

AMENDED IN ASSEMBLY MARCH 25, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2538**

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**Introduced by Assembly Member Miller**

February 21, 1996

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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 amended, 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. The commissioner may require  
 20 a holding company system which is not subject to  
 21 registration under this section to furnish a copy of the  
 22 registration statement or other information filed by the



1 insurance company with the insurance regulatory  
2 authority of domiciliary jurisdiction.

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

7 (1) The capital structure, general financial condition,  
8 ownership, and management of the insurer and any  
9 person controlling the insurer.

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

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

16 (A) Loans, extensions of credit, investments, or  
17 purchases, sales, or exchanges of securities of the affiliates  
18 by the insurer or of the insurer by its affiliates.

19 (B) Purchases, sales, or exchanges of assets.

20 (C) Transactions not in the ordinary course of  
21 business.

22 (D) Guarantees or undertakings for the benefit of an  
23 affiliate which result in an actual contingent exposure of  
24 the insurer's assets to liability, other than insurance  
25 contracts entered into in the ordinary course of the  
26 insurer's business.

27 (E) All management agreements, service contracts,  
28 and all cost-sharing arrangements.

29 (F) Reinsurance agreements.

30 (G) Dividends and other distributions to shareholders.

31 (H) Consolidated tax allocation agreements.

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

35 (5) Other matters as may be included in registration  
36 forms adopted by the National Association of Insurance  
37 Commissioners, to the extent otherwise required by the  
38 commissioner.

39 (c) All registration statements shall contain a  
40 summary outlining all items in the current registration



1 statement that are changes from the prior registration  
2 statement.

3 (d) No information need be disclosed on the  
4 registration statement filed pursuant to subdivision (b) of  
5 this section if the information is not material for the  
6 purposes of this section. Unless the commissioner  
7 provides otherwise, sales, purchases, exchanges, loans or  
8 extensions of credit, investments, or guarantees involving  
9 one-half of 1 percent or less of an insurer's admitted assets  
10 as of the preceding December 31st, are not deemed  
11 material for purposes of this section.

12 (e) Each registered insurer shall keep current the  
13 information required to be disclosed in its registration  
14 statement by reporting all material changes or additions  
15 within 15 days after the end of the month in which it  
16 learns of each change or addition.

17 (f) Subject to Section 1215.5(g), each registered  
18 insurer shall report all dividends and other distributions  
19 to shareholders within five business days following  
20 declaration. No dividend or other distribution to  
21 shareholders may be paid until at least 10 business days  
22 after receipt by the commissioner, at the office of the  
23 department prescribed by the commissioner by notice to  
24 all insurers, of a notice of the declaration of the dividend  
25 or other distribution.

26 (g) Every person in an insurance holding company  
27 system subject to registration is required to provide the  
28 insurer with all information reasonably necessary to  
29 enable the insurer to comply with the provisions of this  
30 act.

31 (h) The commissioner shall terminate the registration  
32 of any insurer which demonstrates that it no longer is a  
33 member of an insurance holding company system.

34 (i) The commissioner may require or allow two or  
35 more affiliated insurers subject to registration hereunder  
36 to file a consolidated registration statement or  
37 consolidated reports amending their consolidated  
38 registration statement or their individual registration  
39 statements.



1 (j) The commissioner may allow any insurer which is  
2 authorized to do business in this state and which is part  
3 of an insurance holding company system to register on  
4 behalf of any affiliated insurer which is required to  
5 register under subdivision (a) of this section and to file all  
6 information and material required to be filed under this  
7 article.

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

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

26 (m) The failure to file a registration statement,  
27 summary thereof, amendment to the statement, or  
28 report of dividend required by this section within the  
29 time specified for the filing is a violation of this article.

30 SEC. 2. Section 1215.5 of the Insurance Code is  
31 amended to read:

32 1215.5. (a) Transactions by registered insurers with  
33 their affiliates are subject to the following standards:

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

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

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



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

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

11 (b) The following transactions involving a domestic  
12 insurer or commercially domiciled insurer, as defined in  
13 Section 1215.13, and any person in its holding company  
14 system, may be entered into only if the insurer has  
15 notified the commissioner in writing of its intention to  
16 enter into the transaction at least 30 days prior thereto, or  
17 a shorter period as the commissioner may permit, and the  
18 commissioner has not disapproved it within that period.  
19 The commissioner shall require the payment of ~~three~~  
20 ~~thousand sixty dollars (\$3,060)~~ *one thousand eight*  
21 *hundred eighty-nine dollars (\$1,889)* as a fee for filings  
22 under this subdivision. The payment shall accompany the  
23 filing.

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

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

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

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



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

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

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

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

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

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

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

34 (c) A domestic insurer may not enter into transactions  
35 that are part of a plan or series of transactions with  
36 persons within the holding company system if the  
37 purpose of those transactions is to avoid the statutory  
38 threshold amount and thus avoid review. If the  
39 commissioner determines that separate transactions  
40 were entered into over any 12-month period to avoid



1 review, the commissioner may exercise his or her  
2 authority under Section 1215.10.

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

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

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

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

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

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

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

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

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

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

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

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

37 (10) The quality and liquidity of investments in  
38 subsidiaries made under Section 1215.1. The  
39 commissioner may treat any such investment as a  
40 disallowed asset for purposes of determining the



1 adequacy of the policyholder's surplus whenever, in his  
2 or her judgment, the investment so warrants.

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

6 (g) No insurer subject to registration under Section  
7 1215.4 shall pay any extraordinary dividend or make any  
8 other extraordinary distribution to its stockholders until  
9 30 days after the commissioner has received notice of the  
10 declaration thereof and has approved the payment or has  
11 not, within the 30-day period, disapproved the payment.  
12 The commissioner shall require the payment of ~~three~~  
13 ~~thousand sixty dollars (\$3,060)~~ *one thousand eight*  
14 *hundred eighty-nine dollars (\$1,889)* as a fee for the  
15 filings under this subdivision. The payment shall  
16 accompany the filing.

17 For purposes of this section, an extraordinary dividend  
18 or distribution is any dividend or distribution which,  
19 together with other dividends or distributions made  
20 within the preceding 12 months, exceeds the greater of  
21 (1) 10 percent of the insurer's policyholder's surplus as of  
22 the preceding December 31st, or (2) the net gain from  
23 operations of the insurer, if the insurer is a life insurer, or  
24 the net income, if the insurer is not a life insurer, for the  
25 12-month period ending the preceding December 31st.

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

34 ~~SEC. 3. Section 1215.8 of the Insurance Code is~~  
35 ~~amended to read:~~

36 ~~1215.8. The commissioner may, upon notice and~~  
37 ~~opportunity for all interested persons to be heard, issue~~  
38 ~~the rules, regulations, and orders that are necessary to~~  
39 ~~carry out the provisions of this article.~~



1 ~~For the regulations found in Sections 2683 to 2683.23,~~  
2 ~~inclusive, of Title 10 of the California Code of Regulations,~~  
3 ~~relating to the filings required pursuant to the California~~  
4 ~~Holding Company System Regulatory Act, repeal may be~~  
5 ~~effected by filing an order of repeal with the Secretary of~~  
6 ~~State under Section 11343 of the Government Code. The~~  
7 ~~Secretary of State shall accept the order to effect the~~  
8 ~~repeal. The Department of Insurance need not comply~~  
9 ~~with the provisions of Article 5 (commencing with~~  
10 ~~Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the~~  
11 ~~Government Code to adopt regulations under the act.~~

12 ~~SEC. 4.—~~

13 *SEC. 3.* Section 1215.13 of the Insurance Code is  
14 amended to read:

15 1215.13. (a) For the purposes of this article only,  
16 every foreign insurer, except an insurer described in  
17 Article 2 (commencing with Section 12350) of Chapter 1  
18 of Part 6 of Division 2, which is authorized to do business  
19 in this state and which, during its three preceding fiscal  
20 years taken together, or during any lesser period of time  
21 if it has been licensed to transact its business in California  
22 only for such lesser period of time, has written an average  
23 of more gross premiums in the State of California than it  
24 has written in its state of domicile during the same period,  
25 and such gross premiums written constitute 33 percent or  
26 more of its total gross premiums written everywhere in  
27 the United States for such three-year or lesser period, as  
28 reported in its three most recent annual statements, shall  
29 be deemed a “commercially domiciled insurer” within  
30 the State of California.

31 (b) The commissioner may exempt from the  
32 provisions of this article any commercially domiciled  
33 insurer made subject to this article by subdivision (a) if  
34 he or she determines that it has a sufficiently large  
35 amount of assets and the evidences of title thereto  
36 physically located in California, or that the ratio of such  
37 assets to its California policyholder liability is sufficiently  
38 large, as to justify the conclusion that there is no  
39 reasonable danger that the operations or conduct of the  
40 business of such insurer could present a danger of loss to



1 California policyholders. The commissioner may also  
2 exempt from the provisions of this article any  
3 commercially domiciled insurer made subject to this  
4 article by subdivision (a) under the circumstances that he  
5 or she deems appropriate.

6 (c) This section does not exempt any foreign insurer  
7 which is authorized to do business in this state, including  
8 a commercially domiciled insurer, from the provisions of  
9 any other sections of this article which may be applicable  
10 to the insurer.

