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## AB-494 Insurance Holding Company System Regulatory Act. (2021-2022)

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### Assembly Bill No. 494

#### CHAPTER 464

An act to amend Sections 1215, 1215.4, and 1215.8 of the Insurance Code, relating to insurance.

[ Approved by Governor October 04, 2021. Filed with Secretary of State October 04, 2021. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 494, Mayes. Insurance Holding Company System Regulatory Act.

Existing law, the Insurance Holding Company System Regulatory Act, requires an insurer that is authorized to do business in this state and that is a member of an insurance holding company system, which consists of two or more affiliated persons, at least one of which is an insurer, to register with the Insurance Commissioner and to file a registration statement containing specified information. Existing law requires the ultimate controlling person of an insurer subject to registration under the act to file an annual enterprise risk report with the lead state commissioner, as determined by procedures of the National Association of Insurance Commissioners (NAIC), and to provide a copy to the commissioner if they are not the lead state commissioner.

This bill would require the ultimate controlling person of an insurer subject to registration under the act to concurrently file with the registration an annual group capital calculation, unless a specified exemption applies. The bill would require the commissioner, if they are the lead state commissioner, to require the group capital calculation for the United States operations of a non-United States-based insurance holding company system if they determine it is appropriate for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace. The bill would authorize the commissioner, if they are the lead state commissioner, to exempt the ultimate controlling person from filing an annual group capital calculation or to accept a limited group capital filing if specified criteria are met. The bill would also require the ultimate controlling person of an insurer subject to registration under the act and scoped into the NAIC Liquidity Stress Test Framework to file the results of a specific year's liquidity stress test, as specified.

Existing law requires information or documents obtained or disclosed in the course of an examination or investigation made pursuant to specified provisions of the Insurance Holding Company System Regulatory Act to be kept confidential. Existing law authorizes the commissioner to share those confidential documents or materials or that other information with the NAIC and its affiliates and subsidiaries under specified circumstances.

This bill would instead authorize the commissioner to share confidential documents, materials, or other information with the NAIC and a third-party consultant designated by the commissioner. The bill would require the commissioner to maintain the confidentiality of a group capital calculation, the resulting group capital ratio, a liquidity stress test, and a liquidity stress test's results and supporting disclosures.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** 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) “Commissioner” means the Insurance Commissioner of the state and any assistant to the Insurance Commissioner designated and authorized by the commissioner while acting under their designation as the Insurance Commissioner.

(d) 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.

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

(f) “Group capital calculation instructions” means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC in accordance with the procedures adopted by the NAIC.

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

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

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

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

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

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

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

(k) “NAIC” means the National Association of Insurance Commissioners.

(l) The “NAIC Liquidity Stress Test Framework” is an NAIC publication that includes a history of the NAIC’s development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and

reporting templates for a specific data year. The scope criteria, instructions, and reporting template may be adopted by the NAIC and amended by the NAIC in accordance with the procedures adopted by the NAIC.

(m) "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.

(n) "Scope criteria," as detailed in the NAIC Liquidity Stress Test Framework, are the designated exposure bases along with minimum magnitudes thereof for the specified data year, which are used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.

(o) 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.

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

(q) "Voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

**SEC. 2.** 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 NAIC, 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 NAIC, 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) Information does not need to be disclosed on the registration statement filed pursuant to subdivision (b) 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. The description of material in this subdivision does not apply for purposes of the group capital calculation or the NAIC Liquidity Stress Test Framework.

(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. A dividend or other distribution to shareholders shall not 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 an 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 NAIC, 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 ultimate controlling person of an insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner, except as provided in paragraphs (1) to (4), inclusive. The report shall be completed in accordance with the NAIC Group Capital Calculation Instructions, which may authorize the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. All of the following insurance holding company systems are exempt from filing the group capital calculation:

(1) An insurance holding company system that has only one insurer within its holding company structure, that only writes business and is only licensed in its domestic state, and that does not assume business from any other insurer.

(2) An insurance holding company system that is required to perform a group capital calculation specified by the Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing.

(3) An insurance holding company system whose non-United States groupwide supervisor is located within a reciprocal jurisdiction, as described in subdivision (a) of Section 922.425, that recognizes the United States' state regulatory approach to group supervision and group capital.

(4) An insurance holding company system that meets both of the following criteria:

(A) The insurance holding company system provides information to the lead state commissioner that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the groupwide supervisor, who has determined the information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the Financial Analysis Handbook adopted by the NAIC.

(B) The insurance holding company system's groupwide supervisor that is not located within a reciprocal jurisdiction, as described in subdivision (a) of Section 922.425, recognizes and accepts the group capital calculation as the worldwide group capital assessment for United States insurance groups who operate in that jurisdiction.

(i) A non-United States jurisdiction is considered to "recognize and accept" the group capital calculation if it satisfies the criteria in both subclauses (I) and (II):

(I) Either of the following is met to satisfy this subclause:

(ia) The non-United States jurisdiction recognizes the United States' state regulatory approach to group supervision and group capital by providing confirmation by a competent regulatory authority in that jurisdiction that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program are subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-United States jurisdiction.

(ib) If a United States insurance group does not operate in the non-United States jurisdiction, that non-United States jurisdiction indicates formally in writing to the lead state commissioner with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard.

(II) The non-United States jurisdiction provides confirmation by a competent regulatory authority in that jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and the jurisdiction, including the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC committee process, if the requirements of the information sharing agreements are in force.

(ii) A list of non-United States jurisdictions that recognize and accept the group capital calculation shall be published through the NAIC committee process.

(I) A list of jurisdictions that recognize and accept the group capital calculation published through the NAIC committee process shall assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list shall clarify those situations in which a jurisdiction is exempted from filing pursuant to this paragraph. To assist with a determination pursuant to subdivision (o), the list shall also identify whether a jurisdiction that is exempted under paragraph (3) or this paragraph requires a group capital filing for a United States-based insurance group's operations in that non-United States jurisdiction.

(II) For a non-United States jurisdiction where United States-based insurance groups do not operate, the confirmation provided to meet the requirement of subclause (I) of clause (i) shall serve as support for a recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC committee process.

(III) If the lead state commissioner makes a determination pursuant to this paragraph that differs from the NAIC list, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

(IV) Upon a determination by the lead state commissioner that a non-United States jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-United States jurisdiction be removed from the list of jurisdictions that recognize and accept the group capital calculation.

(o) (1) Notwithstanding paragraphs (3) and (4) of subdivision (n), a lead state commissioner shall require the group capital calculation for United States operations of any non-United States-based insurance holding company system if, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(2) Notwithstanding the group capital calculation exemptions in subdivision (n), the lead state commissioner may exempt the ultimate controlling person from filing the annual group capital calculation or accept a limited group capital filing or report pursuant to subparagraph (A) or (B).

(A) If an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner may exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

(i) The insurance holding company system has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than one billion dollars (\$1,000,000,000).

(ii) The insurance holding company system does not have insurers within its holding company structure that are domiciled outside of the United States or one of its territories.

(iii) The insurance holding company system does not include within its structure a banking, depository, or other financial entity that is subject to an identified regulatory capital framework.

(iv) The insurance holding company system attests that there are no material changes in the transactions between insurers and noninsurers in the group that have occurred since the last filing of the annual group capital calculation.

(v) The noninsurers within the insurance holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(B) If an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner may accept a limited group capital filing in lieu of the group capital calculation if all of the following criteria are met:

(i) The insurance holding company system has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than one billion dollars (\$1,000,000,000).

(ii) The insurance holding company system does not have insurers within its holding company structure that are domiciled outside of the United States or one of its territories.

(iii) The insurance holding company system does not include within its structure a banking, depository, or other financial entity that is subject to an identified regulatory capital framework.

(iv) The insurance holding company system attests to both of the following:

(I) That there are no material changes in the transactions between insurers and noninsurers in the group that have occurred since the last filing of the annual group capital calculation.

(II) That the noninsurers within the insurance holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(C) If an insurance holding company has previously met an exemption pursuant to subparagraph (A) or (B), the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if an insurer within the insurance holding company system meets any of the following criteria:

(i) An insurer is in a risk-based capital action level event as set forth in Article 4.1 (commencing with Section 739) of Chapter 1 or meets a similar standard for a non-United States insurer.

(ii) An insurer meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in Section 2598.2 of Title 10 of the California Code of Regulations.

(iii) An insurer otherwise exhibits qualities of a troubled insurer, as determined by the lead state commissioner based on unique circumstances including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(D) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this paragraph, the insurance holding company system shall file the group capital calculation at the next annual filing date, unless the lead state commissioner authorizes an extension based on reasonable grounds shown.

(p) The ultimate controlling person of an insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year's liquidity stress test. The filing shall be made to the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by NAIC.

(1) The NAIC Liquidity Stress Test Framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the NAIC Financial Stability Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when those changes are adopted. Insurers meeting at least one threshold of the scope criteria are considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the framework for that data year. Similarly, insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the NAIC Liquidity Stress Test Framework for that data year.

(2) Because regulators wish to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis, the lead state commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, shall assess this concern as part of the determination pursuant to paragraph (1).

(3) The performance of, and filing of the results from, a specific year's liquidity stress test shall comply with the NAIC Liquidity Stress Test Framework's instructions and reporting templates for that year and any lead state commissioner determinations, in conjunction with the NAIC Financial Stability Task Force or its successor, provided within the framework.

(q) For purposes of subdivisions (n), (o), and (p), "lead state commissioner" means the Insurance Commissioner, as long as, and only if, California is considered the lead state in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC.

(r) 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. 3.** Section 1215.8 of the Insurance Code is amended to read:

**1215.8.** (a) All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 1215.4, 1215.5, 1215.6, 1215.7, or 1215.75, and all information reported or provided pursuant to Section 1215.4, 1215.5, 1215.6, 1215.7, or 1215.75 are recognized as being

proprietary and containing trade secrets, shall be kept confidential, are not subject to disclosure by the commissioner pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), are not subject to subpoena, and are not subject to discovery from the commissioner or admissible into evidence in a private civil action if obtained from the commissioner. 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 of the information, in which event the commissioner may publish all or any part of the information in a manner as the commissioner may deem appropriate.

(1) For purposes of the information reported and provided to the department pursuant to subdivisions (n) and (o) of Section 1215.4, the commissioner shall maintain the confidentiality of the group capital calculation, the group capital ratio produced within the calculation, and any group capital information received from an insurance holding company system supervised by the Federal Reserve Board or a United States groupwide supervisor.

(2) For purposes of the information reported and provided to the department pursuant to subdivision (p) of Section 1215.4, the commissioner shall maintain the confidentiality of the liquidity stress test results, supporting disclosures, and any liquidity stress test information received from an insurance holding company system supervised by the Federal Reserve Board and non-United States groupwide supervisors.

(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), including proprietary and trade secret documents and materials, with other state, federal, and international regulatory agencies, with the NAIC, with a third-party consultant designated by the commissioner, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 1215.7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information, and has verified in writing the legal authority to maintain confidentiality.

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

(3) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade secret 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 and a third-party consultant designated by the commissioner 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 or a third-party consultant designated by the commissioner pursuant to this subdivision, including procedures and protocols for sharing by the NAIC with other state, federal, or international regulators. The agreement shall provide 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 its confidentiality.

(B) Specify that ownership of information shared with the NAIC or a third-party consultant designated by the commissioner pursuant to this subdivision remains with the commissioner and the NAIC's or third-party consultant's use of the information is subject to the direction of the commissioner.

(C) Prohibit the NAIC or a third-party consultant designated by the commissioner from storing the information shared pursuant to this article in a permanent database after the underlying analysis is completed, except for the documents, materials, or information reported pursuant to subdivision (p) of Section 1215.4.

(D) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant designated by the commissioner pursuant to this subdivision is subject to a request or subpoena to the NAIC or a third-party consultant designated by the commissioner for disclosure or production.

(E) Require the NAIC or a third-party consultant designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant designated by the commissioner may be



required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant designated by the commissioner pursuant to this subdivision.

(F) For an agreement with a third-party consultant designated by the commissioner, provide for notification of the identity of the consultant to applicable insurers reporting or submitting documents, materials, or information pursuant to subdivision (p) of Section 1215.4.

(c) The sharing of information by the commissioner pursuant to subdivision (b) 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) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (b).

(e) Documents, materials, or other information filed in the possession or control of the NAIC or a third-party consultant designated by the commissioner 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.

(f) (1) The group capital calculation and resulting group capital ratio required pursuant to subdivision (n) of Section 1215.4 and the liquidity stress test, along with its results and supporting disclosures, required pursuant to subdivision (p) of Section 1215.4 are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally.

(2) Except as otherwise required by this article, an insurer, broker, or other person engaged in the insurance business shall not make, publish, disseminate, circulate, or place before the public, or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, over a radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, liquidity stress test results, supporting disclosures for the liquidity stress test of an insurer or an insurer group, or of any component derived in the calculation.

(3) If a materially false statement regarding an insurer's or insurer group's group capital calculation, resulting group capital ratio, liquidity stress test result, or supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation, resulting group capital ratio, liquidity stress test result, or liquidity stress test supporting disclosures, is published in a written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity or inappropriateness of the statement, then the insurer, notwithstanding paragraph (2), may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

**SEC. 4.** The Legislature finds and declares that Section 3 of this act, which amends Section 1215.8 of the Insurance Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

To protect proprietary information and trade secrets, it is necessary for information, documents, and materials to be kept confidential.