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AMENDED IN ASSEMBLY APRIL 16, 1996
AMENDED IN ASSEMBLY MARCH 25, 1996

CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 2538

Introduced by Assembly Member Miller

February 21, 1996

An act to amend Sections 827.3, 1192.95, 1215, 1215.4, 1215.5, 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.

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%.

The bill would make other related changes.

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 827.3 of the Insurance Code is*
 2 *amended to read:*

3 827.3. (a) As used in this section, the term “insurer”
 4 means an insurer which is domestic and admitted.

5 (b) The transactions of an insurer set out in
 6 subdivisions (c) and (d) are exempt from Section 827 if
 7 they meet all of the following requirements:

8 (1) They are not accompanied by an advertisement
 9 and no selling expenses have been given, paid, or
 10 incurred in connection therewith.

11 (2) No consideration has been given, paid, or incurred
 12 in connection with them.

13 (3) Within 30 days after the transaction, the insurer
 14 notifies the commissioner in writing of its occurrence.
 15 The notice shall describe the transaction, including the
 16 transaction date, the number and par value of shares
 17 issued, and the purpose of the transaction. The notice
 18 shall be executed under penalty of perjury.

19 (c) Par value increases resulting from a transfer of
 20 gross paid-in surplus to capital.

21 (d) Shares issued or distributed by an insurer as
 22 dividends to existing holders of shares of the insurer, on



1 a pro rata basis according to the shares previously held by
2 each holder, provided the new shares are of the same class
3 and par value and have the same rights, preferences,
4 privileges, and restrictions as the outstanding shares.

5 (e) Any transfer of surplus to paid-up capital pursuant
6 to subsection (d) shall not be deemed consideration for
7 purposes of this section.

8 (f) Notwithstanding this section, the applicable notice
9 provisions, contained in subdivision ~~(d)~~ (e) of Section
10 1215.4, shall apply to those transactions set forth in
11 subdivision (d).

12 *SEC. 2. Section 1192.95 of the Insurance Code is*
13 *amended to read:*

14 1192.95. (a) Notwithstanding Section 1100, an
15 insurer may make excess funds investments in
16 investment pools and cash management pools established
17 pursuant to this section. The pools shall meet all of the
18 following standards:

19 (1) All participants in a pool shall each be affiliated
20 with one another within the meaning of subdivision (a)
21 of Section 1215 and shall all be insurers, or a pension plan
22 or profit-sharing plan of a participant or affiliate.

23 (2) The pools shall be a corporation, partnership, trust,
24 limited liability company, or business trust domiciled in
25 the United States with all assets held in accordance with
26 Section 1104.9 and shall be maintained in one or more
27 accounts in the name of or on behalf of the investment
28 pool. Pool assets shall be held under a bank custody
29 agreement that states and recognizes the claims and
30 rights of each participant, acknowledges that the pool
31 assets are held solely for the benefit of each participant in
32 proportion to the aggregate amount of its pool
33 investments, and states that the investments shall not be
34 commingled with the general assets of the custodian or
35 any other person. The pool manager shall be an insurer
36 as defined by Section 826 or a business entity registered
37 as an investment adviser under the federal Investment
38 Act of 1940. The fiduciary duties a manager owes to the
39 limited liability company and its members are those of a



1 partner to a partnership. This duty may not be restricted
2 by agreement.

3 (3) Any management fee shall be subject to
4 disapproval by the commissioner. Costs directly incurred
5 in acquiring or selling assets, such as commissions,
6 transaction fees, or custodial fees, are not management
7 fees and may be charged by the pool to the participants
8 as long as these fees are on a direct cost reimbursement
9 basis. All costs shall be apportioned to each participant in
10 proportion to its interest in the pool.

11 (4) All shares of the pool shall be of the same class with
12 equal rights, preferences, and privileges. Each share shall
13 participate equally in dividends and distributions
14 declared by the pool on liquidation in proportion to each
15 participant's interest. When issued, the shares shall be
16 fully paid and nonassessable and shall have no
17 preemptive, conversion, or exchange rights.

18 (5) Each participant shall be entitled to require the
19 pool to redeem all or any portion of the shares held by the
20 participant on demand without penalty or assessment on
21 any business day.

22 (6) All assets of a cash management pool shall be assets
23 that participant insurers may lawfully acquire
24 individually and shall be: (A) debt obligations issued by
25 or on behalf of the United States, its territories and
26 possessions, the District of Columbia, and states or their
27 political subdivisions, agencies, and instrumentalities,
28 including industrial development obligations, having a
29 maturity not exceeding one year; (B) corporate debt
30 obligations, other than debt obligations issued, assumed,
31 guaranteed, or insured by a participant or by any affiliate
32 of a participant, having a maturity not exceeding one year
33 and that are rated One or Two by the Securities Valuation
34 Office of the National Association of Insurance
35 Commissioners; or (C) accounts, deposits, or obligations
36 of banks or savings and loan associations insured by an
37 agency or instrumentality of the federal government.

38 (7) All assets of an investment pool shall be: (A)
39 investments that are authorized under Section 1191,
40 other than stock issued, assumed, guaranteed, or insured



1 by a participant or any affiliate of a participant; (B)
2 accounts, deposits, or obligations of banks or savings and
3 loan associations insured by an agency or instrumentality
4 of the federal government; or (C) investments that are
5 authorized under Section 1192, other than securities or
6 notes issued, assumed, guaranteed, or insured by a
7 participant or any affiliate of a participant, or under
8 Section 1194.5 or 1241.

9 (8) The assets of pools shall be required to meet the
10 requirements of and be authorized for investment by a
11 domestic incorporated insurer under Article 3
12 (commencing with Section 1170) or this article.

13 (9) No pool shall make investments in purchases of, or
14 loans upon, more than 30 percent of the total in par value
15 or more than 30 percent of the total number of
16 outstanding shares of the capital stock of any one
17 corporation.

18 (10) Transactions between the pool and its
19 participants shall not be deemed to be material for
20 purposes of subdivision ~~(e)~~ (d) of Section 1215.4 or
21 subdivision (b) of Section 1215.5. Investment activity of
22 pools and transactions between pools and participants
23 shall be reported annually in the annual registration
24 statement required by Section 1215.4 and pursuant to
25 Section 1215.5.

26 (11) Participation in an investment pool shall be
27 subject to a written pooling agreement that shall be
28 approved by the participant's board of directors and shall
29 provide that (A) the underlying assets of the pool shall
30 not be commingled with the general assets of the pool
31 manager or any other person; (B) each participant must
32 own an undivided interest in the underlying assets of the
33 pool; (C) the underlying assets of the investment pool are
34 held solely for the benefit of each participant; and (D) the
35 pool manager shall make the records of the investment
36 pool available for inspection by the commissioner. Pool
37 agreements shall also specify what type of share
38 participants hold to evidence their beneficial interest in
39 the pool's assets. Prior to the execution of a pool
40 agreement, a participating insurer's board of directors



1 must approve the agreement only after having received
2 a written opinion from an independent outside counsel
3 explaining the ramifications and possible effects that a
4 declaration of insolvency by a participant will have on the
5 insurer's share of the investment pool.

6 (12) No participant insurer may invest more than 10
7 percent of admitted assets in a single pool or more than
8 25 percent of admitted assets in all pools combined.

9 (13) Each participant's proportionate share of the
10 assets of a pool shall be deemed to be the direct holdings
11 of that participant for purposes of determining
12 compliance with the investment requirements of this
13 code and shall be reported as such on required quarterly
14 and annual reports. Pools operated as limited liability
15 companies pursuant to Title 2.5 (commencing with
16 Section 17000) of the Corporations Code shall conform
17 their investments to this paragraph and the requirements
18 of Sections 1200 and 1201.

19 (14) The pool manager shall compile and maintain
20 detailed accounting records setting forth (A) the cash
21 received and disbursements reflecting each participant's
22 proportional investment in the investment pool; (B) a
23 complete description of all underlying assets of the
24 investment pool including amount, interest rate, and
25 maturity date, if any, and other appropriate designations;
26 and (C) other records that, on a daily basis, will allow the
27 commissioner and the participants to verify each
28 participant's investments in the pool.

29 (15) Pools shall not borrow or loan assets, except for
30 securities-lending arrangements that are otherwise
31 lawful for insurer participants of the pool.

32 (b) As used in this section, "share" means stock,
33 participation unit, certificate of interest, or other
34 evidence of beneficial ownership in the pool, whether
35 evidenced by an instrument or by a book entry
36 maintained by the pool.

37 (c) The commissioner shall have the authority to
38 review any pool agreement and to disapprove any
39 agreement that does not comply with this section. The
40 commissioner shall have the authority to review the



1 operation of any pool and to order compliance with this
2 section. The commissioner shall have the authority to
3 disallow, as an admitted asset, any pool investment not in
4 compliance with this section. The commissioner may
5 impose a fee upon any pool to recoup the actual cost of
6 review under this section.

7 *SEC. 3. Section 1215 of the Insurance Code is*
8 *amended to read:*

9 1215. As used in this article, the following terms shall
10 have the respective meanings hereinafter set forth,
11 unless the context shall otherwise require:

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

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

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



1 (d) “Insurer” shall have the same meaning as set forth
2 in Section 826 of this code, excluding subdivisions (e) and
3 (f) of such section.

4 (e) “Person” is an individual, a corporation, a
5 partnership, an association, a joint stock company, a
6 business trust, an unincorporated organization, or any
7 similar entity, or any combination thereof acting in
8 concert.

9 (f) A “subsidiary” of a specified person is an affiliate
10 controlled by such person directly, or indirectly through
11 one or more intermediaries.

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

15 *SEC. 4.* Section 1215.4 of the Insurance Code is
16 amended to read:

17 1215.4. (a) Every insurer which is authorized to do
18 business in this state and which is a member of an
19 insurance holding company system shall register with the
20 commissioner, except a foreign insurer subject to
21 disclosure requirements and standards adopted by
22 statute or regulation in the jurisdiction of its domicile
23 which are substantially similar to those contained in this
24 section. Such exemption from registration for such
25 foreign insurers shall not apply to any commercially
26 domiciled insurer within this state, as provided in Section
27 1215.13. Any insurer which is subject to registration under
28 this section shall register within 60 days after the effective
29 date of this article or 15 days after it becomes subject to
30 registration, whichever is later, and annually thereafter
31 by April 30 of each year for the previous calendar year,
32 unless the commissioner for good cause shown extends
33 the time for registration. The commissioner may require
34 a holding company system which is not subject to
35 registration under this section to furnish a copy of the
36 registration statement or other information filed by the
37 insurance company with the insurance regulatory
38 authority of domiciliary jurisdiction.

39 (b) Every insurer subject to registration shall file a
40 registration statement on a form prescribed by the



1 National Association of Insurance Commissioners, which
2 shall contain current information about the following:

3 (1) The capital structure, general financial condition,
4 ownership, and management of the insurer and any
5 person controlling the insurer.

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

8 (3) The following agreements in force, relationships
9 subsisting, and transactions currently outstanding or that
10 have occurred during the last calendar year between the
11 insurer and its affiliates:

12 (A) Loans, extensions of credit, investments, or
13 purchases, sales, or exchanges of securities of the affiliates
14 by the insurer or of the insurer by its affiliates.

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

16 (C) Transactions not in the ordinary course of
17 business.

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

23 (E) All management agreements, service contracts,
24 and all cost-sharing arrangements. *However,*
25 *subscription agreements or powers of attorney executed*
26 *by subscribers of a reciprocal or interinsurance exchange,*
27 *which terms are not further amended after 1940, are not*
28 *required to be reported pursuant to this section.*

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.~~

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

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

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

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

38 (3) Expenses incurred and payment received shall be
39 allocated to the insurer in conformity with customary
40 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 one
20 thousand eight hundred eighty-nine dollars (\$1,889) as a
21 fee for filings under this subdivision. The payment shall
22 accompany the filing.

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

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

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

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

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



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

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

13 (4) All management agreements, service contracts,
14 ~~guarantees~~, and all cost-sharing arrangements. *However,*
15 *subscription agreements or powers of attorney executed*
16 *by subscribers of a reciprocal or interinsurance exchange,*
17 *which terms are not further amended after 1940, are not*
18 *required to be reported pursuant to this section.*

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

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

39 ~~(6)~~



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

4 ~~Nothing in this section authorizes a transaction that, for~~
5 ~~an insurer not a member of the same holding company~~
6 ~~system, would be otherwise contrary to law.~~

7 (c) A domestic insurer may not enter into transactions
8 that are part of a plan or series of transactions with
9 persons within the holding company system if the
10 purpose of those transactions is to avoid the statutory
11 threshold amount and thus avoid review. If the
12 commissioner determines that separate transactions
13 were entered into over any 12-month period to avoid
14 review, the commissioner may exercise his or her
15 authority under Section 1215.10.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

20 (g) No insurer subject to registration under Section
21 1215.4 shall pay any extraordinary dividend or make any
22 other extraordinary distribution to its stockholders until
23 30 days after the commissioner has received notice of the
24 declaration thereof and has approved the payment or has
25 not, within the 30-day period, disapproved the payment.

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

35 Notwithstanding any other provision of law, an insurer
36 may declare an extraordinary dividend or distribution
37 which is conditional upon the commissioner's approval.
38 The declaration confers no rights upon stockholders until
39 the commissioner has approved the payment of the
40 dividend or distribution or until the commissioner has not



1 disapproved the payment within the 30-day period
2 referred to in this subdivision.

3 ~~SEC. 3.~~

4 SEC. 6. Section 1215.13 of the Insurance Code is
5 amended to read:

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

22 (b) The commissioner may exempt from the
23 provisions of this article any commercially domiciled
24 insurer made subject to this article by subdivision (a) if
25 he or she determines that it has a sufficiently large
26 amount of assets and the evidences of title thereto
27 physically located in California, or that the ratio of such
28 assets to its California policyholder liability is sufficiently
29 large, as to justify the conclusion that there is no
30 reasonable danger that the operations or conduct of the
31 business of such insurer could present a danger of loss to
32 California policyholders. The commissioner may also
33 exempt from the provisions of this article any
34 commercially domiciled insurer made subject to this
35 article by subdivision (a) under the circumstances that he
36 or she deems appropriate.

37 (c) This section does not exempt any foreign insurer
38 which is authorized to do business in this state, including
39 a commercially domiciled insurer, from the provisions of



- 1 any other sections of this article which may be applicable
- 2 to the insurer.

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