

## Senate Bill No. 1448

### CHAPTER 282

An act to amend Sections 1215, 1215.2, 1215.4, 1215.5, and 1215.6 of, to amend and renumber Sections 1215.8, 1215.9, 1215.10, 1215.11, 1215.12, 1215.13, 1215.13½, 1215.14, 1215.15, and 1215.16 of, and to amend, renumber, and add Section 1215.7 of, the Insurance Code, relating to insurance.

[Approved by Governor September 7, 2012. Filed with Secretary of State September 7, 2012.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1448, Calderon. Insurance.

(1) Existing law governs the business of insurance and authorizes the Insurance Commissioner to provide oversight over the insurance industry, including conducting investigations and bringing enforcement actions. Existing law provides that any officer, director, or employee of an insurance holding company who willfully and knowingly subscribes to, makes, or causes to be made materially false statements, reports, or filings, as specified, that involves the deliberate perpetration of a fraud upon the commissioner is guilty of a misdemeanor or a felony.

Existing law 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 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. Existing law also prohibits a person from entering into an agreement to merge with or otherwise 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, the person has filed with the commissioner, and has sent to the insurer, a statement containing the specified information, including, among other things, information regarding 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, 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.

This bill would authorize the commissioner to hold a noticed public hearing after the statement described above is filed and would provide the

person filing the statement with the right to present evidence, to examine witnesses, and to offer oral and written arguments. The bill would also provide for a consolidated hearing before the commissioner and commissioners from other states, as specified.

The bill would require any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer to file with the commissioner confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The bill would require the commissioner to determine those instances in which an insurer under those circumstances would be required to file for and obtain approval of the transaction. The bill would require the information to remain confidential unless the commissioner makes a specified determination.

The bill would require that the ultimate controlling person of every insurer subject to registration file an annual enterprise risk report. The bill would define “enterprise risk” for purposes of these provisions to mean 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. The bill would authorize the commissioner to ascertain the enterprise risk to which an 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, and to order an insurer to produce an enterprise risk report. The bill would provide that whenever it appears to the commissioner that any person has committed a violation of the registration requirements that prevents the full understanding of the enterprise risk to the insurer by affiliates of the insurance company holding system, the violation may serve as an independent basis for disapproving dividends or distribution or placing the insurer under an order of supervision.

(2) Existing law prohibits purchases, exchanges, mergers, or other acquisitions of control from being made until the commissioner approves those acquisitions, and requires the commissioner to approve or disapprove the transaction within 60 days after the filing of that statement.

The bill would instead require the commissioner to approve or disapprove an acquisition of control on or before the latter of 60 days after the statement has been filed with the commissioner or 30 days after the close of the hearing.

(3) Existing law requires every insurer authorized to do business in this state to register with the commissioner and to file a registration statement containing specified information, including the identity and relationship of every member of the insurance holding company system.

This bill would additionally require the registration statement to specify that the insurer’s board of directors is responsible for overseeing corporate governance and internal controls, and that the insurer’s officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures. The bill would also require the insurer to include in the registration statement, if

requested by the commissioner, financial statements, as described, of or within an insurance holding company system, including all affiliates.

(4) Existing law authorizes domestic insurers and commercially domiciled insurers to enter into specified transactions, including sales, loans, and reinsurance agreements, only if the insurer has notified the commissioner in writing of its intention to enter into the transactions 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.

This bill would expand that requirement to apply to amendments or modifications of affiliate agreements previously filed, and would also make it applicable to pooling agreements. The bill would require that the notice include the reasons for the change and the financial impact on the insurer, and would require informal notice to the commissioner for determination of the type of filing required.

The bill would authorize the commissioner to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance with the provisions described above and would require the insurer to pay for the reasonable expenses of the commissioner's participation, as provided. The bill would also authorize the commissioner to establish the supervisory college, clarify its membership, and establish a crisis management plan.

(5) Existing law requires that information reported to the commissioner in the registration statement, and information disclosed in the course of an examination or investigation of the registration statement, be exempt from subpoena or public disclosure, except as specified.

This bill would clarify that information disclosed in the course of an examination or investigation of specified transactions between registered insurers and their affiliates is exempt from subpoena or public disclosure. The bill would specify that this information and the registration statement information is not subject to disclosure pursuant to the California Public Records Act, but would authorize the commissioner to share the information with other state, federal, and international regulatory and enforcement entities if specified requirements are met. The bill would authorize the commissioner to receive documents from the National Association of Insurance Commissioners (NAIC) and regulatory and enforcement entities and to enter into agreements with the NAIC governing the sharing and use of that information, as specified.

(6) The bill would state the intent of the Legislature to conform California law to, and maintain standards consistent with, the National Association of Insurance Commissioners revised model act and would make related findings and declarations.

(7) Because this bill would revise the required content of statements, filings, and reports, and require additional statements and reports, and because it would be a crime for an officer, director, or employee of an insurance holding company to willfully or knowingly engage in specified acts relative to those statements, filings, and reports, the bill would impose a state-mandated local program.

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.

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

SECTION 1. (a) In order to improve interstate and international regulation of insurance holding company systems, it is the intent of the Legislature to conform California law to, and to maintain standards consistent with, the National Association of Insurance Commissioners revised model act.

(b) To improve the regulation of insurance holding company systems, the Legislature finds and declares all of the following:

(1) The solvency of California insurers remains crucial for the protection of consumers and the stability of the economy.

(2) The recent collapse of international regulatory systems that threatened United States insurers made it clear that insurance regulation designed to ensure the solvency of domestic insurers must be strengthened in order to improve the monitoring of insurance holding company systems, including nonregulated or noninsurance entities within that system.

(3) Improved monitoring of insurance holding company systems requires that regulators be able to assess any substantial enterprise risk to an insurer and its insurance holding company, including direct and indirect risks arising from, or related to, any affiliated entity that could have a material adverse impact on the insurer or the insurance holding company system.

(4) Due to the international nature of many holding company systems, it is also necessary to establish better relationships, coordination, and communication with regulators outside of the United States in order to address financial issues before they arise in an insurance holding company system or impact insurers in a group.

(5) In 2011, the National Association of Insurance Commissioners adopted amendments to its model Insurance Holding Company System Regulatory Act that provide substantial improvements to the monitoring of enterprise risks and holding company systems that cross state and national borders, as well as other important regulatory reforms.

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 such actions as 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.

SEC. 3. 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 which 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 under this section, the amount to accompany the application.

(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 such 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. 4. Section 1215.4 of the Insurance Code is amended to read:

1215.4. (a) Every insurer that is authorized to do business in this state and that is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile if substantially similar to those contained in this section. The exemption from registration for those foreign insurers shall not apply to any commercially domiciled insurer within this state, as provided in Section 1215.14. Any insurer that is subject to registration under this section shall register within 60 days after the effective date of this article or 15 days after it becomes subject to registration, whichever is later, and annually thereafter by April 30 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration. The commissioner may require a holding company system that is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement with the commissioner on a form and in a format prescribed by the National Association of Insurance Commissioners, which shall contain current information about the following:

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

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

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

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

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

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

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

(E) All management agreements, service contracts, 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.

(F) Reinsurance agreements.

(G) Dividends and other distributions to shareholders.

(H) Consolidated tax allocation agreements.

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

(5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the United States Securities and Exchange Commission (SEC) pursuant to the federal Securities Act of 1933, as amended, or the federal Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC.

(6) Statements that the insurer's board of directors is responsible for overseeing corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

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

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

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

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

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

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

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

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

(j) The commissioner may allow any insurer that is authorized to do business in this state that is part of an insurance holding company system to register on behalf of any affiliated insurer that is required to register under subdivision (a), and to file all information and material required to be filed under this article.

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

(l) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer. A disclaimer of affiliation may be filed by an insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer, as well as the basis for disclaiming an affiliation. After a disclaimer has been filed, the insurer is relieved of any duty to register or report under this section that may arise out of the insurer's relationship with the disclaimed person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance. If the commissioner at any time determines that the

information disclosed in the disclaimer is incomplete or inaccurate, the commissioner may disallow the disclaimer.

(m) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner, when applicable, of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, and if the commissioner is not the lead state commissioner of the insurance holding company system, a copy shall be provided to the commissioner if the insurance holding company system has an insurer domiciled in this state. The first annual enterprise risk report shall be filed with the insurer's registration statement after July 1, 2013, unless the commissioner establishes a later date either by bulletin or notice.

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

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 under this subdivision. 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 any such investment 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 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 such 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 such 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 such insurer are being adversely affected.

(c) The commissioner may retain at the registered insurer's expense such 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) of this section shall be liable for, and shall pay the expense of, such examination in accordance with Section 736.

SEC. 7. Section 1215.7 is added to the Insurance Code, to read:

1215.7. (a) With respect to any insurer registered under Section 1215.4, and in accordance with subdivision (c), the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this article. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

- (1) Initiating the establishment of a supervisory college.
- (2) Clarifying the membership and participation of other supervisors in the supervisory college.
- (3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a groupwide supervisor.
- (4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing.
- (5) Establishing a crisis management plan.

(b) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes, and as part of the examination of individual insurers in accordance

with Section 1215.6, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies. A supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates. The commissioner may enter into agreements in accordance with subdivision (b) of Section 1215.8 providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

(c) An insurer registered under Section 1215.4 that is subject to this section shall be liable for and shall, in accordance with Section 736, pay the reasonable expenses of the commissioner's participation in a supervisory college pursuant to this section, including reasonable travel expenses, limited to those expenses reasonably related to the regulation of the insurer's business in this state.

SEC. 8. Section 1215.7 of the Insurance Code is amended and renumbered 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 Sections 1215.4 and 1215.5, and all information reported pursuant to Section 1215.4, shall be kept confidential, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall not be subject to subpoena. 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), the commissioner 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. Section 1215.8 of the Insurance Code is amended and renumbered to read:

1215.9. The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this article.

SEC. 10. Section 1215.9 of the Insurance Code is amended and renumbered to read:

1215.10. (a) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the commissioner hereunder, the commissioner may apply to the superior court for the county in which the principal office of the insurer is located, or if such insurer has no such office in this state, then to the Superior Court for the County of Los Angeles, or for the City and County of San Francisco, for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this article or any such rule, regulation, or order, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(b) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the commissioner hereunder, may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the vote of an affirmative percentage of shares may be taken as though such securities were not issued and outstanding. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the commissioner hereunder, the insurer or the commissioner may apply to the Superior Court for the County of Los Angeles or for the City and County of San Francisco or to the superior court for the county in which the insurer has its principal place of business for equitable relief to enjoin the voting of any such security or to void any vote of such security already cast, at any meeting of shareholders.

SEC. 11. Section 1215.10 of the Insurance Code is amended and renumbered to read:

1215.11. (a) Any insurer that fails to file a statement, report, or request for approval required by this article in a timely manner shall be subject to the late filing fees set forth in Section 924.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Sections 1215.4 and 1215.5, or which violate this article, shall pay, in their individual capacity, a civil forfeiture of not more than fifty thousand dollars (\$50,000) per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture

with respect to the gravity of the violation, the history of previous violations, and any other matters as justice may require.

(c) Whenever it appears to the commissioner that any insurer subject to this article or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 1215.5 and which would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if this action is in the best interest of the policyholders, creditors, or the public.

(d) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this article, the commissioner may cause criminal proceedings to be instituted in the county in which the principal office of the insurer is located, or if such insurer has no such office in the state then by the Attorney General against such insurer or the responsible director, officer, employee, or agent thereof. Any insurer which willfully violates this article shall be fined not more than ten thousand dollars (\$10,000). Any individual who willfully violates this article shall be fined not more than three thousand dollars (\$3,000) or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both.

(e) Whenever it appears to the commissioner that any person has committed a violation of Section 1215.4 that prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions or for placing the insurer under an order of supervision in accordance with Article 14 (commencing with Section 1010) of Chapter 1.

(f) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any materially false statements, reports, or filings with the intent to deceive the commissioner in the performance of his or her duties under this article, upon conviction thereof, shall be fined not more than three thousand dollars (\$3,000) or, if the willful violation of this subdivision involves the deliberate perpetration of a fraud upon the commissioner, imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both that imprisonment and fine. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.

SEC. 12. Section 1215.11 of the Insurance Code is amended and renumbered to read:

1215.12. Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in Article 14

(commencing with Section 1010) of Chapter 1 of this part to take possession of the property of the domestic insurer and to conduct the business thereof.

SEC. 13. Section 1215.12 of the Insurance Code is amended and renumbered to read:

1215.13. Whenever it appears to the commissioner that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew that insurer's license or authority to do business in this state for the period that he or she finds is required for the protection of policyholders or the public.

SEC. 14. Section 1215.13 of the Insurance Code is amended and renumbered to read:

1215.14. (a) For the purposes of this article only, every foreign insurer, except an insurer described in Article 2 (commencing with Section 12350) of Chapter 1 of Part 6 of Division 2, that is authorized to do business in this state and that, during its three preceding fiscal years taken together, or during any lesser period of time if it has been licensed to transact its business in California only for such lesser period of time, has written an average of more direct premiums in the State of California than it has written in its state of domicile during the same period, and those direct premiums written constitute 33 percent or more of its total direct premiums written everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements, shall be deemed a "commercially domiciled insurer" within the State of California.

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

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

SEC. 15. Section 1215.13½ of the Insurance Code is amended and renumbered to read:

1215.15. (a) The provisions of this article shall not apply to any party or entity participating in any investment by a home protection company in its subsidiary or affiliate or any debt or security instruments thereof, an effectuation or attempt to effectuate an acquisition of control or a liquidation of, or merger with, a home protection company, or any material transaction

by a home protection company with its affiliate if the investment, effectuation, attempt, or transaction occurred prior to December 31, 1978.

(b) The registration required by Section 1215.4 shall first be applicable to home protection companies who are members of an insurance holding company system on January 1, 1980.

SEC. 16. Section 1215.14 of the Insurance Code is amended and renumbered to read:

1215.16. All laws and parts of laws of this state inconsistent with this article are hereby superseded with respect to matters covered by this article.

SEC. 17. Section 1215.15 of the Insurance Code is amended and renumbered to read:

1215.17. If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and for this purpose the provisions of this article are severable.

SEC. 18. Section 1215.16 of the Insurance Code is amended and renumbered to read:

1215.18. (a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under that order shall have a right to recover on behalf of the insurer (1) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions other than distributions of shares of the same class of stock paid by the insurer on its capital stock, or (2) any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, where the distribution or payment pursuant to (1) or (2) is made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subdivisions (b), (c), and (d).

(b) No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under subdivision (a) that the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or

insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subdivision (c) is insolvent or otherwise fails to pay claims due from it pursuant to that subdivision, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

SEC. 19. 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.