

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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~~ *encourage* 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~~ *is encouraged to* make
4 the CGAD 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 *documents*, 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 ~~(d)~~

4 (c) 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 ~~(e)~~

22 (d) “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 actions that are
32 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 ~~(g)~~
- 2 (e) An “insurance holding company system” consists of two or
- 3 more affiliated persons, one or more of which is an insurer.
- 4 ~~(h)~~
- 5 (f) “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 the~~
- 16 ~~insurance holding company system are at least fifty billion dollars~~
- 17 ~~(\$50,000,000,000) or the total gross written premiums of the~~
- 18 ~~insurance holding company system are at least ten billion dollars~~
- 19 ~~(\$10,000,000,000).~~
- 20 ~~(j) “NAIC” means the National Association of Insurance~~
- 21 ~~Commissioners.~~
- 22 ~~(k)~~
- 23 (g) “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 ~~(l)~~
- 28 (h) 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 ~~(m)~~
- 33 (i) A “subsidiary” of a specified person is an affiliate controlled
- 34 by that person directly, or indirectly through one or more
- 35 intermediaries.
- 36 ~~(n)~~
- 37 (j) “Voting security” shall include any security convertible into
- 38 or evidencing a right to acquire a voting security.
- 39 (k) “*Commissioner*” means the Insurance Commissioner of the
- 40 *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 *(l) "Groupwide supervisor" means the insurance official*
4 *authorized to engage in conducting and coordinating groupwide*
5 *supervision activities who is determined or acknowledged by the*
6 *commissioner pursuant to subdivision (a) of Section 1215.75 to*
7 *have sufficient significant contacts with the internationally active*
8 *insurance group.*

9 *(m) "Internationally active insurance group" means an*
10 *insurance holding company system that includes an insurer*
11 *registered pursuant to Section 1215.4 and that meets the following*
12 *criteria:*

13 *(1) Insurers that are part of the insurance holding company*
14 *system write premiums in at least three countries.*

15 *(2) The percentage of gross premiums written outside the United*
16 *States is at least 10 percent of the insurance holding company*
17 *system's total gross written premiums.*

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

23 *(n) "NAIC" means the National Association of Insurance*
24 *Commissioners.*

25 SEC. 3. Section 1215.1 of the Insurance Code is amended to
26 read:

27 1215.1. (a) Any domestic insurer, either by itself or in
28 cooperation with one or more persons, may organize or acquire
29 one or more subsidiaries subject to the limitations of this section.

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

34 (1) Invest in common stock, preferred stock, debt obligations,
35 and other securities of one or more subsidiaries, amounts that do
36 not exceed the lesser of 10 percent of the insurer's assets or 50
37 percent of the insurer's surplus as regards policyholders. However,
38 after these investments, the insurer's surplus as regards
39 policyholders shall be reasonable in relation to the insurer's
40 outstanding liabilities and adequate to its financial needs. In

1 calculating the amount of these investments, there shall be excluded
2 investments in insurance subsidiaries, and there shall be included
3 (A) total net moneys or other consideration expended and
4 obligations assumed in the acquisition or formation of a subsidiary,
5 including all organizational expenses and contributions to capital
6 and surplus of the subsidiary whether or not represented by the
7 purchase of capital stock or issuance of other securities, and (B)
8 all amounts expended in acquiring additional common stock,
9 preferred stock, debt obligations, and other securities and all
10 contributions to the capital or surplus of a subsidiary subsequent
11 to its acquisition or formation.

12 “Insurance subsidiary” is an insurer that is organized within the
13 United States and is controlled, directly or indirectly, by a reporting
14 insurer subject to this article. For purposes of this paragraph,
15 “investments in insurance subsidiaries” shall include the following:

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

17 (B) The insurer’s proportionate share of any investment in an
18 insurance subsidiary held by any subsidiary of the insurer. This
19 shall be calculated by multiplying the amount of the subsidiary’s
20 investment in the insurance subsidiary by the insurer’s percentage
21 of ownership of the subsidiary.

22 (2) Invest any amount in common stock, preferred stock, debt
23 obligations, and other securities of one or more subsidiaries,
24 provided that each subsidiary agrees to limit its investments in any
25 asset so that these investments will not cause the amount of the
26 total investment of the insurer to exceed any of the investment
27 limitations specified in paragraph (1) or in this chapter applicable
28 to the insurer. For the purpose of this paragraph, “the total
29 investment of the insurer” shall include (A) any direct investment
30 by the insurer in an asset, and (B) the insurer’s proportionate share
31 of any investment of an asset by any subsidiary of the insurer,
32 which shall be calculated by multiplying the amount of the
33 subsidiary’s investment by the percentage of the insurer’s
34 ownership of that subsidiary.

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

1 (c) Investments in common stock, preferred stock, debt
2 obligations, or other securities of subsidiaries made pursuant to
3 subdivision (b) shall neither limit nor be subject to any of the
4 otherwise applicable authorizations, restrictions, or prohibitions
5 contained in this article applicable to these investments of insurers.

6 (d) Whether any investment pursuant to subdivision (b) meets
7 the applicable requirements thereof is to be determined immediately
8 after the investment is made, taking into account the then
9 outstanding principal balance on all previous investments in debt
10 obligations, and the value of all previous investments in equity
11 securities as of the date they were made.

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

18 SEC. 4. Section 1215.2 of the Insurance Code is amended to
19 read:

20 1215.2. (a) No person shall make a tender offer for, or a request
21 or invitation for tenders of, or enter into an agreement to exchange
22 securities for or acquire in the open market, any voting security,
23 or any security convertible into a voting security, of a domestic
24 insurer or of any other person controlling a domestic insurer, if
25 the other person is not substantially engaged either directly or
26 through its affiliates in any businesses other than that of insurance,
27 if, as a result of the consummation thereof, the person would,
28 directly or indirectly, acquire control of the insurer, and no person
29 shall enter into an agreement to merge with or otherwise to acquire
30 control of a domestic insurer, unless, at the time copies of the offer,
31 purchase, request, or invitation are first published, sent, or given
32 to security holders or the agreement or transaction is entered into,
33 as the case may be, the person has filed with the commissioner,
34 and has sent to the insurer, a statement containing the following
35 information, and any additional information as the commissioner
36 may by rule or regulation prescribe as necessary or appropriate in
37 the public interest or for the protection of policyholders or
38 shareholders:

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

4 (2) The source and amount of the funds or other consideration
5 used or to be used in making the purchases or in effecting the
6 exchange, merger, or other acquisition of control, and, if any part
7 of the funds or other consideration has been or is to be borrowed
8 or otherwise obtained for the purpose of making the purchases or
9 effecting the exchange, merger, or other acquisition of control, a
10 description of the transaction and the names of the parties thereto.
11 However, where a source of funds is a loan made in the lender's
12 ordinary course of business, if the person filing the statement so
13 requests, the name of the lender shall not be made available to the
14 public.

15 (3) Any plans or proposals that those persons may have to
16 liquidate the insurer, to sell its assets or merge it with any person,
17 or to make any other major change in its business or corporate
18 structure or management.

19 (4) The amount of each class of voting securities or securities
20 which may be converted into voting securities of the insurer or the
21 controlling person which are beneficially owned, and the amount
22 of each class of voting securities or securities which may be
23 converted into voting securities of the insurer or the controlling
24 person concerning which there is a right to acquire beneficial
25 ownership, by each person and by each affiliate of each person,
26 together with the name and address of each affiliate.

27 (5) Information as to any contracts, arrangements, or
28 understandings with any person with respect to any securities of
29 the insurer or the controlling person, including, but not limited to,
30 transfer of any of the securities, joint ventures, loan or option
31 arrangements, puts or calls, guarantees of loans, guarantees against
32 loss or guarantees of profits, division of losses or profits, or the
33 giving or withholding of proxies, naming the persons with whom
34 the contracts, arrangements, or understandings have been entered
35 into, and giving the details thereof.

36 All requests or invitations for tenders or advertisements making
37 a tender offer or requesting or inviting tenders of the voting
38 securities of the insurer or the controlling person made by or on
39 behalf of the person, and a copy of the agreement to exchange or
40 otherwise acquire securities or to merge with or otherwise to

1 acquire control of the insurer, shall be filed with the commissioner
2 and sent to the insurer as a part of the statement and shall contain
3 the information contained in the statement as the commissioner
4 may by rule or regulation prescribe. Copies of any additional
5 material soliciting or requesting the tender offers subsequent to
6 the initial solicitation or request, and copies of any amendment to
7 the agreement, shall contain the information as the commissioner
8 may by rule or regulation prescribe as necessary or appropriate in
9 the public interest or for the protection of policyholders or
10 shareholders, and shall be filed with the commissioner and sent to
11 the insurer not later than the time copies of the material are first
12 published or sent or given to security holders or the amendment
13 is entered into.

14 (b) If the person required to file the statement referred to in
15 subdivision (a) is a partnership, limited partnership, syndicate, or
16 other group, the commissioner may require that the information
17 called for by paragraphs (1) to (5), inclusive, of subdivision (a)
18 shall be given with respect to: (1) each partner of the partnership
19 or limited partnership, (2) each member of the syndicate or group,
20 and (3) each person who controls the partner or member. If a
21 person referred to in paragraph (1), (2), or (3) of this subdivision
22 is a corporation or the person required to file the statement referred
23 to in subdivision (a) is a corporation, the commissioner may require
24 that the information called for by paragraphs (1) to (5), inclusive,
25 of subdivision (a) shall be given with respect to the corporation
26 and each officer and director of the corporation and each person
27 who is directly or indirectly the beneficial owner of more than 10
28 percent of the outstanding voting securities of the corporation.

29 (c) If any tender offer, request, or invitation for tenders, or
30 agreement to exchange or otherwise acquire securities or to merge
31 or otherwise acquire control referred to in subdivision (a), is
32 proposed to be made by means of a registration statement under
33 the federal Securities Act of 1933, or in circumstances requiring
34 the disclosure of similar information under the federal Securities
35 Exchange Act of 1934, or under a state law requiring similar
36 registration or disclosure, the person required to file the statement
37 referred to in subdivision (a) may file that registration statement
38 with the commissioner as full satisfaction of the requirement in
39 subdivision (a).

1 (d) The purchases, exchanges, mergers, or other acquisitions of
2 control referred to in subdivision (a) may not be made until the
3 commissioner approves the purchases, exchanges, mergers, or
4 other acquisitions of control. The commissioner shall approve or
5 disapprove the transaction on or before the latter of 60 days after
6 the statement required by subdivision (a) has been filed with the
7 commissioner or, if a hearing is held pursuant to subdivision (f),
8 30 days after the close of the hearing held pursuant to subdivision
9 (f). The commissioner may disapprove the transaction if the
10 commissioner finds any of the following:

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

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

18 (3) The financial condition of an acquiring person might
19 jeopardize the financial stability of the insurer, or prejudice the
20 interests of its policyholders.

21 (4) The plans or proposals which the acquiring person has to
22 liquidate the insurer, to sell its assets, or to merge it with any
23 person, or to make any other major change in its business or
24 corporate structure or management, are not fair and reasonable to
25 policyholders.

26 (5) The competence, experience, and integrity of those persons
27 who would control the operation of the insurer indicate that it
28 would not be in the interest of ~~policyholders~~, *policyholders* or the
29 public to permit them to do so.

30 (e) The commissioner shall require the payment of two thousand
31 three hundred sixty dollars (\$2,360) as a fee for filing an
32 application pursuant to this section, the amount to accompany the
33 application. The application shall be on a form and in a format
34 prescribed by the NAIC.

35 (f) (1) The commissioner may hold a public hearing after the
36 statement required by subdivision (a) is filed. If a hearing is held,
37 at least 20 days' notice shall be given by the commissioner to the
38 person filing the statement. Not less than seven days' notice of the
39 public hearing shall be given by the person filing the statement to
40 the insurer and to other persons as may be designated by the

1 commissioner. At the hearing, the person filing the statement, the
2 insurer, any person to whom notice of hearing was sent, and any
3 other person whose interest may be affected, shall have the right
4 to present evidence, examine and cross-examine witnesses, and
5 offer oral and written arguments, and in connection therewith shall
6 be entitled to conduct proceedings in the same manner as is
7 presently allowed under the Administrative Procedure Act (Chapter
8 5 (commencing with Section 11500) of Part 1 of Division 3 of
9 Title 2 of the Government Code). All discovery proceedings shall
10 be concluded not later than three days prior to the commencement
11 of the public hearing.

12 (2) If the proposed acquisition of control will require the
13 approval of more than one commissioner, the public hearing
14 referred to in paragraph (1) may be held on a consolidated basis
15 upon request of the person filing the statement referred to in
16 subdivision (a). The person shall file the statement referred to in
17 subdivision (a) with the National Association of Insurance
18 Commissioners (NAIC) within five days of making the request
19 for a public hearing. A commissioner may opt out of a consolidated
20 hearing, and shall provide notice to the applicant of the opt-out
21 within 10 days of the receipt of the statement referred to in
22 subdivision (a). A hearing conducted on a consolidated basis shall
23 be public and shall be held within the United States before the
24 commissioners of the states in which the insurers are domiciled.
25 The commissioners shall hear and receive evidence. Any
26 commissioner may attend the hearing, in person or by
27 telecommunication.

28 (g) This section shall not apply to any offer for or request or
29 invitation for tenders of any voting securities, or any agreement
30 to exchange securities for or otherwise acquire control, if the
31 insurer whose shares are to be acquired remains a direct or indirect
32 subsidiary of the same ultimate controlling company person within
33 the insurer's insurance holding company system, neither the
34 acquiring person nor any affiliate acquires or incurs any debt,
35 guarantee, or other liability related to the transaction, and no shares
36 are purchased by or sold to a person who is not an affiliated person
37 in that insurance holding company system, or if, and to the extent
38 that, the commissioner, by rule or regulation or by order, exempts
39 the offer, request, invitation, or agreement from the provisions of
40 this section as not comprehended within the purposes thereof.

1 (h) For purposes of this section, any controlling person of a
2 domestic insurer seeking to divest its controlling interest in the
3 domestic insurer, in any manner, shall file with the commissioner,
4 with a copy to the insurer, confidential notice of its proposed
5 divestiture at least 30 days prior to the cessation of control. The
6 commissioner shall determine those instances in which the party
7 or parties seeking to divest a controlling interest in an insurer shall
8 be required to file for and obtain approval of the transaction. The
9 information shall remain confidential until the conclusion of the
10 transaction unless the commissioner, in his or her discretion,
11 determines that confidential treatment will interfere with
12 enforcement of this article. If the statement referred to in
13 subdivision (a) of Section 1215.2 is otherwise filed, this subdivision
14 shall not apply.

15 SEC. 5. Section 1215.5 of the Insurance Code is amended to
16 read:

17 1215.5. (a) Transactions by registered insurers with their
18 affiliates are subject to the following standards:

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

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

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

24 (4) The books, accounts, and records of each party to all
25 transactions shall be so maintained as to clearly and accurately
26 disclose the precise nature and details of the transactions, including
27 accounting information that is necessary to support the
28 reasonableness of the charges or fees to the parties.

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

33 (b) The following transactions involving a domestic insurer or
34 commercially domiciled insurer, as defined in Section 1215.14,
35 and any person in its insurance holding company system, including
36 amendments or modifications of affiliate agreements previously
37 filed pursuant to this section, may be entered into only if the insurer
38 has notified the commissioner in writing of its intention to enter
39 into the transaction at least 30 days prior thereto, or a shorter period
40 as the commissioner may permit, and the commissioner has not

1 disapproved it within that period. The notice for amendments or
2 modifications shall include the reasons for the change and the
3 financial impact on the domestic insurer or commercially domiciled
4 insurer. Informal notice shall be reported, within 30 days after a
5 termination of a previously filed agreement, to the commissioner
6 for determination of the type of filing required, if any. The
7 commissioner shall require the payment of one thousand eight
8 hundred eighty-nine dollars (\$1,889) as a fee for filings pursuant
9 to this subdivision, and the filings shall be on a form and in a
10 format prescribed by the NAIC. The payment shall accompany
11 the filing.

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

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

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

19 (2) Loans or extensions of credit to a person who is not an
20 affiliate, if made with the agreement or understanding that the
21 proceeds of the transactions, in whole or in substantial part, are to
22 be used to make loans or extensions of credit to, to purchase assets
23 of, or to make investments in, any affiliate of the insurer, if the
24 transactions are equal to or exceed:

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

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

30 (3) Reinsurance agreements and pooling agreements and
31 modifications thereto in which the reinsurance premium or a
32 change in the insurer's liabilities, or the projected reinsurance
33 premium or a change in the insurer's liabilities in any of the next
34 three years, equals or exceeds 5 percent of the insurer's
35 policyholder's surplus, as of the preceding December 31st,
36 including those agreements that may require as consideration the
37 transfer of assets from an insurer to a nonaffiliate, if an agreement
38 or understanding exists between the insurer and nonaffiliate that
39 any portion of the assets will be transferred to one or more affiliates
40 of the insurer.

1 (4) All management agreements, service contracts, tax sharing
2 agreements, and cost-sharing arrangements. However, subscription
3 agreements or powers of attorney executed by subscribers of a
4 reciprocal or interinsurance exchange are not required to be
5 reported pursuant to this section if the form of the agreement was
6 in use before 1943 and was not amended in any way to modify
7 payments, fees, or waivers of fees or otherwise substantially
8 amended after 1943. Payment or waiver of fees or other amounts
9 due under subscription agreements or powers of attorney forms
10 that were in use before 1943 and that have not been amended in
11 any way to modify payments, fees, or waiver of fees, or otherwise
12 substantially amended after 1943 shall not be subject to regulation
13 pursuant to paragraph (2) of subdivision (a).

14 (5) Guarantees when initiated or made by a domestic or
15 commercially domiciled insurer, provided that a guarantee that is
16 quantifiable as to amount is not subject to the notice requirements
17 of this paragraph unless it exceeds the lesser of one-half of 1
18 percent of the insurer's admitted assets or 10 percent of surplus as
19 regards policyholders as of the 31st day of December next
20 preceding. Further, all guarantees that are not quantifiable as to
21 amount are subject to the notice requirements of this paragraph.

22 (6) Derivative transactions or series of derivative transactions.
23 The written filing to the commissioner shall include the type or
24 types of derivative transactions, the affiliate or affiliates engaging
25 with the insurer in the derivative transactions, the objective and
26 the rationale for the derivative transaction or series of derivative
27 transactions, the maximum maturity and economic effect of the
28 derivative transactions, and any other information required by the
29 commissioner. Derivative transactions entered into pursuant to
30 this subdivision shall comply with the provisions of Section 1211.

31 (7) Direct or indirect acquisitions or investments in a person
32 that controls the insurer or in an affiliate of the insurer in an amount
33 that, together with its present holdings in those investments,
34 exceeds 2.5 percent of the insurer's policyholder's surplus. Direct
35 or indirect acquisitions or investments in subsidiaries acquired
36 under Section 1215.1, or in nonsubsidiary insurance affiliates that
37 are subject to the provisions of this article, or in subsidiaries
38 acquired pursuant to Section 1199, are exempt from this
39 requirement.

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

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

11 (d) The commissioner, in reviewing transactions under
12 subdivision (b), shall consider whether the transactions comply
13 with the standards set forth in subdivision (a) and whether they
14 may adversely affect the interests of policyholders.

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

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

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

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

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

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

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

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

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

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

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

1 (10) The quality and liquidity of investments in subsidiaries
2 made under Section 1215.1. The commissioner may treat ~~any~~ those
3 investments as a disallowed asset for purposes of determining the
4 adequacy of the policyholder's surplus whenever, in his or her
5 judgment, the investment so warrants.

6 (11) The quality of the company's earnings and the extent to
7 which the reported earnings include extraordinary accounting
8 items.

9 (g) No insurer subject to registration under Section 1215.4 shall
10 pay any extraordinary dividend or make any other extraordinary
11 distribution to its stockholders until 30 days after the commissioner
12 has received notice of the declaration thereof and has approved
13 the payment or has not, within the 30-day period, disapproved the
14 payment.

15 For purposes of this section, an extraordinary dividend or
16 distribution is any dividend or distribution which, together with
17 other dividends or distributions made within the preceding 12
18 months, exceeds the greater of (1) 10 percent of the insurer's
19 policyholder's surplus as of the preceding December 31st, or (2)
20 the net gain from operations of the insurer, if the insurer is a life
21 insurer, or the net income, if the insurer is not a life insurer, for
22 the 12-month period ending the preceding December 31st.

23 Notwithstanding any other provision of law, an insurer may
24 declare an extraordinary dividend or distribution that is conditional
25 upon the commissioner's approval. The declaration confers no
26 rights upon stockholders until the commissioner has approved the
27 payment of the dividend or distribution or until the commissioner
28 has not disapproved the payment within the 30-day period referred
29 to in this subdivision.

30 (h) Notwithstanding the control of a domestic insurer by any
31 person, the officers and directors of the insurer shall not thereby
32 be relieved of any obligation or liability to which they would
33 otherwise be subject to by law, and the insurer shall be managed
34 to ensure its separate operating identity consistent with the
35 provisions of this article. However, nothing in this article shall
36 preclude a domestic insurer from having or sharing a common
37 management or cooperative or joint use of personnel, property, or
38 services with one or more other persons under arrangements
39 meeting the standards of subdivision (a).

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

3 SEC. 6. Section 1215.6 of the Insurance Code is amended to
4 read:

5 1215.6. (a) Subject to the limitation contained in this section,
6 and in addition to the powers which the commissioner has under
7 Article 4 (commencing with Section 730) of Chapter 1 of this part
8 relating to the examination of insurers, the commissioner shall
9 also have the power to examine any insurer registered under
10 Section 1215.4 and its affiliates to ascertain the enterprise risk to
11 which the insurer is subjected by the ultimate controlling party, or
12 by any entity or combination of entities within the insurance
13 holding company system, or by the insurance holding company
14 system on a consolidated basis. The commissioner may also order
15 any insurer registered under Section 1215.4 to produce the records,
16 books, or other information or papers in the possession of the
17 insurer or its affiliates, including a report on the enterprise risk to
18 the insurer by the ultimate controlling party, or by any entity or
19 combination of entities within the insurance holding company
20 system, or by the insurance holding company system on a
21 consolidated basis, as shall be necessary to ascertain the financial
22 condition or legality of conduct of that insurer.

23 (b) The commissioner shall exercise his or her power under
24 subdivision (a) only if the examination of the insurer under Article
25 4 (commencing with Section 730) of Chapter 1 of this part is
26 inadequate or the interests of the policyholders of that insurer are
27 being adversely affected.

28 (c) The commissioner may retain at the registered insurer's
29 expense the attorneys, actuaries, accountants, and other experts
30 not otherwise a part of the commissioner's staff as shall be
31 reasonably necessary to assist in the conduct of the examination
32 under subdivision (a) of this section. Any persons so retained shall
33 be under the direction and control of the commissioner and shall
34 act in a purely advisory capacity.

35 (d) Each registered insurer producing for examination records,
36 books, and papers pursuant to subdivision (a) shall be liable for,
37 and shall pay the expense of, that examination in accordance with
38 Section 736.

39 SEC. 7. Section 1215.75 is added to the Insurance Code, to
40 read:

1 1215.75. (a) (1) The commissioner is authorized to act as the
2 groupwide supervisor for any internationally active insurance
3 group in accordance with this section. However, the commissioner
4 may otherwise acknowledge another regulatory official as the
5 groupwide supervisor when the internationally active insurance
6 group meets any of the following conditions:

7 (A) Does not have substantial insurance operations in the United
8 States.

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

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

15 (2) An insurance holding company system that does not
16 otherwise qualify as an internationally active insurance group may
17 request that the commissioner make a determination or
18 acknowledgment as to a groupwide supervisor pursuant to this
19 section.

20 (b) In cooperation with other state, federal, and international
21 regulatory agencies, the commissioner shall identify a single
22 groupwide supervisor for an internationally active insurance group.
23 The commissioner may determine that he or she is the appropriate
24 groupwide supervisor for an internationally active insurance group
25 that conducts substantial insurance operations concentrated in the
26 state. However, the commissioner may acknowledge that a
27 regulatory official from another jurisdiction is the appropriate
28 groupwide supervisor for the internationally active insurance group.
29 The commissioner shall consider all of the following factors when
30 making a determination or acknowledgment pursuant to this
31 subdivision:

32 (1) The place of domicile of the insurers within the
33 internationally active insurance group that hold the largest share
34 of the group's written premiums, assets, or liabilities.

35 (2) The place of domicile of the top-tiered insurer or insurers
36 in the insurance holding company system of the internationally
37 active insurance group.

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

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

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

6 (B) Otherwise sufficient in terms of providing for groupwide
7 supervision, enterprise risk analysis, and cooperation with other
8 regulatory officials.

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

12 However, a commissioner identified pursuant to this section as
13 the groupwide supervisor may determine that it is appropriate to
14 acknowledge another supervisor to serve as the groupwide
15 supervisor. The acknowledgment of the groupwide supervisor shall
16 be made after consideration of the factors listed in paragraphs (1)
17 to (5), inclusive, and shall be made in cooperation with and subject
18 to the acknowledgment of other regulatory officials involved with
19 supervision of members of the internationally active insurance
20 group, and in consultation with the internationally active insurance
21 group.

22 (c) Notwithstanding any other law, when another regulatory
23 official is acting as the groupwide supervisor of an internationally
24 active insurance group, the commissioner shall acknowledge that
25 regulatory official as the groupwide supervisor. However, if there
26 is a material change in the internationally active insurance group
27 that results in either (1) the internationally active insurance group's
28 insurers domiciled in this state holding the largest share of the
29 group's premiums, assets, or liabilities, or (2) this state being the
30 place of domicile of the top-tiered insurer or insurers in the
31 insurance holding company system of the internationally active
32 insurance group, the commissioner shall make a determination or
33 acknowledgment as to the appropriate groupwide supervisor for
34 that internationally active insurance group pursuant to subdivision
35 (b).

36 (d) Pursuant to Section 1215.6, the commissioner is authorized
37 to collect from any insurer registered pursuant to Section 1215.4
38 all information necessary to determine whether the commissioner
39 may act as the groupwide supervisor of an internationally active
40 insurance group or if the commissioner may acknowledge another

1 regulatory official to act as the groupwide supervisor. Prior to
2 issuing a determination that an internationally active insurance
3 group is subject to groupwide supervision by the commissioner,
4 the commissioner shall notify the insurer registered pursuant to
5 Section 1215.4 and the ultimate controlling person within the
6 internationally active insurance group. The internationally active
7 insurance group shall have not less than 30 days to provide the
8 commissioner with additional information pertinent to the pending
9 determination. The commissioner shall publish on the department's
10 Internet Web site the identity of internationally active insurance
11 groups that the commissioner has determined are subject to
12 groupwide supervision by the commissioner.

13 (e) If the commissioner is the groupwide supervisor for an
14 internationally active insurance group, the commissioner is
15 authorized to engage in any of the following groupwide supervision
16 activities:

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

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

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

23 (2) Request, from any member of an internationally active
24 insurance group subject to the commissioner's supervision,
25 information necessary and appropriate to assess enterprise risk,
26 including, but not limited to, information about the members of
27 the internationally active insurance group regarding any of the
28 following:

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

30 (B) Capital adequacy.

31 (C) Material intercompany transactions.

32 (3) Coordinate and, through the authority of the regulatory
33 officials of the jurisdictions where members of the internationally
34 active insurance group are domiciled, compel development and
35 implementation of reasonable measures designed to ensure that
36 the internationally active insurance group is able to timely
37 recognize and mitigate enterprise risks to members of that
38 internationally active insurance group that are engaged in the
39 business of insurance.

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

6 (5) Enter into agreements with, or obtain documentation from,
7 any insurer registered pursuant to Section 1215.4, any member of
8 the internationally active insurance group, and any other state,
9 federal, and international regulatory agencies for members of the
10 internationally active insurance group, providing the basis for or
11 otherwise clarifying the commissioner's role as groupwide
12 supervisor, including provisions for resolving disputes with other
13 regulatory officials. These agreements or documentation shall not
14 serve as evidence in any proceeding that any insurer or person
15 within an insurance holding company system not domiciled or
16 incorporated in this state is doing business in this state or is
17 otherwise subject to jurisdiction in this state.

18 (6) Other groupwide supervision activities, consistent with the
19 authorities and purposes enumerated above, as considered
20 necessary by the commissioner.

21 (f) If the commissioner acknowledges that another regulatory
22 official from a jurisdiction that is not accredited by the NAIC is
23 the groupwide supervisor, the commissioner is authorized to
24 reasonably cooperate, through supervisory colleges or otherwise,
25 with groupwide supervision undertaken by the groupwide
26 supervisor if the following conditions are satisfied:

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

29 (2) The regulatory official acknowledged as the groupwide
30 supervisor also recognizes and cooperates with the commissioner's
31 activities as a groupwide supervisor for other internationally active
32 insurance groups when applicable. When that recognition and
33 cooperation is not reasonably reciprocal, the commissioner is
34 authorized to refuse recognition and cooperation.

35 (g) The commissioner is authorized to enter into agreements
36 with, or obtain documentation from, any insurer registered pursuant
37 to Section 1215.4, any affiliate of the insurer, and other state,
38 federal, or international regulatory agencies for members of the
39 internationally active insurance groups, that provide the basis for,

1 or otherwise clarify, a regulatory official’s role as groupwide
2 supervisor.

3 (h) A registered insurer subject to this section shall be liable for
4 and shall pay the reasonable expenses of the commissioner’s
5 participation in the administration of this section, including the
6 engagement of attorneys, actuaries, and any other professionals
7 and all reasonable travel expenses.

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

10 1215.8. (a) All information, documents, and copies thereof
11 obtained by or disclosed to the commissioner or any other person
12 in the course of an examination or investigation made pursuant to
13 Section 1215.4, 1215.5, 1215.6, or 1215.75, and all information
14 reported or provided pursuant to Section 1215.4, 1215.5, 1215.6,
15 or 1215.75 shall be kept confidential, is not subject to disclosure
16 by the commissioner pursuant to the California Public Records
17 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
18 of Title 1 of the Government Code), is not subject to subpoena,
19 and is not subject to discovery from the commissioner or admissible
20 into evidence in any private civil action if obtained from the
21 commissioner in any manner. This information shall not be made
22 public by the commissioner or any other person except to insurance
23 departments of other states without the prior written consent of
24 the insurance company to which it pertains, unless the
25 commissioner, after giving the insurer and its affiliates who would
26 be affected thereby notice and opportunity to be heard, determines
27 that the interests of policyholders, shareholders, or the public will
28 be served by the publication thereof, in which event he or she may
29 publish all or any part thereof in a manner as he or she may deem
30 appropriate.

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

33 (1) May, upon request, be required to share documents,
34 materials, or other information, including the confidential and
35 privileged documents, materials, or information subject to
36 subdivision (a), with other state, federal, and international
37 regulatory agencies, with the NAIC and its affiliates and
38 subsidiaries, and with state, federal, and international law
39 enforcement authorities, including members of any supervisory
40 college described in Section 1215.7; provided that the recipient

1 agrees in writing to maintain the confidentiality and privileged
2 status of the documents, materials, or other information, and has
3 verified in writing the legal authority to maintain confidentiality.

4 (2) Notwithstanding paragraph (1), may only share confidential
5 and privileged documents, materials, or information reported
6 pursuant to subdivision (m) of Section 1215.4 with commissioners
7 of states having statutes or regulations substantially similar to
8 subdivision (a) and who have agreed in writing not to disclose the
9 information.

10 (3) May receive documents, materials, or information, including
11 otherwise confidential and privileged documents, materials, or
12 information, from the NAIC and its affiliates and subsidiaries and
13 from regulatory and law enforcement officials of other foreign or
14 domestic jurisdictions, and shall maintain as confidential or
15 privileged any documents, materials, or information received with
16 notice or the understanding that it is confidential or privileged
17 under the laws of the jurisdiction that is the source of the
18 documents, materials, or information.

19 (4) May enter into written agreements with the NAIC governing
20 sharing and use of information provided pursuant to this
21 subdivision consistent with this subdivision that shall do the
22 following:

23 (A) Specify procedures and protocols regarding the
24 confidentiality and security of information shared with the NAIC
25 and its affiliates and subsidiaries pursuant to this subdivision,
26 including procedures and protocols for sharing by the NAIC with
27 other state, federal, or international regulators.

28 (B) Specify that ownership of information shared with the NAIC
29 and its affiliates and subsidiaries pursuant to this subdivision
30 remains with the commissioner and the NAIC's use of the
31 information is subject to the direction of the commissioner.

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

36 (D) Require the NAIC and its affiliates and subsidiaries to
37 consent to intervention by an insurer in any judicial or
38 administrative action in which the NAIC and its affiliates and
39 subsidiaries may be required to disclose confidential information

1 about the insurer shared with the NAIC and its affiliates and
2 subsidiaries pursuant to this subdivision.

3 (c) The sharing of information by the commissioner pursuant
4 to this subdivision shall not constitute a delegation of regulatory
5 authority or rulemaking, and the commissioner is solely responsible
6 for the administration, execution, and enforcement of the provisions
7 of this article.

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

12 (e) Documents, materials, or other information filed in the
13 possession or control of the NAIC pursuant to this subdivision
14 shall be confidential by law and privileged, shall not be subject to
15 subpoena, and shall not be subject to discovery or admissible in
16 evidence in any private civil action.

17 SEC. 9. The Legislature finds and declares that Section 936.6
18 of the Insurance Code, as added by Section 1 of this act, imposes
19 a limitation on the public’s right of access to the meetings of public
20 bodies or the writings of public officials and agencies within the
21 meaning of Section 3 of Article I of the California Constitution.
22 Pursuant to that constitutional provision, the Legislature makes
23 the following findings to demonstrate the interest protected by this
24 limitation and the need for protecting that interest:

25 (1) The Corporate Governance Annual Disclosure and related
26 information will contain confidential and sensitive information
27 related to an insurer or insurance group’s internal operations and
28 proprietary and trade secret information that, if made public, could
29 potentially cause the insurer or insurance group competitive harm
30 or disadvantage.

31 (2) The interests in protecting the internal operations and
32 proprietary and trade secret information of the insurers or insurance
33 groups in order to promote consumer choice and competition in
34 the marketplace strongly outweighs the public interest in having
35 access to this information, and there are other means of obtaining
36 financial information, such as annual reports.

37 SEC. 10. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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

10 (1) In order to permit insurers and insurance groups adequate
11 time to prepare their first ~~Corporate Governance~~ *Governance* Annual
12 Disclosure (CGAD) that would be required, pursuant to the
13 Corporate Governance Disclosure Model Act, to be submitted to
14 the Insurance Commissioner no later than June 1, 2016, it is
15 necessary for this act to take effect immediately.

16 (2) In order to permit California's United States-based insurance
17 groups to receive, as quickly as possible, the benefits of the
18 Insurance Commissioner acting in the capacity of groupwide
19 supervisor under the amendments to the Insurance Holding
20 Company System Regulatory Act, it is necessary for this act take
21 effect immediately.