires passing the qualifying examination~~  
 9 ~~for such an insurance broker's license.~~

10 1765.3. (a) *A license under this chapter may be issued to an*  
 11 *individual or any legal business entity. If issued to a business entity*  
 12 *or individual that maintains more than one surplus line office from*  
 13 *which it transacts that business with California residents, it shall*  
 14 *name the natural person or persons located at each such surplus*  
 15 *line office maintained by the licensee who is or are responsible*  
 16 *for the proper discharge at each office of all duties placed upon*  
 17 *the licensee acting as a surplus line broker and each of these*  
 18 *natural persons are required to be licensed as a surplus line*  
 19 *broker. Each natural person shall meet all of the requirements for*  
 20 *the license.*

21 (b) *Every application for a license filed by a corporation shall*  
 22 *contain the names and addresses of all stockholders owning 10*  
 23 *percent or more of the corporation's stock, and of all officers and*  
 24 *directors of the corporation. Every licensed corporation shall file*  
 25 *a written notice with the commissioner of all changes, except*  
 26 *address changes, of its stockholders who own 10 percent or more*  
 27 *of the corporation's stock and of all officers and directors of the*  
 28 *corporation.*

29 SEC. 22. Section 1765.4 of the Insurance Code is amended to  
 30 read:

31 ~~1765.4. If an applicant for any license under this chapter, within~~  
 32 ~~one year from the date of the receipt by the commissioner of the~~  
 33 ~~application, whether or not the filing is complete, neither fully~~  
 34 ~~qualifies for and receives such license on a permanent basis, nor~~  
 35 ~~is denied its issue, such application is automatically denied without~~  
 36 ~~prejudice to the filing of a new application for such license.~~

37 1765.4. *Any natural person applying for a license to act as a*  
 38 *surplus line broker shall prove his or her competency by showing*  
 39 *he or she holds an existing license to act as a property broker-agent*

1 *or casualty broker-agent, which requires passing the qualifying*  
2 *examination for such an insurance broker's license.*

3 SEC. 23. Section 1765.5 is added to the Insurance Code, to  
4 read:

5 1765.5. If an applicant for any license under this chapter, within  
6 one year from the date of the receipt by the commissioner of the  
7 application, whether or not the filing is complete, neither fully  
8 qualifies for and receives that license on a permanent basis, nor is  
9 denied its issue, such application is automatically denied without  
10 prejudice to the filing of a new application for the license.

11 SEC. 24. Section 1766 of the Insurance Code is amended to  
12 read:

13 1766. A payment of premium to a surplus line broker acting  
14 for a person other than himself or herself in negotiating, continuing,  
15 or renewing any policy of insurance under this chapter shall be  
16 deemed to be payment to the insurer, notwithstanding any  
17 conditions or stipulations in the policy or contract. Nothing in this  
18 section shall be deemed to relieve a surplus line broker or special  
19 lines' surplus line broker of any obligation owed to ~~an~~ *a home*  
20 *state insured or home state insured* applicant.

21 SEC. 25. Section 1768 of the Insurance Code is amended to  
22 read:

23 1768. A resident surplus line broker shall keep in this state  
24 complete records of the business transacted by him or her with  
25 nonadmitted insurers under his or her license as a surplus line  
26 broker *including the following documentation for each policy: (a)*  
27 *verification that the insured is a California home state insured;*  
28 *(b) verification that the commercial insured or industrial insured*  
29 *qualifies for the provisions of this code; (c) whether or not it is a*  
30 *single state policy or multistate policy; and (d) data as necessary*  
31 *to allocate the premium taxes owed to the states and risk of loss*  
32 *as may be required pursuant to a compact. A nonresident surplus*  
33 *line broker shall keep in the state where he or she is licensed as a*  
34 *resident surplus line broker complete records of the business*  
35 *transacted by him or her with nonadmitted insurers under his or*  
36 *her California nonresident surplus line broker license. After notice*  
37 *and hearing, the commissioner shall promulgate reasonable rules*  
38 *and regulations specifying the manner and type of records to be*  
39 *maintained by surplus line brokers and the location or locations*  
40 *where those records shall be kept.*

1 SEC. 26. Section 1774 of the Insurance Code is amended to  
2 read:

3 1774. (a) On or before the first day of March of each year the  
4 surplus line broker, *placing business for a home state insured or*  
5 *the home state insured that directly procures insurance pursuant*  
6 *to Section 1760*, shall file with the commissioner a sworn statement  
7 of all business transacted under his or her surplus line license  
8 during the last preceding calendar year. Such statement shall  
9 contain an account of the business done by the surplus line broker  
10 ~~for the prior year placing business for a home state insured or the~~  
11 ~~home state insured that directly procures insurance pursuant to~~  
12 ~~Section 1760 for the prior year, and shall include (1) the total~~  
13 ~~amount of premium for business conducted; (2) the total premium~~  
14 ~~for single state risks where 100 percent of the premium is~~  
15 ~~attributable to risks in California; and (3) for multistate risks, the~~  
16 ~~percentage of premium allocated to California and each other~~  
17 ~~state.~~

18 ~~(b) For purposes of this chapter, “business done” or “business~~  
19 ~~transacted” under a surplus line broker’s license means all~~  
20 ~~insurance regarding which that surplus line broker is required to~~  
21 ~~file a confidential written report with the commissioner or the~~  
22 ~~commissioner’s designee pursuant to subdivision (a) of Section~~  
23 ~~1763. If two or more persons licensed as surplus line brokers are~~  
24 ~~involved in placing a policy, only the one who is responsible for~~  
25 ~~negotiating, effecting the placement, remitting the premium to the~~  
26 ~~nonadmitted insurer or its representatives and filing the confidential~~  
27 ~~written report pursuant to subdivision (a) of Section 1763, shall~~  
28 ~~be considered transacting under his or her surplus line broker’s~~  
29 ~~license.~~

30 *(b) For purposes of this section, “business done” or “business*  
31 *transacted” means all insurance business conducted by the surplus*  
32 *line broker for a home state insured or directly procured by the*  
33 *home state insured. If two or more persons licensed as surplus*  
34 *line brokers are involved in placing a policy, only the one who is*  
35 *responsible for negotiating, effecting the placement, and remitting*  
36 *the premium to the nonadmitted insurer or its representatives,*  
37 *shall be considered transacting business.*

38 (c) The date on which the surplus line broker transacting a policy  
39 prepares a bill or invoice for payment of all or part of the premiums  
40 due, shall be considered the date on which that business was done

1 or transacted, subject to paragraph (d). This date shall be shown  
2 on the face of the bill or invoice and shall be referred to as the  
3 “invoice date.”

4 (d) (1) The invoice date shall be no more than 60 days after the  
5 policy effective date and no more than 60 days after the insurance  
6 was placed with a nonadmitted insurer, except as provided in  
7 paragraph (2) of this section.

8 (2) For purposes of this chapter, the amount of gross premium  
9 to be reported, if premiums are billed and payable in installments,  
10 shall be the amount of the installment premium, provided the  
11 amount and due date of each installment, or the basis for  
12 determining each installment, is identifiable in the policy or an  
13 endorsement, and either of the following conditions is satisfied:

14 (A) Installments under the policy are not billed more frequently  
15 than once per month.

16 (B) If more than one installment is billed in any month, the  
17 commissioner determines, in his or her discretion, that the  
18 installment billing method used does not unduly burden the  
19 commissioner’s ability to accurately determine the amount of  
20 premium paid by the insured.

21 SEC. 27. Section 1774.1 is added to the Insurance Code, to  
22 read:

23 1774.1. The Board of Equalization and the Franchise Tax  
24 Board, with the approval of the Department of Finance, may, on  
25 behalf of the state, become a party to a reciprocal surplus line  
26 premium tax compact or agreement between the state and another  
27 jurisdiction or an agency thereof that is authorized to enter into an  
28 agreement providing for the administration, collection, and  
29 enforcement by a party to the agreement of the taxes imposed on  
30 multistate risks as defined in subdivision (k) of Section 1760.1 as  
31 set forth in Section 13215 of the Revenue and Taxation Code.

32 SEC. 28. Section 1775.1 of the Insurance Code is amended to  
33 read:

34 1775.1. (a) For the calendar year 1995, and each calendar year  
35 thereafter, every surplus line broker whose annual tax for the  
36 preceding calendar year was five thousand dollars (\$5,000) or  
37 more shall make monthly installment payments on account of the  
38 annual tax on business done during the current calendar year  
39 imposed by Section 1775.5, *unless otherwise required pursuant*

1 to a tax compact agreement as may be agreed to by the State Board  
2 of Equalization.

3 (b) Notwithstanding any other provision, the commissioner may  
4 relieve a surplus line broker of his or her obligation to make  
5 monthly payments where the broker establishes to the satisfaction  
6 of the commissioner that either the broker has ceased to transact  
7 business in this state, or his or her annual tax for the current year  
8 will be less than five thousand dollars (\$5,000).

9 SEC. 29. Section 1775.3 of the Insurance Code is amended to  
10 read:

11 1775.3. Each surplus line broker required to make monthly  
12 installment payments shall remit them on or before the first day  
13 of the third calendar month following the end of the accounting  
14 month in which the business was done, *unless otherwise required*  
15 *pursuant to a tax compact agreement as may be agreed to by the*  
16 *State Board of Equalization*. The annual payment under Section  
17 1775.5 shall be in lieu of an installment payment under this section  
18 for the accounting month of December. Remittances for those  
19 payments shall be made payable to the commissioner and shall be  
20 made by electronic fund transfer in accordance with Section 1775.8  
21 or delivered to the office of the commissioner, accompanied by  
22 an installment payment form prescribed by the commissioner if  
23 remittance by electronic fund transfer is not mandatory under  
24 Section 1775.8.

25 SEC. 30. Section 1775.4 of the Insurance Code is amended to  
26 read:

27 1775.4. (a) The amount of the payment shall be 3 percent of  
28 the gross premiums *charged, unless a different rate is required*  
29 *pursuant to a tax compact agreement*, less return premiums upon  
30 business done by the surplus line broker ~~under the authority of his~~  
31 ~~or her license~~ during the calendar month ending two calendar  
32 months immediately preceding the due date of the payment, as  
33 specified in Section 1775.3, excluding gross premiums and return  
34 premiums paid by him or her upon business governed by the  
35 provisions of Section 1760.5. If during any calendar month those  
36 return premiums upon business done by a surplus line broker  
37 exceed the gross premiums upon the business done by him or her  
38 in that calendar month, then no payment shall be payable by him  
39 or her in respect to that calendar month, and he or she may carry  
40 forward that excess to the next succeeding calendar month or

1 months and apply it in reduction of the taxable premiums on  
2 business done by him or her in that succeeding calendar month or  
3 months. Even though no payment shall be payable by the broker,  
4 he or she shall file a return showing that his or her return premiums  
5 exceeded his or her gross premiums.

6 (b) In determining the applicability of subdivision (a) of Section  
7 1775.1 to a surplus line broker who has acquired the business of  
8 another surplus line broker, the amount of tax liability of the  
9 acquired broker for the immediately preceding calendar year shall  
10 be added to the amount of the tax liability of the acquiring broker  
11 for the immediately preceding calendar year.

12 (c) All amounts paid, other than penalties and interest, shall be  
13 allowed as a credit on the annual tax imposed by Section 1775.5.

14 (d) If the total amount of monthly installment payments for any  
15 calendar year exceeds the amount of annual tax for that year, the  
16 excess shall be treated as an overpayment of annual tax and be  
17 allowed as a credit or refund, *unless otherwise required pursuant*  
18 *to a tax compact agreement as may be agreed to by the State Board*  
19 *of Equalization.*

20 (e) A penalty of 10 percent of the amount of the monthly  
21 payment due shall be levied upon and paid by any surplus line  
22 broker who fails to make the necessary payment within the time  
23 required, plus interest at the rate of 1 percent per calendar month  
24 or fraction thereof from the due date of the payment until the date  
25 payment is received by the commissioner, but not for any period  
26 after the due date of the annual tax. The penalty and interest shall  
27 be applied as prescribed in Section 12636.5 of the Revenue and  
28 Taxation Code. The commissioner may remit the penalty in a case  
29 where he or she finds, as a result of examination or otherwise, that  
30 the failure of, or delay in, payment arose out of excusable mistake  
31 or excusable inadvertence.

32 (f) For any part of a payment required that was not made within  
33 the time required by law, when the nonpayment or late payment  
34 was due to fraud on the part of the taxpayer, a penalty of 25 percent  
35 of the amount unpaid shall be added thereto, in addition to all other  
36 penalties otherwise imposed.

37 (g) The commissioner, upon a showing of good cause, may  
38 extend for not to exceed 10 days the time for making a monthly  
39 payment. The extension may be granted at any time, provided that  
40 a request therefor is filed with the commissioner within or prior

1 to the period for which the extension may be granted. Any surplus  
2 line broker to whom an extension is granted shall, in addition to  
3 the monthly payment, pay interest at the rate of 1 percent per  
4 month, or fraction thereof, from the due date until the annual tax  
5 due date.

6 SEC. 31. Section 1775.5 of the Insurance Code is amended to  
7 read:

8 1775.5. (a) Every surplus line broker shall annually, on or  
9 before the first day of March of each year, pay to the Insurance  
10 Commissioner for the use of the State of California a tax of 3  
11 percent of the gross premiums *charged, unless a different rate is*  
12 *required pursuant to a tax compact agreement*, less return  
13 premiums upon business done by him or her under authority of  
14 his or her license during the preceding calendar year, excluding  
15 any portions of premiums upon business done involving the risk  
16 finance portion of any blended finite risk product used in the  
17 financing element of state or federal Superfund environmental  
18 settlements involving remediation of soil or groundwater  
19 contamination or by the provisions of Section 1760.5. If during  
20 any calendar year 3 percent of such return premiums upon business  
21 done by a surplus line broker exceed 3 percent of the gross  
22 premiums upon such business done by him or her in that year, then  
23 he or she may either carry forward such excess to the next  
24 succeeding year and apply it as a credit against 3 percent of gross  
25 premiums on such business done by him or her in such succeeding  
26 year, or he or she may elect to receive, and thereupon be paid a  
27 refund equal to the amount of taxes theretofore paid by him or her  
28 on such excess of return premiums paid over gross premiums  
29 received.

30 (b) For the purpose of determining such tax, the total premium  
31 charged for all such nonadmitted insurance placed in a single  
32 transaction with one underwriter or group of underwriters, whether  
33 in one or more policies, shall be ~~allocated to this state in such~~  
34 ~~proportion as the total premium on the insured properties or~~  
35 ~~operations in this state, as computed on the exposure in this state~~  
36 ~~on the basis of any single standard rating method in use in all states~~  
37 ~~or countries where such insurance applies, bears to the total~~  
38 ~~premium so computed in all states or countries in which such~~  
39 ~~nonadmitted insurance may apply~~ *the entire premium charged on*  
40 *all nonadmitted insurance for the California home state insured.*

1 This provision shall not apply to interstate motor transit operations  
2 conducted between this and other states. With respect to such  
3 operations surplus line tax shall be payable on the entire premium  
4 charged on all nonadmitted insurance, less the following:

5 (1) Such portion of the premium as is determined, as herein  
6 provided, to have been charged for operations in other states taxing  
7 such premium on operations in such states of an insured  
8 maintaining its headquarters office in this state.

9 (2) The premium for any operations outside of this state of an  
10 insured who maintains a headquarters operating office outside of  
11 this state and a branch office in this state.

12 (c) A penalty of 10 percent of the amount of the payment due  
13 pursuant to this section shall be levied upon and paid by any surplus  
14 line broker who fails to make the necessary payment within the  
15 time required, plus interest at the rate of 1 percent per calendar  
16 month or fraction thereof, from March 1, the due date of the annual  
17 tax, until the date the payment is received by the commissioner *or*  
18 *as may be otherwise required pursuant to a tax compact agreement*  
19 *as may be agreed to by the State Board of Equalization*. The  
20 penalty and interest shall be applied as prescribed in Section  
21 12636.5 of the Revenue and Taxation Code. The commissioner,  
22 upon a showing of good cause, may extend for a period not to  
23 exceed 30 days, the time for filing a tax return or paying any  
24 amount required to be paid with the return. The extension may be  
25 granted at any time, provided that a request therefor is filed with  
26 the commissioner within, or prior to, the period for which the  
27 extension may be granted.

28 Any surplus line broker to whom an extension is granted shall,  
29 in addition to the tax, pay interest at the rate of 1 percent per month  
30 or fraction thereof from March 1, until the date of payment. The  
31 commissioner may remit the penalty in a case where the  
32 commissioner finds, as a result of examination or otherwise, that  
33 the failure of or delay in payment arose out of excusable mistake  
34 or excusable inadvertence.

35 (d) For any part of a payment required by this section or by  
36 Section 1775.4 which was not made within the time required by  
37 law, when such nonpayment or late payment was due to fraud on  
38 the part of the broker, a penalty of 25 percent of the amount unpaid  
39 shall be added thereto, in addition to all other penalties otherwise  
40 imposed.

1 (e) For the purposes of this section these terms shall have the  
2 following meanings:

3 (1) “Blended finite risk product” means a contractual  
4 arrangement combining risk finance with traditional risk transfer,  
5 where a distinct portion of the program cost represents the funding  
6 of a known, existing, nonfortuitous future cost, obligation,  
7 responsibility, or liability at its discounted net present value, and  
8 another portion of the program cost represents risk transfer for  
9 losses which have yet to occur related to the cost, obligation,  
10 responsibility, or liability that is the subject of the program.

11 (2) “Risk financing” means that portion of any blended finite  
12 risk product which represents the funding of a known, existing,  
13 nonfortuitous future cost, obligation, responsibility, or liability.

14 (3) “Risk finance” or “financing element” means a method of  
15 funding for a known future cost over a long time horizon in  
16 current-value dollars using the principle of net present value  
17 discounting.

18 SEC. 32. Section 1780.56 of the Insurance Code is amended  
19 to read:

20 1780.56. (a) The commissioner may delegate one or more of  
21 the following duties to a qualified surplus line advisory  
22 organization under this chapter:

23 (1) To receive, review, and record all documents required by  
24 law, regulation, or order to be filed with the commissioner or his  
25 or her designee with respect to foreign and alien nonadmitted  
26 insurers and any insurance placed with nonadmitted insurers,  
27 except that the advisory organization shall not receive documents  
28 submitted pursuant to subdivision (c) of Section 1763. The review  
29 under this subdivision shall be for completeness, accuracy, and  
30 any other matters the commissioner reasonably may direct the  
31 advisory organization to review. The advisory organization shall  
32 notify the filing surplus line broker in writing of any filing that the  
33 advisory organization determines to be incomplete or inaccurate,  
34 and shall request the filing broker to correct the problem. The  
35 advisory organization may, or as directed by the commissioner  
36 shall, notify the commissioner of incomplete or inaccurate filings.

37 (2) To conduct a security review and analysis ~~of all foreign and~~  
38 ~~alien nonadmitted insurers with which surplus line brokers place~~  
39 ~~or propose to place insurance covering property or risks located~~  
40 ~~or persons residing in this state as directed by the commissioner,~~

1 and to provide to the commissioner, *and if directed by the*  
2 *commissioner, to the NAIC*, a report on any ~~foreign or alien~~  
3 nonadmitted insurer based on that review and analysis. The review  
4 and analysis under this subdivision shall take account of any  
5 matters the commissioner reasonably may direct the advisory  
6 organization to review and any other matters the advisory  
7 organization considers necessary or appropriate.

8 (3) To make confidential recommendations to the commissioner  
9 *and, if directed by the commissioner, to the NAIC*, as to the  
10 suitability of any foreign or alien nonadmitted insurer to insure  
11 property or risks located or persons residing in this state or whether  
12 any foreign or alien nonadmitted insurer should be ~~added to or~~  
13 ~~removed from any list of either eligible or disapproved nonadmitted~~  
14 ~~insurers maintained by the commissioner~~ *eligible or ineligible or*  
15 *approved pursuant to Section 1765.2*. The advisory organization's  
16 recommendations shall be based on any review and analysis that  
17 it performs under this chapter and on any additional information  
18 that may come to the advisory organization's attention or that the  
19 commissioner reasonably may request the advisory organization  
20 to consider.

21 (4) To report to the commissioner and other appropriate  
22 authorities instances of actual fraudulent or illegal insurance  
23 activity in the surplus line market that come to the advisory  
24 organization's attention and any facts that come to the advisory  
25 organization's attention that, in the reasonable judgment of the  
26 advisory organization, may indicate the presence of fraudulent or  
27 illegal insurance activity in the surplus line market or potential  
28 risk of harm to consumers of surplus line insurance.

29 (5) To maintain and report information necessary or that  
30 reasonably may be requested by the commissioner for the  
31 calculation and collection of premium taxes on surplus line  
32 insurance premiums.

33 (6) To respond to any request by the commissioner for comments  
34 on any proposed legislation or regulation affecting the placement  
35 of insurance pursuant to the surplus line law.

36 (7) To receive and disseminate to its members information  
37 relating to surplus line insurance, to educate its members about  
38 the surplus line law and the regulations pertaining thereto, and to  
39 perform any specific educational activities that the commissioner  
40 reasonably may request.

1 (8) To communicate with organizations of admitted insurers  
2 with respect to the proper use of the surplus line market.

3 (9) To enter into written arrangements with the commissioner  
4 whereby the advisory organization will perform any other functions  
5 that, in the judgment of the commissioner and the advisory  
6 organization, will help the commissioner provide effective and  
7 cost-efficient supervision of the surplus line market.

8 (b) If the commissioner delegates to the advisory organization  
9 one or more of the duties set forth in subdivision (a), the advisory  
10 organization also shall be authorized to assess a stamping fee for  
11 each policy, declarations page, cover note, or other premium  
12 bearing document submitted to the advisory organization. The  
13 stamping fee shall be established from time to time by the  
14 governing body of the advisory organization, shall reflect all  
15 reasonable costs associated with the services provided by the  
16 advisory organization, and may be reviewed by the commissioner  
17 for reasonableness as part of the commissioner's examination of  
18 the advisory organization. Except as otherwise provided in this  
19 subdivision, the stamping fee may not exceed three-fourths of 1  
20 percent of the premium for the insurance. Any proposed increase  
21 in the stamping fee above three-fourths of 1 percent shall be filed  
22 with the commissioner along with a written explanation of the  
23 reason for the increase, and the increase shall take effect upon the  
24 expiration of 60 days after the date of filing unless the  
25 commissioner disapproves it within that time. Within 60 days after  
26 the date of filing, the commissioner may provisionally approve  
27 the proposed increase, in which event the increase shall take effect  
28 immediately. The proposed increase shall be deemed fully  
29 approved upon the expiration of 120 days after the date of filing  
30 unless the commissioner disapproves the proposed increase within  
31 that time. The stamping fee shall be paid by the surplus line broker,  
32 provided, however, that the surplus line broker shall be allowed  
33 to receive and collect the stamping fee from the insured.

34 (c) Nothing in this chapter shall affect any delegation by the  
35 commissioner pursuant to the surplus line law, provided, however,  
36 that once the commissioner delegates one or more of the duties  
37 set forth in this section and the advisory organization commences  
38 operations under this chapter, no other organization may  
39 simultaneously perform the same duties under this chapter or  
40 exercise the authority incidental thereto.

1 (d) The advisory organization may cease performing the duties  
2 delegated by the commissioner under this chapter and exercising  
3 the authority incidental thereto at any time upon 180 days' written  
4 notice to the commissioner. The commissioner may require the  
5 advisory organization to continue performing the duties under this  
6 chapter for up to an additional 180 days, and the commissioner  
7 shall be entitled, following receipt of notice from the advisory  
8 organization under this subdivision, to obtain copies of all  
9 unprivileged files, documents, and records maintained by the  
10 advisory organization on behalf of the commissioner under this  
11 chapter.

12 (e) The commissioner's findings, determinations, rules, rulings,  
13 and orders under this chapter shall apply only to the advisory  
14 organization's right to perform the duties delegated by the  
15 commissioner under this chapter and to exercise the authority  
16 incidental thereto. Nothing in this chapter shall be deemed or  
17 construed to affect the advisory organization's right to exist and  
18 function as a private, nonprofit organization, with all powers  
19 attendant thereto, and to engage in lawful activities other than  
20 under the authority of this chapter.

21 SEC. 33. Section 13210 of the Revenue and Taxation Code is  
22 amended to read:

23 13210. (a) For gross premiums paid or to be paid on insurance  
24 contracts that take effect or are renewed on or after January 1,  
25 1994, every ~~person~~ *California home state insured as defined by*  
26 *subdivision (f) of Section 1760.1 of the Insurance Code*, who effects  
27 insurance governed by Chapter 6 (commencing with Section 1760)  
28 of Part 2 of Division 1 of the Insurance Code shall pay a gross  
29 premium tax of 3 percent *charged or at the rate required pursuant*  
30 *to a tax compact agreement*, for the use of the state, less 3 percent  
31 of returned premiums that were subject to the tax received by  
32 reason of cancellation or reduction of premium.

33 (1) This section shall not apply to any of the following:

34 (A) Insurance coverage for which a tax on the gross premium  
35 is due or has been paid pursuant to Section 1775.5 of the Insurance  
36 Code.

37 (B) Gross premiums paid and returned premiums received by  
38 that ~~person~~ *California home state insured as defined by subdivision*  
39 *(f) of Section 1760.1 of the Insurance Code*, upon business

1 governed by the provisions of Section 1760.5 of the Insurance  
2 Code.

3 (C) Insurance coverage for which a tax on the gross premium  
4 is due or has been paid pursuant to Section 132 of the Insurance  
5 Code.

6 (2) If during any calendar quarter 3 percent of the returned  
7 premiums received that were subject to the tax imposed by this  
8 part exceed 3 percent of the gross premiums paid or to be paid by  
9 that person on contracts that took effect or were renewed in that  
10 calendar quarter, then that person may either carry forward the  
11 excess to a succeeding calendar quarter and apply it as a credit  
12 against the 3 percent of gross premiums paid or to be paid by that  
13 person in the succeeding calendar quarter, or the person may elect  
14 to receive, and be paid a refund equal to the amount of taxes paid  
15 by the person on the excess of returned premiums received over  
16 gross premiums paid or to be paid.

17 (b) For purposes of determining the tax, the total premium paid  
18 or to be paid for all nonadmitted insurance placed in a single  
19 transaction with one underwriter or group of underwriters, whether  
20 in one or more policies, in that calendar quarter during which the  
21 taxable insurance contract or contracts took effect or were renewed,  
22 shall be allocated to this state in the proportion that the total  
23 premium on the insured properties or operations in this state, as  
24 computed on the exposure in this state on the basis of any single  
25 standard rating method in use in all states or countries where the  
26 insurance applies, bears to the total premium so computed in all  
27 states or countries in which that nonadmitted insurance may apply  
28 or, with prior approval of the Franchise Tax Board, on any other  
29 reasonable basis as determined by the Franchise Tax Board in its  
30 sole discretion.

31 (c) Subdivision (b) shall not apply to interstate motor transit  
32 operations conducted between this and other states. With respect  
33 to those operations, the tax shall be payable on the entire premium  
34 charged on all nonadmitted insurance, less any of the following:

35 (1) The portion of the premium that is determined to have been  
36 charged for operations in other states that have taxed the premium  
37 on operations in states of an insured maintaining its headquarters  
38 office in this state.

1 (2) The premium for any operations outside of this state of an  
2 insured who maintains a headquarters operating office outside of  
3 this state and a branch office in this state.

4 SEC. 34. Section 13215 is added to the Revenue and Taxation  
5 Code, to read:

6 13215. The State Board of Equalization and the Franchise Tax  
7 Board with the approval of the Department of Finance, may on  
8 behalf of the state become a party to a reciprocal surplus line  
9 premium tax compact or agreement between the state and another  
10 jurisdiction or an agency thereof that is authorized to enter into an  
11 agreement providing for the administration, collection, and  
12 enforcement by a party to the agreement of the taxes imposed on  
13 multistate risks as defined in subdivision (k) of Section 1760.1 of  
14 the Insurance Code.

15 SEC. 35. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,  
16 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32,  
17 and 33 of this act shall become operative on July 21, 2011.

18 SEC. 36. This act is an urgency statute necessary for the  
19 immediate preservation of the public peace, health, or safety within  
20 the meaning of Article IV of the Constitution and shall go into  
21 immediate effect. The facts constituting the necessity are:

22 In order to forestall preemption on July 21, 2011, of state statutes  
23 pertaining to surplus line insurance taxation, eligibility, and broker  
24 licensure by the Nonadmitted Reinsurance and Reform Act of  
25 2010, a part of the federal Dodd-Frank Wall Street Reform and  
26 Consumer Protection Act of 2010, it is necessary that this act take  
27 effect immediately.