

ASSEMBLY BILL

No. 553

Introduced by Assembly Member Daly

February 23, 2015

An act to amend Sections 1215, 1215.1, 1215.2, 1215.5, 1215.6, and 1215.8 of, to add Section 1215.75 to, and to add Article 10.8 (commencing with Section 936.1) to Chapter 1 of Part 2 of Division 1 of, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 553, as introduced, Daly. Insurance: corporate governance: insurance holding companies.

(1) Existing law regulates the business of insurance, including, but not limited to, requiring that each domestic, foreign, and alien insurer doing business in this state annually, on or before the first day of March of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with any additional filings as prescribed by the Insurance Commissioner for the preceding year.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.

This bill would require an insurer or insurance group of which the insurer is a member, to, no later than June 1 of each calendar year, submit to the commissioner a Corporate Governance Annual Disclosure (CGAD) that contains specified information relating to corporate governance structure, policies, and practices. The bill would provide,

with exceptions, that the documents, materials, or other information in the possession or control of the Department of Insurance that are obtained by, created by, or disclosed to the commissioner or any other person pursuant to these provisions are confidential and privileged, are not subject to disclosure pursuant to the California Public Records Act, and are not subject to subpoena or discovery in a civil action if obtained from the commissioner, as specified. The bill would make related findings on the confidentiality of these records. The bill would provide that an insurer who fails, without just cause, to timely file the CGAD as required by these provisions would be subject to specified late filing fees.

(2) The Insurance Holding Company System Regulatory Act, requires each insurer that is authorized to do business in this state and that is a member of an insurance holding company system to register with the commissioner and to file a registration statement containing specified information, including the capital structure and general financial condition of the insurer and specified transactions between the insurer and its affiliates.

The act prohibits a person from making a tender offer for, or a request or invitation for tenders of, or from entering into an agreement to exchange securities for or acquire in the open market, any voting security, or any security convertible into a voting security, of a domestic insurer or of any other person controlling a domestic insurer, if the other person is not substantially engaged in any businesses other than insurance, if that would result in the person acquiring control of the insurer. Existing law also prohibits a person from entering into an agreement to merge with or otherwise acquire control of a domestic insurer. These prohibitions do not apply if, at the time copies of the offer, purchase, request, or invitation are first published, sent, or given to security holders or the agreement or transaction is entered into, the person has filed with the commissioner, and has sent to the insurer, a statement containing specified information and any additional information the commissioner prescribes in the public interest or to protect policyholders or shareholders.

Under the act, a domestic insurer or commercially domiciled insurer, and a person in its insurance holding company system, may only enter into specified affiliate transactions, including reinsurance or pooling agreements, if the insurer has notified the commissioner in writing of its intent to enter into the transaction with at least 30 days' notice, or a

shorter period that the commissioner allows, and the commissioner has not disapproved the transaction within that period.

The act provides that any insurer or any director, officer, employee, or agent of the insurer that commits a willful violation of the act is subject to criminal proceedings.

This bill would require the tender offer or merger statement and the notification of proposed affiliate transaction filed with the commissioner to be submitted on a form and in a format prescribed by the National Association of Insurance Commissioners.

Because a willful violation of this provision would be subject to criminal proceedings, the bill would create a state-mandated local program.

This bill would authorize the commissioner to act as groupwide supervisor, as defined, for any internationally active insurance group, as defined, or, alternatively, authorize the commissioner to acknowledge another regulatory official as the groupwide supervisor if the internationally active insurance group meets any specified condition pertaining to its insurance operations in the state. The bill would also authorize the commissioner, as the groupwide supervisor, to engage in specified supervision activities, including, but not limited to: (A) assessing the enterprise risks within the internationally active insurance group; (B) requesting relevant information from any member of that group; and (C) coordinating and compelling development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to its member. The bill would also make technical, nonsubstantive, and conforming changes.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(4) 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.

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

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

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

1 SECTION 1. Article 10.8 (commencing with Section 936.1)
2 is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code,
3 to read:

4
5 Article 10.8. Corporate Governance Disclosure Act
6

7 936.1. (a) The purpose of this article is to provide the Insurance
8 Commissioner a summary of an insurer or insurance group’s
9 corporate governance structure, policies, and practices to permit
10 the commissioner to gain and maintain an understanding of the
11 insurer’s corporate governance framework and outline the
12 requirements for completing a corporate governance annual
13 disclosure with the Insurance Commissioner. The requirements of
14 this article shall apply to all insurers domiciled in this state.

15 (b) The Legislature finds and declares that the Corporate
16 Governance Annual Disclosure and related information will contain
17 confidential and sensitive information related to an insurer or
18 insurance group’s internal operations and proprietary and trade
19 secret information that, if made public, could potentially cause the
20 insurer or insurance group competitive harm or disadvantage.

21 (c) This article shall not be construed to prescribe or impose
22 corporate governance standards and internal procedures beyond
23 that which is required under applicable state corporate law.
24 Notwithstanding the foregoing, this article shall not be construed
25 to limit the commissioner’s authority or the rights or obligations
26 of third parties, under Article 4 (commencing with Section 729)
27 relating to the examination of insurers.

28 936.2. For the purposes of this article, the following definitions
29 apply:

30 (a) “Corporate Governance Annual Disclosure (CGAD)” means
31 a confidential report filed by the insurer or insurance group made
32 in accordance with the requirements of this article.

33 (b) “Insurance group” means those insurers and affiliates
34 included within an insurance holding company system as defined

1 in subdivision (e) of Section 1215 (Insurance Holding Company
2 System Regulatory Act).

3 (c) “Insurer” has the same meaning as set forth in subdivision
4 (f) of Section 1215, except that it shall not include agencies,
5 authorities, or instrumentalities of the United States, its possessions
6 and territories, the Commonwealth of Puerto Rico, the District of
7 Columbia, or a state or political subdivision of a state.

8 (d) An “ORSA Summary Report” means the report filed in
9 accordance with subdivision (e) of Section 935.2.

10 (e) “Corporate Governance Annual Disclosure Model
11 Regulation” means the current version of the Corporate Governance
12 Annual Disclosure Model Regulation developed and adopted by
13 the National Association of Insurance Commissioners (NAIC) and
14 as amended from time to time. A change in the Corporate
15 Governance Annual Disclosure Model Regulations shall be
16 effective on the January 1 following the calendar year in which
17 the changes have been adopted by the NAIC.

18 936.3. (a) An insurer, or the insurance group of which the
19 insurer is a member, shall, no later than June 1 of each calendar
20 year, submit to the commissioner a CGAD that contains the
21 information described in subdivision (b) of Section 936.5.
22 Notwithstanding any request from the commissioner made pursuant
23 to subdivision (c), if the insurer is a member of an insurance group,
24 the insurer shall submit the report required by this section to the
25 commissioner of the lead state for the insurance group, in
26 accordance with the laws of the lead state, as determined by the
27 procedures outlined in the most recent Financial Analysis
28 Handbook adopted by the NAIC.

29 (b) The CGAD shall include a signature of the insurer or
30 insurance group’s chief executive officer or corporate secretary
31 attesting to the best of that individual’s belief and knowledge that
32 the insurer has implemented the corporate governance practices
33 therein and that a copy of the disclosure has been provided to the
34 insurer’s board of directors or the appropriate committee thereof.

35 (c) An insurer not required to submit a CGAD under this section
36 shall submit a CGAD upon the commissioner’s request.

37 (d) (1) For purposes of completing the CGAD, the insurer or
38 insurance group may provide information regarding corporate
39 governance at one or all of the following: the ultimate controlling
40 parent level, an intermediate holding company level, or the

1 individual legal entity level, depending upon how the insurer or
2 insurance group has structured its system of corporate governance.

3 (2) The insurer or insurance group shall make the CGAD
4 disclosures at one of the following levels:

5 (A) At the level at which the insurer's or insurance group's risk
6 appetite is determined.

7 (B) At the level at which the earnings, capital, liquidity,
8 operations, and reputation of the insurer are overseen collectively
9 and at which the supervision of those factors are coordinated and
10 exercised.

11 (C) At the level at which legal liability for failure of general
12 corporate governance duties would be placed.

13 (3) If the insurer or insurance group determines the level of
14 reporting based on the criteria listed in paragraph (2), it shall
15 indicate which of the three criteria was used to determine the level
16 of reporting and explain any subsequent changes in the level of
17 reporting.

18 (e) The review of the CGAD and any additional requests for
19 information shall be made through the lead state as determined by
20 the procedures within the most recent Financial Analysis Handbook
21 referenced in subdivision (a).

22 (f) Insurers providing information substantially similar to the
23 information required by this article in other documents provided
24 to the commissioner, including proxy statements filed in
25 conjunction with Form B requirements, or other state or federal
26 filings provided to the department, shall not be required to duplicate
27 that information in the CGAD but shall only be required to cross
28 reference the document in which the information is included.

29 936.4. The commissioner may, upon notice and opportunity
30 for all interested parties to be heard, issue those rules, regulations,
31 and orders as may be necessary to carry out the provisions of this
32 article. Those rules and regulations shall be adopted, amended, or
33 repealed in accordance with Administrative Procedure Act Chapter
34 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
35 Title 2 of the Government Code.

36 936.5. (a) The insurer or insurance group shall have discretion
37 over the responses to the CGAD inquiries, provided the CGAD
38 contains the material information necessary to permit the
39 commissioner to gain an understanding of the insurer's or group's
40 corporate governance structure, policies, and practices. The

1 commissioner may request additional information that he or she
2 deems material and necessary to provide him or her with a clear
3 understanding of the corporate governance policies, the reporting
4 or information system, or controls implementing those policies.

5 (b) Notwithstanding subdivision (a), the insurer or insurer group
6 shall prepare the CGAD consistent with the NAIC Corporate
7 Governance Annual Disclosure Model Regulation, subject to the
8 requirements of this article. Documentation and supporting
9 information shall be maintained and made available upon
10 examination or upon request of the commissioner.

11 936.6. (a) (1) Documents, materials, or other information,
12 including the CGAD, in the possession or control of the department
13 that are obtained by, created by, or disclosed to, the commissioner
14 or any other person under this article are recognized by this state
15 as being proprietary and to contain trade secrets. All those
16 documents, materials, or other information shall be confidential
17 by law and privileged, shall not be subject to disclosure pursuant
18 to the California Public Records Act (Chapter 3.5 (commencing
19 with Section 6250) of Division 7 of Title 1 of the Government
20 Code), shall not be subject to subpoena, and shall not be subject
21 to discovery or admissible in evidence in any private civil action
22 if obtained from the commissioner in any manner.

23 (2) However, the commissioner is authorized to use the
24 documents, materials, or other information in the furtherance of
25 any regulatory or legal action brought as a part of the
26 commissioner's official duties. The commissioner shall not
27 otherwise disclose or make public the documents, materials, or
28 other information without the prior written consent of the insurer.

29 (3) This section shall not be construed to require written consent
30 of the insurer before the commissioner may share or receive
31 confidential documents, materials, or other CGAD-related
32 information pursuant to subdivision (c) to assist in the performance
33 of the commissioner's regulatory duties.

34 (b) Neither the commissioner nor any person who received
35 documents, materials, or other CGAD-related information, through
36 examination or otherwise, while acting under the authority of the
37 commissioner, or with whom those documents, materials, or other
38 information are shared pursuant to this article shall be permitted
39 or required to testify in any private civil action concerning any

1 confidential documents, materials, or information described in
2 subdivision (a).

3 (c) In order to assist in the performance of the commissioner's
4 regulatory duties, the commissioner may do both of the following:

5 (1) Upon request, share documents, materials, or other
6 CGAD-related information, including the confidential and
7 privileged documents, materials, or information described in
8 subdivision (a), including proprietary and trade secret documents
9 and materials with other state, federal, and international financial
10 regulatory agencies, including members of any supervisory college
11 as defined in Section 1215.7 (Insurance Holding Company System
12 Regulatory Act), with the NAIC, and with third-party consultants
13 pursuant to Section 936.7, provided that the recipient agrees in
14 writing to maintain the confidentiality and privileged status of the
15 CGAD-related documents, materials, or other information and has
16 verified in writing the legal authority to maintain confidentiality.

17 (2) Receive documents, materials, or other CGAD-related
18 information, including otherwise confidential and privileged
19 documents, materials, or information, including proprietary and
20 trade-secret information or documents, from regulatory officials
21 of other state, federal, and international financial regulatory
22 agencies, including members of any supervisory college as defined
23 in Section 1215.7 (Insurance Holding Company System Regulatory
24 Act), and from the NAIC, and shall maintain as confidential or
25 privileged any documents, materials, or information received with
26 notice or the understanding that it is confidential or privileged
27 under the laws of the jurisdiction that is the source of the document,
28 materials, or information.

29 (d) The sharing of information and documents by the
30 commissioner pursuant to this article shall not constitute a
31 delegation of regulatory authority or rulemaking, and the
32 commissioner is solely responsible for the administration,
33 execution, and enforcement of this article.

34 (e) No waiver of any applicable privilege or claim of
35 confidentiality in the documents, proprietary and trade-secret
36 materials, or other CGAD-related information shall occur as a
37 result of disclosure of that CGAD-related information or those
38 documents to the commissioner under this section or as a result of
39 sharing as authorized in this article.

1 936.7. (a) The commissioner may retain, at the insurer's
2 expense, third-party consultants, including attorneys, actuaries,
3 accountants, and other experts not otherwise a part of the
4 commissioner's staff as may be reasonably necessary to assist the
5 commissioner in reviewing the CGAD and related information or
6 the insurer's compliance with this article.

7 (b) Any person retained under subdivision (a) shall be under
8 the direction and control of the commissioner and shall act in a
9 purely advisory capacity.

10 (c) The NAIC and third-party consultants shall be subject to the
11 same confidentiality standards and requirements as the
12 commissioner.

13 (d) As part of the retention process, a third-party consultant
14 shall verify to the commissioner in writing, with notice to the
15 insurer, that it is free of a conflict of interest, and that it has internal
16 procedures in place to monitor compliance with a conflict and to
17 comply with the confidentiality standards and requirements of this
18 article.

19 (e) A written agreement with the NAIC, a third-party consultant,
20 or both, governing sharing and use of information provided
21 pursuant to this article shall contain all of the following provisions
22 and expressly require the written consent of the insurer prior to
23 making public information provided under this article:

24 (1) Specific procedures and protocols for maintaining the
25 confidentiality and security of CGAD-related information shared
26 with the NAIC or a third-party consultant pursuant to this article.

27 (2) Procedures and protocols for sharing by the NAIC only with
28 other state regulators from states in which the insurance group has
29 domiciled insurers. The agreement shall provide that the recipient
30 agrees in writing to maintain the confidentiality and privileged
31 status of the CGAD-related documents, materials, or other
32 information and has verified in writing the legal authority to
33 maintain confidentiality.

34 (3) A provision specifying that ownership of the CGAD-related
35 information shared with the NAIC or a third-party consultant
36 remains with the department, and the NAIC's or third-party
37 consultant's use of the information is subject to the direction of
38 the commissioner.

1 (4) A provision that prohibits the NAIC or a third-party
2 consultant from storing the information shared pursuant to this act
3 in a permanent database after the underlying analysis is completed.

4 (5) A provision requiring the NAIC or third-party consultant to
5 provide prompt notice to the commissioner and to the insurer or
6 insurance group regarding any subpoena, request for disclosure,
7 or request for production of the insurer's CGAD-related
8 information.

9 (6) A requirement that the NAIC or a third-party consultant
10 consent to intervention by an insurer in any judicial or
11 administrative action in which the NAIC or a third-party consultant
12 may be required to disclose confidential information about the
13 insurer shared with the NAIC or a third-party consultant pursuant
14 to this article.

15 936.8. Any insurer or insurer group failing, without just cause,
16 to timely file the CGAD as required in this article shall be subject
17 to the late filing fees set forth in Section 924. The commissioner
18 may reduce the penalty if the insurer or insurer group demonstrates
19 to the commissioner that the imposition of the penalty would
20 constitute a financial hardship to the insurer or insurer group.

21 936.9. The provisions of this article, other than Section 936.6,
22 are severable. If any provision of this article, other than Section
23 936.6, or its application is held invalid, that invalidity shall not
24 affect other provisions or applications that can be given effect
25 without the invalid provision or application.

26 SEC. 2. Section 1215 of the Insurance Code is amended to
27 read:

28 1215. As used in this article, the following terms shall have
29 the respective meanings hereafter set forth, unless the context shall
30 otherwise require:

31 (a) An "affiliate" of, or person "affiliated" with, a specific
32 person, is a person that directly, or indirectly, through one or more
33 intermediaries, controls, or is controlled by, or is under common
34 control with, the person specified.

35 (b) "Business day" is any day other than Saturday, Sunday, and
36 any other day that is specified or provided for as a holiday in the
37 Government Code.

38 (c) "*Commissioner*" means the Insurance Commissioner of the
39 state and any assistant to the Insurance Commissioner designated

1 *and authorized by the commissioner while acting under his or her*
2 *designation as the Insurance Commissioner.*

3 (e)

4 (d) The term “control” includes the terms “controlling,”
5 “controlled by,” and “under common control with,” and means
6 the possession, direct or indirect, of the power to direct or cause
7 the direction of the management and policies of a person, whether
8 through the ownership of voting securities, by contract other than
9 a commercial contract for goods or nonmanagement services, or
10 otherwise, unless the power is the result of an official position with
11 or corporate office held by the person. Control shall be presumed
12 to exist if any person, directly or indirectly, owns, controls, holds
13 with the power to vote, or holds proxies representing, more than
14 10 percent of the voting securities of any other person. This
15 presumption may be rebutted by a showing that control does not
16 exist in fact pursuant to the filing of a disclaimer of affiliation in
17 accordance with subdivision (l) of Section 1215.4. The
18 commissioner may, after furnishing all persons in interest notice
19 and opportunity to be heard, determine that control exists in fact,
20 notwithstanding the absence of a presumption to that effect.

21 (d)

22 (e) “Enterprise risk” means any activity, circumstance, or event
23 or series of events involving one or more affiliates of an insurer
24 that, if not remedied promptly, is likely to have a material adverse
25 effect upon the financial condition or liquidity of the insurer or its
26 insurance holding company system as a whole, including, but not
27 limited to, anything that would cause the insurer’s risk-based
28 capital to fall into company action level as set forth in Article 4.1
29 (commencing with Section 739) of Chapter 1 and under Section
30 739.5 or would cause the insurer to be in hazardous financial
31 condition and allow the commissioner to take ~~such~~ actions as *that*
32 *are* necessary under Article 14 (commencing with Section 1010),
33 Article 14.3 (commencing with Section 1064.1), and Article 15.5
34 (commencing with Section 1077).

35 (f) “Groupwide supervisor” means the insurance regulatory
36 official authorized to engage in conducting and coordinating
37 groupwide supervision activities who is determined or
38 acknowledged by the commissioner pursuant to subdivision (a) of
39 Section 1215.75 to have sufficient significant contacts with the
40 internationally active insurance group.

1 ~~(e)~~

2 (g) An “insurance holding company system” consists of two or
3 more affiliated persons, one or more of which is an insurer.

4 ~~(f)~~

5 (h) “Insurer” shall have the same meaning as set forth in Section
6 826, excluding subdivisions (e) and (f) of that section.

7 (i) “*Internationally active insurance group*” means an insurance
8 holding company system that includes an insurer registered
9 pursuant to Section 1215.4 and that meets the following criteria:

10 (1) *The insurance holding company system writes premiums in*
11 *at least three countries.*

12 (2) *The percentage of gross premiums written outside the United*
13 *States is at least 10 percent of the insurance holding company*
14 *system’s total gross written premiums.*

15 (3) *Based on a three-year rolling average, the total assets of*
16 *the insurance holding company system are at least fifty billion*
17 *dollars (\$50,000,000,000) or the total gross written premiums of*
18 *the insurance holding company system are at least ten billion*
19 *dollars (\$10,000,000,000).*

20 (j) “NAIC” means the National Association of Insurance
21 Commissioners.

22 ~~(g)~~

23 (k) “Person” is an individual, a corporation, a limited liability
24 company, a partnership, an association, a joint stock company, a
25 business trust, an unincorporated organization, or any similar entity,
26 or any combination thereof acting in concert.

27 ~~(h)~~

28 (l) A “security holder” of a specified person is the holder that
29 owns any security of that person, including common stock,
30 preferred stock, debt obligations, and any other security convertible
31 into or evidencing the right to acquire any of the foregoing.

32 ~~(i)~~

33 (m) A “subsidiary” of a specified person is an affiliate controlled
34 by that person directly, or indirectly through one or more
35 intermediaries.

36 ~~(j)~~

37 (n) “Voting security” shall include any security convertible into
38 or evidencing a right to acquire a voting security.

39 SEC. 3. Section 1215.1 of the Insurance Code is amended to
40 read:

1 1215.1. (a) Any domestic insurer, either by itself or in
2 cooperation with one or more persons, may organize or acquire
3 one or more subsidiaries subject to the limitations of this section.

4 (b) In addition to investments in common stock, preferred stock,
5 debt obligations, and other securities permitted under all other
6 sections of this chapter, a domestic insurer may also do one or
7 more of the following:

8 (1) Invest in common stock, preferred stock, debt obligations,
9 and other securities of one or more subsidiaries, amounts that do
10 not exceed the lesser of 10 percent of the insurer's assets or 50
11 percent of the insurer's surplus as regards policyholders. However,
12 after these investments, the insurer's surplus as regards
13 policyholders shall be reasonable in relation to the insurer's
14 outstanding liabilities and adequate to its financial needs. In
15 calculating the amount of these investments, there shall be excluded
16 investments in insurance subsidiaries, and there shall be included
17 (A) total net moneys or other consideration expended and
18 obligations assumed in the acquisition or formation of a subsidiary,
19 including all organizational expenses and contributions to capital
20 and surplus of the subsidiary whether or not represented by the
21 purchase of capital stock or issuance of other securities, and (B)
22 all amounts expended in acquiring additional common stock,
23 preferred stock, debt obligations, and other securities and all
24 contributions to the capital or surplus of a subsidiary subsequent
25 to its acquisition or formation.

26 "Insurance subsidiary" is an insurer that is organized within the
27 United States and is controlled, directly or indirectly, by a reporting
28 insurer subject to this article. For purposes of this paragraph,
29 "investments in insurance subsidiaries" shall include the following:

30 (A) Any direct investment in an insurance subsidiary.

31 (B) The insurer's proportionate share of any investment in an
32 insurance subsidiary held by any subsidiary of the insurer. This
33 shall be calculated by multiplying the amount of the subsidiary's
34 investment in the insurance subsidiary by the insurer's percentage
35 of ownership of the subsidiary.

36 (2) Invest any amount in common stock, preferred stock, debt
37 obligations, and other securities of one or more subsidiaries,
38 provided that each subsidiary agrees to limit its investments in any
39 asset so that these investments will not cause the amount of the
40 total investment of the insurer to exceed any of the investment

1 limitations specified in paragraph (1) or in this chapter applicable
2 to the insurer. For the purpose of this paragraph, “the total
3 investment of the insurer” shall include (A) any direct investment
4 by the insurer in an asset, and (B) the insurer’s proportionate share
5 of any investment of an asset by any subsidiary of the insurer,
6 which shall be calculated by multiplying the amount of the
7 subsidiary’s investment by the percentage of the insurer’s
8 ownership of that subsidiary.

9 (3) With the approval of the commissioner, invest any amount
10 in common stock, preferred stock, debt obligations, or other
11 securities of one or more subsidiaries, provided that after this
12 investment the insurer’s surplus as regards policyholders shall be
13 reasonable in relation to the insurer’s outstanding liabilities and
14 adequate to its financial needs.

15 (c) Investments in common stock, preferred stock, debt
16 obligations, or other securities of subsidiaries made pursuant to
17 subdivision (b) shall neither limit nor be subject to any of the
18 otherwise applicable authorizations, restrictions, or prohibitions
19 contained in this ~~part~~ *article* applicable to these investments of
20 insurers.

21 (d) Whether any investment pursuant to subdivision (b) meets
22 the applicable requirements thereof is to be determined immediately
23 after the investment is made, taking into account the then
24 outstanding principal balance on all previous investments in debt
25 obligations, and the value of all previous investments in equity
26 securities as of the date they were made.

27 (e) If an insurer ceases to control a subsidiary, it shall dispose
28 of any investment therein made pursuant to this section within
29 three years from the time of the cessation of control, or within any
30 further time as the commissioner may prescribe, unless at any time
31 after the investment has been made, the investment has met the
32 requirements for investment under any other section of this part.

33 SEC. 4. Section 1215.2 of the Insurance Code is amended to
34 read:

35 1215.2. (a) No person shall make a tender offer for, or a request
36 or invitation for tenders of, or enter into an agreement to exchange
37 securities for or acquire in the open market, any voting security,
38 or any security convertible into a voting security, of a domestic
39 insurer or of any other person controlling a domestic insurer, if
40 the other person is not substantially engaged either directly or

1 through its affiliates in any businesses other than that of insurance,
2 if, as a result of the consummation thereof, the person would,
3 directly or indirectly, acquire control of the insurer, and no person
4 shall enter into an agreement to merge with or otherwise to acquire
5 control of a domestic insurer, unless, at the time copies of the offer,
6 purchase, request, or invitation are first published, sent, or given
7 to security holders or the agreement or transaction is entered into,
8 as the case may be, the person has filed with the commissioner,
9 and has sent to the insurer, a statement containing the following
10 information, and any additional information as the commissioner
11 may by rule or regulation prescribe as necessary or appropriate in
12 the public interest or for the protection of policyholders or
13 shareholders:

14 (1) The background and identity of all persons by whom or on
15 whose behalf the purchases or the exchange, merger, or other
16 acquisition of control are to be effected.

17 (2) The source and amount of the funds or other consideration
18 used or to be used in making the purchases or in effecting the
19 exchange, merger, or other acquisition of control, and, if any part
20 of the funds or other consideration has been or is to be borrowed
21 or otherwise obtained for the purpose of making the purchases or
22 effecting the exchange, merger, or other acquisition of control, a
23 description of the transaction and the names of the parties thereto.
24 However, where a source of funds is a loan made in the lender's
25 ordinary course of business, if the person filing the statement so
26 requests, the name of the lender shall not be made available to the
27 public.

28 (3) Any plans or proposals ~~which~~ *that* those persons may have
29 to liquidate the insurer, to sell its assets or merge it with any person,
30 or to make any other major change in its business or corporate
31 structure or management.

32 (4) The amount of each class of voting securities or securities
33 which may be converted into voting securities of the insurer or the
34 controlling person which are beneficially owned, and the amount
35 of each class of voting securities or securities which may be
36 converted into voting securities of the insurer or the controlling
37 person concerning which there is a right to acquire beneficial
38 ownership, by each person and by each affiliate of each person,
39 together with the name and address of each affiliate.

1 (5) Information as to any contracts, arrangements, or
2 understandings with any person with respect to any securities of
3 the insurer or the controlling person, including, but not limited to,
4 transfer of any of the securities, joint ventures, loan or option
5 arrangements, puts or calls, guarantees of loans, guarantees against
6 loss or guarantees of profits, division of losses or profits, or the
7 giving or withholding of proxies, naming the persons with whom
8 the contracts, arrangements, or understandings have been entered
9 into, and giving the details thereof.

10 All requests or invitations for tenders or advertisements making
11 a tender offer or requesting or inviting tenders of the voting
12 securities of the insurer or the controlling person made by or on
13 behalf of the person, and a copy of the agreement to exchange or
14 otherwise acquire securities or to merge with or otherwise to
15 acquire control of the insurer, shall be filed with the commissioner
16 and sent to the insurer as a part of the statement and shall contain
17 the information contained in the statement as the commissioner
18 may by rule or regulation prescribe. Copies of any additional
19 material soliciting or requesting the tender offers subsequent to
20 the initial solicitation or request, and copies of any amendment to
21 the agreement, shall contain the information as the commissioner
22 may by rule or regulation prescribe as necessary or appropriate in
23 the public interest or for the protection of policyholders or
24 shareholders, and shall be filed with the commissioner and sent to
25 the insurer not later than the time copies of the material are first
26 published or sent or given to security holders or the amendment
27 is entered into.

28 (b) If the person required to file the statement referred to in
29 subdivision (a) is a partnership, limited partnership, syndicate, or
30 other group, the commissioner may require that the information
31 called for by paragraphs (1) to (5), inclusive, of subdivision (a)
32 shall be given with respect to: (1) each partner of the partnership
33 or limited partnership, (2) each member of the syndicate or group,
34 and (3) each person who controls the partner or member. If a
35 person referred to in paragraph (1), (2), or (3) of this subdivision
36 is a corporation or the person required to file the statement referred
37 to in subdivision (a) is a corporation, the commissioner may require
38 that the information called for by paragraphs (1) to (5), inclusive,
39 of subdivision (a) shall be given with respect to the corporation
40 and each officer and director of the corporation and each person

1 who is directly or indirectly the beneficial owner of more than 10
2 percent of the outstanding voting securities of the corporation.

3 (c) If any tender offer, request, or invitation for tenders, or
4 agreement to exchange or otherwise acquire securities or to merge
5 or otherwise acquire control referred to in subdivision (a), is
6 proposed to be made by means of a registration statement under
7 the federal Securities Act of 1933, or in circumstances requiring
8 the disclosure of similar information under the federal Securities
9 Exchange Act of 1934, or under a state law requiring similar
10 registration or disclosure, the person required to file the statement
11 referred to in subdivision (a) may file that registration statement
12 with the commissioner as full satisfaction of the requirement in
13 subdivision (a).

14 (d) The purchases, exchanges, mergers, or other acquisitions of
15 control referred to in subdivision (a) may not be made until the
16 commissioner approves the purchases, exchanges, mergers, or
17 other acquisitions of control. The commissioner shall approve or
18 disapprove the transaction on or before the latter of 60 days after
19 the statement required by subdivision (a) has been filed with the
20 commissioner or, if a hearing is held pursuant to subdivision (f),
21 30 days after the close of the hearing held pursuant to subdivision
22 (f). The commissioner may disapprove the transaction if the
23 commissioner finds any of the following:

24 (1) After the change of control the domestic insurer referred to
25 in subdivision (a) could not satisfy the requirements for the
26 issuance of a license to write the line or lines of insurance for
27 which it is presently licensed.

28 (2) The purchases, exchanges, mergers, or other acquisitions of
29 control would substantially lessen competition in insurance in this
30 state or create a monopoly therein.

31 (3) The financial condition of an acquiring person might
32 jeopardize the financial stability of the insurer, or prejudice the
33 interests of its policyholders.

34 (4) The plans or proposals which the acquiring person has to
35 liquidate the insurer, to sell its assets, or to merge it with any
36 person, or to make any other major change in its business or
37 corporate structure or management, are not fair and reasonable to
38 policyholders.

39 (5) The competence, experience, and integrity of those persons
40 who would control the operation of the insurer indicate that it

1 would not be in the interest of policyholders, or the public to permit
2 them to do so.

3 (e) The commissioner shall require the payment of two thousand
4 three hundred sixty dollars (\$2,360) as a fee for filing an
5 application—~~under~~ *pursuant to* this section, the amount to
6 accompany the application. *The application shall be on a form*
7 *and in a format prescribed by the NAIC.*

8 (f) (1) The commissioner may hold a public hearing after the
9 statement required by subdivision (a) is filed. If a hearing is held,
10 at least 20 days' notice shall be given by the commissioner to the
11 person filing the statement. Not less than seven days' notice of the
12 public hearing shall be given by the person filing the statement to
13 the insurer and to ~~such~~ other persons as may be designated by the
14 commissioner. At the hearing, the person filing the statement, the
15 insurer, any person to whom notice of hearing was sent, and any
16 other person whose interest may be affected, shall have the right
17 to present evidence, examine and cross-examine witnesses, and
18 offer oral and written arguments, and in connection therewith shall
19 be entitled to conduct proceedings in the same manner as is
20 presently allowed under the Administrative Procedure Act (Chapter
21 5 (commencing with Section 11500) of Part 1 of Division 3 of
22 Title 2 of the Government Code). All discovery proceedings shall
23 be concluded not later than three days prior to the commencement
24 of the public hearing.

25 (2) If the proposed acquisition of control will require the
26 approval of more than one commissioner, the public hearing
27 referred to in paragraph (1) may be held on a consolidated basis
28 upon request of the person filing the statement referred to in
29 subdivision (a). The person shall file the statement referred to in
30 subdivision (a) with the National Association of Insurance
31 Commissioners (NAIC) within five days of making the request
32 for a public hearing. A commissioner may opt out of a consolidated
33 hearing, and shall provide notice to the applicant of the opt-out
34 within 10 days of the receipt of the statement referred to in
35 subdivision (a). A hearing conducted on a consolidated basis shall
36 be public and shall be held within the United States before the
37 commissioners of the states in which the insurers are domiciled.
38 The commissioners shall hear and receive evidence. Any
39 commissioner may attend the hearing, in person or by
40 telecommunication.

1 (g) This section shall not apply to any offer for or request or
2 invitation for tenders of any voting securities, or any agreement
3 to exchange securities for or otherwise acquire control, if the
4 insurer whose shares are to be acquired remains a direct or indirect
5 subsidiary of the same ultimate controlling company person within
6 the insurer's insurance holding company system, neither the
7 acquiring person nor any affiliate acquires or incurs any debt,
8 guarantee, or other liability related to the transaction, and no shares
9 are purchased by or sold to a person who is not an affiliated person
10 in that insurance holding company system, or if, and to the extent
11 that, the commissioner, by rule or regulation or by order, exempts
12 the offer, request, invitation, or agreement from the provisions of
13 this section as not comprehended within the purposes thereof.

14 (h) For purposes of this section, any controlling person of a
15 domestic insurer seeking to divest its controlling interest in the
16 domestic insurer, in any manner, shall file with the commissioner,
17 with a copy to the insurer, confidential notice of its proposed
18 divestiture at least 30 days prior to the cessation of control. The
19 commissioner shall determine those instances in which the party
20 or parties seeking to divest a controlling interest in an insurer shall
21 be required to file for and obtain approval of the transaction. The
22 information shall remain confidential until the conclusion of the
23 transaction unless the commissioner, in his or her discretion,
24 determines that confidential treatment will interfere with
25 enforcement of this article. If the statement referred to in
26 subdivision (a) of Section 1215.2 is otherwise filed, this subdivision
27 shall not apply.

28 SEC. 5. Section 1215.5 of the Insurance Code is amended to
29 read:

30 1215.5. (a) Transactions by registered insurers with their
31 affiliates are subject to the following standards:

32 (1) The terms shall be fair and reasonable.

33 (2) Charges or fees for services performed shall be reasonable.

34 (3) Expenses incurred and payment received shall be allocated
35 to the insurer in conformity with customary insurance accounting
36 practices consistently applied.

37 (4) The books, accounts, and records of each party to all
38 transactions shall be so maintained as to clearly and accurately
39 disclose the precise nature and details of the transactions, including

1 accounting information that is necessary to support the
2 reasonableness of the charges or fees to the parties.

3 (5) The insurer's policyholder's surplus following any dividends
4 or distributions to shareholder affiliates shall be reasonable in
5 relation to the insurer's outstanding liabilities and adequate to its
6 financial needs.

7 (b) The following transactions involving a domestic insurer or
8 commercially domiciled insurer, as defined in Section 1215.14,
9 and any person in its insurance holding company system, including
10 amendments or modifications of affiliate agreements previously
11 filed pursuant to this section, may be entered into only if the insurer
12 has notified the commissioner in writing of its intention to enter
13 into the transaction at least 30 days prior thereto, or a shorter period
14 as the commissioner may permit, and the commissioner has not
15 disapproved it within that period. The notice for amendments or
16 modifications shall include the reasons for the change and the
17 financial impact on the domestic insurer or commercially domiciled
18 insurer. Informal notice shall be reported, within 30 days after a
19 termination of a previously filed agreement, to the commissioner
20 for determination of the type of filing required, if any. The
21 commissioner shall require the payment of one thousand eight
22 hundred eighty-nine dollars (\$1,889) as a fee for filings ~~under~~
23 ~~pursuant to this subdivision.~~ *subdivision, and the filings shall be*
24 *on a form and in a format prescribed by the NAIC.* The payment
25 shall accompany the filing.

26 (1) Sales, purchases, exchanges, loans, extensions of credit, or
27 investments, if the transactions are equal to or exceed:

28 (A) For a nonlife insurer, the lesser of 3 percent of the insurer's
29 admitted assets or 25 percent of the policyholder's surplus as of
30 the preceding December 31st.

31 (B) For a life insurer, 3 percent of the insurer's admitted assets
32 as of the preceding December 31st.

33 (2) Loans or extensions of credit to a person who is not an
34 affiliate, if made with the agreement or understanding that the
35 proceeds of the transactions, in whole or in substantial part, are to
36 be used to make loans or extensions of credit to, to purchase assets
37 of, or to make investments in, any affiliate of the insurer, if the
38 transactions are equal to or exceed:

1 (A) For a nonlife insurer, the lesser of 3 percent of the insurer's
2 admitted assets or 25 percent of the policyholder's surplus as of
3 the preceding December 31st.

4 (B) For a life insurer, 3 percent of the insurer's admitted assets
5 as of the preceding December 31st.

6 (3) Reinsurance agreements and pooling agreements and
7 modifications thereto in which the reinsurance premium or a
8 change in the insurer's liabilities, or the projected reinsurance
9 premium or a change in the insurer's liabilities in any of the next
10 three years, equals or exceeds 5 percent of the insurer's
11 policyholder's surplus, as of the preceding December 31st,
12 including those agreements that may require as consideration the
13 transfer of assets from an insurer to a nonaffiliate, if an agreement
14 or understanding exists between the insurer and nonaffiliate that
15 any portion of the assets will be transferred to one or more affiliates
16 of the insurer.

17 (4) All management agreements, service contracts, tax sharing
18 agreements, and cost-sharing arrangements. However, subscription
19 agreements or powers of attorney executed by subscribers of a
20 reciprocal or interinsurance exchange are not required to be
21 reported pursuant to this section if the form of the agreement was
22 in use before 1943 and was not amended in any way to modify
23 payments, fees, or waivers of fees or otherwise substantially
24 amended after 1943. Payment or waiver of fees or other amounts
25 due under subscription agreements or powers of attorney forms
26 that were in use before 1943 and that have not been amended in
27 any way to modify payments, fees, or waiver of fees, or otherwise
28 substantially amended after 1943 shall not be subject to regulation
29 pursuant to paragraph (2) of subdivision (a).

30 (5) Guarantees when initiated or made by a domestic or
31 commercially domiciled insurer, provided that a guarantee that is
32 quantifiable as to amount is not subject to the notice requirements
33 of this paragraph unless it exceeds the lesser of one-half of 1
34 percent of the insurer's admitted assets or 10 percent of surplus as
35 regards policyholders as of the 31st day of December next
36 preceding. Further, all guarantees that are not quantifiable as to
37 amount are subject to the notice requirements of this paragraph.

38 (6) Derivative transactions or series of derivative transactions.
39 The written filing to the commissioner shall include the type or
40 types of derivative transactions, the affiliate or affiliates engaging

1 with the insurer in the derivative transactions, the objective and
2 the rationale for the derivative transaction or series of derivative
3 transactions, the maximum maturity and economic effect of the
4 derivative transactions, and any other information required by the
5 commissioner. Derivative transactions entered into pursuant to
6 this subdivision shall comply with the provisions of Section 1211.

7 (7) Direct or indirect acquisitions or investments in a person
8 that controls the insurer or in an affiliate of the insurer in an amount
9 that, together with its present holdings in those investments,
10 exceeds 2.5 percent of the insurer's policyholder's surplus. Direct
11 or indirect acquisitions or investments in subsidiaries acquired
12 under Section 1215.1, or in nonsubsidiary insurance affiliates that
13 are subject to the provisions of this article, or in subsidiaries
14 acquired pursuant to Section 1199, are exempt from this
15 requirement.

16 (8) Any material transactions, specified by regulation, that the
17 commissioner determines may adversely affect the interests of the
18 insurer's policyholders.

19 (c) A domestic insurer may not enter into transactions that are
20 part of a plan or series of transactions with persons within the
21 holding company system if the purpose of those transactions is to
22 avoid the statutory threshold amount and thus avoid review. If the
23 commissioner determines that separate transactions were entered
24 into over any 12-month period to avoid review, the commissioner
25 may exercise his or her authority under Section 1215.11.

26 (d) The commissioner, in reviewing transactions under
27 subdivision (b), shall consider whether the transactions comply
28 with the standards set forth in subdivision (a) and whether they
29 may adversely affect the interests of policyholders.

30 (e) The commissioner shall be notified within 30 days of any
31 investment by the insurer in any one corporation if the total
32 investment in the corporation by the insurance holding company
33 system exceeds 10 percent of the corporation's voting securities.

34 (f) For purposes of this article, in determining whether an
35 insurer's policyholder's surplus is reasonable in relation to the
36 insurer's outstanding liabilities and adequate to its financial needs,
37 the following factors, among others, shall be considered:

38 (1) The size of the insurer, as measured by its assets, capital
39 and surplus, reserves, premium writings, insurance in force, and
40 other appropriate criteria.

1 (2) The extent to which the insurer's business is diversified
2 among the several lines of insurance.

3 (3) The number and size of risks insured in each line of business.

4 (4) The extent of the geographical dispersion of the insurer's
5 insured risks.

6 (5) The nature and extent of the insurer's reinsurance program.

7 (6) The quality, diversification, and liquidity of the insurer's
8 investment portfolio.

9 (7) The recent past and projected future trend in the size of the
10 insurer's investment portfolio.

11 (8) The recent past and projected future trend in the size of the
12 insurer's surplus, and the policyholder's surplus maintained by
13 other comparable insurers.

14 (9) The adequacy of the insurer's reserves.

15 (10) The quality and liquidity of investments in subsidiaries
16 made under Section 1215.1. The commissioner may treat any ~~such~~
17 ~~investment~~ *those investments* as a disallowed asset for purposes
18 of determining the adequacy of the policyholder's surplus
19 whenever, in his or her judgment, the investment so warrants.

20 (11) The quality of the company's earnings and the extent to
21 which the reported earnings include extraordinary accounting
22 items.

23 (g) No insurer subject to registration under Section 1215.4 shall
24 pay any extraordinary dividend or make any other extraordinary
25 distribution to its stockholders until 30 days after the commissioner
26 has received notice of the declaration thereof and has approved
27 the payment or has not, within the 30-day period, disapproved the
28 payment.

29 For purposes of this section, an extraordinary dividend or
30 distribution is any dividend or distribution which, together with
31 other dividends or distributions made within the preceding 12
32 months, exceeds the greater of (1) 10 percent of the insurer's
33 policyholder's surplus as of the preceding December 31st, or (2)
34 the net gain from operations of the insurer, if the insurer is a life
35 insurer, or the net income, if the insurer is not a life insurer, for
36 the 12-month period ending the preceding December 31st.

37 Notwithstanding any other provision of law, an insurer may
38 declare an extraordinary dividend or distribution that is conditional
39 upon the commissioner's approval. The declaration confers no
40 rights upon stockholders until the commissioner has approved the

1 payment of the dividend or distribution or until the commissioner
2 has not disapproved the payment within the 30-day period referred
3 to in this subdivision.

4 (h) Notwithstanding the control of a domestic insurer by any
5 person, the officers and directors of the insurer shall not thereby
6 be relieved of any obligation or liability to which they would
7 otherwise be subject to by law, and the insurer shall be managed
8 to ensure its separate operating identity consistent with the
9 provisions of this article. However, nothing in this article shall
10 preclude a domestic insurer from having or sharing a common
11 management or cooperative or joint use of personnel, property, or
12 services with one or more other persons under arrangements
13 meeting the standards of subdivision (a).

14 (i) The provisions of this section do not apply to any insurer,
15 information, or transaction exempted by the commissioner.

16 SEC. 6. Section 1215.6 of the Insurance Code is amended to
17 read:

18 1215.6. (a) Subject to the limitation contained in this section,
19 and in addition to the powers which the commissioner has under
20 Article 4 (commencing with Section 730) of Chapter 1 of this part
21 relating to the examination of insurers, the commissioner shall
22 also have the power to examine any insurer registered under
23 Section 1215.4 *and its affiliates* to ascertain the enterprise risk to
24 which the insurer is subjected by the ultimate controlling party, or
25 by any entity or combination of entities within the insurance
26 holding company system, or by the insurance holding company
27 system on a consolidated basis. The commissioner may also order
28 any insurer registered under Section 1215.4 to produce ~~such~~ *the*
29 records, books, or other information or papers in the possession
30 of the insurer or its affiliates, including a report on the enterprise
31 risk to the insurer by the ultimate controlling party, or by any entity
32 or combination of entities within the insurance holding company
33 system, or by the insurance holding company system on a
34 consolidated basis, as shall be necessary to ascertain the financial
35 condition or legality of conduct of ~~such~~ *that* insurer.

36 (b) The commissioner shall exercise his or her power under
37 subdivision (a) only if the examination of the insurer under Article
38 4 (commencing with Section 730) of Chapter 1 of this part is
39 inadequate or the interests of the policyholders of ~~such~~ *that* insurer
40 are being adversely affected.

1 (c) The commissioner may retain at the registered insurer's
2 expense ~~such~~ *the* attorneys, actuaries, accountants, and other
3 experts not otherwise a part of the commissioner's staff as shall
4 be reasonably necessary to assist in the conduct of the examination
5 under subdivision (a) of this section. Any persons so retained shall
6 be under the direction and control of the commissioner and shall
7 act in a purely advisory capacity.

8 (d) Each registered insurer producing for examination records,
9 books, and papers pursuant to subdivision (a) ~~of this section~~ shall
10 be liable for, and shall pay the expense of, ~~such~~ *that* examination
11 in accordance with Section 736.

12 SEC. 7. Section 1215.75 is added to the Insurance Code, to
13 read:

14 1215.75. (a) (1) The commissioner is authorized to act as the
15 groupwide supervisor for any internationally active insurance
16 group in accordance with this section. However, the commissioner
17 may otherwise acknowledge another regulatory official as the
18 groupwide supervisor when the internationally active insurance
19 group meets any of the following conditions:

20 (A) Does not have substantial insurance operations in the United
21 States.

22 (B) Has substantial insurance operations in the United States,
23 but not in this state.

24 (C) Has substantial insurance operations in the United States
25 and this state, but the commissioner has determined pursuant to
26 the factors set forth in subdivisions (b) and (f) that the other
27 regulatory official is the appropriate groupwide supervisor.

28 (2) An insurance holding company system that does not
29 otherwise qualify as an internationally active insurance group may
30 request that the commissioner make a determination or
31 acknowledgment as to a groupwide supervisor pursuant to this
32 section.

33 (b) In cooperation with other state, federal, and international
34 regulatory agencies, the commissioner shall identify a single
35 groupwide supervisor for an internationally active insurance group.
36 The commissioner may determine that he or she is the appropriate
37 groupwide supervisor for an internationally active insurance group
38 that conducts substantial insurance operations concentrated in the
39 state. However, the commissioner may acknowledge that a
40 regulatory official from another jurisdiction is the appropriate

1 groupwide supervisor for the internationally active insurance group.
 2 The commissioner shall consider all of the following factors when
 3 making a determination or acknowledgment pursuant to this
 4 subdivision:

5 (1) The place of domicile of the insurers within the
 6 internationally active insurance group that hold the largest share
 7 of the group’s written premiums, assets, or liabilities.

8 (2) The place of domicile of the top-tiered insurer or insurers
 9 in the insurance holding company system of the internationally
 10 active insurance group.

11 (3) The location of the executive offices or largest operational
 12 offices of the internationally active insurance group.

13 (4) Whether another regulatory official is acting, or is seeking
 14 to act, as the groupwide supervisor under a regulatory system that
 15 the commissioner determines to be either of the following:

16 (A) Substantially similar to the system of regulation provided
 17 under the laws of this state.

18 (B) Otherwise sufficient in terms of providing for groupwide
 19 supervision, enterprise risk analysis, and cooperation with other
 20 regulatory officials.

21 (5) Whether another regulatory official acting, or seeking to
 22 act, as the groupwide supervisor provides the commissioner with
 23 reasonably reciprocal recognition and cooperation.

24 However, a commissioner identified pursuant to this section as
 25 the groupwide supervisor may determine that it is appropriate to
 26 acknowledge another supervisor to serve as the groupwide
 27 supervisor. The acknowledgment of the groupwide supervisor shall
 28 be made after consideration of the factors listed in paragraphs (1)
 29 to (5), inclusive, and shall be made in cooperation with and subject
 30 to the acknowledgment of other regulatory officials involved with
 31 supervision of members of the internationally active insurance
 32 group, and in consultation with the internationally active insurance
 33 group.

34 (c) Notwithstanding any other law, when another regulatory
 35 official is acting as the groupwide supervisor of an internationally
 36 active insurance group, the commissioner shall acknowledge that
 37 regulatory official as the groupwide supervisor. However, if there
 38 is a material change in the internationally active insurance group
 39 that results in either (1) the internationally active insurance group’s
 40 insurers domiciled in this state holding the largest share of the

1 group's premiums, assets, or liabilities, or (2) this state being the
2 place of domicile of the top-tiered insurer or insurers in the
3 insurance holding company system of the internationally active
4 insurance group, the commissioner shall make a determination or
5 acknowledgment as to the appropriate groupwide supervisor for
6 that internationally active insurance group pursuant to subdivision
7 (b).

8 (d) Pursuant to Section 1215.6, the commissioner is authorized
9 to collect from any insurer registered pursuant to Section 1215.4
10 all information necessary to determine whether the commissioner
11 may act as the groupwide supervisor of an internationally active
12 insurance group or if the commissioner may acknowledge another
13 regulatory official to act as the groupwide supervisor. Prior to
14 issuing a determination that an internationally active insurance
15 group is subject to groupwide supervision by the commissioner,
16 the commissioner shall notify the insurer registered pursuant to
17 Section 1215.4 and the ultimate controlling person within the
18 internationally active insurance group. The internationally active
19 insurance group shall have not less than 30 days to provide the
20 commissioner with additional information pertinent to the pending
21 determination. The commissioner shall publish on the department's
22 Internet Web site the identity of internationally active insurance
23 groups that the commissioner has determined are subject to
24 groupwide supervision by the commissioner.

25 (e) If the commissioner is the groupwide supervisor for an
26 internationally active insurance group, the commissioner is
27 authorized to engage in any of the following groupwide supervision
28 activities:

29 (1) Assess the enterprise risks within the internationally active
30 insurance group to ensure both of the following:

31 (A) The material financial condition and liquidity risks to the
32 members of the internationally active insurance group that are
33 engaged in the business of insurance are identified by management.

34 (B) Reasonable and effective mitigation measures are in place.

35 (2) Request, from any member of an internationally active
36 insurance group subject to the commissioner's supervision,
37 information necessary and appropriate to assess enterprise risk,
38 including, but not limited to, information about the members of
39 the internationally active insurance group regarding any of the
40 following:

1 (A) Governance, risk assessment, and management.

2 (B) Capital adequacy.

3 (C) Material intercompany transactions.

4 (3) Coordinate and, through the authority of the regulatory
5 officials of the jurisdictions where members of the internationally
6 active insurance group are domiciled, compel development and
7 implementation of reasonable measures designed to ensure that
8 the internationally active insurance group is able to timely
9 recognize and mitigate enterprise risks to members of that
10 internationally active insurance group that are engaged in the
11 business of insurance.

12 (4) Communicate with other state, federal, and international
13 regulatory agencies for members within the internationally active
14 insurance group and share relevant information subject to the
15 confidentiality provisions of Section 1215.8, through supervisory
16 colleges as set forth in Section 1215.7 or otherwise.

17 (5) Enter into agreements with, or obtain documentation from,
18 any insurer registered pursuant to Section 1215.4, any member of
19 the internationally active insurance group, and any other state,
20 federal, and international regulatory agencies for members of the
21 internationally active insurance group, providing the basis for or
22 otherwise clarifying the commissioner's role as groupwide
23 supervisor, including provisions for resolving disputes with other
24 regulatory officials. These agreements or documentation shall not
25 serve as evidence in any proceeding that any insurer or person
26 within an insurance holding company system not domiciled or
27 incorporated in this state is doing business in this state or is
28 otherwise subject to jurisdiction in this state.

29 (6) Other groupwide supervision activities, consistent with the
30 authorities and purposes enumerated above, as considered
31 necessary by the commissioner.

32 (f) If the commissioner acknowledges that another regulatory
33 official from a jurisdiction that is not accredited by the NAIC is
34 the groupwide supervisor, the commissioner is authorized to
35 reasonably cooperate, through supervisory colleges or otherwise,
36 with groupwide supervision undertaken by the groupwide
37 supervisor if the following conditions are satisfied:

38 (1) The commissioner's cooperation is in compliance with the
39 laws of this state.

1 (2) The regulatory official acknowledged as the groupwide
2 supervisor also recognizes and cooperates with the commissioner’s
3 activities as a groupwide supervisor for other internationally active
4 insurance groups when applicable. When that recognition and
5 cooperation is not reasonably reciprocal, the commissioner is
6 authorized to refuse recognition and cooperation.

7 (g) The commissioner is authorized to enter into agreements
8 with, or obtain documentation from, any insurer registered pursuant
9 to Section 1215.4, any affiliate of the insurer, and other state,
10 federal, or international regulatory agencies for members of the
11 internationally active insurance groups, that provide the basis for,
12 or otherwise clarify, a regulatory official’s role as groupwide
13 supervisor.

14 (h) A registered insurer subject to this section shall be liable for
15 and shall pay the reasonable expenses of the commissioner’s
16 participation in the administration of this section, including the
17 engagement of attorneys, actuaries, and any other professionals
18 and all reasonable travel expenses.

19 SEC. 8. Section 1215.8 of the Insurance Code is amended to
20 read:

21 1215.8. (a) All information, documents, and copies thereof
22 obtained by or disclosed to the commissioner or any other person
23 in the course of an examination or investigation made pursuant to
24 ~~Sections 1215.4 and~~ *Section 1215.4, 1215.5, 1215.6, or 1215.75,*
25 and all information reported *or provided* pursuant to Section
26 *1215.4, 1215.5, 1215.6, or 1215.75* shall be kept confidential, is
27 not subject to disclosure by the commissioner pursuant to the
28 California Public Records Act (Chapter 3.5 (commencing with
29 Section 6250) of Division 7 of Title 1 of the Government Code),
30 is not subject to subpoena, and is not subject to discovery from
31 the commissioner or admissible into evidence in any private civil
32 action if obtained from the commissioner in any manner. This
33 information shall not be made public by the commissioner or any
34 other person except to insurance departments of other states without
35 the prior written consent of the insurance company to which it
36 pertains, unless the commissioner, after giving the insurer and its
37 affiliates who would be affected thereby notice and opportunity
38 to be heard, determines that the interests of policyholders,
39 shareholders, or the public will be served by the publication thereof,

1 in which event he or she may publish all or any part thereof in a
2 manner as he or she may deem appropriate.

3 (b) In order to assist in the performance of the commissioner’s
4 duties, the commissioner:

5 (1) May, upon request, be required to share documents,
6 materials, or other information, including the confidential and
7 privileged documents, materials, or information subject to
8 subdivision (a), with other state, federal, and international
9 regulatory agencies, with the NAIC and its affiliates and
10 subsidiaries, and with state, federal, and international law
11 enforcement authorities, including members of any supervisory
12 college described in Section 1215.7; provided that the recipient
13 agrees in writing to maintain the confidentiality and privileged
14 status of the documents, materials, or other information, and has
15 verified in writing the legal authority to maintain confidentiality.

16 (2) Notwithstanding paragraph (1), may only share confidential
17 and privileged documents, materials, or information reported
18 pursuant to subdivision (m) of Section 1215.4 with commissioners
19 of states having statutes or regulations substantially similar to
20 subdivision (a) and who have agreed in writing not to disclose the
21 information.

22 (3) May receive documents, materials, or information, including
23 otherwise confidential and privileged documents, materials, or
24 information, from the NAIC and its affiliates and subsidiaries and
25 from regulatory and law enforcement officials of other foreign or
26 domestic jurisdictions, and shall maintain as confidential or
27 privileged any documents, materials, or information received with
28 notice or the understanding that it is confidential or privileged
29 under the laws of the jurisdiction that is the source of the
30 documents, materials, or information.

31 (4) May enter into written agreements with the NAIC governing
32 sharing and use of information provided pursuant to this
33 subdivision consistent with this subdivision that shall do the
34 following:

35 (A) Specify procedures and protocols regarding the
36 confidentiality and security of information shared with the NAIC
37 and its affiliates and subsidiaries pursuant to this subdivision,
38 including procedures and protocols for sharing by the NAIC with
39 other state, federal, or international regulators.

1 (B) Specify that ownership of information shared with the NAIC
2 and its affiliates and subsidiaries pursuant to this subdivision
3 remains with the commissioner and the NAIC's use of the
4 information is subject to the direction of the commissioner.

5 (C) Require prompt notice to be given to an insurer whose
6 confidential information in the possession of the NAIC pursuant
7 to this subdivision is subject to a request or subpoena to the NAIC
8 for disclosure or production.

9 (D) Require the NAIC and its affiliates and subsidiaries to
10 consent to intervention by an insurer in any judicial or
11 administrative action in which the NAIC and its affiliates and
12 subsidiaries may be required to disclose confidential information
13 about the insurer shared with the NAIC and its affiliates and
14 subsidiaries pursuant to this subdivision.

15 (c) The sharing of information by the commissioner pursuant
16 to this subdivision shall not constitute a delegation of regulatory
17 authority or rulemaking, and the commissioner is solely responsible
18 for the administration, execution, and enforcement of the provisions
19 of this article.

20 (d) No waiver of any applicable privilege or claim of
21 confidentiality in the documents, materials, or information shall
22 occur as a result of disclosure to the commissioner under this
23 section or as a result of sharing as authorized in subdivision (c).

24 (e) Documents, materials, or other information filed in the
25 possession or control of the NAIC pursuant to this subdivision
26 shall be confidential by law and privileged, shall not be subject to
27 subpoena, and shall not be subject to discovery or admissible in
28 evidence in any private civil action.

29 SEC. 9. The Legislature finds and declares that Section 936.6
30 of the Insurance Code, as added by Section 1 of this act, imposes
31 a limitation on the public's right of access to the meetings of public
32 bodies or the writings of public officials and agencies within the
33 meaning of Section 3 of Article I of the California Constitution.
34 Pursuant to that constitutional provision, the Legislature makes
35 the following findings to demonstrate the interest protected by this
36 limitation and the need for protecting that interest:

37 (1) The Corporate Governance Annual Disclosure and related
38 information will contain confidential and sensitive information
39 related to an insurer or insurance group's internal operations and
40 proprietary and trade secret information that, if made public, could

1 potentially cause the insurer or insurance group competitive harm
2 or disadvantage.

3 (2) The interests in protecting the internal operations and
4 proprietary and trade secret information of the insurers or insurance
5 groups in order to promote consumer choice and competition in
6 the marketplace strongly outweighs the public interest in having
7 access to this information, and there are other means of obtaining
8 financial information, such as annual reports.

9 SEC. 10. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

18 SEC. 11. This act is an urgency statute necessary for the
19 immediate preservation of the public peace, health, or safety within
20 the meaning of Article IV of the Constitution and shall go into
21 immediate effect. The facts constituting the necessity are:

22 (1) In order to permit insurers and insurance groups adequate
23 time to prepare their first Corporate Governance Annual Disclosure
24 (CGAD) that would be required, pursuant to the Corporate
25 Governance Disclosure Model Act, to be submitted to the Insurance
26 Commissioner no later than June 1, 2016, it is necessary for this
27 act to take effect immediately.

28 (2) In order to permit California’s United States-based insurance
29 groups to receive, as quickly as possible, the benefits of the
30 Insurance Commissioner acting in the capacity of groupwide
31 supervisor under the amendments to the Insurance Holding
32 Company System Regulatory Act, it is necessary for this act take
33 effect immediately.

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