

Assembly Bill No. 2303

Passed the Assembly August 22, 2012

Chief Clerk of the Assembly

Passed the Senate August 20, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1946.1 of the Civil Code, to amend Sections 100, 661, 700.04, 923.6, 985, 1011, 1012, 1016, 1022, 1035, 1061, 1063, 1070.6, 1639, 1670, 1685, 1687, 1704, 1749.1, 1750, 1751, 1758.1, 1759.10, 1765.1, 1765.4, 1810.7, 1851, 1864, 12100, 12962, and 12967 of, to add Section 1011.1 to, to add Article 7.5 (commencing with Section 14085) to Chapter 1 of Division 5 of, to repeal Sections 117, 1688, 1689, 1691, 1692.1, 1695, 1699, 1700, 1872.1, and 12961 of, and to repeal Chapter 2 (commencing with Section 12420) of Part 6 of Division 2 of, the Insurance Code, and to repeal Section 52.5 of Chapter 639 of the Statutes of 2003, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2303, Committee on Insurance. Insurance omnibus.

(1) Existing law provides that the hiring of real property for a term not specified by the parties is deemed to be renewed at the end of the term unless written notice of termination is given. Existing law requires the owner of a residential dwelling to give notice at least 30 days prior to the proposed date of termination if the owner has contracted to sell the dwelling or unit to a bona fide purchaser for value, has established an escrow with a licensed escrow agent or a licensed real estate broker, and other specified criteria are met.

This bill would additionally permit the escrow to be established with a title insurer or an underwritten title company for purposes of that provision.

(2) Existing law regulates mortgage insurance and defines it as including guaranteeing of the payment of the principal, interest, and other sums agreed to be paid under the terms of any note or bond secured by mortgage, or other sums secured under the terms of the mortgage, in its entirety, or of any undivided or other partial interest in the mortgage, or in a group of mortgages, and the guaranteeing or insuring, directly or indirectly, against loss thereon.

This bill would prohibit mortgage insurance from being an insurance product that may be offered in this state.

(3) Existing law requires the Insurance Commissioner to publish notices of insurer liquidation in a newspaper of general circulation, published in the county in which the proceeding is pending, and in the Counties of Alameda, Los Angeles, Sacramento, San Diego, San Francisco, and Santa Clara, not less than once a week for 4 successive weeks.

This bill would delete the requirement of publication in certain cities and counties for the required period of time, and instead would require only publication in geographic areas pertinent to the liquidation and that the publication reference a source, either the liquidated company's or the liquidator's Internet Web site, where ongoing information for creditors would be provided.

Existing law requires the commissioner to notify the Chair of the Joint Legislative Budget Committee by letter, whenever he or she appoints or employs a special deputy commissioner, clerk, or assistant to the Conservation and Liquidation Office.

This bill would instead require the commissioner only to report the appointment or employment of special deputy commissioners or executive officers.

Existing law authorizes the commissioner to apply by verified application for an order for the liquidation of a domestic corporation in the insurance business.

This bill would incorporate the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 by authorizing the Federal Deposit Insurance Corporation to stand in the place of the commissioner and file a verified application in state court to place the insurer into liquidation under the laws and requirements of the state.

(4) Existing law authorizes the commissioner to grant authority to transact variable contracts to a person, or a natural person named on a license of an organization licensed, as a life agent which is appointed by an admitted insurer which is required to register itself or to register a separate account or fund with the United States Securities and Exchange Commission, or to register its variable policies or contracts with the Securities and Exchange Commission, and has complied with that requirement.

This bill would clarify that the commissioner is authorized to grant authority to transact variable contracts to a nonresident, who is not a licensed life agent in California, as long as the nonresident is licensed for both life and variable contract authority in his or

her resident state. The bill would also impose a \$64 fee on applications, renewals, or changes for a nonresident variable contract authority license. The bill would declare the fee is reasonable and reflects the true costs incurred by the agency in providing those services.

(5) Existing law authorizes the commissioner to issue to eligible persons a certificate of convenience, a temporary permit issued as a matter of convenience to allow the transaction of insurance without a permanent license, to transact certain kinds of insurance, including, but not limited to, transacting industrial life and industrial disability insurance, known as certificates of convenience pending examination. Existing law requires every insurer to have an approved training program on file with the commissioner or have filed a blanket authorization to certify enrollment in an approved course of instruction before appointing any certificate of convenience holder.

This bill would discontinue certificates of convenience pending examination, delete the training program and blanket authorization to certify enrollment requirement, and make conforming changes.

(6) Existing law generally prohibits a surplus linebroker from placing any coverage with a nonadmitted insurer for a home state insured unless the insurer is domiciled in Mexico under specified conditions or meets specified licensing and capital requirements. Existing law prohibits the commissioner from recognizing that a nonadmitted insurer is eligible pursuant to those requirements, unless the insurer has submitted for filing certain information, including a certificate of capital and surplus and a certified copy of the insurer's license issued by the insurer's domiciliary jurisdiction.

This bill would delete the provision prohibiting the commissioner from recognizing a nonadmitted insurer unless the insurer submits for filing the information described above.

(7) Existing law requires an applicant for a bail agent license, in order to be eligible to take the examination, to have completed not less than 12 hours of classroom education in subjects pertinent to the duties and responsibilities of a bail licensee. Existing law requires the commissioner to appoint a curriculum board consisting of representatives of insurance agents, brokers, and life agents trade associations and representatives of insurance companies and consumer groups to develop the prelicensing and continuing

education curriculum for property broker-agents and casualty broker-agents.

This bill would increase the bail agent license exam eligibility qualification to a minimum of 20 hours of specified classroom education. The bill would expand the curriculum board to include representatives of bail agents and insurance adjusters and expand the curriculum being developed to include courses of study for bail agents and insurance adjusters.

(8) Existing law requires any natural person applying for a license to act as a surplus line broker to prove his or her competency by showing he or she holds an existing license to act as a property broker-agent and casualty broker-agent.

This bill would allow a natural person, who is not a resident of California, to prove his or her competency by showing that he or she holds an existing license for property and casualty in his or her resident state.

(9) Existing law requires that on or before May 1 of each year, insurers, engaged in writing child care liability insurance coverage, submit a report to the commissioner of their operations regarding child care liability claims experience for the preceding calendar year ending on December 31 on a form furnished by the commissioner. The commissioner is required to annually report to the Governor, Legislature, and to the Assembly and Senate Committees on Insurance regarding certain court actions, such as medical malpractice, and child care liability claims.

This bill would delete the requirement that the insurer child care liability claims experience report for the preceding calendar year ending on December 31 be submitted to the commissioner on or before May 1 of each year, and would instead require that the report for the preceding calendar year be submitted at the request of the commissioner, but not more than annually, on a form prescribed by the commissioner. The bill would also delete the commissioner's reports to the Governor, Legislature, and to the Assembly and Senate Committees on Insurance described above.

(10) Existing law establishes an advisory committee on automobile insurance fraud and economic automobile theft prevention, investigation, and prosecution within the Fraud Division of the Department of Insurance.

This bill would abolish that committee.

(11) Existing law requires the department to develop and implement a coordinated approach to gather, review, and analyze the archives of insurers and other archives and records to provide for research and investigation into insurance policies, unpaid insurance claims, and related matters of victims of the Holocaust or of the Nazi-controlled German government or its allies, and the beneficiaries and heirs of those victims, and for losses arising from the activities of the Nazi-controlled German government or its allies for insurance policies issued before and during World War II by insurers who have affiliates or subsidiaries authorized to do business in California. Existing law also requires the department to play an independent role in representing the interests of Holocaust survivors where necessary. Under existing law, the department is required to submit to the Governor, the Legislature, and the insurance and budget committees of the Legislature a report on its progress in these matters.

This bill would eliminate this reporting requirement.

(12) Existing law requires insurance adjusters to be licensed by the department. Any person who violates any provision regarding the regulation of insurance adjusters is guilty of a misdemeanor.

This bill would establish a category of insurance adjuster license to be known as the crop insurance adjuster license, subject to the same rules and regulations as an insurance adjuster, except where otherwise specified. A person would be prohibited from acting as a crop insurance adjuster without a license. An applicant for a crop insurance adjuster license would be subject to the same requirements as applicable to obtaining an insurance adjuster license, except the examination, and would be required to provide evidence that he or she has satisfactorily completed the loss adjustment training curriculum and competency testing required by the Federal Crop Insurance Corporation Standard Reinsurance Agreement. Because this bill would expand the scope of a crime, it would create a state-mandated local program.

(13) Existing law expresses the intent of the Legislature that the commissioner review and analyze the financial conditions, underwriting practices, and rate structure of the State Compensation Insurance Fund and report to the Legislature and the Governor on the potential of reducing rates by July 1 each year.

This bill would delete this provision.

(14) This bill would incorporate additional changes in Section 1946.1 of the Civil Code, proposed by AB 2521, that would become operative only if AB 2521 and this bill are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.

(15) The bill would also make technical, conforming, and related changes and delete obsolete provisions.

(16) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. The Legislature finds and declares that the fees to be collected from each nonresident variable contract authority applicant and licensee for filing an application, renewal, or change in an outstanding license, as set forth in Section 30, are reasonable and reflect the true costs incurred by the agency in providing those services.

SEC. 2. Section 1946.1 of the Civil Code is amended to read:

1946.1. (a) Notwithstanding Section 1946, a hiring of residential real property for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his or her intention to terminate the tenancy, as provided in this section.

(b) An owner of a residential dwelling giving notice pursuant to this section shall give notice at least 60 days prior to the proposed date of termination. A tenant giving notice pursuant to this section shall give notice for a period at least as long as the term of the periodic tenancy prior to the proposed date of termination.

(c) Notwithstanding subdivision (b), an owner of a residential dwelling giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if any tenant or resident has resided in the dwelling for less than one year.

(d) Notwithstanding subdivision (b), an owner of a residential dwelling giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if all of the following apply:

(1) The dwelling or unit is alienable separate from the title to any other dwelling unit.

(2) The owner has contracted to sell the dwelling or unit to a bona fide purchaser for value, and has established an escrow with a title insurer or an underwritten title company, as defined in Sections 12340.4 and 12340.5 of the Insurance Code, respectively, a licensed escrow agent, as defined in Sections 17004 and 17200 of the Financial Code, or a licensed real estate broker, as defined in Section 10131 of the Business and Professions Code.

(3) The purchaser is a natural person or persons.

(4) The notice is given no more than 120 days after the escrow has been established.

(5) Notice was not previously given to the tenant pursuant to this section.

(6) The purchaser in good faith intends to reside in the property for at least one full year after the termination of the tenancy.

(e) After an owner has given notice of his or her intention to terminate the tenancy pursuant to this section, a tenant may also give notice of his or her intention to terminate the tenancy pursuant to this section, provided that the tenant's notice is for a period at least as long as the term of the periodic tenancy and the proposed date of termination occurs before the owner's proposed date of termination.

(f) The notices required by this section shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail.

(g) This section may not be construed to affect the authority of a public entity that otherwise exists to regulate or monitor the basis for eviction.

SEC. 2.5. Section 1946.1 of the Civil Code is amended to read:

1946.1. (a) Notwithstanding Section 1946, a hiring of residential real property for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his or her intention to terminate the tenancy, as provided in this section.

(b) An owner of a residential dwelling giving notice pursuant to this section shall give notice at least 60 days prior to the proposed date of termination. A tenant giving notice pursuant to this section shall give notice for a period at least as long as the term of the periodic tenancy prior to the proposed date of termination.

(c) Notwithstanding subdivision (b), an owner of a residential dwelling giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if any tenant or resident has resided in the dwelling for less than one year.

(d) Notwithstanding subdivision (b), an owner of a residential dwelling giving notice pursuant to this section shall give notice at least 30 days prior to the proposed date of termination if all of the following apply:

(1) The dwelling or unit is alienable separate from the title to any other dwelling unit.

(2) The owner has contracted to sell the dwelling or unit to a bona fide purchaser for value, and has established an escrow with a title insurer or an underwritten title company, as defined in Sections 12340.4 and 12340.5 of the Insurance Code, respectively, a licensed escrow agent, as defined in Sections 17004 and 17200 of the Financial Code, or a licensed real estate broker, as defined in Section 10131 of the Business and Professions Code.

(3) The purchaser is a natural person or persons.

(4) The notice is given no more than 120 days after the escrow has been established.

(5) Notice was not previously given to the tenant pursuant to this section.

(6) The purchaser in good faith intends to reside in the property for at least one full year after the termination of the tenancy.

(e) After an owner has given notice of his or her intention to terminate the tenancy pursuant to this section, a tenant may also give notice of his or her intention to terminate the tenancy pursuant to this section, provided that the tenant's notice is for a period at least as long as the term of the periodic tenancy and the proposed date of termination occurs before the owner's proposed date of termination.

(f) The notices required by this section shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail.

(g) This section may not be construed to affect the authority of a public entity that otherwise exists to regulate or monitor the basis for eviction.

(h) Any notice given by an owner pursuant to this section shall contain, in substantially the same form, the following:

“State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.”

SEC. 3. Section 100 of the Insurance Code is amended to read:

100. Insurance in this state is divided into the following classes:

- (1) Life.
- (2) Fire.
- (3) Marine.
- (4) Title.
- (5) Surety.
- (6) Disability.
- (7) Plate glass.
- (8) Liability.
- (9) Workers' compensation.
- (10) Common carrier liability.
- (11) Boiler and machinery.
- (12) Burglary.
- (13) Credit.
- (14) Sprinkler.
- (15) Team and vehicle.
- (16) Automobile.
- (17) [Reserved]
- (18) Aircraft.
- (19) Mortgage guaranty.
- (19.5) Insolvency.
- (19.6) Legal insurance.
- (20) Miscellaneous.

SEC. 4. Section 117 of the Insurance Code is repealed.

SEC. 5. Section 661 of the Insurance Code is amended to read:

661. (a) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(1) Nonpayment of premium.

(2) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(3) Discovery of fraud by the named insured in pursuing a claim under the policy provided the insurer does not rescind the policy.

(4) Discovery of material misrepresentation of any of the following information concerning the named insured or any resident of the same household who customarily operates an automobile insured under the policy:

(A) Safety record.

(B) Annual miles driven in prior years.

(C) Number of years of driving experience.

(D) Record of prior automobile insurance claims, if any.

(E) Any other factor found by the commissioner to have a substantial relationship to the risk of loss.

Any insured who negligently misrepresents information described in this paragraph may avoid cancellation by furnishing corrected information to the insurer within 20 days after receiving notice of cancellation and agreeing to pay any difference in premium for the policy period in which the information remained undisclosed.

(5) A substantial increase in the hazard insured against.

(b) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy.

(c) This section shall not apply to nonrenewal.

SEC. 6. Section 700.04 of the Insurance Code is amended to read:

700.04. Paid-in capital for life insurers is governed by Section 10510 of this code, for title insurers by Section 12359, and for mortgage guaranty insurers by Section 12640.03.

SEC. 7. Section 923.6 of the Insurance Code is amended to read:

923.6. (a) Every admitted property and casualty insurer, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an Appointed Actuary entitled “Statement of Actuarial Opinion.” This opinion shall be filed in accordance with the appropriate Property and Casualty Annual Statement Instructions of the National Association of Insurance Commissioners (NAIC).

(1) For purposes of this section, the term, “property and casualty insurer” means any admitted insurer writing insurance as described in Section 102, 103, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 119.6, 120, 124, or 124.5.

(2) For purposes of this section, the following terms have the same meaning as used in the Property and Casualty Annual Statement Instructions of the NAIC:

- (A) Actuarial Opinion.
- (B) Actuarial Opinion Summary.
- (C) Actuarial Report.
- (D) Appointed Actuary.
- (E) Statement of Actuarial Opinion.
- (F) Property and Casualty Annual Statement Instructions.

(3) The commissioner may adopt regulations related to the terms and conditions required by the Property and Casualty Annual Statement Instructions of the NAIC.

(b) Every property and casualty insurer domiciled in this state that is required to submit a Statement of Actuarial Opinion shall annually submit an Actuarial Opinion Summary, written by the insurer’s Appointed Actuary. This Actuarial Opinion Summary shall be filed in accordance with the appropriate Property and Casualty Annual Statement Instructions of the NAIC and shall be considered as a document supporting the Actuarial Opinion required in subdivision (a).

(c) An admitted insurer not domiciled in this state shall provide the Actuarial Opinion Summary upon request of the commissioner.

(d) An Actuarial Report and underlying workpapers as required by the appropriate Property and Casualty Annual Statement Instructions of the NAIC shall be prepared to support each Actuarial Opinion. If an insurer fails to provide either a supporting Actuarial Report or workpapers at the request of the commissioner,

or if the commissioner determines that the supporting Actuarial Report or workpapers provided by the insurer are otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting Actuarial Report or workpapers.

(e) Notwithstanding subdivision (d) of Section 6254 of the Government Code, subdivision (f), or any other provision of law, the Statement of Actuarial Opinion required by subdivision (a) shall be a public record and open to inspection.

(f) (1) Documents, materials, or other information in the possession or control of the commissioner that are considered an Actuarial Report, workpapers, or Actuarial Opinion Summary provided in support of the Statement of Actuarial Opinion, and any other material provided by the insurer to the commissioner in connection with the Actuarial Report, workpapers, or Actuarial Opinion Summary shall be confidential by law and privileged, shall not be made public by the commissioner or any other person and are exempt from the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action brought by a private party.

(2) This subdivision shall not limit the commissioner's authority to release the documents, materials, and other information described in paragraph (1) to the American Academy of Actuaries' Actuarial Board for Counseling and Discipline (ABCD), or its successor, so long as those documents, materials, and other information are required for the purpose of professional disciplinary proceedings, and the ABCD establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents, nor shall this subdivision limit the commissioner's authority to use those documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(3) The commissioner may also exercise, with respect to the documents, materials, or other information described in paragraph (1), all the authority specified in subdivision (b) of Section 735.5, or any successor provision.

SEC. 8. Section 985 of the Insurance Code is amended to read:

985. (a) On or after January 1, 1970, as used in this article and in paragraph (9) of subdivision (a) of Section 1011, “insolvency” means either of the following:

(1) Any impairment of minimum “paid-in capital” or “capital paid in,” as defined in Section 36, required in the aggregate of an insurer by the provisions of this code for the class, or classes, of insurance that it transacts anywhere.

(2) An inability of the insurer to meet its financial obligations when they are due.

(b) On or after January 1, 1970, an insurer cannot escape the condition of insolvency by being able to provide for all its liabilities and for reinsurance of all outstanding risks. An insurer must also be possessed of additional assets equivalent to the aggregate “paid-in capital” or “capital paid in” required by this code after making provision for all those liabilities and for that reinsurance.

(c) On or after October 1, 1967, as used in this code provision for reinsurance of all outstanding risks and “gross premiums without any deduction, received and receivable upon all unexpired risks” means the greater of: (1) the aggregate amount of actual unearned premiums, or (2) the amount reasonably estimated as being required to reinsure in a solvent admitted insurer the unexpired terms of the risks represented by all outstanding policies.

(d) On or after October 1, 1967, an insurer shall make provision for reinsurance of the outstanding risk on policies that provide premiums that are fully earned at inception and on policies that for any other reason do not provide for a return premium to the insured on cancellation prior to expiration.

(e) On or after October 1, 1967, the commissioner shall prescribe standards for reasonably estimating the amount required to reinsure that will provide adequate safeguards for the policyholders, creditors, and the public.

(f) On or after October 1, 1967, this section shall not be applicable to life, title, mortgage, or mortgage guaranty insurers.

(g) In the application of this section to disability insurance, as defined in Section 106, reserves for unearned premiums and amounts reasonably estimated as required to reinsure outstanding risks shall be determined in accordance with the provisions of Section 997.

SEC. 9. Section 1011 of the Insurance Code is amended to read:

1011. (a) The superior court of the county in which the principal office of a person described in Section 1010 is located, upon the filing by the commissioner of the verified application showing any of the conditions in this subdivision exist, or a filing by the Federal Deposit Insurance Corporation of the verified application showing that the conditions enumerated in subdivision (b) exist and the conditions set forth in Section 5383(e)(3) of Title 12 of the United States Code having been satisfied, shall issue its order vesting title to all of the assets of that person, wheresoever situated, in the commissioner or his or her successor in office, in his or her official capacity, and direct the commissioner forthwith to take possession of all of its books, records, property, real and personal, and assets, and to conduct, as conservator, the business of the person, or so much thereof as to the commissioner may seem appropriate, and enjoining the person and its officers, directors, agents, servants, and employees from the transaction of its business or disposition of its property until any of the following further order of the court:

(1) That the person has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the commissioner or his or her deputy or examiner.

(2) That the person has neglected or refused to observe an order of the commissioner to make good within the time prescribed by law any deficiency in its capital if it is a stock corporation, or in its reserve if it is a mutual insurer.

(3) That the person, without first obtaining the consent in writing of the commissioner, has transferred, or attempted to transfer, substantially its entire property or business or, without consent, has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(4) That the person is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or creditors, or to the public.

(5) That the person has violated its charter or any law of the state.

(6) That any officer of the person refuses to be examined under oath, touching its affairs.

(7) That any officer or attorney in fact of the person has embezzled, sequestered, or wrongfully diverted any of the assets of the person.

(8) That a domestic insurer does not comply with the requirements for the issuance to it of a certificate of authority, or that its certificate of authority has been revoked.

(9) That the last report of examination of any person to whom the provisions of this article apply shows the person to be insolvent within the meaning of Article 13 (commencing with Section 980) of Chapter 1 of Part 2 of Division 1; or if a reciprocal or interinsurance exchange, within the applicable provisions of Section 1370.2, 1370.4, 1371, or 1372; or if a life insurer, within the applicable provisions of Sections 10510 and 10511.

(b) Notification is given by the United States Secretary of the Treasury that a determination has been made by the secretary, in accordance with and satisfying the provisions of Section 5383(b) of Title 12 of the United States Code, as to a person described in Section 1010 that is an insurance company as defined in Section 5381(a)(13) of Title 12 of the United States Code, and one of the following:

(1) The board of directors, or body performing similar functions, of the person acquiesces or consents to the appointment of a receiver as provided for in Section 5832(a)(1)(A)(i) of Title 12 of the United States Code, with that consent to be considered to be consent to issuance of an order under this section.

(2) The United States District Court for the District of Columbia issued an order for the appointment of a receiver of the person as provided for in Section 5382(a)(1)(A)(iv)(I) of Title 12 of the United States Code, without regard to whether an appeal of the order is pending.

(3) A petition by the United States Secretary of the Treasury for appointment of a receiver was made to the United States District Court for the District of Columbia and was granted by operation of the law as provided for in Section 5382(a)(1)(A)(v) of Title 12 of the United States Code, without regard to whether an appeal of the order is pending.

SEC. 10. Section 1011.1 is added to the Insurance Code, to read:

1011.1. If a verified application is filed pursuant to Section 1011 that shows that the conditions set forth in subdivision (b) of

Section 1011 exist and upon a showing that notice was provided to the person that is the subject of the verification application, all of the following apply:

(a) A superior court hearing shall be held in which the person may oppose the verified application solely on the grounds that the conditions set forth in subdivision (b) of Section 1101 do not exist. The hearing shall be completed within 24 hours after the verified application is filed with the court.

(b) The superior court shall issue an order as provided for in Section 1011 within 24-hours after the verified application was filed with the court.

(c) If the superior court does not issue an order within 24 hours as provided for in subdivision (b), then an order described in subdivision (a) of Section 1011 shall be deemed granted by operation of law upon expiration of the 24-hour period, without further notice.

(d) An order entered by the superior court pursuant to subdivision (b) or entered by operation of law pursuant to subdivision (c) shall not be subject to any stay or injunction pending appeal.

SEC. 11. Section 1012 of the Insurance Code is amended to read:

1012. Except in the case of an order issued based on a verified application showing the conditions in subdivision (b) of Section 1011 to exist, the order shall continue in force and effect until, on the application either of the commissioner or of that person, it shall, after a full hearing, appear to the court that the ground for the order directing the commissioner to take title and possession does not exist or has been removed and that the person can properly resume title and possession of its property and the conduct of its business.

SEC. 12. Section 1016 of the Insurance Code is amended to read:

1016. (a) If at any time after the issuance of an order under Section 1011, or if at the time of instituting any proceeding under this article, including under Section 1011, it shall appear to the commissioner that it would be futile to proceed as conservator with the conduct of the business of that person, he or she may apply to the court for an order to liquidate and wind up the business of the person. Upon a full hearing of that application, the court

may make an order directing the winding up and liquidation of the business of that person by the commissioner, as liquidator, for the purpose of carrying out the order to liquidate and wind up the business of that person.

(b) Notwithstanding subdivision (a), the court may issue an order to liquidate and wind up the business of a person as to whom a verified application is filed pursuant to subdivision (b) of Section 1011 based solely on the verified application and hearing as provided for in subdivision (a) of Section 1011.1, without further hearing, or may issue an order to liquidate and wind up the business of the person upon application by the commissioner after the issuance of an order under Section 1011. The court's order may direct the winding up and liquidation of the business of the person by the commissioner, as liquidator, for the purpose of carrying out the order to liquidate and wind up the business of the person.

SEC. 13. Section 1022 of the Insurance Code is amended to read:

1022. The notice shall be published in newspapers of general circulation in geographic areas pertinent to the liquidation. The notice shall reference a source, either the liquidated company's or the liquidator's Internet Web site, where ongoing information for creditors shall be provided. A copy of the notice, accompanied by an affidavit of due publication, including a statement of the date of publication, shall be filed with the clerk of the court.

SEC. 14. Section 1035 of the Insurance Code is amended to read:

1035. (a) In any proceeding under this article, the commissioner may appoint and employ under his or her hand and official seal, special deputy commissioners, as his or her agents, and to employ clerks and assistants and to give to each of them those powers that he or she deems necessary. Upon appointing or employing special deputy commissioners or executive officers, the commissioner shall notify the Chair of the Joint Legislative Budget Committee, by letter, of the action. The costs of employing special deputy commissioners, clerks, and assistants appointed to carry out this article, and all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of that person under this article, shall be fixed by the commissioner, subject to the approval of the court, and shall be paid out of the assets of that person to

the department. In the event the property of that person does not contain cash or liquid assets sufficient to defray the cost of the services required to be performed under the terms of this article, the commissioner may at any time or from time to time pay the cost of those services out of the appropriation for the maintenance of the department, but not out of the assets of other estates. Any amounts so paid shall be deemed expenses of administration and shall be repaid to the fund out of the first available moneys in the estate.

(b) Any person appointed by the commissioner to serve in the capacity of chief executive officer of the department's Conservation and Liquidation Office shall be subject to confirmation by the Senate.

SEC. 15. Section 1061 of the Insurance Code is amended to read:

1061. In verification of the matters set forth in Section 1060 of this code, the Department of Finance shall, at least every two years or more often if requested by the commissioner, examine the commissioner's books and accounts relating to all proceedings under this article, and shall file a report of each examination with the court in which the respective proceeding is pending and shall furnish the commissioner a certified copy of each report. The expense of examining the books and accounts of the commissioner as conservator or liquidator under this article shall be paid out of the support appropriation for the Department of Insurance current at the date of billing for the expense and shall, upon order of the court or courts before which the proceedings under the articles are pending, be ratably reimbursed to that appropriation out of the assets of the estates administered by the commissioner as conservator or liquidator under this article.

SEC. 16. Section 1063 of the Insurance Code is amended to read:

1063. (a) Within 60 days after the original effective date of this article, all insurers, including reciprocal insurers, admitted to transact insurance in this state of any or all of the following classes only in accordance with the provisions of Chapter 1 (commencing with Section 100) of Part 1 of this division: fire (see Section 102), marine (see Section 103), plate glass (see Section 107), liability (see Section 108), workers' compensation (see Section 109), common carrier liability (see Section 110), boiler and machinery

(see Section 111), burglary (see Section 112), sprinkler (see Section 114), team and vehicle (see Section 115), automobile (see Section 116), aircraft (see Section 118), and miscellaneous (see Section 120), shall establish the California Insurance Guarantee Association (the association); provided, however, this article shall not apply to the following classes or kinds of insurance: life and annuity (see Section 101), title (see Section 104), fidelity or surety including fidelity or surety bonds, or any other bonding obligations (see Section 105), disability or health (see Section 106), credit (see Section 113), mortgage guaranty, insolvency or legal (see Section 119), financial guaranty or other forms of insurance offering protection against investment risks (see Section 124), the ocean marine portion of any marine insurance or ocean marine coverage under any insurance policy including the following: the Jones Act (46 U.S.C. Sec. 688), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage, or reinsurance as defined in Section 620, or fraternal fire insurance written by associations organized and operating under Sections 9080 to 9103, inclusive. Any insurer admitted to transact only those classes or kinds of insurance excluded from this article shall not be a member insurer of the association. Each insurer admitted to transact a class of insurance included in this article, including the State Compensation Insurance Fund, as a condition of its authority to transact insurance in this state, shall participate in the association whether established voluntarily or by order of the commissioner after the elapse of 60 days following the original effective date of this article in accordance with rules to be established as provided in this article. It shall be the purpose of the association to provide for each member insurer insolvency insurance as defined in Section 119.5.

(b) The association shall be managed by a board of governors, composed of nine member insurers, each of which shall be appointed by the commissioner to serve initially for terms of one, two, or three years and thereafter for three-year terms so that three terms shall expire each year on December 31, and shall continue in office until his or her successor shall be appointed and qualified. At least five members of the board shall be domestic insurers. At least three of the members shall be stock insurers, and at least three shall be nonstock insurers. The nine members shall be

representative, as nearly as possible, of the classes of insurance and of the kinds of insurers covered by this article. In case of a vacancy for any reason on the board, the commissioner shall appoint a member insurer to fill the unexpired term. In addition to the nine member insurers, the membership of the board shall also include one public member appointed by the President pro Tempore of the Senate, one public member appointed by the Speaker of the Assembly, one business member appointed by the commissioner, and one labor member appointed by the commissioner.

(c) The association shall adopt a plan of operations, and any amendments thereto, not inconsistent with the provisions of this article, necessary to assure the fair, reasonable, and equitable manner of administering the association, and to provide for other matters as are necessary or advisable to implement the provisions of this article. The plan of operations and any amendments thereto shall be subject to prior written approval by the commissioner. All members of the association shall adhere to the plan of operation.

(d) If for any reason the association fails to adopt a suitable plan of operation within 90 days following the original effective date of this article, or if at any time thereafter the association fails to adopt suitable amendments to the plan of operation, the commissioner shall after hearing adopt and promulgate reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. These rules shall continue in force until modified by the commissioner after hearing or superseded by a plan of operation, adopted by the association and approved by the commissioner.

(e) In accordance with its plan of operation, the association may designate one or more of its members as a servicing facility, but a member may decline this designation. Each servicing facility shall be reimbursed by the association for all reasonable expenses it incurs and for all payments it makes on behalf of the association. Each servicing facility shall have authority to perform any functions of the association that the board of governors lawfully may delegate to it and to do so on behalf of and in the name of the association. The designation of servicing facilities shall be subject to the approval of the commissioner.

(f) The association shall have authority to borrow funds when necessary to effectuate the provisions of this article, and may provide in its plan of operations for any of the following:

(1) The issuance of notes, bonds, or debentures, or the establishment of a special purpose trust or other entity, solely for the purpose of facilitating a financing.

(2) The securing of that borrowing or those notes, bonds, or debentures by pledging or granting liens or mortgages, or by otherwise encumbering its real or personal property, including, but not limited to, premiums levied under Section 1063.5.

(g) The association, either in its own name or through servicing facilities, may be sued and may use the courts to assert or defend any rights the association may have by virtue of this article as reasonably necessary to fully effectuate the provisions thereof.

(h) The association shall have the right to intervene as a party in any proceeding instituted pursuant to Section 1016 wherein liquidation of a member insurer as defined in Section 1063.1 is sought.

(i) (1) The association shall have an annual audit of its financial condition conducted by an independent certified public accountant. The audit shall be conducted, to the extent possible, in accordance with generally accepted auditing standards (GAAS) and the report of the audit shall be submitted to the commissioner.

(2) The association shall annually audit at least one-third of the service companies retained by the association to adjust claims of insolvent insurers. The audits shall (A) assure that all covered claims are being investigated, adjusted, and paid in accordance with customary industry standards and practices and all applicable statutes, rules, and regulations, and (B) examine the management and supervisory systems overseeing the claims functions. The audits shall be conducted by the association or an independent auditor, provided that the three largest service companies, as measured by the number of claims processed for the association during the previous three fiscal years, shall be audited by an independent auditor at least once every three years. The association shall implement systems to retain independent auditing firms for the purpose of this paragraph, provided that no one firm is designated or utilized as an exclusive provider. Audits conducted pursuant to this paragraph shall be submitted annually to the commissioner for review.

(j) The commissioner shall examine the association to the same extent as, and in accordance with, the requirements of Article 4 (commencing with Section 729) of Chapter 1 of Part 2 of Division

1, which sets forth the examination requirements applicable to admitted insurers. A copy of the examination report shall be filed with the Chairpersons of the Senate and Assembly Committees on Insurance no later than December 31 of the year the report is completed.

SEC. 17. Section 1070.6 of the Insurance Code is amended to read:

1070.6. The withdrawal procedure and fees prescribed by this article shall not be required of a nonsurviving admitted constituent to a merger or consolidation into another admitted insurer in accordance with the applicable statutes and the commissioner's prior written consent given pursuant to paragraph (3) of subdivision (a) of Section 1011, provided the commissioner is satisfied by documents, authenticated so as to be admissible in evidence over objection, filed with him, that:

(a) The constituent has discharged all of its liabilities to residents of this state in the manner provided by Section 1071.5;

(b) There will be an admitted insurer directly available to the constituent's policyholders: (1) to obtain policy changes and endorsements, (2) to receive payment of premiums and refund unearned premiums, (3) to serve notice of claim, proof of loss, summons, process, and other papers, and (4) for purposes of suit;

(c) The constituent shall timely file with the commissioner appropriate financial statements reporting its insurance business done in this state during the calendar year of the merger or consolidation and all appropriate tax returns required by law for the period, and shall timely pay all taxes found to be due on account of the business; and

(d) The constituent has surrendered its current California certificate of authority to the commissioner for cancellation as of the effective date of the merger.

The withdrawal procedure and fees prescribed by this article shall not be required of an insurer that has been liquidated by a final order of a court of record of this or any sister state provided a certified copy of the order reciting the fact of liquidation and discharge of all obligations has been filed with the commissioner.

SEC. 18. Section 1639 of the Insurance Code is amended to read:

1639. The following types of licenses under this chapter may be issued to nonresidents:

(a) A property broker-agent or a casualty broker-agent if the nonresident is duly licensed to transact those lines of insurance described in Section 1625, under the laws of the state, territory of the United States, or province of Canada where the resident license is maintained.

(b) A personal lines broker-agent if the nonresident is duly licensed to transact those lines of insurance described in Section 1625.5, under the laws of the state, territory of the United States, or province of Canada where the resident license is maintained.

(c) A life-only agent or an accident and health agent if the nonresident possesses a resident license in another state, territory of the United States, or province of Canada to transact life insurance or disability insurance.

(d) A nonresident may be granted authority to transact variable contracts if he or she has been granted that authority by the state where the resident license is maintained. To qualify for this authority, the nonresident is required to also be licensed as a life-only agent in the state where the resident license is maintained.

(e) A surplus line broker and a special lines surplus broker if the nonresident holds that type of license in the state or territory of the United States where the resident license is maintained.

(f) A credit insurance agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(g) A rental car agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(h) A cargo shipper's agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(i) A limited lines license if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained. As used in this section, "limited lines license" means any authority granted by the resident state that restricts the authority of the license to less than the total authority granted by any of the types of licenses identified in this section.

(j) A self-service storage agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

SEC. 19. Section 1670 of the Insurance Code is amended to read:

1670. If an applicant for any license under this chapter, within one year from the date of the receipt by the commissioner of the application, whether or not the filing is complete, or within one year from the date of the issuance to him or her of a certificate of convenience, if any, whichever is the later date, neither fully qualifies for and receives that license on a permanent basis, nor is denied its issue, the application is automatically denied without prejudice to the filing of a new application for the license unless in a proceeding under a statement of issues the commissioner for good cause determines the denial should be set aside or stayed.

SEC. 20. Section 1685 of the Insurance Code is amended to read:

1685. The commissioner may issue to an eligible person a certificate of convenience to act as any of the following:

(a) Any type of a licensee under this chapter or Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Part 5 (commencing with Section 121401) of Division 2 to administer the business of a licensed person who has died or who has been declared incompetent by the judgment of a court of competent jurisdiction. That certificate of convenience may be denominated an estate certificate of convenience.

(b) Any type of a licensee under this chapter or Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Part 5 (commencing with Section 121401) of Division 2 to conserve the business of a licensed natural person who enters the military service of the United States or to conserve the business of an organization under the conditions specified in Section 1697. That certificate of convenience may be denominated a military service certificate.

SEC. 21. Section 1687 of the Insurance Code is amended to read:

1687. Except as provided in Section 1637, to be eligible for a military service certificate of convenience, a person is required to be nominated therefor by the holder of a permanent license who, while the holder, entered the military service of the United States. "Military service" has the meanings ascribed to it by Section 101 of the Servicemembers Civil Relief Act of 2003 (Public Law 108-189).

SEC. 22. Section 1688 of the Insurance Code is repealed.

SEC. 23. Section 1689 of the Insurance Code is repealed.

SEC. 24. Section 1691 of the Insurance Code is repealed.

SEC. 25. Section 1692.1 of the Insurance Code is repealed.

SEC. 26. Section 1695 of the Insurance Code is repealed.

SEC. 27. Section 1699 of the Insurance Code is repealed.

SEC. 28. Section 1700 of the Insurance Code is repealed.

SEC. 29. Section 1704 of the Insurance Code is amended to read:

1704. (a) Any person acting as a licensee under this chapter shall not act as an agent of an insurer unless the insurer has filed with the commissioner a notice of appointment, executed by the insurer, appointing the licensee as the insurer's agent. Every property broker-agent, casualty broker-agent, personal lines broker-agent, or limited lines automobile insurance agent acting in the capacity of an insurance solicitor shall have filed on his or her behalf with the commissioner a notice executed by an insurance agent or insurance broker appointing and agreeing to employ the solicitor as an employee within this state. Additional notices of appointment may be filed by other insurers before the license is issued and thereafter as long as the license remains in force. The authority to transact insurance given to a licensee by an insurer, property broker-agent, casualty broker-agent, personal lines broker-agent, or limited lines automobile insurance agent, as the case may be, by appointment shall be effective as of the date the notice of appointment is signed. That authority to transact shall apply to transactions occurring after that date and for the purpose of determining the insurer's, property broker-agent's, casualty broker-agent's, personal lines broker-agent's, or limited lines automobile insurance agent's liability for acts of the appointed licensee. No notice of appointment of a life agent, property broker-agent, casualty broker-agent, personal lines broker-agent, limited lines automobile insurance agent, or travel insurance agent shall be filed under this subdivision unless the licensee being appointed has consented to that filing. Each appointment made under this subdivision shall by its terms continue in force until:

(1) The cancellation or expiration of the license applied for or held at the time the appointment was filed.

(2) The filing of a notice of termination by the insurer or employing property broker-agent or casualty broker-agent, or by

the appointed life agent, property broker-agent, casualty broker-agent, travel insurance agent, or insurance solicitor.

(b) Upon the termination of all appointments, or all endorsements naming the licensee on the license of an organization licensee, and the cancellation of the bond required pursuant to Section 1662 if acting as a broker, the permanent license shall not be canceled, but shall become inactive. It may be renewed pursuant to Section 1718. It may be reactivated at any time prior to its expiration by the filing of a new appointment pursuant to this section, Section 1707, and Section 1751.3, or the filing of a new bond pursuant to Section 1662. An inactive license shall not permit its holder to transact any insurance for which a valid, active license is required.

(c) Upon the termination of all appointments of a person licensed under a certificate of convenience, that certificate shall be canceled and shall be returned by its lawful custodian to the commissioner.

(d) A property broker-agent or a casualty broker-agent appointing an insurance solicitor pursuant to this section, if a natural person, shall be the holder of a permanent license to act as such a broker-agent or the holder of a certificate of convenience so to act issued pursuant to either subdivision (a) or (b) of Section 1685. If the property broker-agent or the casualty broker-agent is an organization, it shall be the holder of a permanent license.

(e) The filing of an incomplete or deficient action notice with the department shall require the filing of an amended, complete action notice, together with the payment of the fee therefor specified in subdivision (l) of Section 1751.

(f) A notice of appointment appointing a solicitor may be filed by a second or subsequent property broker-agent or casualty broker-agent. The broker-agent seeking to appoint the solicitor shall enter into an agreement with all other property broker-agents and casualty broker-agents with whom the insurance solicitor has an existing appointment. The agreement shall govern how the broker-agents will determine on which property broker-agent's or casualty broker-agent's behalf the solicitor is working when dealing with individuals who are customers of none of the property broker-agents and casualty broker-agents with whom the solicitor has an appointment. If the agreement does not identify which broker-agent or broker-agents are liable for the act of the solicitor, all property broker-agents and casualty broker-agents with whom

the solicitor is appointed at the time of the act shall be jointly and severally liable for that act.

SEC. 30. Section 1749.1 of the Insurance Code is amended to read:

1749.1. (a) The commissioner shall appoint a curriculum board consisting of representatives of insurance agents, brokers, and life agents trade associations, representatives of insurance companies, consumer groups, bail agents, and insurance adjusters to develop the prelicensing and continuing education curriculum, including a list of preapproved courses of study, including courses of study for professional designations that would satisfy the requirements of this article, subdivision (a) of Section 1810.7, and Sections 14090.1 and 15059.1. The curriculum board shall develop or recommend courses of study covering all lines of insurance to be sold under each license, including, but not limited to, any special products such as long-term care insurance, Medi-gap policies, disability insurance products, and course study on ethics and pertinent sections of this code. The curriculum developed and the courses of study approved by the board shall be submitted to the commissioner for final approval.

(b) The curriculum board shall also develop standards for providers and instructors of prelicensing and continuing education courses, programs, and seminars, which standards shall be approved by the board and submitted to the commissioner for final approval. The curriculum board may approve standards for courses in business management practices that may consist of up to 25 percent of the agent or broker requirements for license renewal. No prelicensing or continuing education course shall include sales training, motivational training, self-improvement training, or training offered by insurers or agents regarding new products or programs.

(c) For purposes of applying subdivision (b), courses in “business management practices” shall consist of the following subject matter:

(1) Accounting and financial management, including trust account maintenance, reconciliation and auditing, financial statements, business budgeting, income and expense ratios, banking and investment practices, and business perpetuation and planning.

(2) Information and database management, including recordkeeping, privacy law, and other legal requirements covering the use of information.

(3) Human resource management, including employee compliance supervision, recruitment, training, and licensing.

(4) Customer service management, consisting of methods to improve handling of consumer inquiries and complaints.

(5) Communication skills, consisting of methods to improve writing and verbal skills for communication with clients, employees, insurance carriers, claims departments, and regulators.

(d) Whenever the commissioner has reasonable cause to believe, and determines after public hearing, that any approved course, program of instruction, or seminar is being conducted so as to fail to meet the commissioner's prelicensing or continuing education curriculum, or any provider or instructor for any course, program, or seminar has failed to comply with the commissioner's standards, the commissioner may make and serve upon the provider or instructor of that course, program, or seminar an order or orders rescinding approval for that provider, course, program, or seminar, or imposing fines and penalties on that provider, or both. The amount of any fines and penalties shall not exceed the amounts set forth in Section 1748, and shall be based on the criteria for assessing penalties specified in that section. No credit towards meeting the requirements of this article shall be granted any applicant or licensee for completion of a course, program, or seminar after the effective date of any order rescinding approval for that course, program, or seminar. The commissioner shall serve notice of hearing required by this section upon the provider or instructor of the course, program, or seminar, stating the time and place therefor, and the grounds upon which his or her order is made. The hearing shall occur not less than 30 nor more than 60 days after notice is served.

(e) The commissioner may impose monetary penalties for minor instances of noncompliance with the standards established pursuant to this article, such as late course roster submissions and late course presentation schedules. The monetary penalties shall not exceed the amounts of the fees established pursuant to Section 1751.1. The commissioner shall adopt regulations to establish the monetary penalties to be levied against providers for late filings and other minor instances of noncompliance with this article and Article 6.5

(commencing with Section 2186) of Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations.

SEC. 31. Section 1750 of the Insurance Code is amended to read:

1750. The commissioner shall require in advance as a fee for filing application for the hereinafter designated licenses, renewals thereof, or changes in outstanding licenses, an amount calculated as set forth herein. The fee is determined by multiplying the number of license years in the period of the license applied for or the remaining period of an existing license counting any initial fractional license year of that period as one year for that purpose, as follows:

- (a) Casualty broker-agent, fifty-six dollars (\$56).
- (b) Property broker-agent, fifty-six dollars (\$56).
- (c) Property and casualty broker-agent, when applied for on a single application, fifty-six dollars (\$56).
- (d) Personal lines broker-agent, resident, fifty-six dollars (\$56).
- (e) Life agent, resident, fifty-six dollars (\$56).
- (f) Life agent, nonresident, fifty-six dollars (\$56).
- (g) Surplus line broker who is an individual transacting only on behalf of a surplus line broker organization, two hundred fifty dollars (\$250).
- (h) Surplus line broker not described in subdivision (e), five hundred dollars (\$500).
- (i) Variable contract authority, nonresident, when not also applying for a nonresident life agent license, sixty-four dollars (\$64).

SEC. 32. Section 1751 of the Insurance Code is amended to read:

1751. The commissioner shall require, in advance, a fee for filing the following documents:

- (a) Application for registration of change in membership of a copartnership licensed as any of the following:
 - (1) Casualty broker-agent, fifty-six dollars (\$56).
 - (2) Property broker-agent, fifty-six dollars (\$56).
 - (3) Property and casualty broker-agent, when applied for on a single application, fifty-six dollars (\$56).
 - (4) Life agent, resident, forty-eight dollars (\$48).
 - (5) Life agent, nonresident, fifty-three dollars (\$53).
 - (6) Personal lines broker-agent, fifty-six dollars (\$56).

(b) Notice for adding or removing from any life agent's, property broker-agent's, casualty broker-agent's, or personal lines broker-agent's license issued to an organization the name of any natural person named thereon, sixteen dollars (\$16).

(c) First amendment to an application, eight dollars (\$8); a second and each subsequent amendment to an application, sixteen dollars (\$16).

(d) Original application to be given the qualifying examination for a license of a property, casualty, or personal lines licensee, twenty-seven dollars (\$27) for each person to be examined.

(e) Original application to be given the qualifying examination for a license of a life licensee, twenty-seven dollars (\$27) for each person to be examined.

(f) Application for reexamination for any of the licenses mentioned in this section, twenty-seven dollars (\$27) for each person to be reexamined.

(g) Application which includes a request for a certificate of convenience pursuant to Article 8 (commencing with Section 1685), twenty dollars (\$20) in addition to, and not in lieu of, fees otherwise required.

(h) Application or request for approval of a true or fictitious name pursuant to Section 1724.5, thirty dollars (\$30), except that there shall be no fee when the name is contained in an original application.

(i) "A ratification of appointments of agents" whereby the surviving insurer in a merger or consolidation assumes responsibility for all agents then lawfully appointed for one of the constituent insurers and makes each its agent, one hundred three dollars (\$103).

(j) A bond, pursuant to Article 5 (commencing with Section 1662) or Section 1760.5 or 1765, except when the bond constitutes part of an original application filing, sixteen dollars (\$16).

(k) An application or request for clearance and cancellation notice of a current licensee of record, sixteen dollars (\$16).

(l) An amended action notice pursuant to subdivision (e) of Section 1704, five dollars (\$5).

SEC. 33. Section 1758.1 of the Insurance Code is amended to read:

1758.1. (a) For the purpose of making provision for the issuance of policies or contracts authorized by Article 5

(commencing with Section 10506) of Chapter 5 of Part 2 of Division 2, the commissioner may grant authority to transact variable contracts to a person or a natural person named on a license of an organization licensed as a life agent that is appointed by an admitted insurer that is required to register itself or to register a separate account or fund with the United States Securities and Exchange Commission under the Federal Investment Company Act of 1940, or to register its variable policies or contracts with the Securities and Exchange Commission under the Federal Securities Act of 1933, and has complied with that requirement. The commissioner may grant variable contract authority to a person who is not a resident of California and is not a licensed life agent in California provided that the person is licensed for both life and variable contract authority in his or her resident state.

(b) No person shall act as an agent of the insurer in the transaction of the policies or contracts unless he or she holds a valid authority under this article.

SEC. 34. Section 1759.10 of the Insurance Code is amended to read:

1759.10. A person shall not act as, or hold himself or herself out to be, an administrator in this state, other than an adjuster licensed in this state for the kinds of business for which he or she is acting as an administrator, unless he or she holds a certificate of registration as an administrator issued by the commissioner. The certificate shall be issued, renewed, and held in accordance with, and subject to, all the provisions applicable to a life agent contained in Article 6 (commencing with Section 1666), excluding Section 1672, Article 10 (commencing with Section 1708), Article 11 (commencing with Section 1716), and Article 13 (commencing with Section 1737), excluding Section 1741, of, and subject to the fees applicable to resident life agents as set forth in Article 14 (commencing with Section 1750) of, Chapter 5. Every administrator shall also comply with Section 1724.5.

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

1765.1. No surplus line broker shall place any coverage with a nonadmitted insurer for a home state insured unless the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at

the time of placement, the nonadmitted insurer meets the requirements of either subdivision (a) or (b):

(a) If the insurer is domiciled in one of the states of the United States or its territories as defined in subdivision (o) of Section 1760.1:

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

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

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

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

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

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

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

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

(f) (1) Insurance may be placed on a limited basis with insurers not eligible pursuant to this section if all of the following conditions are met:

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

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that are eligible nonadmitted insurers.

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

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

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

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

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

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

(D) The insured is a multiple employer welfare arrangement, as defined in Section 1002(40)(A) of Title 29 of the United States

Code, or any other arrangement among two or more employers that are not under common ownership or control, which is established or maintained for the primary purpose of providing insurance benefits to the employees of two or more employers.

(E) Ineligible insurers represent a disproportionate portion of the lower layers of the coverage.

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

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

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

SEC. 36. Section 1765.4 of the Insurance Code is amended to read:

1765.4. Any natural person applying for a license to act as a surplus line broker shall prove his or her competency by showing he or she holds an existing license to act as a property broker-agent and casualty broker-agent, which requires passing the qualifying examination for that insurance broker's license. Any natural person who is not a resident of California may prove his or her competency

by showing that he or she holds an existing license for property and casualty in his or her resident state.

SEC. 37. Section 1810.7 of the Insurance Code is amended to read:

1810.7. (a) In order to be eligible to take the examination required to be licensed under this chapter, the applicant shall have completed a minimum of 20 hours of classroom education in subjects pertinent to the duties and responsibilities of a bail licensee, including, but not limited to, all related laws and regulations, rights of the accused, ethics, and apprehension of bail fugitives. Additionally, a licensee shall complete in each two-year license term not less than 12 hours of continuing education in these subjects prior to renewal of his or her license.

(b) The commissioner shall approve or disapprove an applicant to provide education for licensure as required by this section within 90 days of receipt of the applicant's full and complete application. However, this 90-day period shall be tolled during the pendency of any investigation of the applicant by the commissioner for an alleged violation that would, if proven, result in the suspension, revocation, or denial of the provider's approval to provide continuing education to bail agents as prescribed in Section 1813. Failure to disapprove an applicant within this period shall result in the automatic approval of the application. Approval shall be valid for two years. The commissioner may, at any time, disapprove any provider who is not qualified or whose course outlines are not approved, who is not of good business reputation, or who is lacking in integrity, honesty, or competency. A provider shall not provide education for licensure following the expiration of the two-year approval period unless the commissioner has renewed the provider's approval. The commissioner shall, at the time of renewal, approve or disapprove the course outlines and schedule of classes to be provided.

(c) Providers responsible for providing education for licensure under this chapter shall consult with the California State Sheriffs' Association, the California District Attorneys Association, and the County Counsels Association of California prior to submission of the course outlines for approval by the commissioner, and these entities may respond within 30 days of receipt of a request for consultation from a provider. Providers shall maintain records of their requests for consultation and any responses from these

entities, and make these records available to the department for review as requested. The bail license fee shall be increased, the amount of which shall be determined by the commissioner, which shall be deposited in the Insurance Fund for the purposes of recovering the administrative costs for meeting the conditions and purposes of this section. Providers of education or continuing education shall offer courses to all applicants at the same course fees.

(d) Any person who falsely represents to the commissioner that compliance with this section has been met shall be subject, after notice and hearing, to the penalties and fines set out in Section 1814.

(e) A licensee shall not be required to comply with the continuing education requirements of this section if the licensee submits proof satisfactory to the commissioner that he or she has been a licensee in good standing for 30 continuous years in this state and is 70 years of age or older.

(f) The commissioner may make reasonable rules and regulations necessary, advisable, and convenient for the administration and enforcement of this chapter. The rules and regulations may include a schedule establishing fees to be paid by an applicant seeking approval to act as a provider and to deliver courses under this section. Those fees shall be in an amount no greater than fees paid by applicants providing similar courses to other insurance agents licensed by the department, as specified in Section 1751.1.

(g) Nothing in this chapter shall preclude completion of the bail agent continuing education requirements of this section through a course of instruction offered via the Internet or correspondence. However, this subdivision shall not be construed to allow completion of the prelicensing education requirements of this section through a course of instruction.

(h) Successful completion of the continuing education requirements by means of an Internet or correspondence course shall require obtaining a passing grade of at least 70 percent on a written final examination. The final examination shall be open book and shall be graded by the approved provider. The provider shall issue certificates of completion only to those students who have passed the final examination.

SEC. 38. Section 1851 of the Insurance Code is amended to read:

1851. The provisions of this chapter shall apply to all insurance on risks or on operations in this state, except:

(a) Reinsurance, other than joint reinsurance to the extent stated in Article 5 (commencing with Section 1856).

(b) Life insurance.

(c) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance.

(d) Title insurance.

(e) Disability insurance.

(f) Workers' compensation insurance and insurance of any liability of employers for injuries to, or death of, employees arising out of, and in the course of, employment when this insurance is incidental to, and written in connection with, the workers' compensation insurance issued to the same employer and covering the same employer interests.

(g) Insurance transacted by county mutual fire insurers or county mutual fire reinsurers.

SEC. 39. Section 1864 of the Insurance Code is amended to read:

1864. (a) Each insurer engaged in writing child care liability insurance coverage in this state shall submit to the commissioner a report of its operations regarding child care liability claims experience for the last preceding calendar year at the request of the commissioner, but not more than annually, on a form prescribed by the commissioner. Each report shall separately state the following information for family day care homes, as defined in Section 1596.78 of the Health and Safety Code, and licensed child care centers, as defined in Section 1596.76 of the Health and Safety Code:

(1) Premiums earned.

(2) Premiums written.

(3) Number of claims.

(4) Number of new claims during the reporting period.

(5) Number of claims closed during the reporting period.

(6) Number of claims outstanding at the end of the reporting period.

(7) Total losses incurred.

(8) Total losses incurred as a percentage of premiums earned.

(9) Total number of policies in force on the last day of the reporting period.

(10) Total number of policies canceled.

(11) Total number of policies nonrenewed.

(12) Net underwriting gain or loss.

(13) Separate allocations of expenses for commissions, other acquisition costs, general office expenses, taxes, licenses and fees, and other expenses. The allocations required by this section shall be made by dividing the company's total premiums earned for child care liability insurance by its total premiums earned and applying the ratio determined to the expenses reported in the company's annual statement filed with the commissioner pursuant to Section 900.

(b) The commissioner shall develop and issue reporting forms to insurers at least 90 days prior to the due date of the reports required pursuant to this section.

(c) The Legislature finds that it is in the public interest of the policyholders of this state that insurers writing child care liability insurance permit remittance of premiums to occur on an installment basis.

(d) The information provided under this section pertaining to a specified claim, insurance policy, or insurer shall be confidential and shall only be revealed by the department on a nonspecific basis as part of an aggregate report of claims or policies.

SEC. 40. Section 1872.1 of the Insurance Code is repealed.

SEC. 41. Section 12100 of the Insurance Code is amended to read:

12100. As used in this article:

(a) (1) "Financial guaranty insurance" means a surety bond, an insurance policy or, when issued by an insurer, an indemnity contract and any guarantee similar to the foregoing types, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(A) Failure of any obligor on or issuer of any debt instrument or other monetary obligation (including equity securities guaranteed

under a surety bond, insurance policy, or indemnity contract) to pay, when due to be paid by the obligor or scheduled at the time insured to be received by the holder of the obligation, principal, interest, premium, dividend, purchase price of or on the instrument or obligation, or other monetary payment when the failure is the result of financial default or insolvency, or, provided that the payment source is investment grade, any other failure of that payment source to make payment, regardless of whether the obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted.

(B) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products.

(C) Changes in the rate of exchange of currency.

(D) Changes in the value of financial or commodity indices, or price levels in general.

(E) Other events that the commissioner determines by order, regulation, or written consent are substantially similar to any of the foregoing.

(2) Notwithstanding paragraph (1), “financial guaranty insurance” shall not include any of the following:

(A) Insurance of any loss resulting from any event described in paragraph (1), if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event.

(ii) A failure of or deficiency in the operation of equipment.

(iii) An inability to extract or recover a natural resource.

(B) Title insurance authorized by Section 104 and as permitted to be written by title insurers pursuant to Chapter 1 (commencing with Section 12340) of Part 6.

(C) Surety insurance as authorized by Section 105.

(D) Credit unemployment insurance, meaning insurance on a debtor in connection with a specific loan or other credit transaction, to provide payments to a creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed.

(E) Credit insurance authorized by Section 113.

(F) Guaranteed investment contracts and funding agreements issued by life insurance companies that provide that the life insurer

itself will make specified payments in exchange for specific premiums or contributions.

(G) Mortgage guaranty insurance authorized by Section 119 and as permitted to be written by a mortgage guaranty insurer pursuant to Chapter 2A (commencing with Section 12640.01) of Part 6.

(H) Indemnity contracts or similar guarantees, to the extent that they are not otherwise limited or proscribed by this article, in which a life insurer does any of the following:

(i) Guarantees its obligations or indebtedness or the obligations or indebtedness of a subsidiary (as defined in Section 1215) other than a financial guaranty insurance corporation; provided that:

(I) To the extent that any obligations or indebtedness are backed by specific assets, those assets shall at all times be owned by the life insurer or the subsidiary.

(II) In the case of the guarantee of the obligations or indebtedness of the subsidiary that are not backed by specific assets of the life insurer, the guarantee terminates once the subsidiary ceases to be a subsidiary.

(ii) Guarantees obligations or indebtedness (including the obligation to substitute assets where appropriate) with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guarantees obligations or indebtedness acquired by its subsidiary, provided that the assets acquired pursuant to this clause have been either of the following:

(I) Acquired by a special purpose entity, whose sole purpose is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by the assets.

(II) Sold to an independent third party.

(iii) Guarantees obligations or indebtedness of an employee or agent of the life insurer.

(I) Any cramdown bond or mortgage repurchase bond, as those phrases are used by nationally recognized rating agencies in respect of mortgage-backed securities.

(J) Residual value insurance.

(K) Any other form of insurance covering risks that the commissioner determines by order, regulation, or written consent to be substantially similar to any of the foregoing.

(b) “Affiliate” means a person that, directly or indirectly, owns at least 10 but less than 50 percent of the financial guaranty insurance corporation or that is at least 10 percent but less than 50 percent, directly or indirectly, owned by a financial guaranty insurance corporation.

(c) “Asset-backed securities” means either of the following:

(1) Securities or other financial obligations of an issuer provided that both of the following apply:

(A) The issuer is a special purpose corporation, trust, or other entity, or, provided that the securities or other financial obligations constitute an insurable risk, is a bank, trust company, or other financial institution, deposits in which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or any successors thereto.

(B) The securities or other financial obligations are related to a pool of assets so that all of the following apply:

(i) The pool of assets has been conveyed, pledged, or otherwise transferred to or is otherwise owned or acquired by the issuer.

(ii) The pool of assets backs the securities or other financial obligations issued.

(iii) No asset in the pool, other than an asset directly payable by, guaranteed by, or backed by the full faith and credit of the United States government or that otherwise qualifies as collateral under paragraph (1) or (2) of subdivision (e), has a value exceeding 20 percent of the aggregate value of the pool.

(2) A pool of credit default swaps or credit default swaps referencing a pool of obligations, provided that each of the following is true:

(A) The swap counterparty whose obligations are insured under the credit default swap is a special purpose corporation, special purpose trust, or other special purpose legal entity.

(B) No reference obligation in the pool, other than an obligation directly payable by, guaranteed by, or backed by the full faith and credit of the United States government, or that otherwise qualifies as collateral under paragraph (2) of subdivision (e), has a notional amount exceeding 10 percent of the pool’s aggregate notional amount.

(C) The insurer has the benefit of a deductible or other first loss credit protection against claims under its insurance policy.

(d) “Average annual debt service” means the amount of insured unpaid principal and interest on an obligation multiplied by the number of the insured obligations (assuming that each obligation represents a \$1,000 par value), divided by the amount equal to the aggregate life of all of those obligations. This definition, expressed as a formula in regard to bonds, is as follows:

$$\text{Average Annual Debt Service} = \frac{\text{Total Debt Service} \times \text{Number of Bonds}}{\text{Bond Years}}$$

$$\text{Total Debt Service} = \text{Insured Unpaid Principal} + \text{Interest}$$

$$\text{Number of Bonds} = \frac{\text{Total Insured Principal}}{\$1,000}$$

$$\text{Bond Years} = \text{Number of Bonds} \times \text{Term in Years}$$

Term in Years = Term to maturity based on scheduled amortization or, in the absence of a scheduled amortization in the case of asset-backed securities or other obligations lacking a scheduled amortization, expected amortization, in each case determined as of the date of issuance of the insurance policy based upon the amortization assumptions employed in pricing the insured obligations or otherwise used by the insurer to determine aggregate net liability.

(e) “Collateral” means any of the following:

(1) Cash.

(2) The cashflow from specific obligations that are not callable and scheduled to be received based on expected prepayment speed on or prior to the date of scheduled debt service (including scheduled redemptions and prepayments) on the insured obligation, provided that any of the following is true, as applicable:

(A) The specific obligations are directly payable by, guaranteed by, or backed by the full faith and credit of the United States government.

(B) In the case of insured obligations denominated or payable in a foreign currency as permitted under paragraph (3) of subdivision (b) of Section 12112, the specific obligations are directly payable by, guaranteed by, or backed by the full faith and credit of the foreign government or the central bank thereof.

(C) The specific obligations are insured by the same insurer that insures the obligations being collateralized, and the cashflows from the specific obligations are sufficient to cover the insured scheduled payments on the obligations being collateralized.

(3) The market value of investment grade obligations, other than obligations evidencing an interest in the project or projects financed with the proceeds of the insured obligations.

(4) The face amount of each letter of credit that meets all of the following criteria:

(A) Is irrevocable.

(B) Provides for payment under the letter of credit in lieu of or as reimbursement to the insurer for payment required under a financial guaranty insurance policy.

(C) Is issued, presentable, and payable either:

(i) At an office of the letter of credit issuer in the United States.

(ii) At an office of the letter of credit issuer located in the jurisdiction in which the trustee or paying agent for the insured obligation is located.

(D) Contains a statement that either:

(i) Identifies the financial guaranty insurance corporation, its collateral agent, or any successor by operation of law, including any liquidator, rehabilitator, receiver, or conservator, as the beneficiary.

(ii) Identifies the trustee or the paying agent for the insured obligation as the beneficiary.

(E) Contains a statement to the effect that the obligation of the letter of credit issuer under the letter of credit is an individual obligation of that issuer and is in no way contingent upon reimbursement with respect thereto.

(F) Contains an issue date and an expiration date.

(G) Does either of the following:

(i) Has a term at least as long as the shorter of the term of the insured obligation or the term of the financial guaranty insurance policy.

(ii) Provides that the letter of credit shall not expire without 30 days prior written notice to the beneficiary and allows for drawing under the letter of credit in the event that, prior to expiration, the letter of credit is not renewed or extended or a substitute letter of credit or alternate collateral meeting the requirements of subdivision (e) is not provided.

(H) If the letter of credit is governed by the 1983 revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 or 500), or any successor revision approved by the commissioner, it shall contain a provision for an extension of time, of not less than 30 days after resumption of business, to draw against the letter of credit in the event that one or more of the occurrences described in Article 19 of Publication 400 or 500 occurs.

(I) Is issued by a bank, trust company, or savings association that meets all of the following criteria:

(i) Is organized and existing under the laws of the United States or any state thereof or, in the case of a financial institution organized under the laws of a foreign country, has a branch or agency office licensed under the laws of the United States or any state thereof and is domiciled in a member country of the Organization of Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner.

(ii) Has (or is the principal operating subsidiary of a financial institution holding company that has) a long-term debt rating of at least investment grade.

(iii) Is not a parent, subsidiary, or affiliate of the trustee or paying agent, if any, with respect to the insured obligation if that trustee or paying agent is the named beneficiary of the letter of credit.

(5) The amount of credit protection available to the insurer (or its nominee) under each credit default swap that satisfies each of the following:

(A) May not be amended without the consent of the insurer and may only be terminated in accordance with one of the following:

(i) At the option of the insurer.

(ii) At the option of the counterparty to the insurer (or its nominee), if the credit default swap provides for the payment of a termination amount equal to the replacement cost of the terminated credit default swap determined with reference to standard documentation of the International Swap and Derivatives Association, Inc. or otherwise acceptable to the commissioner.

(iii) At the discretion of the commissioner acting as rehabilitator, liquidator, or receiver of the insurer upon payment by or on behalf of the insurer of any termination amount due from the insurer.

(B) Provides for payment under all instances in which payment under a financial guaranty insurance policy is required, except that payment under the credit default swap may be on a first loss, excess of loss, or other nonpro rata basis and may apply on an aggregate basis to more than one policy.

(C) Is provided by one of the following:

(i) A counterparty whose obligations under the credit default swap are insured by a financial guaranty insurance corporation licensed under this article or guaranteed by a financial institution referred to in clauses (ii) and (iii) of this subparagraph.

(ii) A financial institution satisfying the requirements of clauses (i) to (iii), inclusive, of subparagraph (I) of paragraph (4), provided that obligations of the financial institution on parity with its obligations under the credit default swap are rated as investment grade, and further provided that, if the financial institution is not organized under, or acting through a branch or agency office licensed under, the laws of the United States or any state thereof, then the financial institution is required to collateralize the replacement cost of the credit default swap in the event that it fails to maintain the investment grade rating.

(iii) Any other financial institution that the commissioner determines to be substantially similar to any specified in clause (i) or (ii).

(iv) The requirements of this subparagraph shall not be construed as authority for an insurer domiciled in the United States to issue credit default swaps unless the insurer has explicit authority to issue credit default swaps.

Collateral shall be deposited with or held by the financial guaranty insurance corporation, held by a trustee or agent for the benefit of the financial guaranty insurance corporation in trust or to perfect a security interest, or held in trust pursuant to the bond indenture or other trust arrangement by a trustee or custodian for the benefit of holders of the insured obligations in the form of funds for payment of insured obligations, sinking funds, or other reserves that may be used for the payment of insured obligations, collateral agent fees and trustee fees, or reimbursement of the financial guaranty insurance corporation on any obligation insured

by the corporation. The trustee, custodian, or agent shall be a bank, savings association, depository institution, or other entity acceptable to the commissioner, the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation (or any successors thereto), or in the case of banking organizations organized under the laws of a foreign country in addition satisfies the requirements of clauses (i) and (ii) of subparagraph (I) of paragraph (4), and in each case that has a net worth of at least twenty-five million dollars (\$25,000,000). The trustee or agent may also be an approved or qualified servicer or originator of the kind of assets that comprise the collateral that maintains in force at all times errors and omissions insurance applicable to the trust or agency activities, including without limitation, a servicer qualified under a federal or state insurance or guaranty program to service loans or mortgage loans. The commissioner may adopt regulations, bulletins, notices or orders to limit the amount of collateral provided by obligations, letters of credit, or credit default swaps, or to limit the amount of collateral provided by any single issuer, bank, or counterparty as provided for in this subdivision. The commissioner may also require additional reporting as deemed necessary.

(f) “Commercial real estate” means income-producing real property other than residential property consisting of less than five units.

(g) “Contingency reserve” means an additional liability reserve established to protect policyholders against the effects of adverse economic cycles or other unforeseen circumstances.

(h) “Credit default swap” means an agreement referencing credit derivative definitions published from time to time by the International Swap and Derivatives Association, Inc., or otherwise acceptable to the commissioner, pursuant to which a party agrees to compensate another party in the event of a payment default by, insolvency of, or other adverse credit event in respect of, an issuer of a specified security or other obligation; provided that the agreement does not constitute an insurance contract and the making of the credit default swap does not constitute the transaction of insurance.

(i) “Excess spread” means, with respect to any insured issue of asset-backed securities, the excess of (A) the scheduled cashflow

on the underlying assets that is reasonably projected to be available, over the term of the insured securities after payment of the expenses associated with the insured issue, to make debt service payments on the insured securities over (B) the scheduled debt service requirements on the insured securities, provided that this excess is held in the same manner as collateral is required to be held under subdivision (e).

(j) “Financial guaranty insurance corporation” means an insurer transacting financial guaranty insurance.

(k) “Governmental unit” means a state, territory, or possession of the United States of America, the District of Columbia, the country of Canada, a province of Canada, the United Kingdom, a public authority of the United Kingdom, a member country of the Organization for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner, a municipality, or a political subdivision of any of the foregoing, or any public agency or instrumentality thereof.

(l) “Guarantees of consumer debt obligations” means insurance policies indemnifying a purchaser or lender against loss or damage resulting from defaults on a pool of debts owed for extensions of credit (including in respect of installment purchase agreements and leases) to individuals provided in the normal course of the purchaser’s or lender’s business, provided that the pool meets the requirements of paragraph (2) of subdivision (c) and that the pool has been determined to be investment grade. Policies providing that coverage shall contain a provision that all liability terminates upon sale or transfer of the underlying obligation to any transferee that is not an insured of the financial guaranty insurance corporation under a similar policy.

(m) “Industrial development bond” means any security, or other instrument under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project serving a private industrial, commercial, or manufacturing purpose and not guaranteed by a governmental unit.

(n) “Insurable risk” means that the obligation on an uninsured basis has been determined to be not less than investment grade. With respect to asset-backed securities as defined in subdivision (c), the determination shall be, based solely on the pool of assets backing the insured obligation or securing the financial guaranty

insurance corporation, without consideration of the creditworthiness of the issuer.

(o) “Investment grade” means that the obligation or parity obligation of the same issuer is rated in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the commissioner, that the obligation or parity obligation of the same issuer, without regard to financial guaranty insurance, has been identified in writing by that rating agency as an insurable risk deemed to be of investment grade quality, or that the obligation or parity obligation of the same issuer has been determined to be investment grade (as indicated by a category 1 or 2 rating) by the Securities Valuation Office of the National Association of Insurance Commissioners.

(p) “Municipal bonds” means municipal obligation bonds and special revenue bonds.

(q) (1) “Municipal obligation bond” means any security, or other instrument, including a lease payable or guaranteed by the United States or another national government that qualifies as a governmental unit, or any agency, department, or instrumentality thereof, or by a state or an equivalent subdivision of another national government that qualifies as a governmental unit, but not a lease of any other governmental unit, under which a payment obligation is created, issued by or on behalf of a governmental unit or issued by a special purpose corporation, special purpose trust, or other special purpose legal entity to finance a project or undertaking serving a substantial public purpose, and that is one or more of the following:

(A) Payable from tax revenues, but not tax allocations, within the jurisdiction of the governmental unit.

(B) Payable or guaranteed by the United States of America or another national government that qualifies as a governmental unit, or any agency, department, or instrumentality thereof, or by a housing agency of a state or an equivalent political subdivision of another national government that qualifies as a governmental unit.

(C) Payable from rates or charges (but not tolls) levied or collected in respect of a nonnuclear utility project, public transportation facility (other than an airport facility) or public higher education facility.

(D) With respect to lease obligations, payable from past, present, or future appropriations.

(2) Notwithstanding paragraph (1), obligations of a special purpose corporation, special purpose trust, or other special purpose legal entity shall not be considered municipal obligation bonds unless the obligations are investment grade at the time of issuance, the obligations are payable from sources enumerated in subparagraphs (A) to (D), inclusive, and the project being financed or the tolls, tariffs, usage fees, or other similar rates or charges for its use are subject to regulation or oversight by a governmental entity.

(r) “Parent” means a person that, directly or indirectly, owns at least 50 percent of a financial guaranty insurance corporation.

(s) “Reinsurance” means cessions qualifying for credit under Section 12121.

(t) “Security” or “secured” means any of the following:

(1) A deposit at least equal to the full amount of the outstanding principal of the insured obligation.

(2) Collateral, as defined by subdivision (e), at least equal to the full amount of the outstanding principal of the insured obligation or that has a market value or scheduled cashflow that is equal to or greater than the scheduled debt service on the insured obligation.

(3) Property, provided the financial guaranty insurance corporation or the trustee has possession of evidence of the right, title, or authority to claim or foreclose thereon or otherwise dispose of the property for value, the scheduled cashflow from which, or market value thereof, is at least equal to the scheduled debt service on the insured obligation.

(u) “Special revenue bond” means any security or other instrument under which a payment obligation is created, issued by or on behalf of, or payable or guaranteed by, a governmental unit to finance a project or undertaking serving a substantial public purpose and not payable from the sources enumerated in subdivision (q) or securities that are substantially similar to the foregoing issued by any of the following:

(1) A not-for-profit corporation.

(2) A special purpose corporation, special purpose trust or other special purpose legal entity, provided that the obligations are investment grade at the time of issuance, the obligations are not payable from the sources enumerated in subparagraphs (A) to (D), inclusive, of paragraph (1) of subdivision (q), and the project being

financed or the tolls, tariffs, usage fees, or other similar rates or charges for its use are subject to regulation or oversight by a governmental entity.

(v) “Subsidiary” means a person that, directly or indirectly, is at least 50 percent owned by a financial guaranty insurance corporation.

(w) “Total net liability” of a financial guaranty insurance corporation means the aggregate amount of insured unpaid principal, interest, and other monetary payments, if any, of guaranteed obligations insured or assumed, less reinsurance and less collateral.

(x) “Utility first mortgage obligation” means an obligation of an issuer secured by a first priority mortgage on property owned or leased by an investor-owned or cooperative-owned utility company and located in the United States, Canada, or a member country of the Organization for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner, provided that the utility or utility property or the usage fees or other similar utility rates or charges are subject to regulation or oversight by a governmental entity.

SEC. 42. Chapter 2 (commencing with Section 12420) of Part 6 of Division 2 of the Insurance Code is repealed.

SEC. 43. Section 12961 of the Insurance Code is repealed.

SEC. 44. Section 12962 of the Insurance Code is amended to read:

12962. The commissioner shall report to the Governor, the Legislature, and to the committees of the Senate and Assembly having jurisdiction over insurance all of the following in the annual report submitted pursuant to Section 12922:

(a) An analysis of the information required by Sections 674.5, 1857.7, 1857.9, and 12963, including, but not limited to, all of the following:

(1) An aggregate and an average for all insurers for each item of information required by these sections.

(2) The number of insurers reporting policies written for each class during the calendar year.

(3) For each class, the number of insurers reporting a combined loss ratio of 100 percent or more, and the number reporting a combined loss ratio of under 100 percent.

(4) An analysis of adjustments made to loss reserves for prior years.

(5) The change in any item required to be included by paragraphs (1) to (4), inclusive, from the immediately prior year.

(b) An analysis of the activities of the department in implementing the provisions of Proposition 103 on the November 8, 1988, general election ballot, as set forth in Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1.

(c) Recommendations and proposals, including suggested legislation, to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable commissioner, and to ensure that insurance is fair, available, and affordable for all Californians.

(d) The requirements of this section shall be satisfied if the analysis required by this section is included in the annual report to the Governor required by Section 12922, and a copy of that report is provided to the Legislature.

SEC. 45. Section 12967 of the Insurance Code is amended to read:

12967. (a) (1) The department shall develop and implement a coordinated approach to gather, review, and analyze the archives of insurers and other archives and records, using onsite teams and the oversight committee, to provide for research and investigation into insurance policies, unpaid insurance claims, and related matters of victims of the Holocaust or of the Nazi-controlled German government or its allies, and the beneficiaries and heirs of those victims, and for losses arising from the activities of the Nazi-controlled German government or its allies for insurance policies issued before and during World War II by insurers who have affiliates or subsidiaries authorized to do business in California. Information compiled shall be placed in a centralized database for the retention of policy and claimant data, and the data shall be used to implement this section and Section 790.15.

(2) The department has an affirmative duty to play an independent role in representing the interests of Holocaust survivors where necessary, including the duty to carry out research, investigations, and advocacy. The department shall cooperate with, participate in, promote coordination with, and to the extent feasible and consistent with the purposes of this section, work jointly with

the National Association of Insurance Commissioners and the international commission on Holocaust survivor claims or any other entity involved in the documentation, resolution, settlement, or distribution of insurance claims, including the documentation of unpaid claims and the distribution of proceeds, and the establishment and maintenance of a database to contain information relevant to claimants and documents and historical information. The department shall work to recover information and records that will strengthen the claims of California residents.

(3) The department shall employ insurance archaeologists, economists, attorneys, accountants, and other specialists, in this country and in Europe, to implement this section. The department shall work jointly with the National Association of Insurance Commissioners and other organizations for this purpose. The department's cooperation with other states shall be for the purpose of advancing survivors' claims while avoiding duplication of efforts, and shall be dependent upon contributions by other states.

(4) In order to ensure that Holocaust survivors receive the most aggressive and independent representation possible in pursuit of their historic claims, in contracting with accounting firms, law firms, economists, or others to implement this section, the department shall, to the maximum extent possible, avoid any potential or actual conflict of interest by doing the following:

(A) Seek and give preference to firms that are entirely free of any associations with firms representing insurers and nations from which Holocaust survivors are seeking just treatment of their claims.

(B) If the department finds that it is necessary to contract with a firm or firms that have conflicts or potential conflicts of interest, those conflicts or potential conflicts of interest shall be disclosed to the commissioner, and the following requirements shall apply:

(i) The contract shall contain a provision that expresses a formal commitment on the part of the firm to aggressively pursue a maximum just settlement for Holocaust survivors and their families without regard to any adverse impacts on insurers, affiliates of insurers, nations, or others that may have employed the firm or affiliates of the firm that is contracting with the commissioner to assist in carrying out the commissioner's responsibilities under this section.

(ii) If any conflict or potential conflict exists between the firm, or an affiliate of the firm, and an insurer, an affiliate of an insurer, a nation or others directly or indirectly involving Holocaust claims, the firm shall disclose both the fact of the conflict or potential conflict, and all relevant information describing the nature of the conflict or potential conflict.

(iii) If a conflict or potential conflict exists between the firm, or an affiliate of the firm, and an insurer, an affiliate of an insurer, a nation, or others that does not directly or indirectly involve Holocaust claims, the firm shall disclose the fact of the conflict or potential conflict and identify the source of the conflict or potential conflict, but need not describe the particular circumstances or facts that create the conflict or potential conflict.

(C) The department may take whatever special measures it deems necessary to avoid either the appearance or the reality of conflicts that may undermine public confidence in the integrity of the effort to secure justice for Holocaust survivors.

(b) The funding of the activities provided for by this section for the 1998–99 fiscal year shall be from funds transferred pursuant to subdivision (b) of Section 1523 of the Code of Civil Procedure, which funds are hereby appropriated to the commissioner for that purpose. The commissioner shall seek reimbursement of those funds as provided in subdivision (c).

Funding for subsequent fiscal years shall be subject to the Budget Act and based on a plan submitted by the commissioner to the Legislature outlining the plan for reimbursement of expenses of the department by affected insurers.

Funds made available to implement this section shall be used to develop and implement a coordinated approach to gather, review, and analyze the archives of affected insurance groups, and other archives and records, using onsite teams and the oversight committee. These funds shall also be used to fund the necessary expenses of the Holocaust Era Insurance Claims Oversight Committee established in subdivision (d). The information compiled shall be placed in a centralized database for the retention of policy and claimant data, and that data shall be used by the department to implement this section.

(c) (1) Any funds recovered by the department for the purpose of reimbursing the state for costs associated with investigation and enforcement actions under this section shall not be deposited in

the Insurance Fund, but instead shall be delivered to the Controller for deposit into the General Fund.

(2) To the maximum extent possible, the department shall seek reimbursement for its costs incurred in implementing this section, including funds transferred pursuant to subdivision (b) of Section 1523 of the Code of Civil Procedure, from any settlements reached with affected insurers.

(d) (1) There is established a seven-member Holocaust Era Insurance Claims Oversight Committee, that shall be known as the oversight committee, and whose members shall be appointed as follows:

(A) Four members shall be appointed by the Governor.

(B) One member shall be appointed by the President pro Tempore of the Senate.

(C) One member shall be appointed by the Speaker of the Assembly.

(D) One member shall be appointed by the Commissioner of Insurance.

(2) The Governor shall designate one of his or her appointees as the chairperson of the committee.

(3) Each member of the committee shall serve at the pleasure of the authority that appointed him or her to serve on the committee.

(4) The oversight committee shall be composed of qualified individuals with experience in Holocaust claims cases, similar investigations, archival research, and international law. The oversight committee shall also include Holocaust survivors. No member of the oversight committee shall have a potential or actual conflict of interest, or shall be employed by a person who has a potential or actual conflict of interest.

(5) The appointments shall be expedited because of the urgency due to survivors' needs.

(6) The oversight committee shall have the following authority and shall do all of the following:

(A) Review and make recommendations concerning any insurance settlement negotiation or offer relating to a Holocaust era insurance claim in which the department is involved.

(B) Review and make recommendations to the commissioner on the priorities for expenditure of funds and use of resources by the department for Holocaust era insurance claims-related activities.

(C) Recommend whether a proposed settlement of a Holocaust era insurance claim submitted to the committee pursuant to paragraph (7) is equitable before the department finalizes the settlement agreement.

(7) The commissioner, in the event of a proposed settlement of any policy or group of policies relating to Holocaust era insurance claims, shall confer with the committee prior to the department finalizing the settlement agreement. The department may not finalize a proposed settlement of a Holocaust era insurance claim unless the committee, pursuant to subparagraph (C) of paragraph (6), recommends that the proposed settlement is equitable.

SEC. 46. Article 7.5 (commencing with Section 14085) is added to Chapter 1 of Division 5 of the Insurance Code, to read:

Article 7.5. Crop Insurance Adjusters

14085. (a) Upon application, the commissioner shall issue a crop insurance adjuster license to a person who meets both of the following requirements:

(1) Obtains an insurance adjuster license, with the exception of the examination requirement of Section 14026.

(2) Provides evidence that he or she has satisfactorily completed the loss adjustment training curriculum and competency testing required by the Federal Crop Insurance Corporation Standard Reinsurance Agreement.

(b) For the purposes of this article, the following definitions apply:

(1) “Crop insurance” means insurance provided by the private insurance market that indemnifies for damage to crops from unfavorable weather conditions, fire, lightning, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils, and multiple peril crop insurance reinsured by the federal crop insurance corporation.

(2) “Crop insurance adjuster” means a person who investigates, negotiates, or settles crop insurance claims.

(c) A person shall not act as or purport to be a crop insurance adjuster unless licensed as a crop insurance adjuster.

(d) A person shall not contract, employ, or use any other person to adjust claims made under a crop insurance policy unless the other person is licensed as a crop insurance adjuster.

(e) All provisions of this chapter and any regulations adopted pursuant to this chapter shall apply to crop insurance adjusters, unless exempted by or in conflict with this article or the regulations adopted pursuant to this article.

(f) The commissioner may adopt regulations to implement this article, including, but not limited to, regulations that require applicants to satisfy other competency requirements in addition to or instead of those referred to in paragraph (2) of subdivision (a), and regulations that establish standards of practice for crop insurance adjusters.

SEC. 47. Section 52.5 of Chapter 639 of the Statutes of 2003 is repealed.

SEC. 48. Section 2.5 of this bill incorporates amendments to Section 1946.1 of the Civil Code proposed by both this bill and Assembly Bill 2521. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 1946.1 of the Civil Code, and (3) this bill is enacted after Assembly Bill 2521, in which case Section 2 of this bill shall not become operative.

SEC. 49. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2012

Governor