

Assembly Bill No. 553

CHAPTER 213

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.

[Approved by Governor August 17, 2015. Filed with
Secretary of State August 17, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 553, 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 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 by the commissioner pursuant to the California Public Records Act, are not subject to subpoena, and are not subject to discovery from the commissioner or admissible in evidence in any 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.

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

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

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

Article 10.8. Corporate Governance Disclosure Act

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

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

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

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

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

(b) “Insurance group” means those insurers and affiliates included within an insurance holding company system as defined in subdivision (e) of Section 1215 (Insurance Holding Company System Regulatory Act).

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

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

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

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

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

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

(d) (1) For purposes of completing the CGAD, the insurer or insurance group may provide information regarding corporate governance at one or all of the following: the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance.

(2) The insurer or insurance group is encouraged to make the CGAD disclosures at one of the following levels:

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

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

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

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

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

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

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

936.5. (a) The insurer or insurance group shall have discretion over the responses to the CGAD inquiries, provided the CGAD contains the material information necessary to permit the commissioner to gain an understanding of the insurer's or group's corporate governance structure, policies, and practices. The commissioner may request additional information that he or she deems material and necessary to provide him or her with a clear understanding of the corporate governance policies, the reporting or information system, or controls implementing those policies.

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

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

(2) However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal

action brought as a part of the commissioner's official duties. The commissioner shall not otherwise disclose or make public the documents, materials, or other information without the prior written consent of the insurer.

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

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

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

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

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

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

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials, or other CGAD-related information shall occur as a result of disclosure of that CGAD-related

information or those documents to the commissioner under this section or as a result of sharing as authorized in this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) “Commissioner” means the Insurance Commissioner of the state and any assistant to the Insurance Commissioner designated and authorized by the commissioner while acting under his or her designation as the Insurance Commissioner.

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

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

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

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

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

(n) “NAIC” means the National Association of Insurance Commissioners. SEC. 3. Section 1215.1 of the Insurance Code is amended to read:

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

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

(1) Invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts that do not exceed the lesser

of 10 percent of the insurer's assets or 50 percent of the insurer's surplus as regards policyholders. However, after these investments, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of these investments, there shall be excluded investments in insurance subsidiaries, and there shall be included (A) total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and (B) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

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

(A) Any direct investment in an insurance subsidiary.

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

(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that each subsidiary agrees to limit its investments in any asset so that these investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (1) or in this chapter applicable to the insurer. For the purpose of this paragraph, "the total investment of the insurer" shall include (A) any direct investment by the insurer in an asset, and (B) the insurer's proportionate share of any investment of an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of that subsidiary.

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

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

(d) Whether any investment pursuant to subdivision (b) meets the applicable requirements thereof is to be determined immediately after the investment is made, taking into account the then outstanding principal

balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made.

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

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

1215.2. (a) No person shall make a tender offer for, or a request or invitation for tenders of, or enter 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 either directly or through its affiliates in any businesses other than that of insurance, if, as a result of the consummation thereof, the person would, directly or indirectly, acquire control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer, unless, 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, as the case may be, the person has filed with the commissioner, and has sent to the insurer, a statement containing the following information, and any additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate in the public interest or for the protection of policyholders or shareholders:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in paragraph (1) may be held on a consolidated basis upon request of the person filing

the statement referred to in subdivision (a). The person shall file the statement referred to in subdivision (a) with the National Association of Insurance Commissioners (NAIC) within five days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in subdivision (a). A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence. Any commissioner may attend the hearing, in person or by telecommunication.

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

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

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

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

- (1) The terms shall be fair and reasonable.
- (2) Charges or fees for services performed shall be reasonable.
- (3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.
- (4) The books, accounts, and records of each party to all transactions shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including accounting information that is necessary to support the reasonableness of the charges or fees to the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1215.75. (a) (1) The commissioner is authorized to act as the groupwide supervisor for any internationally active insurance group in accordance with this section. However, the commissioner may otherwise acknowledge another

regulatory official as the groupwide supervisor when the internationally active insurance group meets any of the following conditions:

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

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

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

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

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

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

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

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

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

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

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

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

However, a commissioner identified pursuant to this section as the groupwide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the groupwide supervisor. The acknowledgment of the groupwide supervisor shall be made after consideration of the factors listed in paragraphs (1) to (5), inclusive, and shall be made in cooperation with and subject to the acknowledgment of

other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

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

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

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

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

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

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

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

(A) Governance, risk assessment, and management.

(B) Capital adequacy.

(C) Material intercompany transactions.

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel 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 members of that internationally active insurance group that are engaged in the business of insurance.

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

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

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

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

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

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

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

(h) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the

administration of this section, including the engagement of attorneys, actuaries, and any other professionals and all reasonable travel expenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The interests in protecting the internal operations and proprietary and trade secret information of the insurers or insurance groups in order to promote consumer choice and competition in the marketplace strongly

outweighs the public interest in having access to this information, and there are other means of obtaining financial information, such as annual reports.

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

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

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

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