



ภาคผนวก

Singapore
Insurance
(CHAPTER 142)

Short title

1. This Act may be cited as the Insurance Act.

Interpretation

1A. In this Act, unless the context otherwise requires —

"accounting period" , relation to any insurer, means the period beginning from the commencement of its business in Singapore or 1st January of any year, as the case may be, and ending on 31st December of that year for which accounts relating to the insurance business carried on by the insurer in Singapore are kept and for which an insurance fund has been established under this Act, unless otherwise allowed by the Authority.

"actuary" means a Fellow of any prescribed professional body or institute;

"advocate and solicitor" means an advocate and solicitor of the Supreme Court or a foreign lawyer as defined in section 130A of the Legal Profession Act (Cap. 161);

"authorised reinsurer" means an insurer which is for the time being authorised under section 8A;

"Authority" means the Monetary Authority of Singapore established under the Monetary Authority of Singapore Act (Cap. 186);

"captive insurer" means an insurer whose registration is restricted to the carrying on of business which consists principally of risks of its related corporations, and includes a rent-a-captive insurer;

"company" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"corporation" has the same meaning as in section 4 (1) of the Companies Act;

"direct insurance broker" means a person who is for the time being registered under section 35X in respect of insurance policies relating to general business and long-term accident and health policies, other than insurance policies relating to reinsurance business;

"direct insurer" means any insurer other than a reinsurer , an authorised reinsurer or a captive insurer;

"director" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"directions" includes directives and notices;

"exempt financial adviser" has the same meaning as in the Financial Advisers Act (Cap. 110);

"financial advisory service" has the same meaning as in section 2(1) of the Financial Advisers Act;

"financial year" has the same meaning as in section 4 (1) of the Companies Act;

"general reinsurance broker" means a person who is for the time being registered under section 35X in respect of reinsurance of liabilities under insurance policies relating to general business;

"insurance agent" means a person who is or has been carrying on insurance business in Singapore as an agent for one or more insurers and includes an agent of a foreign insurer carrying on insurance business in Singapore under a foreign insurer scheme under Part IIA.

"insurance broker" means a person who is or has been carrying on insurance business in Singapore as an agent for insureds or intending insureds in respect of —

(a) insurance policies relating to general business and long-term accident and health policies, other than insurance policies relating to reinsurance business; or

(b) reinsurance of liabilities under insurance policies relating to —

(i) life business; or

(ii) general business;

"insurance intermediary" means a person who, as an agent for one or more insurers or as an agent for insureds or intending insureds, arranges contracts of insurance in Singapore;

"insured" includes reinsured and "insurer" includes reinsurer;

"licensed financial adviser" means a holder of a financial adviser's licence under the Financial Advisers Act;

"life reinsurance broker" means a person who is for the time being registered under section 35X in respect of reinsurance of liabilities under insurance policies relating to life business;

"limited liability partnership" has the same meaning as in section 2 (1) of the Limited Liability Partnerships Act 2005;

"partner" and "manager", in relation to a limited liability partnership, have the respective meanings assigned to them in section 2 (1) of the Limited Liability Partnerships Act 2005;

"registered insurance broker" means an insurance broker who is for the time being registered under section 35X;

"reinsurer" means an insurer whose registration is restricted to the carrying on of reinsurance business;

"related corporation" has the same meaning as in section 4 (1) of the Companies Act (Cap. 50);

"representative" , in relation to a licensed financial adviser or exempt financial adviser, has the same meaning as in the Financial Advisers Act (Cap. 110);

"registered insurer" means an insurer which is for the time being registered under section 8;

"statutory balance-sheet" and "statutory valuation" mean respectively a balance-sheet lodged with the Authority in order to comply with section 36 (1), and a valuation of which the results are shown in a valuation balance-sheet lodged with it on an actuarial investigation made in order to comply with section 37 (1).

Classification of insurance business and construction of references to matters connected with insurance

2. —(1) For the purposes of this Act, insurance business shall be divided into 2 classes —

(a) life business, which means all insurance business concerned with life policies, long-term accident and health policies, or both; and

(b) general business, that is to say, all insurance business which is not life business, and shall include the effecting and carrying out by any person, not being a person licensed under the Monetary Authority of Singapore Act (Cap. 186), Banking Act (Cap. 19), Finance Companies Act (Cap. 108) or Securities and Futures Act (Cap. 289); of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidental to some other business carried on by the person effecting them) in return for the payment of one or more premiums.

(2) For the purposes of this Act, the reinsurance of liabilities under insurance policies shall be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the reinsurer or authorised reinsurer.

(3) Notwithstanding anything in subsections (1) and (2), if the Authority is satisfied that any part of an insurer's business which belongs to a particular class or type of insurance business ought in the insurer's case to be treated as belonging to another class or type, the Authority may direct that it shall be so treated for the purposes of this Act.

(4) For the purposes of this Act, references to carrying on insurance business include the carrying it on through an agent, or as agent; but “insurer” does not include an insurance agent as such nor, in the case of a person who is both insurer and insurance agent, have reference to business done as an insurance agent.

(5) For the purposes of this Act and subject to subsection (5A), “Singapore insurer” means a person who is or has been carrying on insurance business in Singapore as an insurer; and references to carrying on insurance business, or any class of insurance business, in Singapore mean the receipt of proposals for, or issuing of, policies in Singapore or the collection or receipt in Singapore of premiums on insurance policies.

(5A) A person shall not be treated as carrying on insurance business, or any class of insurance business, in Singapore as an insurer if, apart from the collection or receipt of premiums in Singapore, he —

- (a) carries out all activities in relation to his reinsurance business outside Singapore; and
- (b) does not have any commercial or physical presence in Singapore for the purpose of carrying on such reinsurance business.

(6) The operation, otherwise than for profit, of a scheme or arrangement relating to service in particular offices or employments, and having for its object or one of its objects to make provision in respect of persons serving therein against future retirement or partial retirement, or against future termination of service through death or disability, or against similar matters, shall not be treated for the purposes of this Act as carrying on the business of insurance.

(7) For the purposes of this Act, no society registered under the Societies Act (Cap. 311) or organisation registered under the Mutual Benefit Organisations Act (Cap. 191) shall be deemed to be an insurer, and no agent for such a society, organisation or company shall as such be deemed to be an insurance agent; nor shall references in this Act to a policy or contract of insurance apply to any policy or contract whereby an insurance is effected with such a society or organisation.

(8) For the purposes of this Act —

- (a) any reference to the last statutory balance-sheet or to the last statutory valuation shall be construed as referring to that last prepared or made and not superseded by the arrival of the date as at which another is to be prepared or made; and

(b) any reference to there being shown in a statutory balance-sheet or on a statutory valuation a surplus of assets over liabilities of an insurance fund shall be construed accordingly by reference to the prescribed form of balance-sheet or valuation balance-sheet and to the rules to be followed under this Act and the regulations in preparing it.

(9) The definitions set out in the First Schedule shall have effect for the construction of references in this Act to policies of insurance, policy owners and policy moneys.

PART IIB

INSURANCE INTERMEDIARIES

General

Insurance agent to operate under written agreement

35M. —(1) An insurance agent shall not arrange, or hold himself out as entitled to arrange, a contract of insurance as agent for a registered insurer unless an agreement in writing between the insurance agent and the insurer authorises the insurance agent to arrange, as agent for that insurer

- (a) that contract;
- (b) any contract of insurance; or
- (c) any class of contracts of insurance which includes that contract.

(2) A registered insurer shall not cause or permit an insurance agent to arrange, or hold himself out as entitled to arrange, a contract of insurance as agent for that insurer unless an agreement in writing between the insurer and the insurance agent authorises the insurance agent to arrange, as agent for that insurer —

- (a) that contract;
- (b) any contract of insurance; or
- (c) any class of contracts of insurance which includes that contract.

(3) Subsections (1) and (2) shall not apply in relation to any act or thing done by an employee of a registered insurer in the course of performing his duties as such an employee.

(3A) Subsection (1) shall not apply to —

- (a) a licensed financial adviser;

(b) a person exempt from holding a financial adviser's licence in respect of any financial advisory service under section 23 (1) (a), (b), (c), (d) or (e) of the Financial Advisers Act (Cap. 110), other than a registered insurer; and

(c) a representative of a person referred to in paragraph (a) or (b),

where they arrange, or hold themselves out as entitled to arrange, a contract of insurance in respect of life policies, other than contracts for the reinsurance of liabilities under life policies, as agent for a registered insurer.

(3B) Subsection (1) shall not apply to a registered insurer and any insurance agent acting for that insurer where they arrange, or hold themselves out as entitled to arrange, a contract of insurance in respect of life policies, other than contracts for the reinsurance of liabilities under life policies, as agent for another registered insurer.

(3C) Subsection (2) shall not apply to a registered insurer in relation to an insurance agent who is a person specified in subsection (3A) or (3B).

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$2,500 for every day or part thereof during which the offence continues after conviction.

Application of sections 35O to 35R and 35T, 35TA, 35U and 35V

35N. —(1) Sections 35O and 35Q shall not apply to a general reinsurance broker or life reinsurance broker in respect of contracts for the reinsurance of liabilities under insurance policies.

(2) Section 35P shall not apply to —

(a) a licensed financial adviser or exempt financial adviser, or its representatives, in respect of life policies, other than life policies with accident and health benefits and contracts for the reinsurance of liabilities under insurance policies; or

(b) a general reinsurance broker or life reinsurance broker in respect of contracts for the reinsurance of liabilities under insurance policies.

(3) Sections 35R, 35T, 35U and 35V shall not apply to a licensed financial adviser or an exempt financial adviser, or its representatives, in respect of life policies, other than contracts for the reinsurance of liabilities under insurance policies.

(4) Section 35TA shall not apply to a licensed financial adviser or an exempt financial adviser, or its representatives, in respect of life policies, other than life policies with accident and health benefits and contracts for the reinsurance of liabilities under insurance policies.

Effect of payment to insurance intermediary

35O. —(1) Where a contract of insurance is arranged or effected by an insurance intermediary, payment to the insurance intermediary of moneys payable by the insured to the insurer under or in relation to the contract (whether in respect of a premium or otherwise) shall be a discharge, as between the insured and the insurer, of any liability of the insured under or in respect of the contract, to the extent of the amount of the payment.

(2) Payment to an insurance intermediary by or on behalf of an intending insured of moneys in respect of a contract of insurance to be arranged or effected by the insurance intermediary (whether the payment is in respect of a premium or otherwise) shall be a discharge, as between the insured and the insurer, of any liability of the insured under or in respect of the contract, to the extent of the amount of the payment.

(3) Payment by an insurer to an insurance intermediary of moneys payable to an insured (whether in respect of a claim, return of premiums or otherwise) under or in relation to a contract of insurance, shall not discharge any liability of the insurer to the insured in respect of those moneys.

(4) An agreement, insofar as it purports to alter or restrict the operation of subsection (1), (2) or (3), shall be void.

(5) Subsection (4) shall not render void an agreement between an insurance intermediary and an insured insofar as the agreement allows the insurance intermediary to set off, against moneys payable to the insured, moneys payable by the insured to the insurance intermediary in respect of premiums.

Pre-contract disclosure by insurance intermediary

35P. —(1) No insurance intermediary shall invite any person to make an offer or proposal to enter into a contract of insurance without disclosing to the person all material information, including —

- (a) the name of the registered insurer;
- (b) his relationship with the registered insurer;

(c) the premium charged by the registered insurer; and

(d) such other information as the Authority may prescribe or specify in directions.

(2) No insurance intermediary shall arrange any group policy for 2 or more persons where any person insured under the group policy all material information, including is liable to pay the premium without disclosing to every person insured under the group policy —

(a) the name of the registered insurer;

(b) his relationship with the registered insurer;

(c) the conditions of the group policy;

(d) the premium charged by the registered insurer; and

(e) such other information as the Authority may prescribe or specify in directions.

(2A) Any insurance intermediary who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) In this section, “insurance intermediary” includes the group policy owner of any group policy.

Effect of payment to group policy owner and liability of insurer under group policy

35Q. —(1) This section applies to any group policy where any person insured under the group policy is liable to pay a premium.

(2) Payment to the group policy owner of moneys payable by any person insured under the group policy to the insurer under or in relation to the group policy (whether in respect of a premium or otherwise) shall be a discharge, as between the person insured and the insurer, of any liability of the person insured under or in respect of the group policy, to the extent of the amount of the payment.

(3) The registered insurer of a group policy shall pay the moneys due under the policy to the person insured or any person entitled through him if the person insured has paid the premium or is regarded as having paid the premium under subsection (2), and is entitled to the benefit under the policy.

Representation by insurance intermediary

35R. —(1) No insurance intermediary shall, with intent to deceive, make a false or misleading statement as to —

- (a) any amount that would be payable in respect of a proposed contract of insurance; or
- (b) the effect of any provision of a contract of insurance or a proposed contract of insurance.

(2) A reference in subsection (1) to making a misleading statement includes a reference to omitting to disclose any matter that is material to a statement.

(3) No insurance intermediary shall, with intent to deceive, in relation to a proposed contract of insurance —

- (a) write on a form, being a form that is given or sent to an insurer, any matter that is material to the contract and is false or misleading in a material particular;
- (b) omit to disclose to the insurer any matter that is material to the proposed contract;
- (c) advise or induce the intending insured to write on a form, being a form that is given or sent to an insurer, any matter that is false or misleading in a material particular; or
- (d) advise or induce the intending insured to omit to disclose to the insurer any matter that is material to the proposed contract.

(4) No insurance intermediary shall, with intent to deceive, in relation to a claim under a contract of insurance —

- (a) fill up, in whole or in part, a form, being a form that is given or sent to an insurer, in such a way that the form is false or misleading in a material particular;
- (b) omit to disclose to the insurer any matter that is material to the claim;
- (c) induce the insured to fill up, in whole or in part, a form, being a form that is given or sent to the insurer, in such a way that the form is false or misleading in a material particular; or
- (d) advise or induce the insured to omit to disclose to the insurer any matter that is material to the claim.

(5) Any person who contravenes subsection (1), (3) or (4) shall, notwithstanding that a contract of insurance does not come into being, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both.

Insurance agent to act only for insurers entitled to carry on business in Singapore

35S. —(1) No person shall, without the approval of the Authority, act as an insurance agent for an insurer in respect of any insurance business which the insurer is not entitled to carry on in Singapore under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 3 years or to both.

(3) Where the Authority has, under section 7 of the Insurance Intermediaries Act (Cap. 142A) in force before 1st October 2002*, approved any person to act as an insurance agent for an insurer in respect of any insurance business which the insurer is not entitled to carry on in Singapore, the approval shall continue in force as if granted by the Authority under subsection (1).

*Date of commencement of section 20 of the Insurance (Amendment) Act 2001 (Act 41 of 2001).

Control of written communication used by insurance intermediary

35T. —(1) The Authority may, by notice in writing, require any insurance intermediary to submit to it any written communication which is for the time being in use by the insurance intermediary for describing the terms or conditions of, or the benefits to be or likely to be derived from, policies.

(2) Where the whole or part of any written communication referred to in subsection (1) is not in English, there shall be submitted with it a translation in English.

(3) A requirement made under subsection (1), unless it is otherwise provided therein, shall apply to all such written communication coming into use after the making of the requirement and before the Authority notifies the insurance intermediary that the requirement is withdrawn.

(4) If it appears to the Authority that any such written communication used by an insurance intermediary contravenes any provision of this Part, or is in any respect likely to mislead, the Authority may (after affording the insurance intermediary an opportunity to make representations orally or in writing), by notice in writing, direct the insurance intermediary to discontinue the use in Singapore of the written communication immediately or from such date as may be specified in the notice.

(5) For each occasion on which any insurance intermediary fails to comply with a requirement under subsection (1) or uses any written communication in contravention of subsection (4), the

insurance intermediary shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 12 months or to both.

(6) In this section, “written communication” includes any brochure, leaflet, circular or advertising matter, whether in electronic, print or other form.

Business conduct of insurance intermediaries

35TA. Without prejudice to the generality of section 64 (1) and (2), the Authority may make regulations or issue directions for or with respect to —

- (a) the standards to be maintained by an insurance intermediary in the conduct of business under this Act, including the standards in relation to the obligation to disclose information to insureds;
- (b) the qualifications, experience and training of an insurance intermediary and, where the insurance intermediary is a corporation or an association, of the officers, agents and employees of the insurance intermediary; and
- (c) the procedure for the conduct of disciplinary control of insurance intermediaries and, where the insurance intermediary is a corporation or an association, of the officers, agents and employees of the insurance intermediary.

Obligation to furnish information to Authority

35U. The Authority may, by notice in writing, require any insurance intermediary to furnish it with information about any matter related to his business carried on in Singapore or elsewhere if, in the opinion of the Authority, it requires that information for the discharge of its functions under this Act.

Authority may prohibit person from carrying on business as insurance intermediary

35V. —(1) The Authority may, by order, prohibit any person from carrying on business as an insurance intermediary or from taking part, directly or indirectly, in the management of any insurance intermediary —

- (a) where the person has been convicted, whether in Singapore or elsewhere, of an offence involving fraud, dishonesty or moral turpitude or the conviction for which involved a finding that he acted fraudulently or dishonestly; or
- (b) where the Authority is satisfied that the person has —
 - (i) forged policyholders’ signatures;
 - (ii) misappropriated policyholders’ premiums;

- (iii) contravened any provision of this Act;
- (iv) given false, misleading or inaccurate information in its application to the insurer;
- (v) wilfully misled any policyholder when assisting him to fill up the proposal form;
- (vi) used dishonest means to meet the requirements set up by the insurer; or
- (vii) been involved in any activity prejudicial to the public interest.

(2) Before prohibiting any person from carrying on business as an insurance intermediary or from taking part, directly or indirectly, in the management of any insurance intermediary, the Authority shall —

- (a) give the person notice in writing of its intention to do so; and
- (b) in the notice referred to in paragraph (a), call upon the person to show cause within such time as may be specified in the notice why he or it should not be prohibited from carrying on business as an insurance intermediary or from taking part, directly or indirectly, in the management of any insurance intermediary, as the case may be.

(3) If the person to whom notice has been given under subsection (2) —

- (a) fails to show cause within the time given to him or it to do so or within such extended period of time as the Authority may allow; or
- (b) fails to show sufficient cause,

the Authority shall give notice in writing to that person of the date on which the prohibition is to take effect.

(4) Any person who is aggrieved by a decision of the Authority under subsection (1) may, within 30 days of the decision of the Authority, appeal to the Minister in writing in accordance with Part IIIB.

(5) No insurer or insurance intermediary shall employ or otherwise deal with any person who has been issued an order under subsection (1) where any activity to be undertaken by the person pursuant to such employment or dealing is prohibited by the order.

(6) Any person who —

- (a) fails to comply with an order of the Authority made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 2 years or to both;

(b) contravenes subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.

(7) Where the Authority has, under section 31 of the Insurance Intermediaries Act (Cap. 142A) in force before 1st October 2002, by order prohibited any person from carrying on business as an insurance intermediary or from taking part, directly or indirectly, in the management of any insurance intermediary, the order shall continue in force as if made by the Authority under subsection (1).

Conduct of Insurance Broking Business

Insurance broker not to carry on business unless registered

35W. —(1) No person shall carry on business as any type of insurance broker in Singapore unless—

- (a) the person is registered by the Authority as that type of insurance broker; or
- (b) the person is exempted from registration under section 35ZN.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$7,500 for every day or part thereof during which the offence continues after conviction.

Registration of insurance brokers

35X. —(1) A person who desires to carry on business as an insurance broker shall apply in writing to the Authority for registration under this section and shall furnish such information as the Authority may require.

(2) Upon receiving an application under subsection (1), the Authority shall consider the application and may, subject to section 35Y —

- (a) register the applicant with or without conditions; or
- (b) refuse to register the applicant.

(3) The Authority may register the applicant as a direct insurance broker, general reinsurance broker, life reinsurance broker or a combination of any of these.

(4) Subject to subsection (5), any person who has been registered under section 16 of the Insurance Intermediaries Act (Cap. 142A) in force before 1st October 2002 as a direct general

insurance broker, general reinsurance broker, life reinsurance broker or a combination of any of these shall be deemed to be registered as such under subsection (2).

(5) Any person who is registered or deemed to be registered under this section as a direct general insurance broker immediately before the date of commencement of the Insurance (Amendment) Act 2003 shall, as from that date, be deemed to be registered as a direct insurance broker under subsection (2).

Registration requirements

35Y.—(1) The Authority shall not register any applicant under section 35X unless the applicant (a) is a company;

(b) has a paid-up share capital which is not less than such amount as may be prescribed; and

(c) has in force a professional indemnity insurance policy, the cover of which is consistent with such limit and deductible requirements as may be prescribed.

(2) For the purposes of subsection (1) (b) and (c), the Authority may prescribe different amounts for different types of insurance brokers.

(3) In subsection (1) (c), “professional indemnity insurance policy” means a contract of insurance with an insurer under which a person is indemnified in respect of the liabilities arising out of or in the course of his business as an insurance broker.

Conditions of registration

35Z.—(1) The Authority may at any time add to, vary or revoke any existing condition of registration of an insurance broker or impose any new condition thereto.

(2) Any insurance broker which fails to comply with any of the conditions imposed by the Authority under subsection (1) or section 35X (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Annual fees

35ZA.—(1) Every registered insurance broker shall pay to the Authority such annual fees as may be prescribed.

(2) The Authority may prescribe different annual fees for different types of registered insurance brokers.

(3) The Authority may exempt wholly or in part any registered insurance broker from the payment of the annual fees prescribed under this section.

Cancellation of registration

35ZB. —(1) The Authority may by order, at the request of the insurance broker or on any ground specified under subsection (2), cancel the registration of any insurance broker.

(2) The grounds referred to in subsection (1) are —

- (a) that the insurance broker has not commenced business within 6 months after being registered;
- (b) that the insurance broker has ceased to carry on the business for which it is registered;
- (c) that, it appears to the Authority, the insurance broker has failed to satisfy any obligation to which it is subject by virtue of this Act;
- (d) that there exists a ground on which the Authority would be prohibited by section 35Y from registering the insurance broker;
- (e) that the insurance broker —
 - (i) proposes to make, or has made, any composition or arrangement with its creditors;
 - (ii) has gone into liquidation; or
 - (iii) has been wound up or dissolved;
- (f) that the insurance broker is carrying on its business in a manner likely to be detrimental to the interests of policy owners for whom it is acting as an agent;
- (g) that the insurance broker is unable to meet its obligations;
- (h) that the insurance broker has contravened any provision of this Act or any condition imposed or any direction given by the Authority under this Act;
- (i) that any of the officers of the insurance broker holding a managerial or executive position has been convicted of any offence under this Act;
- (j) that the insurance broker has furnished false, misleading or inaccurate information, or has concealed or failed to disclose material facts, in its application for registration; and
- (k) that it is in the public interest to cancel the registration.

(3) Before cancelling the registration of an insurance broker under this section otherwise than at its request, the Authority shall —

- (a) give the insurance broker notice in writing of its intention to do so; and

(b) in the notice referred to in paragraph (a), call upon the insurance broker to show cause within such time as may be specified in the notice why its registration should not be cancelled.

(4) If the insurance broker to whom notice has been given under subsection (3) —

(a) fails to show cause within the time given to it to do so or within such extended period of time as the Authority may allow; or

(b) fails to show sufficient cause,

the Authority shall give notice in writing to the insurance broker of the date on which the cancellation of registration is to take effect.

(5) Any insurance broker which is aggrieved by a decision of the Authority under subsection (1) to cancel its registration as an insurance broker otherwise than at its request may, within 30 days of the decision of the Authority, appeal to the Minister in writing in accordance with Part IIIB.

(6) Notwithstanding the fact that the registration of an insurance broker has been cancelled under this section, so long as the insurance broker remains under any liability to an insurer, insured or intending insured, the insurance broker shall take such action as it considers necessary or as may be required by the Authority to ensure that reasonable provision has been or will be made for that liability.

(7) If the registration of a person as an insurance broker has been cancelled or has expired, sections 35ZC and 36 shall, unless the Authority otherwise directs, continue to apply in relation to the person in respect of matters that occurred before the cancellation or expiration as if its registration had not been cancelled or had not expired, as the case may be.

Duty to maintain net asset value

35ZC. Every registered insurance broker shall maintain a net asset value of such amount as may be prescribed.

Insurance broking premium accounts

35ZD. —(1) Subject to subsection (2), every registered insurance broker which receives any money —

(a) from or on behalf of an insured or intending insured for or on account of an insurer in connection with a contract of insurance or proposed contract of insurance; or

(b) from or on behalf of an insurer for or on account of an insured or intending insured,

shall, for the purposes of this section, establish and maintain a separate account with a bank licensed under the Banking Act (Cap. 19).

(2) Where the registered insurance broker is registered under section 35X to carry on business as more than one type of insurance broker, it shall establish and maintain separate accounts with a bank licensed under the Banking Act in respect of the carrying on of business of each type of insurance broker for which it is registered.

(3) The Authority may prescribe, in relation to an account established under subsection (1) or (2)-

- (a) the types of moneys that must be paid into or withdrawn from such account;
- (b) the manner in which moneys should be paid into or withdrawn from such account;
- (c) the manner in which moneys held in such account are to be invested;
- (d) the manner in which the proceeds from the investment of moneys held in such account are to be distributed;
- (e) the rights and obligations of any party in relation to moneys held in such account; and
- (f) any other matter which the Authority considers to be incidental to or necessary for this section.

(4) A lien or claim on the moneys in any account established by any registered insurance broker under subsection (1) or (2) shall be void unless the moneys in the account are for fees due and owing to the registered insurance broker.

(5) A charge or mortgage on the moneys in any account established by any registered insurance broker under subsection (1) or (2) shall be void.

(6) Any registered insurance broker which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(7) In this section, "moneys" means any sum received by a registered insurance broker as agent for an insured or intending insured, including policy moneys, premiums and claims payments.

Negotiation and placement of risk with unregistered insurer

35ZE. —(1) Subject to sections 35ZF and 35ZG, no registered insurance broker shall, in the course of its business as such, negotiate any contract of insurance with an insurer (directly or indirectly) except with a registered insurer acting in the course of its business as such.

(2) The reference in subsection (1) to a contract of insurance shall not apply to —

- (a) reinsurance;
- (b) business relating to risks outside Singapore; or
- (c) such other risks as may be prescribed.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 3 years or to both.

(4) In subsection (2), “risks outside Singapore” means any risk which would be classified as an offshore policy as defined in the First Schedule had the risk been underwritten by a registered insurer in Singapore.

Permission to negotiate and place risk with unregistered insurer

35ZF. —(1) Where in any particular case the Authority is satisfied that, by reason of the exceptional nature of the risk or other exceptional circumstances, it is not reasonably practicable to comply with section 35ZE, the Authority may permit any registered insurance broker —

- (a) to negotiate the contract of insurance with such insurer as the insurance broker sees fit; and
- (b) if in the opinion of the Authority the case requires it, to effect the contract of insurance and receive the premium in Singapore on behalf of such insurer.

(2) Where the Authority has, under section 23 (5) of the Insurance Intermediaries Act (Cap. 142A) in force before 1st October 2002, granted any registered insurance broker permission to negotiate with any unregistered insurer as the insurance broker sees fit and, if the case requires it, to effect the contract of insurance and receive the premium in Singapore on behalf of the insurer, the permission shall continue in force as if granted by the Authority under subsection (1).

Negotiation and placement of risk with foreign insurer

35ZG. —(1) Without prejudice to section 35ZF, a registered insurance broker may negotiate any contract of insurance referred to in section 35ZE with a foreign insurer under a foreign insurer scheme under Part IIA if he is authorised to do so under a licence issued by the Authority.

(2) Any person who wishes to obtain a licence under subsection (1) shall apply to the Authority in such manner as the Authority may determine and furnish such information as the Authority may require.

(3) In issuing a licence under subsection (1), the Authority may impose such conditions as it thinks fit and may at any time add to, vary or revoke such conditions.

(4) The issue of a licence by the Authority under subsection (1) shall be subject to the payment of such annual fees as may be prescribed.

(5) Section 35ZB shall apply, with the necessary modifications, in relation to the cancellation of a licence issued under subsection (1).

(6) Where, immediately before 1st October 2002, a person has a licence under section 8 of the Insurance Intermediaries Act (Cap.142A) in force before that date, he shall be deemed to have been issued, subject to the same terms and conditions but only in so far as they are not inconsistent with the provisions of this Act, with a licence under subsection (1) to negotiate contracts of insurance referred to in section 35ZE with such foreign insurers under any foreign insurer scheme under Part IIA as the Authority may determine.

Restriction as to receipt and payment of remuneration

35ZH.—(1) An insurer shall not pay to a registered insurance broker, and a registered insurance broker shall not receive from an insurer, in respect of the arranging or effecting of contracts of insurance by the insurance broker with the insurer, remuneration at a rate or on a basis that has been varied, having regard solely to all or any of the following:

- (a) the number of contracts so arranged or effected;
- (b) the total amount of premiums paid or payable under such contracts;
- (c) the total amount of sums insured under such contracts.

(2) Subsection (1) shall not apply to the receipt and payment of profit commissions.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(4) This section shall not apply to general reinsurance brokers and life reinsurance brokers in respect of contracts for the reinsurance of liabilities under insurance policies.

Control of take-over of insurance broker

35ZI. —(1) This section shall apply to and in relation to all individuals whether resident in Singapore or not and whether citizens of Singapore or not, and to all bodies corporate or unincorporate, whether incorporated or carrying on business in Singapore or not.

(2) No person shall enter into an agreement to acquire shares of a registered insurance broker by virtue of which he would, if the agreement is carried out, obtain effective control of that insurance broker without first notifying the Authority of his intention to enter into the agreement and obtaining the approval of the Authority to his entering into the agreement.

(3) For the purposes of this section —

(a) a person shall be regarded as obtaining effective control of a registered insurance broker by virtue of an agreement if the person alone or acting together with any associate or associates would, if the agreement is carried out —

(i) acquire or hold, directly or indirectly, 20% or more of the issued share capital of the insurance broker; or

(ii) control, directly or indirectly, 20% or more of the voting power of the insurance broker;

(b) a reference to entering into an agreement to acquire shares includes —

(i) a reference to a person making or publishing a statement, however expressed, that expressly or impliedly invites a holder of shares to offer to dispose of his shares to the first person; and

(ii) a reference to a person obtaining a right to acquire shares under an option, or to have shares transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on fulfilment of a condition or not;

(c) a reference to the voting power in a registered insurance broker is a reference to the total number of votes that might be cast in the general meeting of the insurance broker; and

(d) a person, *A*, is an associate of another person, *B*, if —

(i) *A* is the spouse or a parent or remoter lineal ancestor, or a son, daughter or remoter issue, or a brother or sister, of *B*;

(ii) *A* is a partner of *B*;

(iii) *A* is a corporation of which *B* is an officer;

(iv) where *B* is a corporation, *A* is an officer of *B*;

(v) *A* is an employee or employer of *B*;

- (vi) *A* is an officer of any corporation of which *B* is an officer;
- (vii) *A* is an employee of an individual of whom *B* is an employee;
- (viii) *A* is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B* or, where *B* is a corporation, of the directors of *B*;
- (ix) *B* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *A* or the directors of *A*, where *A* is a corporation;
- (x) *A* is a corporation in which *B* is in a position to control not less than 20% of the voting power in *A*; or
- (xi) where *B* is a corporation, *A* is a person who is in a position to control not less than 20% of the voting power in *B*.

(4) Any person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years or to both.

Approval or removal of chief executive officer and director of insurance broker

35ZJ. —(1) No registered insurance broker shall appoint a person as its chief executive officer or director in Singapore unless it has obtained the approval of the Authority.

(1A) Where a registered insurance broker has obtained the approval of the Authority to appoint a person as its chief executive officer or director under subsection (1), the person may be re-appointed as chief executive officer or director, as the case may be, of the registered insurance broker immediately upon the expiry of the earlier term without the approval of the Authority.

(2) If at any time it appears to the Authority that a chief executive officer or director of a registered insurance broker has failed to perform his functions or is no longer a fit and proper person to be so appointed, the Authority may, in writing, direct the insurance broker to remove the chief executive officer or director, as the case may be.

(3) For the purpose of determining whether to grant its approval under subsection (1) or whether the chief executive officer or director has failed to perform his functions under subsection (2), the Authority shall, without prejudice to any other matter that it may consider relevant, have regard to such criteria as may be prescribed.

(4) Before directing the registered insurance broker to remove its chief executive officer or any director under subsection (2), the Authority shall —

- (a) give the registered insurance broker notice in writing of its intention to do so; and
- (b) in the notice referred to in paragraph (a), call upon the registered insurance broker to show cause within such time as may be specified in the notice why the chief executive officer or director, as the case may be, should not be removed.

(5) If the registered insurance broker referred to in subsection (4) —

- (a) fails to show cause within the time given to it to do so or within such extended period of time as the Authority may allow; or
- (b) fails to show sufficient cause,

the Authority shall give notice in writing to the insurance broker of the date on which the direction to remove the chief executive officer or director, as the case may be, is to take effect.

(6) Any person who is aggrieved by a decision of the Authority under subsection (1) or (2) may, within 30 days of the decision of the Authority, appeal to the Minister in writing in accordance with Part IIIB.

(7) Any registered insurance broker which fails to comply with any direction of the Authority under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$150,000.

(8) Any approval by the Authority for a registered insurance broker to appoint a person as its chief executive officer or director in Singapore under section 26 of the Insurance Intermediaries Act (Cap. 142A) in force before 1st October 2001 shall continue in force as if approved by the Authority under subsection (1).

(9) Nothing in section 152 of the Companies Act (Cap. 50) shall prevent the Authority from exercising any power under subsection (2).

(10) In this section, “chief executive officer” means any person by whatever name described, who is —

- (a) in the direct employment of, or acting for, or by arrangement with a registered insurance broker; and
- (b) directly responsible for the conduct of any type of business of the insurance broker in Singapore.

Restriction on granting of unsecured loans or advances to director and employee of or adviser
engaged by registered insurance broker

35ZK. —(1) Without prejudice to section 162 of the Companies Act, no registered insurance broker shall, on or after 1st October 2002, in respect of its business in Singapore, grant, directly or indirectly, any unsecured loan or unsecured advance —

(a) to a director of the insurance broker, other than a director who is its employee; or
(b) to an employee of the insurance broker, including a director who is its employee, or a person engaged by the insurance broker to provide technical advice to clients, which in the aggregate and outstanding at any one time exceeds the sum of \$3,000.

(2) No registered insurance broker shall, on or after 1st October 2002 —

(a) increase the amount of any unsecured loan or unsecured advance granted to any person referred to in subsection (1) (a) before that date; or
(b) increase the amount of any unsecured loan or unsecured advance granted to any person referred to in subsection (1) (b) before that date if the total amount granted to that person will exceed the sum stated in that subsection.

(3) Any registered insurance broker which contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500 and, in the case of a continuing offence, to a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction.

(4) In this section, “director” includes the spouse, father, step-father, mother, step-mother, son, step-son, daughter, step-daughter, brother or sister of a director.

Holding out as registered insurance broker

35ZL. —(1) No person shall hold himself out to be registered as a direct insurance broker, general reinsurance broker or life reinsurance broker unless he is registered under this Act as such.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Use of words “insurance broking”

35ZM. —(1) No person, other than a registered insurance broker or an insurance broker who is exempt from registration under section 35ZN (1) (a), (b), (c), (d), (e) or (ea), shall —

(a) use the words “insurance broking” or any of its derivatives in any language, or any other word indicating that that person carries on business as an insurance broker in the name, description or title under which it carries on business in Singapore; or

(b) make any representation to such effect in any bill head, letter paper, notice, advertisement, publication or writing, including in electronic form, or in any other manner.

(2) Nothing in this section shall prohibit an association of insurance brokers from using the words “insurance broking” or any of its derivatives in any language as part of its name or description of its activities, subject to the Authority’s prior written approval.

(3) Nothing in this section shall apply to the use of the words “life insurance broking” or any of its derivatives.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$12,500 and, in the case of a continuing offence, to a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction.

(5) Any association of insurance brokers that, immediately before 1st October 2002, had been using the words “insurance broking” or any of its derivatives in any language, in any bill head, letter paper, notice, advertisement, publication or writing or in any other manner, shall be deemed to have been granted approval under subsection (1) to use such words in the same manner.

Exempt insurance brokers

35ZN. —(1) The following persons (referred to in this section as exempt insurance brokers) shall be exempt from registration as insurance brokers:

(a) a bank licensed under the Banking Act (Cap. 19);

(b) a merchant bank approved as a financial institution and approved to carry on business as an insurance broker under the Monetary Authority of Singapore Act (Cap. 186);

(c) a licensed financial adviser under the Financial Advisers Act (Cap. 108A);

(d) a holder of a capital markets services licence under the Securities and Futures Act (Cap. 289);

(e) a finance company which has been granted an exemption from section 25 (2) of the Finance Companies Act (Cap. 108) to carry on business as an insurance broker;

(ea) a direct insurer registered to carry on life business; and

(f) such other persons or class of persons as may be prescribed, subject to such conditions as the Authority may impose.

(2) Subject to this Act, sections 35ZD, 35ZE, 35ZF and 35ZH shall, with the necessary modifications, apply to the persons referred to in subsection (1) (other than persons referred to in subsection (1) (f)) in respect of their business as insurance brokers as if they are registered insurance brokers.

(2A) For the avoidance of doubt, references in subsection (2) to specific sections in this Act that apply to the persons referred to in that subsection do not include references to any regulations made under those sections unless the Authority prescribes that such regulations so apply.

(3) The Authority may prescribe or specify in directions the provisions of this Act that apply to the persons referred to in subsection (1) (f).

(4) The Authority may by written directions impose such conditions or restrictions as it deems fit on an exempt insurance broker or a class of exempt insurance brokers.

(5) The Authority may withdraw an exemption granted to any person under this section if the person contravenes any provision of this Act applicable to him or if the Authority considers it necessary in the public interest.

(6) A withdrawal of an exemption under subsection (5) shall not operate so as to —

(a) avoid or affect any agreement, transaction or arrangement, relating to any contract of insurance entered into by the person, whether the agreement, transaction or arrangement was entered into before or after the withdrawal of the exemption; or

(b) affect any right, obligation or liability arising under any agreement, transaction or arrangement referred to in paragraph (a).

(7) Any exempt insurance broker who is aggrieved by a decision of the Authority to withdraw the exemption under subsection (5) may, within 30 days of the decision, appeal in writing to the Minister in accordance with Part IIIB.

(8) Any exempt insurance broker who contravenes any condition or restriction imposed by the Authority under subsection (4) shall be guilty of an offence and shall be liable on conviction to a

fine not exceeding \$12,500 and, in the case of a continuing offence, to a further fine not exceeding \$1,250 for every day or part thereof during which the offence continues after conviction.

Registers maintained by Authority

35ZO. —(1) The Authority shall establish and maintain one or more registers in respect of the following persons:

- (a) registered insurance brokers;
- (b) persons removed by registered insurance brokers as directed by the Authority in exercise of its powers under section 35ZJ;
- (c) persons against whom a prohibition order is made under section 35V; and
- (d) such other persons as may be prescribed.

(2) The Authority may prescribe the manner in which the registers are established or maintained, including the details or particulars required to be entered in the registers.

(3) Any person may, upon payment of the prescribed fee, inspect and take an extract from the registers established under subsection (1), and any such extract, certified by the Authority to be a true copy, shall be admissible as evidence in any legal proceedings.

America

1. This act shall be known as the California Insurance Code.
2. The provisions of this code in so far as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations thereof, and not as new enactments.
3. All persons who, at the time this code goes into effect, hold office under any of the acts repealed by this code, which offices are continued by this code, continue to hold the same according to the former tenure thereof.
4. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but all procedure thereafter taken therein shall conform to the provisions of this code so far as possible.
5. Unless the context otherwise requires, the general provisions hereinafter set forth shall govern the construction of this code.

6. Division, part, chapter, article, and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of any division, part, chapter, article, or section hereof.
7. Whenever, by the provisions of this code, a power is granted to a public officer or a duty imposed upon such an officer, the power may be exercised or the duty performed by a deputy of the officer or by a person authorized pursuant to law by the officer, unless it is expressly otherwise provided.
8. Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this code, it shall be made in writing in the English language unless it is otherwise expressly provided.
9. Whenever any reference is made to any portion of this code or of any other law of this State, such reference shall apply to all amendments and additions thereto now or hereafter made.
10. "Section" means a section of this code unless some other statute is specifically mentioned and "subdivision" or "subsection" means a subdivision or subsection of the section in which that term occurs unless some other section is expressly mentioned.
11. The present tense includes the past and future tenses; and the future, the present.
12. The masculine gender includes the feminine and neuter.
13. The singular number includes the plural, and the plural the singular.
14. "County" includes "city and county."
15. "City" includes "city and county."
16. As used in this code the word "shall" is mandatory and the word "may" is permissive, unless otherwise apparent from the context.
17. "Oath" includes affirmation.
18. "Signature" or "subscription" includes mark when the signer or subscriber can not write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.
19. "Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation.

20. "Commissioner" means the Insurance Commissioner of this State.

20.5. Whenever in this code the terms "State Industrial Accident Commission" or "Industrial Accident Commission" or "commission," relating to the said "State Industrial Accident Commission" or the said "Industrial Accident Commission," appear, said terms shall mean "Division of Industrial Accidents," including "administrative director" of said division or "appeals board," or both, as the context may require.

21. "Division," and "department," in reference to the government of this state, mean the Department of Insurance of this state.

21.5. (a) "Administrative law bureau" or "administrative hearing bureau" means the unit within the Department of Insurance that provides administrative hearings.

(b) An administrative law judge appointed by the commissioner pursuant to civil service rules shall be employed within the administrative law bureau and shall not be supervised directly by the commissioner or supervised directly or indirectly by an employee in the legal branch of the department.

22. Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event.

23. The person who undertakes to indemnify another by insurance is the insurer, and the person indemnified is the insured.

24. "Admitted," in relation to a person, means entitled to transact insurance business in this State, having complied with the laws imposing conditions precedent to transaction of such business.

25. "Nonadmitted," in relation to a person, means not entitled to transact insurance business in this State, whether by reason of failure to comply with conditions precedent thereto, or by reason of inability so to comply.

26. "Domestic" means organized under the laws of this State, whether or not admitted.

27. "Foreign" means not organized under the laws of this State, whether or not admitted.

28. "State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes the District of Columbia, the commonwealths and the territories.

29. "Mortgage" includes a trust deed, "mortgagor" includes a trustor under such trust deed, "mortgagee" includes a beneficiary under such trust deed, or a trustee exercising powers or performing duties granted to or imposed upon him thereunder, and "lien" in respect to real or personal property includes a charge or incumbrance arising out of a trust deed.

30. "Resident" means residing in this State, "nonresident" means not residing in this State.

31. "Insurance agent" means a person authorized, by and on behalf of an insurer, to transact all classes of insurance other than life insurance.

An insurance agent is also authorized to transact 24-hour care coverage, as defined in Section 1749.02.

32. A life agent means an insurance agent authorized, by and on behalf of a life, disability or life and disability insurer, to transact life, disability or life and disability insurance.

A life agent may be authorized to transact 24-hour care coverage, as defined in Section 1749.02, pursuant to the requirements of subdivision (b) of Section 1749 or subdivision (h) of Section 1749.3.

32.5. "Life and disability insurance analyst" means a person who, for a fee or compensation of any kind, paid by or derived from any person or source other than an insurer, advises, purports to advise, or offers to advise any person insured under, named as beneficiary of, or having any interest in, a life or disability insurance contract, in any manner concerning that contract or his or her rights in respect thereto.

33. "Insurance broker" means a person who, for compensation and on behalf of another person, transacts insurance other than life with, but not on behalf of, an insurer.

33.5. "Fire and casualty broker-agent" means a person licensed pursuant to Section 1625.

34. "Insurance solicitor" means a natural person employed to aid a fire and casualty broker-agent acting as an insurance agent or insurance broker in transacting insurance other than life.

35. "Transact" as applied to insurance includes any of the following:

- (a) Solicitation.
- (b) Negotiations preliminary to execution.
- (c) Execution of a contract of insurance.
- (d) Transaction of matters subsequent to execution of the contract and arising out of it.

36. "Paid-in capital" or "capital paid-in" means:

(a) In the case of a foreign mutual insurer not issuing or having outstanding capital stock, the value of its assets in excess of the sum of its liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law. Such foreign mutual insurer shall not be admitted, however, unless its paid-in capital is composed of available cash assets amounting to at least two hundred thousand dollars (\$200,000.00).

(b) In the case of a foreign joint stock and mutual insurer, its paid-in capital computed, according to its desire, pursuant to the provisions of subdivision (a) or subdivision (c) of this section. If computed pursuant to the provisions of subdivision (a), its admission is subject to the qualification therein expressed.

(c) In the case of all other insurers, the lower of the following amounts:

(1) The value of its assets in excess of the sum of its liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law.

(2) The aggregate par value of its issued shares of stock, including treasury shares.

For the purpose of computing paid-in capital or capital paid-in, shares of stock are not taken as liabilities.

37. Provisions of this code relating to a particular class of insurance or a particular type of insurer prevail over provisions relating to insurance in general or insurers in general.

38. Unless expressly otherwise provided, any notice required to be given to any person by any provision of this code may be given by mailing notice, postage prepaid, addressed to the person to be notified, at his residence or principal place of business in this State. The affidavit of the person who mails the notice, stating the facts of such mailing, is prima facie evidence that the notice was thus mailed.

39. If any provision of this code, or the application thereof to any person or circumstance, is held invalid, the remainder of the code, or the application of such provision to other persons or circumstances, shall not be affected thereby.

40. The existence of insurers formed prior to the date this code takes effect shall not be affected by the enactment of this code nor by any repeal of the laws under which they were formed, but such insurers shall thereafter operate under the provisions of this code.

41. All insurance in this State is governed by the provisions of this code.

42. The designation of insurance coverage as "group" in any code or law of this State other than this code does not authorize its representation as a group coverage or as a group policy, certificate or contract by any person licensed or certificated by the commissioner unless the policy providing the coverage is defined as group insurance by a specific provision of this code or of the laws of the state in which the policy, certificate or contract is issued. This section shall apply only to life, disability and workmen's compensation insurance.

44. Any person who willfully and knowingly makes, circulates, or transmits to another any false written or printed statement for the purpose of damaging the financial condition or stability of any insurance company doing business in this state is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000).

45. (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or an international funds transfer, at the option of the insurer.

(b) For purposes of this section:

(1) "Automated clearinghouse" means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(2) "Automated clearinghouse debit" means a transaction in which any department of the state, through its designated depository bank, originates an automated clearinghouse transaction

debiting the taxpayer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction by the taxpayer shall be paid by the state.

(3) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the taxpayer, through its own bank, originates an entry crediting the state's bank account and debiting its own bank account. Banking costs incurred by the state for the automated clearinghouse credit transaction may be charged to the taxpayer.

(4) "Fedwire" means any transaction originated by the taxpayer and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the taxpayer debits its own bank account and credits the state's bank account. Electronic funds transfers may be made by Fedwire only if prior approval is obtained from the department and the taxpayer is unable, for reasonable cause, to make payments pursuant to paragraph (2) or (3). Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

(5) "International funds transfer" means any transaction originated by the taxpayer and utilizing "SWIFT," the international electronic payment system to transfer funds in which the taxpayer debits its own bank account, and credits the funds to a United States bank that credits the state's bank account. Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

46. The Legislature hereby declares its intent that the term "workmen's compensation" shall hereafter also be known as "workers' compensation." In furtherance of this policy it is the desire of the Legislature that references to the term "workmen's compensation" in this code be changed to "workers' compensation" when such code sections are being amended for any purpose. This act is declaratory and not amendatory of existing law.

47. "Surplus line broker" means a person licensed under Section 1765 and authorized to do business under Chapter 6 (commencing with Section 1760) of Part 2 of Division 1.

48. A "surplus line broker certificate" means a certificate issued by a surplus line broker to an insurance purchaser as evidence of the placement of insurance with an eligible nonadmitted insurer in accordance with the requirements of Sections 1764, 1764.1, and 1764.2.

100. Insurance in this state is divided into the following classes:

(1) Life

- (2) Fire
- (3) Marine
- (4) Title
- (5) Surety
- (6) Disability
- (7) Plate glass
- (8) Liability
- (9) Workmen's compensation
- (10) Common carrier liability
- (11) Boiler and machinery
- (12) Burglary
- (13) Credit
- (14) Sprinkler
- (15) Team and vehicle
- (16) Automobile
- (17) Mortgage
- (18) Aircraft
- (19) Mortgage guaranty
- (19.5) Insolvency
- (19.6) Legal insurance
- (20) Miscellaneous

101. Life insurance includes insurance upon the lives of persons or appertaining thereto, and the granting, purchasing, or disposing of annuities.

102. Fire insurance includes:

- (a) Insurance against loss by fire, lightning, windstorm, tornado, or earthquake.
- (b) Insurance against loss of, or destruction of, or damage to, any of the following property, when such insurance includes loss thereof by fire and excludes coverage of property while in the custody of, or possession of, or being transported by, any carrier for hire or in the mail:

1. Accounts, books, maps, manuscripts, indexes and other valuable papers, documents and records incidental to the business or profession or activity in which the insured is engaged,

resulting from any cause, but excluding any article constituting stock in trade or used as a sample or sold or held for sale.

2. Moneys, stamps, coins, bullion, securities, notes, drafts, acceptances or instruments of like kind or character, resulting from any cause, except:

(i) Forgery.

(ii) Any dishonest, fraudulent or criminal act of any officer, employee, partner, director, trustee or authorized representative of the insured.

(c) Insurance by means of an all-risk policy of the type commonly known as the "Personal Property Floater" against any and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise.

The provisions of Section 2070 shall not apply to insurance written pursuant to subdivisions (b) or (c).

103. Marine insurance includes insurance against any and all kinds of loss of or damage to:

(a) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind (excluding aircraft and automobiles operating under their own power or while in storage not incidental to transportation), as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, money, bullion, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property, and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same, or during any delays, storage, transshipment, or reshipment incident thereto including marine builder's risks, and all personal property floater risks.

(b) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance including liability for loss of or damage arising out of or in connection with the construction, repair, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds);

but except as herein specified, shall not mean insurances against loss by reason of bodily injury to the person. Inland marine insurance shall be deemed to include hull insurance on water

pleasure craft not used for commercial purposes of a size and type to be determined by the commissioner.

(c) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise.

104. Title insurance means insuring, guaranteeing or indemnifying owners of real or personal property or the holders of liens or encumbrances thereon or others interested therein against loss or damage suffered by reason of:

- (a) Liens or encumbrances on, or defects in the title to said property;
- (b) Invalidity or unenforceability of any liens or encumbrances thereon; or
- (c) Incorrectness of searches relating to the title to real or personal property.

105. Surety insurance includes:

(a) The guaranteeing of behavior of persons and the guaranteeing of performance of contracts (including executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed), other than insurance policies and other than for payments secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate.

(b) Insurance against loss resulting from the forgery or alteration of any instrument of any kind or character or of any signature thereon. Nothing in this section shall be deemed to limit any of the powers of title insurers.

(c) Any of the following insurance when included as a part of contract containing any such guarantee of behavior or performance or in a contract indemnifying any bank, banker, broker, financial or moneyed corporation or association, any state, political subdivision, public or municipal corporation, or any officer of any state, political subdivision, public or municipal corporation: Insurance indemnifying the insured named therein against loss or destruction from any cause of any evidences of debt of any kind or character, evidences of ownership of any kind or character, deeds, mortgages, warehouse receipts, bills of lading, certificates of stock, bonds, notes, drafts, checks, instruments of similar character, stamps, documents, money, precious metals of any kind or character, refined or unrefined, and articles made therefrom, jewelry, watches, necklaces, bracelets, gems and precious and semiprecious stones, and also against loss or damage, except by fire, to the insured's premises, furnishings, fixtures, equipment, safes and

vaults therein caused by burglary, robbery, holdup, theft or larceny or attempt thereof. No such insurance indemnifying against loss of any property as specified herein shall indemnify against loss of any such property occurring while in the mail or in the exclusive custody or possession of a common carrier for the purpose of transportation, except for the purpose of transportation by an armored motor vehicle.

(d) No insurance may be written as surety insurance if it falls within the definition of financial guaranty insurance as set forth in Section 12100.

106. (a) Disability insurance includes insurance appertaining to injury, disablement or death resulting to the insured from accidents, and appertaining to disablements resulting to the insured from sickness.

(b) In statutes that become effective on or after January 1, 2002, the term "health insurance" for purposes of this code shall mean an individual or group disability insurance policy that provides coverage for hospital, medical, or surgical benefits. The term "health insurance" shall not include any of the following kinds of insurance:

- (1) Accidental death and accidental death and dismemberment.
- (2) Disability insurance, including hospital indemnity, accident only, and specified disease insurance that pays benefits on a fixed benefit, cash payment only basis.
- (3) Credit disability, as defined in subdivision (2) of Section 779.2.
- (4) Coverage issued as a supplement to liability insurance.
- (5) Disability income, as defined in subdivision (i) of Section 799.01.
- (6) Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.
- (7) Insurance arising out of a workers' compensation or similar law.
- (8) Long-term care.

107. Plate glass insurance includes insurance against breakage of glass.

108. Liability insurance includes:

(a) Insurance against loss resulting from liability for injury, fatal or nonfatal, suffered by any natural person, or resulting from liability for damage to property, or property interests of others but does not include worker's compensation, common carrier liability, boiler and machinery, or team and vehicle insurance.

(b) (1) With respect to operations or property covered by a policy of liability insurance as defined in subdivision (a), insurance of medical, hospital, surgical and funeral loss or expense of the insured or other persons injured, and in the case of an automobile

liability policy disability benefits to the insured or other persons injured and in the event of their death, funeral and accidental death benefits to their dependents, beneficiaries or personal representatives irrespective of legal liability of the insured, when issued with or supplemental to the insurance defined in subdivision (a);

(2) When issued with or supplemental to the insurance defined in subdivision (a), disability insurance covering the insured and members of his household, or other persons who customarily operate any automobile covered by such a policy and who are named in such policy; and such disability insurance may cover against accidental injury, death or dismemberment caused by any or all hazards as defined in such coverage;

(c) Insurance covering injuries sustained by an insured resulting from a tort committed by a third party against which such third party is not himself covered by liability insurance;

(d) Insurance coverage against the legal liability of the insured, and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional services by any person who holds a certificate or license issued pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, a license issued pursuant to the Osteopathic Initiative Act, or license as a community clinic defined in subdivision (a) of Section 1203 of the Health and Safety Code, or a license as a health facility pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(e) The provisions of this code relating to disability insurance do not apply to insurance defined in this section.

108.1. Insurers admitted to transact liability insurance are also deemed to be admitted to transact workers' compensation insurance for the purpose of covering those persons defined as employees of subdivision (d) of Section 3351 of the Labor Code.

109. Workmen's compensation insurance includes insurance against loss from liability imposed by law upon employers to compensate employees and their dependents for injury sustained by

the employees arising out of and in the course of the employment, irrespective of negligence or of the fault of either party.

110. Common carrier liability insurance includes insurance against loss resulting from liability of a common carrier for accident or injury, fatal or nonfatal, to any person but does not include liability or workmen's compensation insurance.

111. Boiler and machinery insurance includes insurance against loss of property and liability for damage to persons or property from explosion of, or accident to, boilers, tanks, pipes, pressure vessels, engines, wheels, electrical machinery, or apparatus connected therewith or operating thereby.

112. Burglary insurance includes:

- (a) Insurance against loss by burglary or theft or both.
- (b) Insurance against loss of, or destruction of, or damage to, any of the following property, resulting from any cause, when such insurance includes loss thereof by burglary or theft, or both, and excludes coverage of property while in the custody of, or possession of, or being transported by, any carrier for hire or in the mail: Moneys, stamps, coins, bullion, securities, notes, drafts, acceptances or instruments of like kind or character, accounts, books, maps, manuscripts, indexes and other valuable papers, documents and records incidental to the business or profession or activity in which the insured is engaged.
- (c) Insurance by means of an all-risk policy of the type commonly known as the "Personal Property Floater" against any and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise.

113. Credit insurance includes insurance of persons engaged in business against loss by reason of extending credit to those dealing with them, and insurance against loss from the failure of persons to meet existing or contemplated obligations to the insured. However, no insurance may be written as credit insurance if it falls within the definition of financial guaranty insurance as set forth in Section 12100.

114. Sprinkler insurance includes insurance against loss through damage by water to goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus placed for extinguishing fires, or loss arising from the breakage or leakage of water pipes, or through accidental injury to such sprinklers, pumps, or other apparatus.

115. Team and vehicle insurance includes insurance against loss through damage or legal liability for damage, to property caused by the use of teams or vehicles other than ships, boats, or railroad rolling stock, whether by accident or collision or by explosion of engine, tank, boiler, pipe, or tire of the vehicle, and insurance against theft of the whole or part of such vehicle.

116. (a) Automobile insurance includes insurance of automobile owners, users, dealers, or others having insurable interests therein, against hazards incident to ownership, maintenance, operation, and use of automobiles, other than loss resulting from accident or physical injury, fatal or nonfatal, to, or death of, any natural person.

(b) Automobile insurance also includes any contract of warranty, or guaranty that promises service, maintenance, parts replacement, repair, money, or any other indemnity in event of loss of or damage to a motor vehicle or a trailer, as defined by Section 630 of the Vehicle Code, or any part thereof from any cause, including loss of or damage to or loss of use of the motor vehicle or trailer by reason of depreciation, deterioration, wear and tear, use, obsolescence, or breakage if made by a warrantor or guarantor who is doing an insurance business.

(c) Automobile insurance also includes any agreement that promises repair or replacement of a motor vehicle, or part thereof, after a mechanical or electrical breakdown, at either no cost or a reduced cost for the agreement holder. However, automobile insurance does not include a vehicle service contract subject to Part 8 (commencing with Section 12800) of Division 2, or an agreement deemed not to be insurance under that part.

(d) The doing or proposing to do any business in substance equivalent to the business described in this section in a manner designed to evade the provisions of this section is the doing of an insurance business.

116.5. An express warranty warranting a motor vehicle lubricant, treatment, fluid, or additive that covers incidental or consequential damage resulting from a failure of the lubricant, treatment, fluid, or additive, shall constitute automobile insurance, unless all of the following requirements are met:

(a) The obligor is the primary manufacturer of the product. For the purpose of this section, "manufacturer" means a person who can prove clearly and convincingly that the per unit cost of owned or leased capital goods, including the factory, plus the per unit cost of nonsubcontracted labor, exceeds twice the per unit cost of raw materials. "Manufacturer" also means a person who

has formulated or produced, and continuously offered in this state for more than nine years, a motor vehicle lubricant, treatment, fluid, or additive.

(b) The commissioner has issued a written determination that the obligor is a manufacturer as defined in subdivision (a). An obligor shall provide the commissioner with all information, documents, and affidavits reasonably necessary for this determination to be made. Approval by the commissioner shall be obtained prior to January 1, 2004, or prior to the issuance of a warranty subject to this section, whichever is later. If the commissioner determines that the obligor is not a manufacturer, the obligor may obtain a hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The agreement covers only damage incurred while the product was in the vehicle.

(d) The agreement is provided automatically with the product at no extra charge.

116.6. (a) Notwithstanding Section 116, a warranty issued by the warrantor of a vehicle protection product shall constitute an express warranty, as defined in Section 1791.2 of the Civil Code, and shall not constitute automobile insurance if the warrantor complies with all of the following requirements:

(1) The warrantor maintains an insurance policy with an admitted insurer providing coverage for 100 percent of the warrantor's obligations under the warranty. The insurance policy shall allow the warrantyholder to make a direct claim for payment from the insurer upon the failure of the warrantor to pay any covered claim within 60 days after a complete proof-of-loss has been filed with the party designated in the warranty. In addition, all of the following shall apply:

(A) The warrantor shall file with the commissioner a copy of the insurance policy. At any time, a warrantor may have on file with the commissioner only one active policy from one insurer.

(B) The insurer's liability under the policy shall not be negated by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer or to remit moneys owed to the insurer.

(C) No policy cancellation by an insurer shall be valid unless a notice of the intent to cancel the policy is filed with the commissioner not less than 30 days prior to the effective date of the cancellation, or, in the event that the cancellation is due to fraud, material misrepresentation, or defalcation by the warrantor, not less than 10 days prior to that date.

(D) In the event an insurer cancels a policy that a warrantor has filed with the commissioner, the warrantor shall do either of the following:

(i) File a copy of a new policy with the commissioner, before the termination of the prior policy, providing no lapse in coverage following the termination of the prior policy.

(ii) Discontinue acting as a warrantor as of the termination date of the policy until a new policy becomes effective and is accepted by the commissioner.

(2) The warrantor does not use the words insurance, casualty, surety, mutual, or any other words descriptive of the casualty, insurance, or surety business or deceptively similar to the name or description of any insurance company or casualty or surety company in the vehicle protection product name or warranty or in any advertising or other materials provided to prospective purchasers.

(3) The warranty has been issued to a customer that is insured under a comprehensive vehicle insurance policy for the vehicle covered by the warranty agreement.

(4) The warranty is in writing and provides all of the following:

(A) The benefits are limited to the difference between the actual cash value of the stolen vehicle and the vehicle's replacement cost, temporary vehicle rental expenses, reimbursement for insurance policy deductible, and registration fees and taxes on a replacement vehicle or a fixed amount for those benefits.

(B) A statement that the warrantyholder shall be entitled to make a direct claim against the insurer covering the obligations of the warranty upon the failure of the warrantor to pay any covered claim within 60 days after a complete proof-of-loss has been filed with the party designated in the warranty.

(C) A disclosure stating clearly the name, address, and telephone number of the insurer covering the obligations of the warrantor.

(D) A toll-free telephone number established and operated by the warrantor for the warrantyholder to call for questions about the warranty or the procedures to file a claim.

(E) A statement that clearly indicates the terms of the warranty, whether new or used cars are eligible for the vehicle protection product, the method for calculating the benefits paid and provided to the warrantyholder, and the procedure for filing a claim under the warranty.

(F) A disclosure in 10-point type or larger that reads as follows: "This agreement is a product warranty and is not insurance. It is not subject to state insurance laws but is subject to state law concerning warranties."

(G) A disclosure in 10-point type or larger that reads as follows: "To be eligible for this warranty, the warrantyholder must have comprehensive insurance coverage on the vehicle that is protected by the antitheft device."

(5) The benefit is payable upon the theft of the vehicle, as defined in the warranty, and subject to the satisfaction of the procedural proof of claim requirements of the warranty.

(b) For purposes of this section, the following definitions shall apply:

(1) "Warrantor" means the manufacturer or provider of a vehicle protection product who, under the terms of a vehicle protection product warranty, is the contractual obligor to the purchaser of a vehicle protection product.

(2) (A) "Vehicle protection product" means a vehicle protection device, system, or service that is installed on, or applied to, a vehicle, is designed to deter the theft of a vehicle, and includes a written warranty that provides if the product fails to deter the theft of the vehicle, that the warrantyholder shall be paid specified incidental costs by the warrantor as a result of the failure of the device, system, or service to perform pursuant to the terms of the warranty.

(B) For purposes of this section, "vehicle protection product" shall also include alarm systems, window etch products, body part marking products, steering locks, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.

(c) The commissioner may issue a stop order pursuant to Section 12921.8 to a warrantor who is in violation of the requirements of this section.

(d) A warrantor shall have the burden of proving that a claim filed in compliance with the terms and conditions of the warranty is not covered by the warranty. A warrantor shall have the burden of proving that a claim settlement amount fulfills the promises contained in the warranty.

(e) The requirements of this section shall not apply under either of the following conditions:

(1) The warrantor is a manufacturer of motor vehicles, as defined pursuant to Section 672 of the Vehicle Code, or a distributor of motor vehicles, as defined pursuant to Section 296 of the Vehicle Code.

(2) The warranty only provides for the repair or replacement of the vehicle protection product subsequent to a mechanical or electrical breakdown of the vehicle protection product.

(f) Nothing in this section is intended to affect any pending litigation.

117. Mortgage insurance includes the guaranteeing of the payment of the principal, interest and other sums agreed to be paid under the terms of any note or bond secured by mortgage, or other sums secured under the terms of any such mortgage, in its entirety, or of any undivided or other partial interest in any such mortgage, or in a group of such mortgages, and the guaranteeing or insuring, directly or indirectly, against loss thereon.

118. Aircraft insurance includes insurance of aircraft owners, users, dealers or others having insurable interests therein, against loss through hazards incident to ownership, maintenance, operation and use of aircraft, other than against loss resulting from accident or physical injury, fatal or nonfatal, to any natural person.

119. Mortgage guaranty insurance includes insurance against financial loss by reason of the nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate.

119.5. Insolvency insurance includes insurance against loss arising from the failure of an insolvent insurer to discharge its obligations under its insurance policies.

119.6. Legal insurance includes the assumption of a contractual obligation to reimburse the insured against all or a portion of his fees, costs, and expenses related to or arising out of services performed by or under the supervision of an attorney who is an active member of the bar of any jurisdiction or jurisdictions of the United States, in which these legal services are performed.

Legal insurance does not include any of the following:

(a) Retainer contracts made by an individual lawyer or law firm with an individual client with the fee based on an estimate of the nature and the amount of services that will be provided to that specific client, and similar contracts made with a group of clients involved in the same or closely related legal matters (such as class actions);

(b) Plans providing no benefits other than consultation and advice on matters in connection with, or a part of, referral services.

(c) Plans providing limited benefits on simple legal matters on a voluntary and informal basis, not involving a legally binding promise, in the context of an employment or educational or similar relationship; or

(d) Legal services provided by labor unions or employee associations to their members in matters relating to employment or occupation.

(e) Legal service incidental to other insurance coverages.

The foregoing is not intended as an exclusive list of legal services plans or arrangements which do not constitute legal insurance as defined by this section.

120. Miscellaneous insurance includes insurance against loss from damage done, directly or indirectly by lightning, windstorm, tornado, earthquake or insurance under an open policy indemnifying the producer of any motion picture, television, theatrical, port, or similar production, event, or exhibition against loss by reason of the interruption, postponement, or cancellation of such production, event, or exhibition due to death, accidental injury, or sickness preventing performers, directors, or other principals from commencing or continuing their respective performance or duties; and any insurance not included in any of the foregoing classes, and which is a proper subject of insurance.

121. Except as otherwise stated, the enumeration in this chapter of the kinds of insurance in a particular class does not limit any such kind to any one of such particular classes, inasmuch as the classification of similar insurance may vary with the subject matter, risk, and connected insurances; but the fact that similar kinds of insurance occur in different classes does not extend or change the scope of any such class.

122. (a) An insurer admitted for all the classes of insurance defined in Sections 102, 107, 108, 112 and 120 is authorized, in addition to the underwriting powers granted by such classes, to include any and all insurance described in paragraph (b) in a policy which contains fire coverage written on a form complying with either Section 2070 or Section 2071 and which provides insurance covering only noncommercial risks and covering either residence properties (not more extensive than a four-family dwelling) and appurtenances, or the contents thereof other than merchandise, or both.

(b) Such insurance is any or all insurance against all risks of physical loss of, damage to, or personal liability (except workmen's compensation) for injury to person or damage to property incident to, any or all of the following:

(1) The location described and property covered by the fire insurance policy as described in subdivision (a),

(2) Personal effects,

(3) Boats not over 16 feet in length (including furnishings, equipment, outboard motors, and trailers); provided the physical loss or damage coverage does not exceed five hundred dollars (\$500),

(4) Personal property intended primarily for residential or recreational use, (excluding boats except as provided above),

(5) Farm implements or self-propelled vehicles, excluding automobiles and aircraft, and,

(6) Horses, including accouterments and vehicles or implements to be drawn thereby.

123. An insurer admitted to transact liability insurance may extend such insurance on noncommercial or farm risks to include insurance of the legal liability of the insured for damage to property caused by use of "teams" or "vehicles" as the meaning thereof is limited by Section 115.

124. "Financial guaranty insurance" means that insurance as defined by Section 12100.

125. This chapter shall be known and may be cited as the California Risk Retention Act of 1991.

126. The Legislature finds and declares that the provisions of this chapter are for the purpose of providing a means for a bona fide for-profit or nonprofit association or individual business to insure against liability and those obligations imposed by statute.

127. Unless the context otherwise requires, the general provisions hereinafter set forth shall govern the application of this chapter and supersede any other provisions of law in conflict.

128. The purposes of this chapter are as follows:

(a) To regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the federal Liability Risk Retention Act of 1986, to the extent permitted by that law.

(b) To promote the formation and operation of risk retention groups and purchasing groups in this state. Californians who are experiencing difficulty in obtaining liability coverage are encouraged to form and operate risk retention and purchasing groups in this state.

(c) To authorize the formation of a risk retention group for directors and officers of corporations, whether for profit or nonprofit, who are engaged in the same line of business with respect to the liability risks faced by those officers and directors within the meaning of the federal Liability Risk Retention Act of 1986.

130. The following definitions govern this chapter:

(a) "Commissioner" means the Insurance Commissioner of this state or the commissioner, director, or superintendent of insurance of any other state.

(b) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means the following:

(1) For a corporation, the state in which the purchasing group is incorporated and registered to do business pursuant to the federal Liability Risk Retention Act (15 U.S.C. Sec. 3901 and following).

(2) For an unincorporated entity, the state of its principal place of business and in which it is registered to do business under the federal Liability Risk Retention Act (15 U.S.C. 3901 and following).

(c) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able to do either of the following:

(1) Meet obligations to policyholders with respect to known claims and reasonably anticipated claims.

(2) Pay other obligations in the normal course of business.

(d) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state.

(e) (1) "Liability" means legal liability for damages including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to the other persons resulting from or arising out of any of the following:

(A) Any business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations.

(B) Any activity of any state or local government, or any agency or political subdivision thereof.

(2) "Liability" includes financial responsibility required by the state for any activity for which an individual is required to obtain a license or certificate to provide a service. For purposes of this subdivision, a state agency has discretion to accept or deny proof of financial responsibility.

(3) "Liability" does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. Sec.51 et seq.).

(f) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subdivision (f).

(g) "Plan of operation or a feasibility study" with respect to risk retention groups chartered in California includes analysis which presents the expected activities and results of a risk retention group including, at a minimum, all of the following:

(1) Information to demonstrate that its members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

(2) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.

(3) Historical and expected loss experience of the proposed members and national experience of similar exposures, to the extent that this experience is reasonably available.

(4) Pro forma financial statements and projections.

(5) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition.

(6) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements.

(h) "Public entity" includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

(i) "Purchasing group" means any group which does all of the following:

(1) Has as one of its purposes the purchase of liability insurance on a group basis.

(2) Purchases that insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (3).

(3) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations.

(4) Is domiciled in any state.

(j) "Risk Retention Administration Account" means an account within the Insurance Fund to be used as a depository of moneys received under this chapter or appropriated by the Legislature for the purpose of administering this chapter.

(k) "Risk retention group" means any corporation, public entity, or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands that meets all of the following criteria:

(1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members.

(2) Which is organized for the primary purpose of conducting the activity described under paragraph (1).

(3) Which is either of the following:

(A) Chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state.

(B) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, has certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any group is considered to be a risk retention group only if it has been

engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as those terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the federal Liability Risk Retention Act of 1986.

(4) Does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over that person.

(5) Has as its members only persons who comprise the membership of the risk retention group and as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by that group.

(6) Whose members are engaged in businesses or activities similar or related with respect to the liability of which those members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations.

(7) Whose activities do not include the provision of insurance other than for the following:

(A) Liability insurance for assuming and spreading all or any portion of the liability of its group members.

(B) Reinsurance with respect to the liability of any other risk retention group or any members of that other group that is engaged in businesses or activities so that the group or member meets the requirement described in paragraph (6) from membership in the risk retention group that provides that reinsurance.

(8) The name of which includes the phrase "risk retention group."

(l) "State" means any state of the United States or the District of Columbia.

131. (a) An entity seeking to be licensed in this state as a risk retention group shall be organized under the laws of this state and licensed as a liability insurance company pursuant to Article 3 (commencing with Section 699) of Chapter 1 of Part 2.

(b) An entity that has not completed its chartering and licensing as a risk retention group in its domiciliary state is subject to the requirements of Article 8 (commencing with Section 820) of Chapter 1 of Part 2.

(c) In addition to the requirements of Article 3 (commencing with Section 699) of Chapter 1 of Part 2, a risk retention group licensed in this state shall submit to the commissioner a feasibility

study or plan of operations and all other documentation required by the federal Liability Risk Retention Act of 1986 (15 U. S.C. Section

3901 et seq.) to be submitted by a risk retention group to a nonchartering state.

132. Risk retention groups chartered, incorporated, or licensed in states other than this state and seeking to do business as a risk retention group in this state shall file a notice of operation with the commissioner of its intention to do business in this state. The

notice shall be filed with the commissioner within 60 days of the filing by the group of any notice filed with its chartering state of its intention to do business in this state, but in no event may a notice of intended operation be filed with the commissioner less than

60 days prior to the group commencing business in this state. In doing business in this state the risk retention group shall observe and abide by the laws of this state including the following:

(a) A risk retention group shall submit to the commissioner all of the following:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under subdivision (k) of Section 130.

(2) A copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to the state in which the risk retention group is chartered and licensed. However, the provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance which (A) was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and (B) was offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date.

(3) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(4) A registration filing fee shall accompany the statement of registration, which shall be deposited in the Risk Retention Administration Account, which is hereby created within the Insurance Fund. Notwithstanding Section 13340 of the Government Code, moneys in the account are continuously appropriated to the department for purposes of this chapter.

(b) Any risk retention group within this state shall submit to the commissioner all of the following:

(1) Upon commencement of business within this state and annually thereafter, a copy of the group's annual financial statement submitted to the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist.

(2) Upon request by the commissioner, a copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination and all documentation received as part of the examination.

(3) Upon request by the commissioner, a copy of any outside audit performed with respect to the risk retention group.

(c) (1) As authorized under the federal Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3902(a)(1)(B)), each risk retention group is liable for the payment of premium taxes and taxes on premiums for business done or located within this state, and shall report to the commissioner the gross premiums written, less returned premiums, on business done within this state. The risk retention group is subject to taxation, and any applicable fines and nonconformance fees related thereto, on the same basis as a foreign admitted insurer. Nonconformance fees shall be paid to the department and deposited in the Risk Retention Administration Account within the Insurance Fund.

(2) To the extent licensed surplus line brokers are utilized pursuant to Chapter 6 (commencing with Section 1760) of Part 2, they shall report to the commissioner the premiums for direct business for risks resident or located within this state which those licensees have placed with or on behalf of, a risk retention group not chartered in this state.

(d) Any risk retention group, its agents and representatives shall comply with Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2.

(e) Any risk retention group shall comply with the laws of this state regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding that conduct, the injunction shall be obtained from a court of competent jurisdiction.

(f) Any risk retention group shall submit to an examination upon request by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state.

(g) Every application form for insurance from a risk retention group and every policy issued by a risk retention group shall contain in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(h) The following acts by a risk retention group are hereby prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in that group.

(2) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition.

(i) No risk retention group may offer insurance policy coverage prohibited by Section 533.5 or declared unlawful by the Supreme Court of California.

(j) The risk retention group shall make its initial registration by filing the materials specified in subdivision (a). The initial registration is valid until December 31 of the year in which it was made, as long as the risk retention group is in compliance with this chapter. To maintain the registration in force, the risk retention group shall continue in compliance with this chapter and shall file the following items with the commissioner on or before December 31 of each year:

(1) An annual reporting statement on a form prescribed by the commissioner.

(2) An annual renewal fee to be determined by the commissioner, limited to the actual cost of administering this section, not to exceed three hundred dollars (\$300).

(3) Any other information required by the commissioner to determine whether the risk retention group is in compliance with the requirements of this chapter.

(k) The risk retention group shall notify the commissioner in writing of any changes in the information provided according to subdivision (a) within 30 days of the effective date of the change.

133. (a) No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by that risk retention group.

(b) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever located, shall be covered by any insurance guaranty fund or similar mechanism in this state.

(c) When a purchasing group obtains insurance covering its members' risks from an authorized admitted insurer, only risks located in this state shall be covered by the state insurance guaranty fund.

(d) A risk retention group shall not participate in this state's joint underwriting associations, California Automobile Assigned Risk Plan, Fair Access to Insurance Requirements Plan, and market assistance plans.

134. (a) A purchasing group that intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which does the following:

(1) Identify the state in which the group is domiciled.

(2) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase.

(3) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of that company.

(4) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state.

(5) Identify the principal place of business of the group.

(6) Provide other information that may be required by the commissioner to verify that the purchasing group is qualified under subdivision (i) of Section 130.

(b) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee in the amount of three hundred dollars (\$300) shall be submitted to the commissioner for deposit in the Risk Retention Administration Account within the Insurance Fund, except that these requirements do not apply in the case of a purchasing group that did all of the following:

(1) Was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States.

(2) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state, and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state.

(3) Was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986. (4) Does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.

(c) Any purchasing group which was doing business in this state prior to the enactment of this chapter shall, within 30 days after January 1, 1990, furnish notice to the commissioner pursuant to subdivision (a) and furnish information that may be required pursuant to subdivisions (b) and (c).

(d) Each purchasing group which is required to give notice pursuant to subdivision (a) shall also furnish information as may be required by the commissioner to:

(1) Verify that the entity qualifies as a purchasing group.

(2) Determine where the purchasing group is located.

(3) Determine appropriate tax treatment.

(4) Verify that the purchasing group is in compliance with the requirements of this chapter.

(e) Any purchasing group that intends to do business in this state shall make its initial registration by submitting to the commissioner the materials listed in subdivision (a). The registration is valid until December 31 of the year in which it was made, as long as the purchasing group is in compliance with this chapter. To maintain the registration, the purchasing group shall continue to comply with the provisions of this chapter.

Additionally, the purchasing group shall file the following documents with the commissioner on or before January 31 of each year:

- (1) An annual reporting statement on a form prescribed by the commissioner.
- (2) An annual renewal fee, to be determined by the commissioner, limited to the actual cost of administering this section, not to exceed two hundred dollars (\$200).
- (3) Any other information required by the commissioner to determine whether the purchasing group is in compliance with the requirements of this chapter or other applicable provisions of this code.

(f) The purchasing group shall notify the commissioner in writing of any changes in the information provided according to subdivision (a) within 30 days of the effective date of the change.

135. (a) No purchasing group may offer insurance policy coverage prohibited by Section 533.5 or declared invalid by the Supreme Court of California.

(b) A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state all of the following:

- (1) The risk is not protected by an insurance insolvency guaranty fund in this state.
- (2) The risk retention group or such insurer may not be subject to all insurance laws and regulations of this state.

136. The powers authorized by this chapter shall only be exercised to the extent these powers are not preempted by the Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986.

137. (a) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless that person, firm, association, or corporation is licensed as a fire and casualty broker-agent in accordance with Chapter 5 (commencing with Section 1621) of Part 2 and is authorized to act as an insurance broker; except salaried employees or officers of a risk retention group, provided no part of the compensation of such person is on a commission basis or otherwise based on production of business.

(b) No person, firm, association, or corporation shall act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless that person, firm, association, or corporation is licensed as a surplus line broker in accordance with Chapter 6 (commencing with Section 1760) of Part 2. A nonresident person may be licensed as a surplus lines broker for purposes of placing insurance on behalf of a purchasing group.

(c) Any person, firm, association, or corporation licensed pursuant to Chapter 5 (commencing with Section 1621) of Part 2, on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by subdivision (g) of Section 132 in the case of a risk retention group and subdivision (b) of Section 135 in the case of a purchasing group.

138. There shall be no civil liability on the part of any agent or broker who places liability insurance coverage on behalf of any risk retention group which is incorporated and licensed in this state in the event of an insolvency by the risk retention group.

140. The commissioner may order a purchasing group or risk retention group to cease and desist from the solicitation or sale of insurance by, or the operations of, a risk retention group or purchasing group whose officers, organizers, or directors have engaged in any of the acts or omissions set forth in subdivision (a) of Section 1668.5. That order shall be made in accordance with the procedures set forth in Article 14.5 (commencing with Section 1065.1) of Chapter 1 of Part 2.

769. (a) After a written agency or written brokerage contract, where the broker-agent represents the insurer, has been in effect for at least one year, it shall not be terminated or amended by an insurer, except by mutual agreement, unless 120 days' advance written notice has been given by the insurer to the broker-agent.

(b) The advance notice required by this section does not apply if the broker-agent has done any of the following:

(1) Exceeded his or her binding authority under the agency or brokerage contract.

(2) Violated the written underwriting rules or regulations of the insurer, a copy of which has been provided to the broker-agent, which misleads the insurer concerning the nature or extent of a risk.

(3) Failed to comply with the fiduciary requirements set forth in Section 1733, 1734, 1734.5, or 1735.

(4) Failed, either within 10 days after written notice upon failure to remit funds within the time limits set forth in the agency or brokerage contract or within 30 days after written demand if the agency or brokerage contract does not set forth time limits, to remit funds due and owing to the insurer.

(5) Had his or her license suspended or revoked by the commissioner.

(6) Engaged in fraudulent acts affecting his or her relationship with the insurer or its insureds.

(7) Transferred ownership, control, or servicing of policies written with the insurer to another insurer, or to an entity directly or indirectly owned or controlled by an insurer or to an entity directly or indirectly owning or controlling an insurer.

(c) When a broker-agent's contract is terminated as provided by this section, the rights, duties, and obligations set forth in the terminated contract of the broker-agent having property rights in renewals shall continue solely with respect to policies then in force or renewed as provided by this section until those policies are canceled in accordance with law, placed by the broker-agent with another insurer, or have expired. The broker-agent's authority during the period following notice of termination of his or her contract shall be governed by the written contract between the broker-agent and the insurer, except that, after the receipt of the notice of termination, the broker-agent shall not bind new risks on behalf of the insurer, renew policies except as permitted by this section, or otherwise increase the obligation of the insurer, without the express approval of the insurer or in accordance with the terms of an existing policy.

(d) If a terminated broker-agent is unable, after making a good faith effort, to place existing policies with another insurer, the insurer then insuring the risk shall, at the broker-agent's request, renew any insurance contract written by the broker-agent for the insurer for one policy term or a period of one year, whichever is shorter. Where the insurer is prohibited by subdivision (c) of Section 1861.03 from nonrenewing the risk, the insurer shall continue to compensate the broker-agent for servicing the policies written by the insurer prior to termination of the broker-agent relationship until the insurer can cancel or nonrenew the policyholder pursuant to statute or the broker-agent moves the policyholder to another insurer but, in no event, shall the insurer's obligation to compensate the broker-agent exceed three years after

termination of the broker-agent's contract, unless otherwise provided by terms of the contract. The renewal shall be at the insurer's premium rates ineffect on the date of renewal and at prevailing commission rates for that class or line of business in effect on the date of renewal for broker-agents whose contracts are not terminated. An insurer shall not be precluded from paying a commission to a terminated broker-agent pursuant to this section at a level the insurer is paying at the time it provides notice to the broker-agent that it is terminating the contract or as set forth in the written agreement, providing that there has not been any unilateral change in the commission paid by the insurer within 180 days of the notice of the broker-agent's termination. An insurer shall be allowed to subtract from the three-year time period provided to a broker-agent upon termination, the time period that elapsed during which the broker-agent is involved in a rehabilitation program with an insurer.

(e) (1) Notwithstanding any other provision of this section, no insurer shall be required to renew any policy of insurance or compensate a terminated broker-agent pursuant to the provisions of this section if any of the following apply:

(A) The broker-agent is no longer the broker-agent of record with respect to the policy, or the broker-agent has transferred ownership, control, or servicing of policies written with the insurer to another insurer or an entity owned or controlled, directly or indirectly, by another insurer or to an entity owning or controlling, directly or indirectly, another insurer.

(B) The broker-agent has died or has become unable to conduct his or her business affairs.

(C) The broker-agent has failed, either within 10 days after written demand upon failure to remit funds within the time limits set forth in the agency or brokerage contract or within 30 days after written demand if the agency or brokerage contract does not set forth time limits, to remit funds due and owing to the insurer.

(D) The broker-agent has failed to follow the written instructions of the insurer, a copy of which has been provided to the broker-agent, generally applicable to the renewal of policies.

(E) The commissioner has determined that the renewal of the policy would threaten the solvency of the insurer.

(F) The insurer suffers the withdrawal of reinsurance covering all or part of the risk and this withdrawal of reinsurance is likely to threaten, in the opinion of the commissioner, the financial integrity or solvency of the insurer.

(G) The insurer has withdrawn from the State of California in accordance with Sections 1070 to 1076, inclusive.

(2) Nothing in this subdivision shall be construed to authorize the nonrenewal of a good driver discount policy as defined and issued pursuant to the provisions of Sections 1861.02, 1861.025, and 1861.03.

(f) This section shall not apply to a life insurer, an agent of a life insurer, a disability insurer, a nonprofit hospital service plan, an agent of a disability insurer or nonprofit hospital service plan, an agent who is the employee of an insurer, or to an agent who, by contractual agreement either represents only one insurer or group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to other insurers.

(g) This section does not apply to any management contract of a managing general agent as defined in Section 1735, but it shall continue to apply to any agency or brokerage contract of a managing general agent or any portion of a management contract authorizing a managing general agent to act in his or her capacity as an insurance agent as defined in Section 1621, or an insurance broker as defined in Section 1623.

(h) (1) For purposes of this section, a "rehabilitation program" shall include, but not be limited to, all of the following:

(A) Written communication to the broker-agent outlining the fact that the broker-agent is on rehabilitation status.

(B) Identification by the company of problem areas.

(C) Mutual agreement on performance objectives and specific dates for accomplishment.

(D) Length of rehabilitation plan to be negotiated, but not less than six months.

(2) For purposes of subdivision (d), a good faith effort is satisfied by a terminated broker-agent who markets his or her book of business to other insurers that underwrite the same or similar lines of insurance, consistent with the interests of the policyholders.

An insurer who terminates a broker-agent shall be entitled to be informed of the marketing activity and to obtain copies of any correspondence reflecting these efforts. However, nothing in this section shall be interpreted to allow the insurer to require the terminated broker-agent to

obtain written rejections of an agency appointment from other insurers, or written rejections from individual policyholders.

(i) An insurer that takes action, other than terminating the written agency or brokerage contract, solely for the purpose of avoiding the provisions of subdivision (a) shall be required to extend existing policies pursuant to the applicable provision of subdivision (d) if both of the following apply:

(1) The action is designed to impact only a specific agency or agencies and the business produced by them. (2) The action results in the cancellation or nonrenewal of substantially all of the agency's or agencies' business.

(j) This section shall apply to written agency contracts becoming effective on or after January 1, 1987. The amendments to this section by the act adding this sentence also apply to any written agency contract amended after January 1, 1988.

(k) The amendments to this section made by the act adding this subdivision shall apply to any written brokerage contract becoming effective, or amended, on or after January 1, 1996.

769.2. (a) In determining the amount of an insurer's rollback obligation pursuant to Section 1861.01 or any regulations promulgated to implement this section, each insurer shall be given full credit for all premium taxes, commissions, and brokerage expenses that the insurer actually paid during the rollback period. No insurer shall be required or permitted to seek, directly or indirectly, reimbursement from the state of any premium taxes paid on premiums earned during the rollback period or reimbursement from any employee or third-party contractor of an insurer of any compensation paid to them for services rendered during the rollback period.

(b) The provisions of this section and the findings and declarations in support thereof take effect immediately upon enactment and apply to any order, settlement agreement, consent decree, or any other resolution of an insurer's rollback obligation pursuant to Section 1861.01 that occurs after the effective date of this section.

(c) Nothing in this section shall be deemed in any regulatory or judicial proceeding or for any other purpose to constitute legislative intent to endorse or approve any regulations on the issue of Proposition 103 rollback refunds.

769.55. Notwithstanding any other provision of this code, for the purposes of Chapter 6 (commencing with Section 520) through Chapter 11 (commencing with Section 675), inclusive of

Part 1 of Division 1, the obligation of an insurer to furnish any notice to its insured required by law may be carried out by an insurer's general agent, provided, however, that an insurer's delegation of a notice obligation to a general agent shall not limit or negate the insurer's responsibility or liability if the general agent fails to provide the required notice.

As used in this section, "general agent" means a licensed fire and casualty broker-agent who, pursuant to a written contract with an admitted insurer manages the transaction of one or more classes of insurance written by the insurer and has the power to (1) appoint, supervise, and terminate local agents, (2) accept or decline risks, and (3) collect premium moneys from producing broker-agents.

Nothing in this section shall provide an exemption from Article 5.4 (commencing with Section 769.80) to any fire and casualty broker-agent who is otherwise subject to that article.

769.80. This act shall be known and may be cited as the Managing General Agents Act.

769.81. As used in this article:

(a) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries, the Casualty Actuarial Society, or the Society of Actuaries, and is qualified to sign a statement of actuarial opinion on loss reserves.

(b) "Insurer" means any person, firm, association, or corporation duly licensed as an insurer and operating under a certificate of authority in this state.

(c) "Managing General Agent" (MGA) means any person, firm, association, partnership, or corporation who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office) and acts as an agent for that insurer whether known as an MGA, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than 5 percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following: (1) adjusts or pays claims in excess of an amount determined by the commissioner, or (2) negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as MGAs for the purposes of this act:

- (1) An employee of the insurer.
- (2) A United States manager of the United States branch of an alien insurer.
- (3) An underwriting manager which, pursuant to contract, manages the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written.
- (4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(d) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

769.82. (a) No producer shall act in the capacity of an MGA with respect to risks located in this state for an insurer which holds a certificate of authority unless that producer is licensed as a fire and casualty broker-agent or as a life agent in this state.

(b) No producer shall act in the capacity of an MGA representing an insurer domiciled in this state with respect to risks located outside this state unless that producer is licensed as a fire and casualty broker-agent or as a life agent in this state.

(c) The commissioner may require a fidelity bond in an amount acceptable to him or her for the protection of the insurer.

(d) The commissioner may require the MGA to maintain an errors and omissions policy. If a policy is not generally available at a reasonable cost, the commissioner may, by rule, suspend the requirement of this subdivision until that coverage becomes generally available at a reasonable cost.

769.83. No producer acting in the capacity of an MGA shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

(a) The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.

(b) The MGA shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(c) All funds collected for the account of an insurer shall be held by the MGA in a fiduciary capacity in a bank or savings association the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The requirements of this subdivision shall be in addition to the requirements of Sections 1734 and 1735.

(d) Separate records of business written by the MGA shall be maintained. The insurer shall have access to and the right to copy all accounts and records related to its business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts, and records of the MGA in a form usable to the commissioner. Those records shall be retained by the MGA, and shall be the joint property of the insurer and MGA.

(e) The contract may not be assigned in whole or part by the MGA.

(f) Appropriate underwriting guidelines including:

- (1) The maximum annual premium volume.
- (2) The basis of the rates to be charged.
- (3) The types of risks which may be written.
- (4) Maximum limits of liability.
- (5) Applicable exclusions.
- (6) Territorial limitations.
- (7) Policy cancellation provisions.
- (8) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance, except as limited by any other provision of this code.

(g) If the contract permits the MGA to settle claims on behalf of the insurer:

- (1) All claims shall be reported to the insurer in a timely manner.
- (2) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim is subject to any of the following:

(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less.

(B) Involves a coverage dispute.

(C) May exceed the MGA's claims settlement authority.

(D) Is open for more than six months.

(E) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.

(3) All claim files shall be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer such files shall become the sole property of the insurer or its estate; the MGA shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(h) Where electronic claims files are in existence, the contract shall address the timely transmission of the data.

(i) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to Section 769.84.

(j) The MGA shall not do any of the following:

(1) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and

commission schedules. This paragraph shall not operate to prohibit transactions which are subject to Chapter 6.5 (commencing with Section 1781.1) of

Part 2 of Division 1, if the MGA has complied with all of the requirements of that chapter.

(2) Commit the insurer to participate in insurance or reinsurance syndicates.

(3) Appoint any agent without assuring that the agent is lawfully licensed to transact the type of insurance for which he or she is appointed.

(4) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed 1 percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year.

(5) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer.

(6) Permit any agent appointed pursuant to paragraph (3) to serve on the insurer's board of directors.

(7) Jointly employ an individual who is employed with the insurer.

(8) Appoint a sub-MGA.

769.84. (a) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each MGA with which it has done business.

(b) If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This is in addition to any other required loss reserve certification.

(c) The insurer shall periodically (at least semiannually) conduct an onsite review of the underwriting and claims processing operations of the MGA.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA.

(e) Within 30 days of entering into or termination of a contract with an MGA, the insurer shall provide written notification of such appointment or termination to the commissioner. Notices of appointment of an MGA shall include a statement of duties which the applicant is expected to

perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(f) An insurer shall review its books and records each quarter to determine if any producer has become, by operation of Section 769.81, an MGA as defined in that section. If the insurer determines that a producer has become an MGA pursuant to the above, the insurer shall promptly notify the producer and the commissioner of that determination and the insurer and the producer shall fully comply with this article within 30 days.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, any agent appointed pursuant to paragraph (3) of subdivision (j) of Section 769.83, or controlling shareholder of its MGAs. This subdivision shall not apply to relationships governed by Article 4.7 (commencing with Section 1215) of Chapter 2 of Part 2 of Division 1.

769.85. The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting. An MGA may be examined as if it were the insurer.

769.86. (a) If the commissioner finds after hearing that any person has violated any provision of this article he or she may order any of the following:

(1) For each separate violation, a penalty in an amount not to exceed twenty-five thousand dollars (\$25,000).

(2) Revocation or suspension of the producer's license. (b) Hearings held pursuant to subdivision (a) shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the hearings shall be conducted by administrative law judges chosen under Section 11502 or appointed by the commissioner.

(c) The decision, determination, or order of the commissioner pursuant to subdivision (a) shall be subject to judicial review.

(d) Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in this code, nor limit any other authority required or authorized by this code to be exercised by the commissioner.

(e) Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

769.87. The commissioner may adopt reasonable rules and regulations for the implementation and administration of this article.

930. The provisions of this article shall apply to all domestic, foreign, and alien insurers doing business in this state.

931. (a) Each domestic, foreign, and alien insurer doing business in this state shall annually, on or before the first day of March of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with any additional filings as prescribed by the commissioner for the

preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.

(b) Each year, on or before the following dates, every domestic, foreign, and alien insurer doing business in this state shall make and file with the National Association of Insurance Commissioners, in the number, form, and methods prescribed by the commissioner, a copy of the quarterly statements exhibiting its condition and affairs for the period beginning on January 1 of the current calendar year through the end of each quarter of the current year as described below. These quarterly filings shall cover the period of time beginning January 1 of the current year through and including the last day of the quarter for which the report is being made. The first quarter filing shall be filed on or before May 15th of every year. The second quarter filing shall be filed on or before August 15th of every year. The third quarter filing shall be filed on or before November 15th of every year. If any of these dates fall on a day other than a business day, then the filing is due to the National Association of Insurance Commissioners by the first business day preceding that date. The information filed with the National Association of Insurance Commissioners shall include a jurat page. A copy of any amendments and addendums to the quarterly statement filings subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.

(c) Foreign insurers that are domiciled in a state which has a law substantially similar to subdivision (a) of this section shall be deemed in compliance with this section.

932. In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, National Association of Insurance Commissioners' employees, and all others charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this article and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required herein.

933. All financial analysis ratios and examination synopses concerning insurers that are submitted to the department by the National Association of Insurance Commissioners' Insurance Regulatory Information System are confidential and may not be disclosed by the department.

934. The commissioner may suspend, revoke, or refuse to renew the certificate of authority of any insurer failing to file its annual or quarterly statement with the National Association of Insurance Commissioners when due or within any extension of time which the commissioner, for good cause, may grant.