

ASSEMBLY BILL

No. 2538

Introduced by Assembly Member Miller

February 21, 1996

An act to amend Sections 1215.4, 1215.5, 1215.8, and 1215.13 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2538, as introduced, Miller. Insurance: holding companies.

Under the Insurance Holding Company System Regulatory Act, the Department of Insurance regulates certain transactions involving two or more affiliated persons, at least one of which is an insurer.

This bill would revise provisions of the act to bring it into compliance with the National Association of Insurance Commissioners Model Holding Company Act. The revised provisions relate to registration procedures, reporting requirements, and transaction requirements. The revisions would require that the Insurance Commissioner be notified in advance of certain transactions involving a domestic insurer or commercially domiciled insurer, as defined, and a person in the insurer's holding company system. Transactions entered into for the purpose of avoiding the notice requirement would be prohibited. The bill would also specify standards of review to be used by the commissioner in approving transactions after receiving the required notice. A fee would be charged for each transaction subject to advance notice to the commissioner.

The bill would specify procedures for the repeal of regulations under the act, and would exempt the Department of Insurance from complying with specified statutory procedures for the adoption of regulations under the act.

Existing law provides that a foreign insurer authorized to do business in California is considered “commercially domiciled” in this state if, among other things, gross premiums written in California during a specified time period constitute 20% of the insurer’s total gross premiums written everywhere in the United States.

This bill would increase that amount to 33%.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 1215.4 of the Insurance Code is
2 amended to read:
3 1215.4. (a) Every insurer which is authorized to do
4 business in this state and which is a member of an
5 insurance holding company system shall register with the
6 commissioner, except a foreign insurer subject to
7 disclosure requirements and standards adopted by
8 statute or regulation in the jurisdiction of its domicile
9 which are substantially similar to those contained in this
10 section. Such exemption from registration for such
11 foreign insurers shall not apply to any commercially
12 domiciled insurer within this state, as provided in Section
13 1215.13. Any insurer which is subject to registration under
14 this section shall register within 60 days after the effective
15 date of this article or 15 days after it becomes subject to
16 registration, whichever is later, *and annually thereafter*
17 *by April 30 of each year for the previous calendar year,*
18 unless the commissioner for good cause shown extends
19 the time for registration, ~~and then within such extended~~
20 ~~time.~~ The commissioner may require a holding company
21 system which is not subject to registration under this
22 section to furnish a copy of the registration statement or
23 other information filed by ~~such~~ *the* insurance company



1 with the insurance regulatory authority of domiciliary
2 jurisdiction.

3 (b) Every insurer subject to registration shall file a
4 registration statement on a form ~~provided by the~~
5 ~~commissioner~~ *prescribed by the National Association of*
6 *Insurance Commissioners*, which shall contain current
7 information about the following:

8 (1) The capital structure, general financial condition,
9 ownership, and management of the insurer and any
10 person controlling ~~such~~ *the insurer*;

11 (2) *The identity and relationship of every member of*
12 *the insurance holding company system.*

13 (3) The following agreements in force, relationships
14 subsisting, and transactions currently outstanding *or that*
15 *have occurred during the last calendar year* between
16 ~~such~~ *the insurer* and its affiliates:

17 ~~(i)~~

18 (A) Loans, ~~other~~ *extensions of credit*, investments, or
19 purchases, sales, or exchanges of securities of the affiliates
20 by the insurer or of the insurer by its affiliates;

21 ~~(ii)~~

22 (B) Purchases, sales, or exchanges of assets;

23 ~~(iii)~~

24 (C) Transactions not in the ordinary course of
25 business;

26 ~~(iv)~~

27 (D) Guarantees or undertakings for the benefit of an
28 affiliate which result in an actual contingent exposure of
29 the insurer's assets to liability, other than insurance
30 contracts entered into in the ordinary course of the
31 insurer's business;

32 ~~(v)~~

33 (E) All management ~~and~~ *agreements*, service
34 contracts, and all cost-sharing arrangements, ~~other than~~
35 ~~cost-allocation arrangements based upon generally~~
36 ~~accepted accounting principles~~;

37 ~~(vi)~~

38 (F) Reinsurance agreements ~~covering all or~~
39 ~~substantially all of one or more lines of insurance of the~~
40 ~~ceding company~~.



1 (G) *Dividends and other distributions to shareholders.*

2 (H) *Consolidated tax allocation agreements.*

3 ~~(3)~~

4 (4) *A pledge of the insurer's stock, including stock of*
5 *a subsidiary or controlling affiliate, for a loan made to a*
6 *member of the insurance holding company system.*

7 (5) Other matters as may be included in registration
8 forms adopted by the National Association of Insurance
9 Commissioners, to the extent *otherwise* required by the
10 commissioner.

11 (c) *All registration statements shall contain a*
12 *summary outlining all items in the current registration*
13 *statement that are changes from the prior registration*
14 *statement.*

15 (d) No information need be disclosed on the
16 registration statement filed pursuant to subdivision (b) of
17 this section if ~~such~~ *the* information is not material for the
18 purposes of this ~~article~~ *section*.

19 ~~(1) Unless the commissioner by rule, regulation, or~~
20 ~~order provides otherwise, sales, purchases, exchanges,~~
21 ~~loans or extensions of credit, or investments made within~~
22 ~~the immediately preceding 12 months, or guarantees~~
23 ~~involving, in the net aggregate, one-half of 1 percent or~~
24 ~~less of an insurer's admitted assets, or 5 percent or less of~~
25 ~~an insurer's surplus as to policyholders, determined by~~
26 ~~whichever is greater, as of the preceding December 31st~~
27 ~~day of December next preceding, shall, are not be~~
28 ~~deemed material for purposes of this section.~~

29 ~~(2) Unless the commissioner by rule, regulation, or~~
30 ~~order provides otherwise, sales, purchases, exchanges,~~
31 ~~loans or extensions of credit, or investments made within~~
32 ~~the immediately preceding 12 months involving in the~~
33 ~~net aggregate more than either 5 percent of the insurer's~~
34 ~~admitted assets or 25 percent of the insurer's surplus as to~~
35 ~~policyholders, determined by whichever is the lesser, as~~
36 ~~of the 31st day of December next preceding shall be~~
37 ~~deemed material transactions of an extraordinary type.~~

38 ~~(d)~~

39 (e) Each registered insurer shall keep current the
40 information required to be disclosed in its registration



1 statement by reporting all material changes or additions
2 within 15 days after the end of the month in which it
3 learns of each such change or addition. However, subject

4 ~~(f) Subject to this subdivision Section 1215.5(g), each~~
5 registered insurer shall ~~so~~ report all dividends and other
6 distributions to shareholders within five business days
7 following declaration. No dividend or other distribution
8 to shareholders may be paid until at least 10 business days
9 after receipt by the commissioner, at the office of the
10 department prescribed by the commissioner by notice to
11 all insurers, of a notice of the declaration of the dividend
12 or other distribution. ~~Material transactions that are of the~~
13 ~~extraordinary type, as defined in paragraph (2) of~~
14 ~~subdivision (e), shall not be consummated without prior~~
15 ~~approval of the commissioner. The commissioner shall~~
16 ~~require the payment of one thousand one hundred eighty~~
17 ~~dollars (\$1,180), as a fee for the approval of the forms filed~~
18 ~~pursuant to this subdivision. The payment shall~~
19 ~~accompany the filing of the form.~~

20 ~~(e)~~

21 *(g) Every person in an insurance holding company*
22 *system subject to registration is required to provide the*
23 *insurer with all information reasonably necessary to*
24 *enable the insurer to comply with the provisions of this*
25 *act.*

26 *(h) The commissioner shall terminate the registration*
27 *of any insurer which demonstrates that it no longer is a*
28 *member of an insurance holding company system.*

29 ~~(f)~~

30 *(i) The commissioner may require or allow two or*
31 *more affiliated insurers subject to registration hereunder*
32 *to file a consolidated registration statement or*
33 *consolidated reports amending their consolidated*
34 *registration statement or their individual registration*
35 *statements.*

36 ~~(g)~~

37 *(j) The commissioner may allow any insurer which is*
38 *authorized to do business in this state and which is part*
39 *of an insurance holding company system to register on*
40 *behalf of any affiliated insurer which is required to*



1 register under subdivision (a) of this section and to file all
 2 information and material required to be filed under this
 3 article.

4 (h)

5 (k) The provisions of this section ~~shall do~~ not apply to
 6 any insurer, information, or transaction ~~if and to the~~
 7 ~~extent that~~ *exempted by* the commissioner ~~by rule,~~
 8 ~~regulation, or order shall exempt the same from the~~
 9 ~~provisions of this section as not comprehended within the~~
 10 ~~purposes of this section.~~

11 (i)

12 (l) Any person may file with the commissioner a
 13 disclaimer of affiliation with any authorized insurer ~~or~~
 14 ~~such a~~ *A disclaimer of affiliation* may be filed by ~~such an~~
 15 insurer or any member of an insurance holding company
 16 system. The disclaimer shall fully disclose all material
 17 relationships and bases for affiliation between ~~such the~~
 18 person and ~~such the~~ insurer, as well as the basis for
 19 disclaiming ~~such an~~ affiliation. After a disclaimer has been
 20 filed, the insurer ~~shall be~~ *is* relieved of any duty to register
 21 or report under this section which may arise out of the
 22 insurer's relationship with ~~such the disclaimed~~ person
 23 unless and until the commissioner disallows ~~such a the~~
 24 disclaimer. The commissioner shall disallow ~~such a the~~
 25 disclaimer only after furnishing all parties in interest with
 26 notice and opportunity to be heard and after making
 27 specific findings of fact to support ~~such the~~ disallowance.

28 (j)

29 (m) The failure to file a registration statement ~~or any,~~
 30 ~~summary thereof,~~ amendment ~~thereto~~ *to the statement,*
 31 *or report of dividend* required by this section within the
 32 time specified for ~~such the~~ filing ~~shall be~~ *is* a violation of
 33 this article.

34 SEC. 2. Section 1215.5 of the Insurance Code is
 35 amended to read:

36 1215.5. (a) ~~Material transactions~~ *Transactions* by
 37 registered insurers with their affiliates ~~shall be~~ *are* subject
 38 to ~~each of~~ the following standards:

39 (1) The terms shall be fair and reasonable;



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

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

6 (4) *The books, accounts, and records of each party to*
7 *all transactions shall be so maintained as to clearly and*
8 *accurately disclose the precise nature and details of the*
9 *transactions, including accounting information that is*
10 *necessary to support the reasonableness of the charges or*
11 *fees to the parties.*

12 ~~(3)~~
13 (5) *The insurer's policyholder's surplus—as regards*
14 *policyholders following any dividends or distributions to*
15 *shareholder affiliates shall be reasonable in relation to the*
16 *insurer's outstanding liabilities and adequate to its*
17 *financial needs.*

18 (b) *The following transactions involving a domestic*
19 *insurer or commercially domiciled insurer, as defined in*
20 *Section 1215.13, and any person in its holding company*
21 *system, may be entered into only if the insurer has*
22 *notified the commissioner in writing of its intention to*
23 *enter into the transaction at least 30 days prior thereto, or*
24 *a shorter period as the commissioner may permit, and the*
25 *commissioner has not disapproved it within that period.*
26 *The commissioner shall require the payment of three*
27 *thousand sixty dollars (\$3,060) as a fee for filings under*
28 *this subdivision. The payment shall accompany the filing.*

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

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

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

37 (2) *Loans or extensions of credit to a person who is not*
38 *an affiliate, if made with the agreement or understanding*
39 *that the proceeds of the transactions, in whole or in*
40 *substantial part, are to be used to make loans or extensions*



1 of credit to, to purchase assets of, or to make investments
2 in, any affiliate of the insurer, if the transactions are equal
3 to or exceed:

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

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

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

19 (4) All management agreements, service contracts,
20 guarantees, and all cost-sharing arrangements.

21 (5) Direct or indirect acquisitions or investments in a
22 person that controls the insurer or in an affiliate of the
23 insurer in an amount that, together with its present
24 holdings in those investments, exceeds 2.5 percent of the
25 insurer's policyholder's surplus. Direct or indirect
26 acquisitions or investments in subsidiaries acquired
27 under Section 1215.1 of this article, or in nonsubsidiary
28 insurance affiliates that are subject to the provisions of
29 this article, or in subsidiaries acquired pursuant to Section
30 1199, are exempt from this requirement.

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

34 Nothing in this section authorizes a transaction that, for
35 an insurer not a member of the same holding company
36 system, would be otherwise contrary to law.

37 (c) A domestic insurer may not enter into transactions
38 that are part of a plan or series of transactions with
39 persons within the holding company system if the
40 purpose of those transactions is to avoid the statutory



1 *threshold amount and thus avoid review. If the*
2 *commissioner determines that separate transactions*
3 *were entered into over any 12-month period to avoid*
4 *review, the commissioner may exercise his or her*
5 *authority under Section 1215.10.*

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

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

16 (f) *For purposes of this article, in determining*
17 *whether an insurer's ~~policyholder's~~ surplus—~~as regards~~*
18 *~~policyholders~~ is reasonable in relation to the insurer's*
19 *outstanding liabilities and adequate to its financial needs,*
20 *the following factors, among others, shall be considered:*

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

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

26 (3) *The number and size of risks insured in each line*
27 *of business;.*

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

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

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

34 (7) *The recent past and projected future trend in the*
35 *size of the insurer's ~~surplus as regards policyholders;~~*
36 *investment portfolio.*

37 (8) *The recent past and projected future trend in the*
38 *size of the insurer's surplus—~~as regards policyholders,~~ and*
39 *the policyholder's surplus maintained by other;*
40 *comparable insurers;.*



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

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

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

12 (e)

13 (g) No insurer subject to registration under Section
14 1215.4 shall pay any extraordinary dividend or make any
15 other extraordinary distribution to its stockholders until
16 30 days after the commissioner has received notice of the
17 declaration thereof and *has approved the payment or* has
18 not, within ~~such the 30-day~~ period, disapproved ~~such the~~
19 payment, ~~or the commissioner shall have approved such~~
20 ~~payment within such 30-day period.~~ *The commissioner*
21 *shall require the payment of three thousand sixty dollars*
22 *(\$3,060) as a fee for the filings under this subdivision. The*
23 *payment shall accompany the filing.*

24 For purposes of this section, an extraordinary dividend
25 or distribution is any dividend or distribution which,
26 together with other dividends or distributions made
27 within the preceding 12 months, exceeds the greater of
28 (1) 10 percent of ~~such the insurer's policyholder's~~ surplus
29 ~~as regards policyholders~~ as of the *preceding December*
30 ~~31st day of December next preceding~~, or (2) the net gain
31 from operations of ~~such the~~ insurer, if ~~such the~~ insurer is
32 a life insurer, or the net income, if ~~such the~~ insurer is not
33 a life insurer, for the 12-month period ending the
34 *preceding December 31st day of December next*
35 *preceding*.

36 Notwithstanding any other provision of law, an insurer
37 may declare an extraordinary dividend or distribution
38 which is conditional upon the commissioner's approval
39 ~~thereof, and such a.~~ *The declaration shall confer confers*
40 no rights upon stockholders until the commissioner has



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

5 SEC. 3. Section 1215.8 of the Insurance Code is
6 amended to read:

7 1215.8. The commissioner may, upon notice and
8 opportunity for all interested persons to be heard, issue
9 ~~such~~ *the* rules, regulations, and orders ~~as shall be~~ *that are*
10 necessary to carry out the provisions of this article.

11 *For the regulations found in Sections 2683 to 2683.23,*
12 *inclusive, of Title 10 of the California Code of Regulations,*
13 *relating to the filings required pursuant to the California*
14 *Holding Company System Regulatory Act, repeal may be*
15 *effected by filing an order of repeal with the Secretary of*
16 *State under Section 11343 of the Government Code. The*
17 *Secretary of State shall accept the order to effect the*
18 *repeal. The Department of Insurance need not comply*
19 *with the provisions of Article 5 (commencing with*
20 *Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the*
21 *Government Code to adopt regulations under the act.*

22 SEC. 4. Section 1215.13 of the Insurance Code is
23 amended to read:

24 1215.13. (a) For the purposes of this article only,
25 every foreign insurer, except an insurer described in
26 Article 2 (commencing with Section 12350) of Chapter 1
27 of Part 6 of Division 2, which is authorized to do business
28 in this state and which, during its three preceding fiscal
29 years taken together, or during any lesser period of time
30 if it has been licensed to transact its business in California
31 only for such lesser period of time, has written an average
32 of more gross premiums in the State of California than it
33 has written in its state of domicile during the same period,
34 and such gross premiums written constitute ~~20~~ 33 percent
35 or more of its total gross premiums written everywhere
36 in the United States for such three-year or lesser period,
37 as reported in its three most recent annual statements,
38 shall be deemed a “commercially domiciled insurer”
39 within the State of California.



1 (b) The commissioner may exempt from the
 2 provisions of this article any commercially domiciled
 3 insurer made subject to this article by subdivision (a) if
 4 he or she ~~shall determine~~ *determines* that it has a
 5 sufficiently large amount of assets and the evidences of
 6 title thereto physically located in California, or that the
 7 ratio of such assets to its California policyholder liability
 8 is sufficiently large, as to justify the conclusion that there
 9 is no reasonable danger that the operations or conduct of
 10 the business of such insurer could present a danger of loss
 11 to California policyholders. The commissioner may also
 12 exempt from the provisions of this article any
 13 commercially domiciled insurer made subject to this
 14 article by subdivision (a) under ~~such~~ *the* circumstances
 15 as *that* he or she deems appropriate.

16 (c) This section ~~shall~~ *does* not, ~~however,~~ ~~be construed~~
 17 ~~to~~ exempt any foreign insurer which is authorized to do
 18 business in this state, including a commercially domiciled
 19 insurer, from the provisions of any other sections of this
 20 article which may be applicable to ~~such~~ *the* insurer.

