STATE OF CALIFORNIA
DEPARTMENT OF FINANCIAL INSTITUTIONS

BANKING LAW
PAYMENT INSTRUMENTS LAW
BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS LAW
SAVINGS ASSOCIATION LAW
CREDIT UNION LAW
and Related Laws
as of January 1, 2005

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FOREWORD

This compilation, prepared by the Legislative Counsel, includes the 2000 revisions to laws relating to financial institutions.

This revised edition shows all sections as they are in effect on and after January 1, 2005.

History notes in parentheses following headings or sections reflect only the latest legislative action preceding this publication. The statutory record may be consulted to determine prior history in any particular instance.

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EXCERPTS FROM THE FINANCIAL CODE

DIVISION 1. BANKS
(Division 1 enacted by Stats. 1951, Ch. 364.)

CHAPTER 1. SCOPE AND DEFINITIONS
(Chapter 1 enacted by Stats. 1951, Ch. 364.)

99. This division is known and may be cited as the "Banking Law."
(Added by renumbering Section 118 by Stats. 1951, Ch. 381.)

100. This division is applicable to the following:

(a) All corporations engaging in commercial banking, industrial banking, or the trust business.

(b) All national banking associations authorized to transact business in this state to the extent that the provisions of this division are not inconsistent with and do not infringe paramount federal laws governing national banking associations.

(c) All other corporations as shall subject themselves to the s31507pecial provisions and sections of this division.

(d) All other persons, associations, copartnerships, or corporations who, by violating any of its provisions, become subject to the penalties provided for in this division.
(Amended by Stats. 2000, Ch. 1015, Sec. 3. Effective September 30, 2000.)

100.5. If and to the extent that any provision of this division is preempted by federal law, the provision does not apply and shall not be enforced.
(Added by Stats. 1995, Ch. 480, Sec. 1.5. Effective October 2, 1995.)

101. All provisions of law applicable to corporations generally (including, but not limited to, the General Corporation Law (Division 1 (commencing with Section 100), Title 1 of the Corporations Code)) shall apply to banks. However, whenever any provision of this division or of any regulation or order issued under any provision (other than this section) of this division applicable to banks is inconsistent with any provision of law applicable to corporations generally, such provision of this division or of such regulation or order shall apply and such provision of law applicable to corporations generally shall not apply.
(Amended by Stats. 1978, Ch. 965.)

102. The word "bank" as used in this division means any incorporated banking institution that shall have been incorporated to engage in commercial banking business, industrial banking, or trust business.
(Amended by Stats. 2000, Ch. 1015, Sec. 4. Effective September 30, 2000.)

103. Banks are divided into the following classes:

(a) Commercial banks.

(b) Industrial banks.

(c) Trust companies.
(Amended by Stats. 2000, Ch. 1015, Sec. 5. Effective September 30, 2000.)

105. "Commercial bank" means a corporation organized for the purpose of engaging in the commercial banking business.
(Amended by Stats. 2000, Ch. 1015, Sec. 6. Effective September 30, 2000.)

105.2. "Commercial banking business" includes, but is not limited to, the business of soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing, provided that nothing herein shall apply to or include money or its equivalent left in escrow, or left with an agent pending investment in real estate or securities for, or on account of, his or her principal. In addition, "commercial banking business" means to lend money on the security of real or personal property or without security; to discount or deal in bills, notes, or other commercial paper; to buy and sell for the account of customers, and, if eligible for investment, for its own account, securities, gold and silver bullion, foreign coins, and bills of exchange; and generally to transact a commercial banking business.
(Added by Stats. 2000, Ch. 1015, Sec. 7. Effective September 30, 2000.)

105.5. "Industrial bank" means a corporation organized for the purpose of engaging in the industrial banking business.
(Added by Stats. 2000, Ch. 1015, Sec. 8. Effective September 30, 2000.)

105.7. "Industrial banking business" includes the making of loans and acceptance of deposits, including deposits evidenced by investment or thrift certificates, but excluding demand deposits.
(Added by Stats. 2000, Ch. 1015, Sec. 9. Effective September 30, 2000.)

106. "Trust business" means the business of acting as executor, administrator, guardian or conservator of estates, assignee, receiver, depositary or trustee under the appointment of any court, or by authority of any law of this or any other state or of the United States, or as trustee for any purpose permitted by law.
(Amended by Stats. 1959, Ch. 391.)

107. "Trust company" means a corporation, industrial bank, or a commercial bank that is authorized to engage in the trust business.
(Amended by Stats. 2000, Ch. 1015, Sec. 10. Effective September 30, 2000.)

107.5. It shall be unlawful for any person, corporation, limited liability company, partnership, firm, or any other form of business entity allowed by law, to engage in or transact commercial banking business, industrial banking business, or trust business within this state except by means of a corporation duly organized for that purpose.
(Added by Stats. 2000, Ch. 1015, Sec. 11. Effective September 30, 2000.)

109. "Bank" or "banks" includes commercial banks, industrial banks, and trust companies unless the context otherwise requires. However, "bank" does not include a savings association or a credit union.
(Amended by Stats. 2000, Ch. 1015, Sec. 12. Effective September 30, 2000.)

110. "Office" includes head office, branch office, and any other authorized place of business of a bank.

"Head office" means the principal place of business of a bank.
(Amended by Stats. 1969, Ch. 1280.)

111. "Real property" and "personal property" have the meanings defined in and shall be construed in accordance with Title 1, Part 1, Division 2, Civil Code of California.
(Enacted by Stats. 1951, Ch. 364.)

112. "Commissioner" means the Commissioner of Financial Institutions and "department" means the Department of Financial Institutions.
(Amended by Stats. 1996, Ch. 1064, Sec. 22. Effective January 1, 1997. Operative July 1, 1997.)

113. "Person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, limited liability company, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.
(Amended by Stats. 1994, Ch. 1010, Sec. 109. Effective January 1, 1995.)

115. Unless the provision or the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.
(Enacted by Stats. 1951, Ch. 364.)

116. No corporation shall hereafter be organized under the laws of this state to transact the business of a commercial bank, industrial bank, or trust company except as provided in this division.
(Amended by Stats. 2000, Ch. 1015, Sec. 13. Effective September 30, 2000.)

117. Neither the enactment of this code nor the amendment or repeal thereof nor the repeal of any statute affected thereby shall take away or impair any liability or cause of action existing or incurred against any bank or trust company or the shareholders, directors, or officers thereof.
(Enacted by Stats. 1951, Ch. 364.)

118. (a) All references in this division and in Division 1

(commencing with Section 100), Title 1 of the Corporations Code to financial statements, balance sheets, income statements and statements of changes in financial position of a bank and all references to assets, liabilities, earnings, retained earnings, shareholders' equity, and similar accounting items of a bank mean such financial statements or such items prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters which they purport to present, subject to any specific accounting treatment required by any provision of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, of this division, or of any regulation or order issued under this division.

(b) The commissioner may, by regulation or order, require that any financial statement or accounting item of a bank be prepared or determined in a manner other than in conformity with generally accepted accounting principles if the commissioner finds that such other manner is necessary or appropriate to carry out the purposes or provisions of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 23. Effective January 1, 1997. Operative July 1, 1997.)

119. References in this division to the voting of shares shall be construed in accordance with Section 111 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

120. If the articles of a bank provide for more or less than one vote for any share on any matter, the references in Sections 123 and 124 to a majority or other proportion of shares means, as to such matter, a majority or other proportion of the votes entitled to be cast. Whenever, under Division 1 (commencing with Section 100), Title 1 of the Corporations Code or this division, shares are disqualified from voting on any matter, they shall not be considered outstanding for the determination of a quorum at any meeting to act upon, or the required vote to approve action upon, such matter under any provision of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, of this division, or of the articles or bylaws.
(Added by Stats. 1978, Ch. 965.)

121. Any requirement in this division for a vote of each class of outstanding shares shall be construed in accordance with Section 117 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

122. "Approved by (or approval of) the board" means approved or ratified by the vote of the board or by the vote of a committee authorized to exercise the powers of the board, except as to any matter not within the competence of the committee under Section 311 of the Corporations Code or any matter for which this division also requires approval of the shareholders or approval of the outstanding shares.
(Amended by Stats. 1982, Ch. 1411, Sec. 1.)

123. "Approved by (or approval of) the outstanding shares" has the meaning set forth in Section 152 of the Corporations Code and shall include approval by the affirmative vote of a majority of the outstanding shares of each class or series entitled, by any provision of the articles, of this division, or of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, to vote as a class or series on the subject matter being voted upon, and shall also include approval by the affirmative vote of such greater proportion (including all) of the outstanding shares of any class or series if such greater proportion is required by the articles, by this division, or by Division 1 (commencing with Section 100), Title 1 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

124. "Approved by (or approval of) the shareholders" has the meaning set forth in Section 153 of the Corporations Code and shall include approval or ratification by the affirmative vote or written consent of such proportion (including all) greater than a majority of the shares of any class or series as may be provided in the articles, in this division, or in Division 1 (commencing with Section 100), Title 1 of the Corporations Code for all or any specified shareholder action.
(Added by Stats. 1978, Ch. 965.)

125. "Articles" has the meaning set forth in Section 154 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

126. "Board" has the meaning set forth in Section 155 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

126.5. "California" means:

(a) When used with respect to a bank, in the case of a state bank, a bank that is organized under the laws of this state and, in the case of a national bank, a national bank that maintains its main office in this state.

(b) When used with respect to an office of a bank, an office which is located in this state.

(c) When used with respect to any corporation other than a bank, a corporation that is organized under the laws of this state.
(Added by Stats. 1995, Ch. 480, Sec. 4. Effective October 2, 1995.)

127. "Certificate of correction" means a certificate executed and filed with the Secretary of State pursuant to Section 109 of the Corporations Code, subject, however, to the provisions of Section 600.10.
(Added by Stats. 1978, Ch. 965.)

128. "Certificate of determination" has the meaning set forth in Section 156 of the Corporations Code, subject, however, to the provisions of Section 600.8.
(Added by Stats. 1978, Ch. 965.)

129. "Certificate of revocation" means a certificate executed and filed with the Secretary of State pursuant to the second and third sentences of subdivision (c) of Section 110 of the Corporations Code, subject, however, to the provisions of Section 600.12.
(Added by Stats. 1978, Ch. 965.)

130. "Common shares" has the meaning set forth in Section 159 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

132. "Constituent corporation," when used with respect to a corporation:

(a) In the case of a merger, has the meaning set forth in Section 161 of the Corporations Code.

(b) In the case of a consolidation, means a corporation that is consolidated with one or more other corporations.
(Amended by Stats. 1995, Ch. 480, Sec. 6. Effective October 2, 1995.)

134. "Contributed capital" means all of shareholders' equity other than retained earnings. However, nothing in this section shall prohibit a bank from transferring amounts from time to time from its retained earnings to its contributed capital, subject to any applicable statutes, regulations, and generally accepted accounting principles.
(Amended by Stats. 1997, Ch. 375, Sec. 1. Effective January 1, 1998.)

134.5. "Credit union" means a corporation of the type described in Section 14002 organized under the laws of this state or a corporation of similar type organized under the laws of the United States or of any state of the United States other than this state.
(Added by Stats. 1996, Ch. 1064, Sec. 24. Effective January 1, 1997. Operative July 1, 1997.)

135. "Directors" has the meaning set forth in Section 164 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

137. "Disappearing," when used with respect to a corporation, means a constituent corporation that is not the surviving corporation.
(Repealed and added by Stats. 1995, Ch. 480, Sec. 10. Effective October 2, 1995.)

139. "Distribution to its shareholders" has the meaning set forth in Section 166 of the Corporations Code. However, in Division 1 (commencing with Section 100), Title 1 of the Corporations Code and in this division, "distribution to its shareholders" does not include any purchase of shares by a bank or by a majority-owned subsidiary of a bank which is necessary to reduce or avoid loss to such bank or to such subsidiary on an extension of credit previously made in good faith. Also, in this division, "distribution to its shareholders" includes any distribution made by a bank or by a majority-owned subsidiary of a bank to the shareholders of any corporation of which such bank is a majority-owned subsidiary.
(Added by Stats. 1978, Ch. 965.)

139.2. (a) "Foreign," when used with respect to a bank, an office of a bank, or any corporation other than a bank, means foreign (other nation) or foreign (other state).

(b) "Foreign banking corporation" means a foreign bank.
(Added by Stats. 1995, Ch. 480, Sec. 12. Effective October 2, 1995.)

139.3. "Foreign nation" means any nation other than the United States, including, without limitation, any subdivision, territory, trust territory, dependency, colony, or possession of any nation other than the United States. "Foreign nation" includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States.
(Added by Stats. 1995, Ch. 480, Sec. 13. Effective October 2, 1995.)

139.4. (a) The definition of "state of the United States" in Section 146.7 does not apply to this section. In this section, "state of the United States" means any state of the United States or the District of Columbia.

(b) "Foreign (other nation):"

(1) When used with respect to a bank, means any bank (including, without limitation, any commercial bank, merchant bank, or other institution that engages in banking activities that are usual in connection with the business of banking in the nation in which the institution is organized or operating) other than (A) a bank that is organized under the laws of a state of the United States or (B) a national bank that maintains its main office in a state of the United States.

(2) When used with respect to an office of a bank, means an office that is located in a place other than a state of the United States.

(3) When used with respect to any corporation other than a bank, means a corporation that is organized under the laws of a foreign nation.
(Added by Stats. 1995, Ch. 480, Sec. 14. Effective October 2, 1995.)

139.5. "Foreign (other state)":

(a) When used with respect to a bank, means a bank that is organized under the laws of any state of the United States other than this state, or a national bank that maintains its main office in any state of the United States other than this state, and includes any savings bank, as defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(g)), that is organized under the laws of a state other than this state.

(b) When used with respect to an office of a bank, means an office that is located in a state other than this state.

(c) When used with respect to a corporation other than a bank, means a corporation that is organized under the laws of any state of the United States other than this state or under the laws of the United States.

(Added by Stats. 1995, Ch. 480, Sec. 15. Effective October 2, 1995.)

139.7. "Insured:"

(a) When used with respect to a bank or an office of a bank, means a bank or office the deposits of which are insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(b) When used with respect to a deposit, means a deposit that is insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(Added by Stats. 1995, Ch. 480, Sec. 16. Effective October 2, 1995.)

139.9. "Law of the domicile" means:

(a) When used with respect to a national bank, the law of the United States.

(b) When used with respect to a state bank, the law of the state of the United States under which the bank is organized.

(c) When used with respect to a foreign (other nation) bank, the law of the foreign nation under which the bank is organized.

(Added by Stats. 1995, Ch. 480, Sec. 17. Effective October 2, 1995.)

140. "Majority-owned subsidiary" has the meaning set forth for "subsidiary" in subdivision (a) of Section 189 of the Corporations Code.

(Added by Stats. 1978, Ch. 965.)

140.3. (a) "National bank" or "national banking association" means a national banking association organized under the National Bank Act.

(b) For purposes of this division, a national bank is deemed to be a corporation.

(Added by Stats. 1995, Ch. 480, Sec. 18. Effective October 2, 1995.)

140.5. "Officers' certificate" has the meaning set forth in Section 173 of the Corporations Code.

(Added by Stats. 1982, Ch. 1411, Sec. 2.)

142. "Resulting," when used with respect to a corporation, means:

(a) In the case of a consolidation, the corporation into which the constituent corporations are consolidated.

(b) In the case of a conversion, the corporation into which the converting corporation is converted.

(Amended by Stats. 1995, Ch. 480, Sec. 20. Effective October 2, 1995.)

143. "Savings association" includes a savings association, a savings and loan association, and a savings bank. However, "savings association" does not include any savings bank of the type defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(g)).

(Added by Stats. 1996, Ch. 1064, Sec. 26. Effective January 1, 1997. Operative July 1, 1997.)

144. "Series," when used with respect to shares, has the meaning set forth in Section 183 of the Corporations Code.

(Added by Stats. 1978, Ch. 965.)

145. "Shares" has the meaning set forth in Section 184 of the Corporations Code.

(Added by Stats. 1978, Ch. 965.)

146. "Shareholder" has the meaning set forth in Section 185 of the Corporations Code.

(Added by Stats. 1978, Ch. 965.)

146.3. "State":

(a) When used with respect to a corporation, means a corporation that is organized under the laws of a state of the United States.

(b) When used with respect to an office of a foreign (other nation) bank, means an office that the bank is authorized to maintain under the laws of a state of the United States.

(Added by Stats. 1995, Ch. 480, Sec. 22. Effective October 2, 1995.)

146.7. "State of the United States" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Added by Stats. 1995, Ch. 480, Sec. 23. Effective October 2, 1995.)

148. "Surviving," when used with respect to a corporation, means a corporation in which one or more other corporations are merged.

(Repealed and added by Stats. 1995, Ch. 480, Sec. 26. Effective October 2, 1995.)

150. "Vote" has the meaning set forth in Section 194 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

151. "Voting power" has the meaning set forth in Section 194.5 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

CHAPTER 1.5. TRANSITION PROVISIONS

(Chapter 1.5 added by Stats. 1978, Ch. 965.)

180. In this chapter, unless the provision or context requires otherwise:

(a) "New General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on and after January 1, 1977.

(b) "Prior Banking Law" means this division, as in effect on December 31, 1978.

(c) "Prior General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on December 31, 1976.

(d) "Revised Banking Law" means this division, as in effect on and after January 1, 1979.

(e) "Subject institution" means:

(1) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the commercial banking business under Division 1 (commencing with Section 99) of the Financial Code.

(2) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the trust business under Division 1 (commencing with Section 99) of the Financial Code.

(3) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500), Chapter 19 of this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 27.1. Effective January 1, 1997. Operative July 1, 1997.)

181. For purposes of Chapter 23 (commencing with Section 2300) of the new General Corporation Law, in the case of any subject institution existing on January 1, 1979:

(a) The term "new law" shall mean the new General Corporation Law, subject, however, to the provisions of Section 101 of the revised banking law.

(b) The term "prior law" shall mean the prior General Corporation Law, subject, however, to the provisions of Section 101 of the prior Banking Law.

(c) The term "effective date" shall mean January 1, 1979.

(Added by Stats. 1978, Ch. 965.)

182. (a) Sections 600 and 600.2 of the revised Banking Law shall not apply to any subject institution existing on January 1, 1979, unless and until an amendment of the articles of such subject institution is filed with the Secretary of State pursuant to Section 2302 of the new General Corporation Law.

(b) An amendment of the articles of a subject institution existing on January 1, 1979, which is filed with the Secretary of State pursuant to Section 2302 of the new General Corporation Law may be adopted by approval of the board alone in accordance with the second sentence of Section 2302 of the new General Corporation Law, notwithstanding the fact that such amendment changes such articles to conform to the provisions of Sections 600 and 600.2 of the revised Banking Law.

(c) Neither Article 6 (commencing with Section 690), Chapter 5 of the revised Banking Law nor Section 904 of the new General Corporation Law shall apply to an amendment of the articles of a subject institution existing on January 1, 1979, which is filed with the Secretary of State pursuant to Section 2302 of the new General Corporation Law on account of the fact that such amendment conforms such articles to the provisions of Section 600.2 of the revised Banking Law.

(Added by Stats. 1978, Ch. 965.)

184. In case the board of a subject institution has, prior to January 1, 1979, adopted a resolution levying an assessment on the common shares of such subject institution in accordance with an order issued by the commissioner pursuant to Section 661 of the prior Banking Law:

(a) If the assessment has, prior to January 1, 1979, become a lien on the common shares in accordance with Section 2704 of the prior General Corporation Law, the assessment shall be collected pursuant to the prior General Corporation Law:

(b) Otherwise, the resolution shall be deemed to be rescinded on January 1, 1979.

(Amended by Stats. 1996, Ch. 1064, Sec. 28. Effective January 1, 1997. Operative July 1, 1997.)

185. Article 3 (commencing with Section 640), Chapter 5 of the revised Banking Law applies to any distribution to its shareholders made after January 1, 1979, by a subject institution existing on January 1, 1979, except that any such distribution effected pursuant to a contract for the purchase or redemption of shares entered into by such subject institution prior to January 1, 1979, may be made if permissible under the applicable provisions of the revised Banking Law and the new General Corporation Law or under the applicable provisions of the prior Banking Law and the prior General Corporation Law in effect at the time such contract was entered into.
(Added by Stats. 1978, Ch. 965.)

CHAPTER 2. DEPARTMENT OF FINANCIAL INSTITUTIONS

(Heading of Chapter 2 amended by Stats. 1996, Ch. 1064, Sec. 28.5.
Effective January 1, 1997.
Operative July 1, 1997.)

Article 1. General

(Article 1 enacted by Stats. 1951, Ch. 364.)

200. (a) In this section:

(1) "Business and industrial development corporation" means a corporation licensed under Division 15 (commencing with Section 31000).

(2) "Payment instrument" has the same meaning as set forth in Section 33059.

(3) "Traveler's check" has the same meaning as set forth in Section 1852.

(b) There is in the state government, in the Business, Transportation and Housing Agency, a Department of Financial Institutions which has charge of the execution of, among other laws, the laws of this state relating to any of the following: (1) banks or trust companies or the banking or trust business; (2) savings associations or the savings association business; (3) credit unions or the credit union business; (4) persons who engage in the business of receiving money for transmission to foreign nations or such business;

(5) issuers of traveler's checks or the traveler's check business; (6) issuers of payment instruments or the payment instrument business; (7) business and industrial development corporations or the business and industrial development corporation business, or (8) insurance premium finance agencies or the insurance premium finance business.
(Amended by Stats. 2000, Ch. 1015, Sec. 15. Effective September 30, 2000.)

Article 2. Commissioner of Financial Institutions

(Heading of Article 2 amended by Stats. 1996, Ch. 1064, Sec. 29.5 Effective January 1, 1997.
Operative July 1, 1997.)

210. The chief officer of the Department of Financial Institutions is the Commissioner of Financial Institutions. The Commissioner of Financial Institutions is the head of the department and, except as otherwise provided in this code, is subject to the provisions of the Government Code relating to department heads, but need not reside in Sacramento.
(Amended by Stats. 1996, Ch. 1064, Sec. 30. Effective January 1, 1997. Operative July 1, 1997.)

210.5. As of the operative date of this section:

(a) In this section, "order" means any approval, consent, authorization, exemption, denial, prohibition, requirement, or other administrative action, applicable to a specific case.

(b) The office of the Superintendent of Banks and the State Banking Department are abolished. All powers, duties, responsibilities, and functions of the Superintendent of Banks and the State Banking Department are transferred to the Commissioner of Financial Institutions and the Department of Financial Institutions, respectively. The Commissioner of Financial Institutions and the Department of Financial Institutions succeed to all the rights and property of the Superintendent of Banks and the State Banking Department, respectively; the Commissioner of Financial Institutions and the Department of Financial Institutions are subject to all the debts and liabilities of the Superintendent of Banks and the State Banking Department, respectively, as if the Commissioner of Financial Institutions and the Department of Financial Institutions had incurred them. Any action or proceeding by or against the Superintendent of Banks or the State Banking Department may be prosecuted to judgment, which shall bind the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively, or the Commissioner of Financial Institutions or the Department of Financial Institutions may be proceeded against or substituted in place of the Superintendent of Banks or the State Banking Department, respectively. References in the Constitution of the State of California or in any statute or regulation to the Superintendent of Banks or to the State Banking Department mean the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively. All agreements entered into with, and orders and regulations issued by, the Superintendent of Banks or the State Banking Department shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively.

(c) The office of the Savings and Loan Commissioner and the Department of Savings and Loan are abolished. All powers, duties, responsibilities, and functions of the Savings and Loan Commissioner and the Department of Savings

and Loan are transferred to the Commissioner of Financial Institutions and the Department of Financial Institutions, respectively. The Commissioner of Financial Institutions and the Department of Financial Institutions succeed to all the rights and property of the Savings and Loan Commissioner and the Department of Savings and Loan, respectively; the Commissioner of Financial Institutions and the Department of Financial Institutions are subject to all the debts and liabilities of the Savings and Loan Commissioner and the Department of Savings and Loan, respectively, as if the Commissioner of Financial Institutions and the Department of Financial Institutions had incurred them. Any action or proceeding by or against the Savings and Loan Commissioner or the Department of Savings and Loan may be prosecuted to judgment, which shall bind the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively, or the Commissioner of Financial Institutions or the Department of Financial Institutions may be proceeded against or substituted in place of the Savings and Loan Commissioner or the Department of Savings and Loan, respectively. References in the Constitution of the State of California or in any statute or regulation to the Savings and Loan Commissioner or to the Department of Savings and Loan mean the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively. All agreements entered into with, and orders and regulations issued by, the Savings and Loan Commissioner or the Department of Savings and Loan shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Institutions or the Department of Financial Institutions.

(d) All powers, duties, responsibilities, and functions of the Commissioner of Corporations and the Department of Corporations with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business are transferred to the Commissioner of Financial Institutions and the Department of Financial Institutions, respectively. The Commissioner of Financial Institutions and the Department of Financial Institutions succeed to all the rights and property of the Commissioner of Corporations and the Department of Corporations, respectively, with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business; the Commissioner of Financial Institutions and the Department of Financial Institutions are subject to all the debts and liabilities of the Commissioner of Corporations and the Department of Corporations, respectively, with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business, as if the Commissioner of Financial Institutions and the Department of Financial Institutions had incurred them. Any action or proceeding by or against the Commissioner of Corporations or the Department of Corporations with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business may be prosecuted to judgment, which shall bind the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively, or the Commissioner of Financial Institutions or the Department of Financial Institutions may be proceeded against or substituted in place of the Commissioner of Corporations or the Department of Corporations, respectively. References in the Constitution of the State of California or any statute or regulation to the Commissioner of Corporations or to the Department of Corporations with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business mean the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively. All agreements entered into with, and orders and regulations issued by, the Commissioner of Corporations or the Department of Corporations in the exercise of authority under any law relating to credit unions, the credit union business, industrial loan companies, or the industrial loan business, shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Institutions or the Department of Financial Institutions.

(Added by Stats. 1996, Ch. 1064, Sec. 31. Effective January 1, 1997. Operative July 1, 1997.)

211. The commissioner is appointed by the Governor, and holds office at the pleasure of the Governor. The appointment of the commissioner is subject to confirmation by the Senate.

(Amended by Stats. 1996, Ch. 1064, Sec. 32. Effective January 1, 1997. Operative July 1, 1997.)

212. The commissioner shall be a citizen of the United States and a resident of the state for at least three years prior to his or her appointment. The commissioner shall be chosen solely for his or her qualifications and fitness to perform the duties of his or her office.

(Amended by Stats. 1996, Ch. 1064, Sec. 33. Effective January 1, 1997. Operative July 1, 1997.)

213. The annual salary of the commissioner is provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1996, Ch. 1064, Sec. 34. Effective January 1, 1997. Operative July 1, 1997.)

214. Before entering upon the duties of his or her office, the commissioner shall take and subscribe to the constitutional oath of office and file the same with the Secretary of State.

(Amended by Stats. 1996, Ch. 1064, Sec. 35. Effective January 1, 1997. Operative July 1, 1997.)

215. The commissioner is responsible for the performance of all duties, the exercise of all powers and jurisdiction, and the assumption and discharge of all responsibilities vested by law in the department. The commissioner has and may exercise all the powers necessary or convenient for the administration and enforcement of, among other laws, the laws described in Section 200. The commissioner may issue such rules and regulations consistent with law as he or she may deem necessary or advisable in executing the powers, duties, and responsibilities of the department.
(Amended by Stats. 1996, Ch. 1064, Sec. 36. Effective January 1, 1997. Operative July 1, 1997.)

216. (a) The commissioner may make the agreements that he or she deems necessary or appropriate in exercising his or her powers.

(b) (1) The agreements authorized under subdivision (a) may include, but are not limited to, agreements with agencies of this state, of other states of the United States, of the United States, or of foreign nations that regulate financial institutions, relating to examinations of banks, savings associations, credit unions, industrial loan companies, and other matters.

(2) Any agreement with a government agency that regulates financial institutions is exempt from the advertising and competitive bidding requirements of the Public Contract Code.
(Amended by Stats. 1996, Ch. 1064, Sec. 37. Effective January 1, 1997. Operative July 1, 1997.)

216.3. (a) For purposes of this section, the following definitions apply:

(1) "Applicable law" means:

(A) With respect to any bank, Division 1.5 (commencing with Section 4800), and any of the following provisions of Division 1 (commencing with Section 99) of the Financial Code:

(i) Article 5 (commencing with Section 270) of Chapter 2.

(ii) Article 3 (commencing with Section 640) of Chapter 5.

(iii) Article 4.5 (commencing with Section 670) of Chapter 5.

(iv) Article 6 (commencing with Section 690) of Chapter 5.

(v) Chapter 6 (commencing with Section 750).

(vi) Chapter 10 (commencing with Section 1200).

(vii) Article 1 (commencing with Section 1400) of Chapter 11.

(viii) Chapter 12 (commencing with Section 1500).

(ix) Chapter 13.5 (commencing with Section 1700).

(x) Section 1936.

(xi) Section 1937.

(xii) Section 1938.

(xiii) Section 1939.

(xiv) Section 1945.

(xv) Section 1951.

(xvi) Section 3359.

(xvii) Chapter 19 (commencing with Section 3500).

(xviii) Chapter 21.5 (commencing with Section 3750).

(xix) Chapter 22 (commencing with Section 3800).

(B) With respect to any savings association, any provision of Division 1.5 (commencing with Section 4800) and Division 2 (commencing with Section 5000).

(C) With respect to any issuer of traveler's checks, any provision of Chapter 14A (commencing with Section 1851) of Division 1.

(D) With respect to any insurance premium finance company, any provision of Division 7 (commencing with Section 18000).

(E) With respect to any business and development corporation, any provision of Division 15 (commencing with Section 31000).

(F) With respect to any credit union, any of the following provisions:

(i) Section 14252.

(ii) Section 14253.

(iii) Section 14255.

(iv) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.

(v) Section 14401.

(vi) Section 14404.

(vii) Section 14408, only as that section applies to gifts to directors, volunteers, and employees, and the related family or business interests of the directors, volunteers, and employees.

(viii) Section 14409.

(ix) Section 14410.

(x) Article 5 (commencing with Section 14600) of Chapter 4 of Division 5.

(xi) Article 6 (commencing with Section 14650) of Chapter 4 of Division 5, excluding subdivision (a) of Section 14651.

(xii) Section 14803.

(xiii) Section 14851.

(xiv) Section 14858.

(xv) Section 14860.

(xvi) Section 14861.

(xvii) Section 14863.

(G) With respect to any person licensed to transmit money abroad, any provision of Chapter 14 (commencing with Section 1800).

(H) With respect to any person licensed to sell payment instruments, any provision of Division 16 (commencing with Section 33000).

(2) "Licensee" means any bank, savings association, credit union, transmitter of money abroad, issuer of payment instruments, issuer of traveler's checks, insurance premium finance agency, or business and industrial development corporation that is authorized by the commissioner to conduct business in this state.

(b) Notwithstanding any other provision of this code that applies to a licensee or a subsidiary of a licensee, after notice and an opportunity to be heard, the commissioner may, by order that shall include findings of fact which incorporates a determination made in accordance with subdivision (e), levy civil penalties against any licensee or any subsidiary of a licensee who has violated any provision of applicable law, any order issued by the commissioner, any written agreement between the commissioner and the licensee or subsidiary of the licensee, or any condition of any approval issued by the commissioner. Notwithstanding any other provision of law, neither the commissioner nor any employee of the department shall disclose or permit the disclosure of any record, record of any action, or information contained in a record of any action, taken by the commissioner under the provisions of this section, unless the action was taken pursuant to paragraph (2) of subdivision (b), to persons other than federal or state government employees who are authorized by statute to obtain the records in the performance of their official duties, unless the disclosure is authorized or requested by the affected licensee or the affected subsidiary of the licensee. The commissioner shall have the sole authority to bring any action with respect to a violation of applicable law subject to a penalty imposed under this section.

Except as provided in paragraphs (1) and (2), any penalty imposed by the commissioner may not exceed one thousand dollars ($1,000) a day, provided that the aggregate penalty of all offenses in any one action against any licensee or subsidiary of a licensee shall not exceed fifty thousand dollars ($50,000).

(1) If the commissioner determines that any licensee or subsidiary of the licensee has recklessly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed five thousand dollars ($5,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed seventy-five thousand dollars ($75,000).

(2) If the commissioner determines that any licensee or subsidiary of the licensee has knowingly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed ten thousand dollars ($10,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed 1 percent of the total assets of the licensee or subsidiary of a licensee subject to the penalty.

(c) Nothing in this section shall be construed to impair or impede the commissioner from pursuing any other administrative action allowed by law.

(d) Nothing in this section shall be construed to impair or impede the commissioner from bringing an action in court to enforce any law or order he or she has issued, including orders issued under this section. Nothing in this section shall be construed to impair or impede the commissioner from seeking any other damages or injunction allowed by law.

(e) In determining the amount and the appropriateness of initiating a civil money penalty under subdivision (b), the commissioner shall consider all of the following:

(1) Evidence that the violation or practice or breach of duty was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution.

(2) The duration and frequency of the violations,practices, or breaches of duties.

(3) The continuation of the violations, practices, or breaches of duty after the licensee or subsidiary of the licensee was notified, or, alternatively, its immediate cessation and correction.

(4) The failure to cooperate with the commissioner in effecting early resolution of the problem.

(5) Evidence of concealment of the violation, practice, or breach of duty or, alternatively, voluntary disclosure of the violation, practice, or breach of duty.

(6) Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of that harm.

(7) Evidence that a licensee or subsidiary of a licensee received financial gain or other benefit as a result of the violation, practice, or breach of duty.

(8) Evidence of any restitution paid by a licensee or subsidiary of a licensee of losses resulting from the violation, practice, or breach of duty.

(9) History of prior violations, practices, or breaches of duty, particularly where they are similar to the actions under consideration.

(10) Previous criticism of the institution for similar actions.

(11) Presence or absence of a compliance program and its effectiveness.

(12) Tendency to engage in violations of law, unsafe or unsound banking practices, or breaches of duties.

(13) The existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent the violation, practice, or breach of duty.

(14) Whether the violation, practice, or breach of duty causes quantifiable, economic benefit or loss to the licensee or the subsidiary of the licensee. In those cases, removal of the benefit or recompense of the loss usually will be insufficient, by itself, to promote compliance with the applicable law, order, or written agreement. The penalty amount should reflect a remedial purpose and should provide a deterrent to future misconduct.

(15) Other factors as the commissioner may, in his or her opinion, consider relevant to assessing the penalty or establishing the amount of the penalty.

(f) The amounts collected under this section shall be deposited in the appropriate fund of the department. For purposes of this subdivision, the term “appropriate fund” means the fund to which the annual assessments of fined licensees, or the parent licensee of the fined subsidiary, are credited.

(Amended by Stats. 2004, Ch. 183, Sec. 97. Effective January 1, 2005.)

217. The authority vested in the Superintendent of Banks under subdivision (2) of Section 1 of Article XV of the California Constitution is delegated to the commissioner.

(Added by Stats. 1996, Ch. 1064, Sec. 37.5. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Deputies and Employees
(Article 3 enacted by Stats. 1951, Ch. 364.)

230. The commissioner shall appoint a chief deputy who holds office at the pleasure of the commissioner. The annual salary of the chief deputy shall be fixed by the commissioner with the approval of the Director of Finance. The chief deputy shall have the same qualifications as the commissioner. The commissioner shall also appoint two deputies, one to serve in the City and County of San Francisco and one to serve in the City of Los Angeles.

(Amended by Stats. 1996, Ch. 1064, Sec. 38. Effective January 1, 1997. Operative July 1, 1997.)

231. The commissioner may employ deputies in addition to the chief deputy, and examiners, appraisers, technical assistants, investigators, administrative assistants, clerks, and other employees that he or she may need to discharge in a proper manner the duties imposed upon him or her by law. He or she shall prescribe their duties and fix their compensation in accordance with classifications made by the State Personnel Board. The commissioner may also, at those times and on those terms as may be approved by the Governor, employ those attorneys as he or she may need.

(Amended by Stats. 1996, Ch. 1064, Sec. 39. Effective January 1, 1997. Operative July 1, 1997.)

232. Before entering upon the duties of his office each deputy and examiner shall take and subscribe to the constitutional oath of office and file the same with the Secretary of State.

(Enacted by Stats. 1951, Ch. 364.)

233. The commissioner may require, at any time, of any deputy, examiner, or other employee of the department, an official bond in such amount as the commissioner may deem necessary. The premium for bonds required by the commissioner shall be an expense of the department.
(Amended by Stats. 1996, Ch. 1064, Sec. 40. Effective January 1, 1997. Operative July 1, 1997.)

234. Neither the commissioner nor any deputy or employee of the department shall do or be any of the following with respect to any bank, savings association, credit union, or industrial loan company supervised by the department:

(a) Be indebted, directly or indirectly, as borrower, endorser, surety, or guarantor to any such bank, savings association, credit union, or industrial loan company.

(b) Be an officer, director, or employee of any such bank, savings association, credit union, or industrial loan company.

(c) Own or deal in directly or indirectly, the shares or obligations of any such bank, savings association, credit union, or industrial loan company.

(d) Be interested in or, directly or indirectly, receive from any such bank, savings association, credit union, or industrial loan company or any officer, director, or employee thereof, any salary, fee, compensation, or other valuable thing by way of gift, credit, compensation for services, or otherwise. However, this subdivision does not prohibit any person from being interested in or directly or indirectly receiving (1) anything which is expressly excluded from a definition of "gift" or "honorarium" in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code) or in regulations issued under the Political Reform Act of 1974 by the Fair Political Practices Commission or (2) anything which, if received by the commissioner, would constitute a gift or honorarium within the meaning of the Political Reform Act of 1974 or regulations issued under the Political Reform Act of 1974 by the Fair Political Practices Commission but which the commissioner would not be prohibited from receiving under the Political Reform Act of 1974 or regulations issued under the Political Reform Act of 1974 by the Fair Political Practices Commission.

(e) Be interested in or engage in the negotiation of any loan to, obligation of, or accommodation for another person to or with any such bank, savings association, credit union, or industrial loan company.

Notwithstanding the foregoing the commissioner and any deputy or employee may have and maintain one or more deposit or similar accounts in any bank, savings association, credit union, or industrial loan company in this state and may maintain with any bank, savings association, credit union, or industrial loan company in this state a loan which was not obtained in violation of this section if the person reports the loan in writing to the department within 30 days after the person commences his or her term of appointment or employment with the department and if the loan is not renewed, renegotiated, extended, or otherwise modified on or after July 1, 1997.

A violation of this section by any person shall constitute sufficient grounds for his or her removal or discharge.
(Amended by Stats. 1996, Ch. 1064, Sec. 41. Effective January 1, 1997. Operative July 1, 1997.)

235. If the commissioner is unable to perform his or her duties for more than 30 consecutive days or if the office of the commissioner becomes vacant, the chief deputy shall have all the powers and duties of the commissioner until the return or recovery of the commissioner, or, in case of a vacancy, until a new commissioner is appointed by the Governor and qualifies to hold office.
(Amended by Stats. 1996, Ch. 1064, Sec. 42. Effective January 1, 1997. Operative July 1, 1997.)

Article 4. Administration of Department
(Article 4 enacted by Stats. 1951, Ch. 364.)

250. The commissioner shall have his or her principal office in the City and County of San Francisco and may also have an office in the City of Sacramento, in the City of Los Angeles and in the City of San Diego. The commissioner shall provide at the expense of the department such office space, furniture, and equipment as may be necessary or convenient for the transaction of the business of the department.
(Amended by Stats. 1996, Ch. 1064, Sec. 43. Effective January 1, 1997. Operative July 1, 1997.)

251. The department may expend moneys in accordance with law for the necessary travel expenses of officers and employees of the department while traveling in the line of their duties either within or without the State.
(Enacted by Stats. 1951, Ch. 364.)

252. The commissioner shall adopt and keep an official seal. Papers executed by the commissioner in his or her official capacity pursuant to law and bearing the seal, or copies thereof certified by him or her, shall be received in evidence in like manner as the original and may be recorded in the same manner and with the same effect as a deed regularly acknowledged.
(Amended by Stats. 1996, Ch. 1064, Sec. 44. Effective January 1, 1997. Operative July 1, 1997.)

253. (a) Whenever it is necessary for the commissioner to approve any instrument and to affix his or her official seal thereto, the commissioner shall charge a fee of twenty-five dollars ($25) therefor.

(b) Whenever it is proper for the department to furnish a copy of any paper that has been filed therein and to certify to the paper, the commissioner may charge twenty-five cents ($0.25) for each page copied.

(c) Whenever the commissioner is required or requested to certify copies of documents, the commissioner may charge a fee of twenty-five dollars ($25) for certifying the copied documents and for affixing his or her official seal.
(Amended by Stats. 2004, Ch. 176, Sec. 1. Effective January 1, 2005.)

255. Official reports made by the commissioner and verified reports of an examination made by the commissioner, exclusively or in conjunction with or with assistance from any agency of the United States, of a state of the United States, or of a foreign nation are prima facie evidence of the facts stated in the reports for all purposes.
(Amended by Stats. 1996, Ch. 1064, Sec. 46. Effective January 1, 1997. Operative July 1, 1997.)

258. At least once each month, the commissioner shall issue and disseminate as the commissioner deems appropriate a bulletin containing the following information:

(a) Information regarding any of the following actions taken since issuance of the previous bulletin:

(1) The filing, approval, or denial under Chapter 3 (commencing with Section 350) of an application for authority to organize a California state bank, or the issuance under Chapter 3 of a certificate of authority to a California state bank.

(2) The filing, approval, or denial under Article 1 (commencing with Section 5400) of Chapter 2 of Division 2 of an application for the issuance of an organizing permit for the organization of a California savings association, or for the issuance under Article 2 (commencing with Section 5500) of Chapter 2 of Division 2 of a certificate of authority to a California savings association.

(3) The filing, approval, or denial under Article 2 (commencing with Section 14150) of Chapter 2 of Division 5 of an application for a certificate to act as a credit union, or the issuance of a certificate to engage in the business of a credit union.

(4) The filing, approval, or denial under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000) of an application for a license to engage in business, or the issuance under any of those laws of a license to engage in business.

(5) The filing, approval, or denial under Chapter 13.5 (commencing with Section 1700) of an application by a foreign (other nation) bank to establish its first office of any particular class (as determined under Section 1701) in this state, or the issuance under that chapter of a license in connection with the establishment of such an office.

(6) The filing, approval, or denial under Division 1.5 (commencing with Section 4800) of an application for approval of a sale, merger, or conversion.

(7) The filing, approval, or denial under Article 6 (commencing with Section 5700) of Chapter 2 of Division 2 of an application for approval of a conversion of a federal savings association into a state savings association, or the filing of a federal charter of a state savings association that has converted to a federal savings association.

(8) The filing, approval, or denial under Article 7 (commencing with Section 5750) of Chapter 2 of Division 2 of an application for approval of a reorganization, merger, consolidation, or transfer of assets of a state savings association.

(9) The filing, approval, or denial under Chapter 9 (commencing with Section 15200) of Division 5 of an application for approval of a merger, dissolution, or conversion of a credit union.

(10) The taking of possession of the property and business of a California state bank, savings association, credit union, or person licensed by the commissioner under any of the laws cited in paragraph (2).

(b) Other information as the commissioner deems appropriate.
(Amended by Stats. 2000, Ch. 1015, Sec. 17. Effective September 30, 2000.)

259. Notwithstanding any other provision of this code, whenever any provision of this division requires the pledge of securities to be deposited with the Treasurer, to insure the performance of any act or duty, the securities after first being approved by the commissioner and upon the written order of the commissioner, shall be deposited with the Treasurer. The Treasurer, with the consent of the owner of the securities deposited or to be deposited with the Treasurer, may place the securities in the custody of a qualified trust company or bank in the same manner and under the same conditions provided in Article 3 (commencing with Section 16550) of Chapter 4 of Part 2 of Division 4 of Title 2 of the Government Code.
(Amended by Stats. 1996, Ch. 1064, Sec. 49. Effective January 1, 1997. Operative July 1, 1997.)

260. Whenever the commissioner is notified of or discovers a violation of the state law punishable by criminal penalties, he or she shall promptly advise the Attorney General.
(Amended by Stats. 1996, Ch. 1064, Sec. 50. Effective January 1, 1997. Operative July 1, 1997.)

261. (a) For the purposes of this section the following definitions shall apply:

(1) "Control" has the meaning set forth in subdivision (b) of Section 700. "Control" also means the ownership of a subject person by means of sole proprietorship, partnership, or by any other similar means.

(2) “Controlling person” means a person who, directly or indirectly, controls a subject person.

(3) "Subject person" means any of the following:

(A) A commercial bank, industrial bank, trust company, savings association, or credit union incorporated under the laws of

(B) A person licensed by the commissioner under Chapter 14 (commencing with Section 1800) to receive money for transmission to foreign countries.

(C) A person authorized by the commissioner pursuant to Section 1803 to act as an agent of a person licensed by the commissioner to receive money for transmission to foreign countries.

(D) A person licensed by the commissioner pursuant to Division 7 (commencing with Section 18000) to transact business as a premium finance agency.

(E) A person licensed by the commissioner pursuant to Division 15 (commencing with Section 31000) to transact business as a business and industrial development corporation.

(F) A person licensed by the commissioner pursuant to Division 16 (commencing with Section 33000) to engage in the business of selling payment instruments in this state issued by the licensee.

(G) A corporation incorporated under the laws of this state for the purpose of engaging in, or that is authorized by the commissioner to engage in, business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(H) A foreign corporation that is licensed by the commissioner pursuant to Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(b) Notwithstanding any other provision of law, and subject to subdivision (c), the commissioner may deliver, or cause to be delivered, to local, state, or federal law enforcement agencies fingerprints taken of any of the following:

(1) An applicant for employment with the department.

(2) A person licensed, or proposed to be licensed, as a subject person.

(3) A director, officer, or employee of an existing or proposed subject person.

(4) An existing or proposed controlling person of a subject person.

(5) A director, officer, or employee of an existing or proposed controlling person of a subject person.

(6) A director, officer, or employee of an existing or proposed affiliate of a subject person.

(c) The authorization in subdivision (b) may only be used by the department for the purpose of obtaining information regarding an individual as to the existence and nature of the criminal record, if any, of that individual relating to convictions, and to any arrest for which the individual is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(d) No request shall be submitted pursuant to this section without the written consent of the person affected.

(e) Any criminal history information obtained pursuant to this section shall be confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(Amended by Stats. 2004, Ch. 176, Sec. 2. Effective January 1, 2005.)

262. (a) The commissioner shall inform the Commissioner of Corporations and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions of any enforcement actions, including, but not limited to, civil or criminal actions, cease and desist orders, license or authorization suspensions or revocations, or an open investigation.

(b) The commissioner shall inform the Commissioner of Corporations and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions if it appears that any bank, bank holding company, savings association, savings and loan holding company, credit union, industrial loan company, industrial loan holding company, or other licensee of the department is conducting its business in a fraudulent, unsafe, unsound, or injurious manner, or has suffered or will suffer substantial financial loss or damage, and it appears to the commissioner that the information is relevant to the regulatory activities of the other agency.

(Amended by Stats. 1996, Ch. 1064, Sec. 52. Effective January 1, 1997. Operative July 1, 1997.)

263. Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to hearings conducted by the department.

(Added by Stats. 1996, Ch. 1064, Sec. 52.3. Effective January 1, 1997. Operative July 1, 1997.)

Article 4.5. Financial Institutions Fund
(Article 4.5 added by Stats. 1996, Ch. 1064, Sec. 52.5.
Effective January 1, 1997. Operative July 1, 1997.)

265. As of the operative date of this section, there is established a Financial Institutions Fund in the State Treasury. Except as otherwise provided in Division 5 (commencing with Section 14000), all money collected or received by the commissioner under this code shall be deposited with the Treasurer to the credit of the Financial Institutions Fund.
(Added by Stats. 1996, Ch. 1064, Sec. 52.5. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. State Banking Account
(Heading of Article 5 amended by Stats. 1996, Ch. 1064, Sec. 52.7. Effective January 1, 1997.
Operative July 1, 1997.)

270. (a) The commissioner shall annually collect pro rata from the banks and trust companies under the supervision of the department a fund in amount sufficient in the commissioner's judgment to meet the expenses of the department in administering laws relating to banks or trust companies or to the banking or trust business that are not otherwise provided for and to provide a reasonable reserve for contingencies.

(b) The amount of the annual assessment for the fund on any bank or trust company shall not be less than five thousand dollars ($5,000). Above that minimum amount, except as otherwise provided subdivision (c), the annual assessment shall not exceed the sum of the products of a base assessment rate, or percentage thereof, and segregated portions of its total resources, according to the following table:

Segregated Total Resources (In Millions or Fractions Thereof)	Percentage of Base Assessment Rate
First $2	100.0
Next $18	50.0
Next $80	12.0
Next $100	6.25
Next $800	6.0
Next $1,000	4.0
Next $4,000	3.5
Next $14,000	3.0
Next $20,000	2.5
Excess over $40,000	1.5

(c) (1) For purposes of determining the annual assessment on banks and trust companies that have one or more foreign (other state) branch offices, the resources of foreign (other state) branch offices shall be excluded from total resources, except that the commissioner may order the resources of foreign (other state) branch offices to be included in total resources if and to the extent that it is necessary in the commissioner's judgment to meet the expenses of the department on account of foreign (other state) branch offices and a reasonable reserve for contingencies.

(2) If the commissioner finds that a bank or trust company allocated any resource to a foreign (other state) branch office for the purpose, in whole or in part, of reducing its annual assessment, the commissioner may, for purposes of calculating the annual assessment on the bank or trust company, reallocate the resource to the bank's or trust company's head office.

(d) The base assessment rate shall be set by the commissioner from time to time at the commissioner's discretion, not to exceed two dollars and twenty cents ($2.20) per one thousand dollars ($1,000) of total resources.
(Amended by Stats. 1996, Ch. 1064, Sec. 53.1. Effective January 1, 1997. Operative July 1, 1997.)

271. The commissioner shall annually collect from national banking associations and foreign (other state) banks operating trust departments in this state an annual assessment to meet expenses of the department, not exceeding one one-hundredth of 1 percent of the amount required by law to be deposited with the Treasurer as surety for the faithful performance and execution of all court and private trusts accepted by them.
(Amended by Stats. 1996, Ch. 1064, Sec. 54. Effective January 1, 1997. Operative July 1, 1997.)

271.5. Whenever the commissioner makes an assessment pursuant to Section 270 or 271, the commissioner shall fix the date when the assessment is due and payable and shall mail or otherwise deliver to each bank and trust company assessed an invoice showing the amount of its assessment and the date when the assessment is due and payable.
(Amended by Stats. 1996, Ch. 1064, Sec. 55.1. Effective January 1, 1997. Operative July 1, 1997.)

272. The commissioner, in addition to the annual assessment, shall collect from each bank authorized to engage in the trust business, to defray the cost of examination, a fee not to exceed seventy-five dollars ($75) per hour for each examiner necessarily engaged in the examination of the trust company, trust business, or trust department. The commissioner shall assess the fee upon completion of the examination of the trust company or trust business and shall mail or otherwise deliver an invoice for the fee to the institution. The institution shall pay the fee within 30 days after the invoice is mailed or otherwise delivered to it.
(Amended by Stats. 1997, Ch. 375, Sec. 3. Effective January 1, 1998.)

273. If any bank or trust company fails to make timely payment of any assessment made pursuant to Section 270, 271, or 272, the commissioner may, in the commissioner's sole discretion, (a) cancel the certificate of authority of the bank or trust company to conduct a banking or trust business or (b) levy a civil penalty pursuant to Section 216.3.
(Amended by Stats. 2003, Ch. 445, Sec. 2. Effective January 1, 2004.)

273.5. As of the operative date of this section:

(a) The State Banking Fund is converted into a separate account in the Financial Institutions Fund and designated as the State Banking Account.

(b) All moneys and other assets and all liabilities of the State Banking Fund shall be transferred to the State Banking Account.
(Added by Stats. 1996, Ch. 1064, Sec. 58. Effective January 1, 1997. Operative July 1, 1997.)

274. Except as otherwise provided in Section 276 or 277, all salaries and other expenses of the department, other than those incurred in administering laws relating to savings associations or the savings association business, credit unions or the credit union business, industrial banks, the industrial banking business, insurance premium finance agencies, the insurance premium finance business, or Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, shall be paid out of the State Banking Account in the Financial Institutions Fund. Salaries and other expenses incurred in the liquidation or conservation of any bank (other than an industrial bank) or of any person licensed under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000), including the compensation of employees of the department to the extent that they are engaged in that liquidation or conservation, if possible, and if advanced from the State Banking Account in the Financial Institutions Fund, shall constitute a first charge against the assets of the bank or licensee, as the case may be. Salaries and other expenses incurred in the liquidation or conservation of any industrial bank, including the compensation of employees of the department to the extent that they are engaged in that liquidation or conservation, if possible, and if advanced from the Industrial Bank Account in the Financial Institutions Fund, shall constitute a first charge against the assets of the industrial bank.
(Amended by Stats. 2000, Ch. 1015, Sec. 18. Effective September 30, 2000.)

275. The commissioner shall deliver all moneys received or collected by the commissioner under Section 270, 271, or 272 or otherwise, other than moneys received or collected by the commissioner under laws relating to savings associations, the savings association business, credit unions, the credit union business, industrial banks, the industrial banking business, insurance premium finance agencies, the insurance premium finance business, or Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to the Treasurer, who shall deposit the moneys to the credit of the State Banking Account of the Financial Institutions Fund.
(Amended by Stats. 2000, Ch. 1015, Sec. 19. Effective September 30, 2000.)

276. (a) In this section, "assessment statute" means any statute that authorizes the commissioner to make or collect an assessment (other than a fine) on financial institutions, including the following:

(1) Sections 270 to 271.5, inclusive.
(2) Section 1801.1.
(3) Section 33302.
(4) Article 2 (commencing with Section 8030) of Chapter 7 of Division 2.
(5) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.
(6) Section 1402.

(b) The commissioner may charge to and collect from the Financial Institutions Fund, the Credit Union Fund, each

of the accounts included in the Financial Institutions Fund, and each of the programs included in the State Banking Account an amount equal to the fund's, account's, or program's pro rata share of those expenses of the department which, in the opinion of the commissioner, it is not feasible to attribute to any single one of the funds, accounts, or programs. The fund's, account's, or program's pro rata share shall be determined and paid in the manner and at the time ordered by the commissioner.

(c) The provisions of any assessment statute that authorize the commissioner to make or collect an assessment for the purposes specified in the assessment statute include authority for the commissioner to make and collect an assessment for the additional purpose of providing money in an amount that will, in the commissioner's judgment, be sufficient to make payments that may be required under subdivision (b).

(Amended by Stats. 2000, Ch. 1015, Sec. 20. Effective September 30, 2000.)

277. Notwithstanding any other provision of this code or of Section 53667 of the Government Code, the commissioner may, at any time during a fiscal year, pay any expense of the department from any of the following accounts and funds: the State Banking Account, the Savings and Loan Account, the Industrial Bank Account, the Financial Institutions Fund, the Credit Union Fund, and the Local Agency Deposit Security Fund. However, if the commissioner pays an expense of the department from an account or fund from which the expense is not, except for this section, permitted to be paid, the commissioner shall, as of a date within that fiscal year, reimburse the account or fund from which the expense was paid by making a transfer from the account or fund from which the expense would have been permitted to be paid.

(Amended by Stats. 2000, Ch. 1015, Sec. 21. Effective September 30, 2000.)

CHAPTER 3. ORGANIZATION OF BANKS
(Chapter 3 enacted by Stats. 1951, Ch. 364.)

Article 1. General
(Article 1 enacted by Stats. 1951, Ch. 364.)

350. When authorized by the commissioner as provided in this chapter a corporation may be formed by one or more persons in accordance with the laws of this state for the purpose of conducting a commercial banking business or a trust business, or both of them. The Corporate Securities Law shall not apply to securities issued by and representing an interest in or a direct obligation of a bank or trust company incorporated under the laws of this state.
(Amended by Stats. 1996, Ch. 1064, Sec. 61. Effective January 1, 1997. Operative July 1, 1997.)

351. No bank shall be a close corporation (as defined in Section 158 of the Corporations Code).
(Added by Stats. 1978, Ch. 965.)

Article 2. Application
(Article 2 enacted by Stats. 1951, Ch. 364.)

360. The request for authority to organize and establish a corporation to engage in the banking or trust business shall be set forth in an application in such form and containing such information as the commissioner may require and shall be accompanied by a fee of five thousand dollars ($5,000).
(Amended by Stats. 1996, Ch. 1064, Sec. 62. Effective January 1, 1997. Operative July 1, 1997.)

360.5. Upon receiving a request for an application, the commissioner shall inform the prospective applicant in writing that the commissioner is available to confer with such prospective applicant in advance of the filing of an application for the purpose of discussing questions relating to such application. However, no application shall be decided in advance of filing.
(Amended by Stats. 1996, Ch. 1064, Sec. 63. Effective January 1, 1997. Operative July 1, 1997.)

361. Upon the filing of an application the commissioner shall make or cause to be made a careful investigation and examination relative to the following:

(a) The character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company.

(b) The need for banking or trust facilities or additional banking or trust facilities, as the case may be, giving particular consideration to the adequacy of existing banking or trust facilities and the need for further banking or trust facilities.

(c) The character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers of the bank or trust company.

(d) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors.

(e) Other facts and circumstances bearing on the proposed bank or trust company and its relation to the locality as in the opinion of the commissioner may be relevant.
(Amended by Stats. 1996, Ch. 1064, Sec. 64.1. Effective January 1, 1997. Operative July 1, 1997.)

362. The commissioner may give or withhold his or her approval of the application in his or her discretion, but he or she shall not approve the application until he or she has ascertained to his or her satisfaction:

(a) That the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company.

(b) That the proposed bank or trust company will have a reasonable promise of successful operation.

(c) That the bank is being formed for no other purpose than the legitimate objects contemplated by this division.

(d) That the proposed capital structure is adequate.

(e) That the proposed officers and directors have sufficient banking or trust experience, ability, and standing to afford reasonable promise of successful operation.

(f) That the name of the proposed bank or trust company does not resemble, so closely as to be likely to cause confusion, the name of any other bank or trust company transacting business in this state or which had previously transacted business in this state.

(g) That the applicant has complied with all of the applicable provisions of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 65.1. Effective January 1, 1997. Operative July 1, 1997.)

362.5. (a) In this section:

(1) "Control" has the meaning set forth in Section 700.

(2) "Officer" has the meaning set forth in Section 33057.

(b) For purposes of Section 362, the commissioner may find:

(1) That a proposed officer or director of a proposed bank or trust company does not have sufficient standing to afford reasonable promise of successful operation if such person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(2) That the establishment of a proposed bank or trust company will not promote the public convenience and advantage if any person who is proposed to control the proposed bank or trust company or any director or officer of such person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(c) Subdivision (b) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 362, that a proposed officer or director of a proposed bank or trust company does not have sufficient standing to afford reasonable promise of successful operation or that the establishment of a proposed bank or trust company will not promote the public convenience and advantage.

(Amended by Stats. 1996, Ch. 1064, Sec. 66. Effective January 1, 1997. Operative July 1, 1997.)

363. At least 30 days before denying an application, the commissioner shall by mail or other method of service give written notice of the intended denial of an application and of the right of the applicant to meet with the commissioner regarding the reasons for such denial. The request for such meeting shall be in writing and delivered to the commissioner within 20 calendar days of the date of giving of the notice of intended denial. If a request is made for such meeting, the application may not be denied until after the meeting.

(Amended by Stats. 1996, Ch. 1064, Sec. 67. Effective January 1, 1997. Operative July 1, 1997.)

Article 4. Authorization to Engage in Banking

(Article 4 enacted by Stats. 1951, Ch. 364.)

399. In this article:

(a) "Preopening expenditure" means any obligation incurred, or sum disbursed, by a bank prior to the time when it commences to transact banking business, for the purpose of organizing such bank.

(b) "Preopening noncapital expenditure" means any preopening expenditure other than such preopening expenditures as may be capitalized.

(Added by Stats. 1978, Ch. 965.)

400. The articles of incorporation of the proposed bank or trust company shall be submitted to the commissioner for his or her approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the proposed bank or trust company shall:

(a) File with the commissioner a copy of its articles of incorporation, certified by the Secretary of State.

(b) File with the commissioner a statement in the form and with any supporting data as the commissioner may require showing that the entire contributed capital has been fully paid in lawful money, unconditionally, and that the funds representing the contributed capital, less sums spent as authorized by this article for preopening expenditures are on deposit in a state or national bank in this state, subject to withdrawal on demand.

(c) Pay to the commissioner a fee of two thousand five hundred dollars ($2,500).

(Amended by Stats. 1996, Ch. 1064, Sec. 68.1. Effective January 1, 1997. Operative July 1, 1997.)

401. If the commissioner finds that the proposed bank or trust company has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this code or by regulation, the commissioner shall, within 30 days after the statement and supporting data specified in Section 400 have been filed with him or her, issue in duplicate a certificate of authorization to transact business as a bank or trust company, as the case may be, and shall transmit one copy to the bank or trust company and place one copy on file in the department. The certificate of authorization shall state that the corporation named therein has complied with all the provisions of this code governing organization of banks or trust companies and that it is authorized to transact the business specified therein.

(Amended by Stats. 1996, Ch. 1064, Sec. 69. Effective January 1, 1997. Operative July 1, 1997.)

402. It shall be unlawful to accept payment of subscriptions for shares of any corporation proposing to engage in the banking or trust business unless authority to organize such corporation has been granted by the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 70. Effective January 1, 1997. Operative July 1, 1997.)

403. No corporation organized to transact a commercial banking or trust business shall transact any business until the commissioner has issued his or her certificate authorizing it to transact such business. No bank or trust company shall

incur any indebtedness except that which is incidental to its organization until the amount of its contributed capital has been fully paid in lawful money to the cashier or chief financial officer thereof.
(Amended by Stats. 1996, Ch. 1064, Sec. 71. Effective January 1, 1997. Operative July 1, 1997.)

404. If the proposed bank or trust company fails to file evidence of incorporation and organization with the commissioner pursuant to Section 400 within one year after the approval of the application for authority to organize the bank or trust company, the right to organize the bank or trust company automatically terminates. The commissioner, however, for good cause on written application filed before the expiration of the original period or any additional period, as the case may be, and payment of a fee of one hundred dollars ($100), may extend for additional periods not in excess of six months each the time within which the bank or trust company may be organized.
(Amended by Stats. 1996, Ch. 1064, Sec. 72. Effective January 1, 1997. Operative July 1, 1997.)

405. If the proposed bank or trust company fails to open for business within 90 days after the issuance of the certificate of authorization, the right to transact business automatically terminates. The commissioner, however, for good cause on written application filed before the end of said 90-day period, may extend for one additional period of not to exceed 90 days the time within which the bank or trust company may open for business.
(Amended by Stats. 1996, Ch. 1064, Sec. 73. Effective January 1, 1997. Operative July 1, 1997.)

406. It is unlawful to apply any part of the funds collected from subscribers or shareholders to the payment of commissions or fees for obtaining subscriptions or selling shares or, except with the prior approval of the commissioner, to the payment of preopening noncapital expenditures.
(Amended by Stats. 1996, Ch. 1064, Sec. 74. Effective January 1, 1997. Operative July 1, 1997.)

407. Every bank and trust company shall keep posted in a conspicuous place in its banking room at its head office the certificate of authority to transact a banking or trust business issued by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 75. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. Location of Head Office
(Heading of Article 5 amended by Stats. 1995, Ch. 480, Sec. 30. Effective October 2, 1995.)

419. A California state bank shall maintain its head office in this state.
(Added by Stats. 1995, Ch. 480, Sec. 31. Effective October 2, 1995.)

420. A bank or trust company may change the location of its head office within this state with the written approval of the commissioner. An application for approval shall be in the form and contain the information that the commissioner may require, and shall be accompanied by a fee of two hundred fifty dollars ($250).
(Amended by Stats. 1996, Ch. 1064, Sec. 76. Effective January 1, 1997. Operative July 1, 1997.)

421. (a) As used in this section:

(1) "Branch office" has the meaning set forth in subdivision (a) of Section 500.

(2) "Redesignation of the head office and a branch office" means the relocation by a bank of its head office to the site of a branch office in this state and the concurrent establishment by the bank of a branch office at the former site of the head office.

(b) A redesignation of the head office and a branch office shall not be subject to Section 420 or to Article 1 (commencing with Section 500) of Chapter 4.

(c) A bank may effect a redesignation of the head office and a branch office, if it files with the commissioner a report on the proposed redesignation not less than 30 days before the redesignation. The report shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires, be verified in the manner the commissioner may require.

(d) Whenever a bank effects a redesignation of the head office and a branch office, the bank shall do the following:

(1) The bank shall surrender to the commissioner for cancellation the certificate of authority for the head office at the original site and the certificate of authority for the branch office where it is relocating the head office. The commissioner shall issue to the bank a new certificate of authority authorizing the bank to maintain the head office at the new site and a new certificate of authority authorizing the bank to establish and operate a branch office at the former site of the head office. The bank shall pay to the commissioner a fee of twenty-five dollars ($25) for each new certificate.

(2) In the event that the bank has any other certificates of authority which list the bank's head office at the former site, the bank shall surrender the certificates to the commissioner for cancellation. The commissioner shall issue to the bank replacement certificates listing the bank's head office at the new site, and the bank shall pay to the commissioner a fee of twenty-five dollars ($25) for each replacement certificate.
(Amended by Stats. 1996, Ch. 1064, Sec. 77. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 4. BRANCH OFFICES, OTHER PLACES OF BUSINESS, AND AUTOMATED TELLER MACHINES

(Heading of Chapter 4 amended by Stats. 1981, Ch. 1075, Sec. 21.)

Article 1. Exemptions

(Article 1 added by Stats. 1995, Ch. 480, Sec. 33. Effective October 2, 1995.)

490. (a) In issuing an exemption under this section, the commissioner may impose any conditions that the commissioner finds necessary or appropriate.

(b) The commissioner may, by order or regulation, exempt from the requirement of authorization by the commissioner set forth in subdivision (b) of Section 500 or Section 541 or 551 any establishment of an office that the commissioner finds not necessary or appropriate to regulate under the section.

(c) The commissioner may, by order or regulation, exempt from the requirement of authorization or approval by the commissioner set forth in Section 507 or 546 any relocation of an office that the commissioner finds not necessary or appropriate to regulate under the section.

(Amended by Stats. 1996, Ch. 1064, Sec. 78. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Branches

(Heading of Article 2 renumbered from Article 1 by Stats. 1995, Ch. 480, Sec. 34 Effective October 2, 1995.)

500. (a) In this article, "branch office" means any branch office other than an automated teller machine branch office as defined in Section 550 or a remote service facility as defined in subsection (d) of Section 345.12 of Title 12 of the Code of Federal Regulations, except that no place where a bank or trust company engages in fiduciary business shall, solely on that account, be deemed to be a branch office.

(b) When authorized by the commissioner as provided in this chapter, a bank or trust company, with the approval of its board, may establish and maintain one or more branch offices.

(Amended by Stats. 2000, Ch. 204, Sec. 1. Effective January 1, 2001.)

501 The request for authority to establish a branch office shall be set forth in an application in such form and containing such information as the commissioner may require and shall be accompanied by an application fee of one thousand dollars ($1,000) for each new branch office.

(Amended by Stats. 1996, Ch. 1064, Sec. 80. Effective January 1, 1997. Operative July 1, 1997.)

503. In determining whether to approve or disapprove an application by a bank for authority to establish a branch office, the commissioner shall consider all of the following:

(a) The financial history and condition of the bank.

(b) The adequacy of the shareholders' equity in the bank.

(c) The future earnings prospects of the bank.

(d) The management of the bank.

(e) The convenience and needs of the community to be served by the branch office.

(Amended by Stats. 1996, Ch. 1064, Sec. 81. Effective January 1, 1997. Operative July 1, 1997.)

504. When the commissioner has approved an application for permission to establish a branch office, the commissioner shall issue a certificate in duplicate authorizing the opening and operation of the branch office and specifying the date on which and the conditions under which it may be opened and the place where it will be located. The commissioner shall cause one copy to be transmitted to the applicant and the other copy to be filed in the department.

(Amended by Stats. 1996, Ch. 1064, Sec. 82. Effective January 1, 1997. Operative July 1, 1997.)

505. The failure of a bank or trust company to open and operate a branch office within one year after the commissioner approves the application therefor shall automatically terminate the right of the bank or trust company to open the branch office except that the commissioner, for good cause on written application made before the expiration of the one-year period and accompanied by a fee of one hundred dollars ($100), may extend for additional periods not in excess of one year each the time within which the branch office may be opened.

(Amended by Stats. 1996, Ch. 1064, Sec. 83. Effective January 1, 1997. Operative July 1, 1997.)

506. A bank or trust company which opens a branch office without first obtaining the approval of the commissioner shall be subject to a civil penalty levied pursuant to Section 216.3.

(Amended by Stats. 2003, Ch. 445, Sec. 3. Effective January 1, 2004.)

507. When authorized by the commissioner a bank or trust company may change the location of a branch office from one location to another in the same vicinity. An application for such authorization shall be in such form and contain such information as the commissioner may require and be accompanied by a fee of two hundred fifty dollars ($250).
(Amended by Stats. 1996, Ch. 1064, Sec. 85. Effective January 1, 1997. Operative July 1, 1997.)

509. A bank or trust company which maintains a branch office or branch offices shall give to each branch office maintained by it a specific designation by name or number and include in the designation the word "branch" or the word "office" and shall prominently display the designation at the place of business of the branch.
(Enacted by Stats. 1951, Ch. 364.)

510. (a) A bank or trust company may close or discontinue the operation of any branch office if, before the closing or discontinuance, (1) the bank files with the commissioner a notice containing the information in subdivision (b), and (2) the commissioner within 60 days after the filing of the notice or any longer period to which the bank consents, either (A) issues a written statement not objecting to the notice or (B) does not issue a written objection to the notice.

(b) (1) A notice filed under subdivision (a) shall contain all of the following information:

(A) The name of the California state bank.

(B) The location of the branch office proposed to be closed or discontinued.

(C) The location of the office to which the business of the branch office proposed to be closed or discontinued is proposed to be transferred.

(D) The proposed date of closing or discontinuance.

(E) A detailed statement of the reasons for the decision to close the branch office.

(F) Statistical or other information in support of the reasons consistent with the institution's written policy for branch office closings.

(G) Any other information that the commissioner may require.

(2) A notice filed under subdivision (a) shall be in the form, shall be signed in the manner, and shall, if the commissioner requires, be verified in the manner that the commissioner may require.

(c) For purposes of subdivision (a), a notice is deemed to be filed with the commissioner at the time when the complete notice, including any amendments or supplements, containing all the information required by the commissioner, and otherwise complying with subdivision (b), is received by the commissioner.

(d) In determining whether or not to object to a notice filed under subdivision (a), except if the commissioner finds that it is necessary in the interests of safety and soundness that the branch office be closed or discontinued, the commissioner shall consider whether the closing or discontinuance of the branch office will have a seriously adverse effect on the public convenience or advantage.
(Amended by Stats. 1996, Ch. 1064, Sec. 87.1. Effective January 1, 1997. Operative July 1, 1997.)

511. A bank may arrange for the collection of savings from school children by the principal of the school, by the teachers, or by collectors, pursuant to regulations issued by the commissioner and approved, in the case of public schools, by the board of education or board of trustees of the city or district in which the school is situated. The principal, teacher, or person authorized by the bank to make collections from the school children shall be the agent of the bank and the bank is liable to the pupil for all deposits made with such principal, teacher, or other authorized person to the same extent as if the deposits were made directly with the bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 88. Effective January 1, 1997. Operative July 1, 1997.)

512. With the approval of the commissioner and subject to any regulations that the commissioner may prescribe, a bank may transact at a foreign (other state) or foreign (other nation) branch office business that is permissible for banks organized under the laws of the state or nation where the branch office is located but that would not otherwise be permissible for the bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 89. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Other Places of Business
(Article 3 added by Stats. 1969, Ch. 1280.)

540. As used in this article, "place of business" means any place of business of a bank other than a head office, a branch office, or a place of business consented to by the commissioner pursuant to Section 776 of this code.
(Amended by Stats. 1996, Ch. 1064, Sec. 90. Effective January 1, 1997. Operative July 1, 1997.)

541. No bank shall establish or maintain a place of business unless it is authorized to do so by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 91. Effective January 1, 1997. Operative July 1, 1997.)

542. An application for authority to establish and maintain a place of business shall be in such form and contain such information as the commissioner may prescribe, and shall be accompanied by a fee of two hundred fifty dollars ($250).
(Amended by Stats. 1996, Ch. 1064, Sec. 92. Effective January 1, 1997. Operative July 1, 1997.)

543. The commissioner may give or withhold approval of an application in his or her discretion, but he or she shall not approve the application until he or she has ascertained to his or her satisfaction that the public convenience and advantage will be promoted by the proposed place of business.
(Amended by Stats. 1996, Ch. 1064, Sec. 93. Effective January 1, 1997. Operative July 1, 1997.)

544. When the commissioner has approved an application, the commissioner shall issue a certificate in duplicate authorizing the bank to establish and maintain the place of business. The certificate shall specify the conditions, if any, under which the place of business may be established and maintained and the place where it will be located. The commissioner shall place one copy of the certificate on file with the department. The commissioner shall transmit one copy of the certificate to the applicant bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 94.1. Effective January 1, 1997. Operative July 1, 1997.)

545. The approval of an application to establish and maintain a place of business shall be revoked by operation of law if the applicant bank does not establish and maintain such place of business within one year after the date of such approval. However, for good cause on written application made before such approval is revoked and accompanied by a fee of one hundred dollars ($100), the commissioner may extend for additional periods not in excess of one year each the time within which such place of business may be established and maintained.
(Amended by Stats. 1996, Ch. 1064, Sec. 95. Effective January 1, 1997. Operative July 1, 1997.)

546. With the prior written approval of the commissioner, a bank may change the location of a place of business from one location to another in the same vicinity. An application for such approval shall be accompanied by a fee of one hundred dollars ($100).
(Amended by Stats. 1996, Ch. 1064, Sec. 96. Effective January 1, 1997. Operative July 1, 1997.)

547. (a) A bank may close or discontinue the operation of a place of business provided it files a notice with the commissioner, containing the information in subdivision (b), at least 30 days prior to the closure or discontinuance, and provided further that the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(b) A notice filed by a California state bank of the closure or discontinuance of a place of business shall contain the following information.

(1) The name of the California state bank.

(2) The name and location of the place of business proposed to be closed or discontinued.

(3) The name and location of the place of business that will assume the business of the branch office proposed to be closed or discontinued.

(4) Any other information that the commissioner may require.
(Amended by Stats. 1996, Ch. 1064, Sec. 97.1. Effective January 1, 1997. Operative July 1, 1997.)

Article 4. Automated Teller Machine Branch Offices
(Article 4 added by Stats. 1981, Ch. 1075, Sec. 23.)

550. In this article, unless the context otherwise requires:

(a) "Automated teller machine" means any electronic information processing device used by a financial institution and its customers for the primary purpose of executing transactions solely between the financial institution and its customers, if the transactions are not incidental to sales between the customer and a business entity other than a financial institution. "Automated teller machine" does not include devices used solely to facilitate check guarantee or check authorization.

(b) "Automated teller machine branch office" means a branch office that consists exclusively of one or more automated teller machines. However, an automated teller machine branch office of a bank may include (1) a night depository facility and (2) personnel of the bank, provided that the personnel do not accept deposits, pay checks, or make loans.

(c) "Bank" means (1) a California state bank or (2) a foreign (other nation) bank that is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to maintain one or more retail branch offices as defined in Section 1700.
(Amended by Stats. 1995, Ch. 480, Sec. 39. Effective October 2, 1995.)

551. Except as the commissioner may otherwise order, a bank is not required to file any notice with, or to obtain any approval or certificate of authority from, the commissioner or to comply with any other regulatory requirement in order to establish, relocate, or discontinue an automated teller machine or remote service facility.
(Repealed and added by Stats. 2000, Ch. 204, Sec. 3. Effective January 1, 2001.)

559. Subject to applicable laws and regulations, a bank is permitted but not required to share its automated teller machine branch offices with one or more other banks (as defined in Section 102), savings associations, and credit unions, or such other persons as the commissioner may approve.
(Amended by Stats. 1996, Ch. 1064, Sec. 106. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. Automated Teller Machine Networks
(Article 5 added by Stats. 1981, Ch. 1075, Sec. 24.)

560. In this article, unless the context otherwise requires:

(a) "Automated teller machine" has the meaning set forth in subdivision (a) of Section 550.

(b) "Bank" has the meaning set forth in subdivision (c) of Section 550.
(Added by Stats. 1981, Ch. 1075, Sec. 24.)

561. A bank may use automated teller machines established or operated by another person, provided that the bank complies with the following requirements:

(a) In case the person is not (1) a bank, (2) a national banking association headquartered in this state, or (3) a foreign (other nation) bank that maintains a federal retail branch office (as defined in Section 1700) in this state, the bank shall, before commencing such use, file with the commissioner satisfactory assurances that the performance of the services by the person will be subject to examination by the commissioner to the same extent as if the services were being performed by the bank itself.

(b) In any case the bank shall, not less than 30 days before commencing such use, file with the commissioner a notice that contains the following information:

(1) The name and primary address of the person establishing or operating the automated teller machines.

(2) A description of the type of functions that the automated teller machines will perform.

The notice shall also contain any additional information that the commissioner may prescribe regarding the financial condition of the notifying bank, and the functions and locations of the automated teller machines.
(Amended by Stats. 1996, Ch. 1064, Sec. 107. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 5. CORPORATE REQUIREMENTS

(Chapter 5 enacted by Stats. 1951, Ch. 364.)

Article 1. Articles, Bylaws, and Name

(Heading of Article 1 amended by Stats. 1978, Ch. 965.)

600. The articles of each bank shall contain the applicable one of the following statements:

(a) In case the bank is, or is proposed to be, a commercial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank.

(b) In case the bank is, or is proposed to be, a commercial bank authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank authorized to engage in trust business.

(c) In case the bank is, or is proposed to be, an industrial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank.

(d) In case the bank is, or is proposed to be, an industrial bank authorized to engage in trust business, that the purpose of the corporation is to engage in industrial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to an industrial bank authorized to engage in trust business.

(e) In case the bank is, or is proposed to be, a trust company (other than a commercial bank authorized to engage in trust business), that the purpose of the corporation is to engage in trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a trust company.

(Amended by Stats. 2000, Ch. 1015, Sec. 22. Effective September 30, 2000.)

600.3. (a) In this section:

(1) "Assessment provision" means the provision in the articles of a bank that complies with the requirements of Section 600.2, as in effect immediately before the effective date of this section, or any predecessor statute.

(2) "Bank" means any (A) California state bank or (B) corporation organized under the laws of this state for the purpose of transacting business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(b) On and after the effective date of this section, the assessment provision in the articles of a bank shall no longer be of any force or effect.

(c) Notwithstanding Sections 902 and 903 of the Corporations Code, a bank may, on or after the effective date of this section, amend its articles by deleting the assessment provision with the approval of its board alone and without any approval of its outstanding shares.

(d) (1) Any order issued before the effective date of this section by the commissioner pursuant to Section 662, as in effect immediately before the effective date of this section or any predecessor statute, shall, if and to the extent that the bank has not before that date levied and collected through sale of shares or otherwise, an assessment on its common shares, be deemed rescinded.

(2) Any proceeding commenced before the effective date of this section by a bank to assess its common shares in accordance with an order issued by the commissioner pursuant to Section 662, as in effect immediately before the effective date of this section or any predecessor statute, shall be terminated on the effective date of this section. On and after the effective date of this section, the bank shall take no further action to levy or collect the assessment on its common shares, and any lien on the common shares created by the assessment shall be deemed extinguished.

(Added by Stats. 1997, Ch. 375, Sec. 5. Effective January 1, 1998.)

600.4. (a) No amendment of the articles of a bank (other than an amendment set forth in an agreement of merger or in a certificate of ownership executed pursuant to Section 1110 of the Corporations Code that requires the approval of the commissioner pursuant to Chapter 4 (commencing with Section 4880) of Division 1.5) shall become effective unless the certificate of amendment or other instrument setting forth the amendment is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the amendment becomes effective, the bank shall file with the commissioner a copy of the certificate of amendment or other instrument certified by the Secretary of State.

(b) Any amendment of the articles of a bank set forth in an agreement of merger or in a certificate of ownership executed pursuant to Section 1110 of the Corporations Code that requires the approval of the commissioner pursuant to Chapter 4 (commencing with Section 4880) of Division 1.5, shall become effective at the time when the merger becomes effective pursuant to this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 109. Effective January 1, 1997. Operative July 1, 1997.)

600.6. No restated articles of a bank shall become effective unless the certificate setting forth such restated articles is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the restated articles become effective, such bank shall file with the commissioner a copy of such certificate certified by the Secretary of State.
(Amended by Stats. 1996, Ch. 1064, Sec. 110. Effective January 1, 1997. Operative July 1, 1997.)

600.8. No certificate of determination of a bank shall become effective unless such certificate of determination is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the certificate of determination becomes effective, such bank shall file with the commissioner a copy of the certificate of determination certified by the Secretary of State.
(Amended by Stats. 1996, Ch. 1064, Sec. 111. Effective January 1, 1997. Operative July 1, 1997.)

600.10. No certificate of correction of a bank shall become effective unless such certificate of correction is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the certificate of correction becomes effective, such bank shall file with the commissioner a copy of the certificate of correction certified by the Secretary of State.
(Amended by Stats. 1996, Ch. 1064, Sec. 112. Effective January 1, 1997. Operative July 1, 1997.)

600.12. No certificate of revocation of a bank shall become effective unless such certificate of revocation is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the certificate of revocation becomes effective, such bank shall file with the commissioner a copy of the certificate of revocation certified by the Secretary of State.
(Amended by Stats. 1996, Ch. 1064, Sec. 113. Effective January 1, 1997. Operative July 1, 1997.)

602. (a) A bank may change its name if it files with the commissioner a report on the proposed change not less than 30 days before the change. The report shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires, be verified in the manner the commissioner may require.

(b) Whenever a bank changes its name, the bank shall surrender to the commissioner for cancellation the certificates of authority under its old name for its head office, any branch offices, and any places of business. The commissioner shall issue to the bank replacement certificates under the bank's new name and the bank shall pay to the commissioner a fee of twenty-five dollars ($25) for each replacement certificate.

(c) The commissioner may not deny an application for approval of an amendment of the articles of incorporation of a bank which changes the name of the bank or any other application of a bank relating to a change in the name of the bank because the new name of the bank resembles so closely, as to be likely to cause confusion, the name of any other bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 115. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Shares
(Article 2 enacted by Stats. 1951, Ch. 364.)

620. A bank may, with the approval of its board, determine and from time to time redetermine the par value of any class or series of its shares unless its articles provide that such shares shall have par value and specify the par value of such shares.
(Repealed and added by Stats. 1978, Ch. 965.)

621. No bank or trust company after October 1, 1949, shall issue any shares before they are fully paid for.
(Enacted by Stats. 1951, Ch. 364.)

622. No bank shall issue any shares in consideration of:

(a) Services rendered in the organization of such bank; or

(b) Any note (whether or not negotiable and whether or not secured) made by the purchaser of such shares.
(Added by Stats. 1978, Ch. 965.)

Article 3. Distributions to Shareholders
(Article 3 repealed and added by Stats. 1978, Ch. 965.)

640. This article does not apply to any distribution made to the shareholders of a bank in any proceeding to wind up and dissolve or to liquidate such bank.
(Repealed and added by Stats. 1978, Ch. 965.)

641. Section 500 of the Corporations Code does not apply to the making by a bank or by any majority-owned subsidiary of a bank of any distribution to the shareholders of such bank.
(Repealed and added by Stats. 1978, Ch. 965.)

642. Neither a bank nor any majority-owned subsidiary of a bank shall make any distribution to the shareholders of such bank in an amount which exceeds the lesser of:

(a) The retained earnings of the bank; or

(b) The net income of the bank for its last three fiscal years, less the amount of any distributions made by the bank or by any majority-owned subsidiary of the bank to the shareholders of the bank during such period.
(Repealed and added by Stats. 1978, Ch. 965.)

643. Notwithstanding the provisions of Section 642, a bank or a majority-owned subsidiary of a bank may, with the prior approval of the commissioner, make a distribution to the shareholders of such bank in an amount not exceeding the greatest of:

(a) The retained earnings of the bank;

(b) The net income of the bank for its last fiscal year; or (c) The net income of the bank for its current fiscal year.
(Amended by Stats. 1996, Ch. 1064, Sec. 116. Effective January 1, 1997. Operative July 1, 1997.)

644. Notwithstanding the provisions of Section 642, a bank may:

(a) With the prior approval of the commissioner, make a distribution to its shareholders by means of redeeming its redeemable shares; and

(b) With the prior approval of its outstanding shares and of the commissioner, otherwise make a distribution to its shareholders in connection with a reduction of its contributed capital.
(Amended by Stats. 1996, Ch. 1064, Sec. 117. Effective January 1, 1997. Operative July 1, 1997.)

645. If the commissioner finds that the shareholders' equity of a bank is not adequate or that the making by a bank or by any majority-owned subsidiary of a bank of a distribution to the shareholders of the bank would be unsafe or unsound for the bank, the commissioner may order the bank and its majority-owned subsidiaries not to make any distribution to the shareholders of the bank. In addition to the order authorized by this section, the commissioner may levy a civil penalty against the bank pursuant to Section 216.3.
(Amended by Stats. 2004, Ch. 183, Sec. 99. Effective January 1, 2005.)

646. (a) For purposes of Section 506 of the Corporations Code, the making by a bank or by any majority-owned subsidiary of a bank of a distribution to any shareholder of the bank in violation of any provision of this article shall be deemed to be prohibited by, and to be a violation of, Section 500 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 506 of the Corporations Code for the benefit of a bank against any shareholder of the bank on account of receiving, with knowledge of facts indicating the impropriety thereof, any distribution prohibited by any provision of this article or by any provision of Sections 501, 502, and 503 of the Corporations Code, to the same extent as a creditor of the bank who did not consent to the illegal distribution to the shareholder and who had a valid claim against the bank which arose prior to the time of the illegal distribution to the shareholder and which exceeded the amount of the illegal distribution to the shareholder, might bring the action in the name of the bank.

(c) As an alternative to the action provided for in subdivision (b), the commissioner may levy a civil penalty against the bank pursuant to Section 216.3.
(Amended by Stats. 2003, Ch. 445, Sec. 5. Effective January 1, 2004.)

Article 4. Shareholders' Equity
(Heading of Article 4 amended by Stats. 1978, Ch. 965.)

660. In determining for purposes of this division whether the shareholders' equity of a bank or of a proposed bank is adequate, the commissioner shall consider:

(a) The nature and volume of the business of the bank;

(b) The amount, nature, quality, and liquidity of the assets of the bank;

(c) The amount and nature of the liabilities (including, but not limited to, any capital notes or debentures and any contingent liabilities) of the bank;

(d) The amount and nature of the fixed charges of the bank;

(e) The history of, and prospects for, the bank to earn and retain income;

(f) The quality of the operations of the bank;

(g) The quality of the management of the bank;

(h) The nature and quality of the ownership of the bank; and (i) Such other factors as are in the opinion of the commissioner relevant.

(Amended by Stats. 1996, Ch. 1064, Sec. 120. Effective January 1, 1997. Operative July 1, 1997.)

661. For purposes of any statute, regulation, or requirement of any governmental official or agency which refers to the capital (including, without limitation, stated capital, paid-in capital, and paid-up capital, but excluding contributed capital), surplus, or undivided profits of a bank, a bank, with the approval of its board, may establish and maintain capital, surplus, and undivided profits accounts and may from time to time allocate and reallocate its shareholders' equity among such accounts; provided, however:

(a) That no part of the contributed capital of the bank shall be allocated to the undivided profits account of the bank;

(b) That the undivided profits account of the bank shall at no time exceed the retained earnings of the bank; and

(c) That, in case the articles of the bank provide that any of the bank's shares shall have par value and specify the par value of such shares or in case the bank has determined the par value of any of its shares pursuant to Section 620, the capital account of the bank shall be not less than the aggregate par value of such shares which are outstanding.

(Added by Stats. 1978, Ch. 965.)

663. A bank which has deficit retained earnings may, with the prior approval of its outstanding shares and of the commissioner, readjust its accounts in a quasi-reorganization. Such readjustment may include, without limitation, eliminating such deficit retained earnings.

(Amended by Stats. 1996, Ch. 1064, Sec. 122. Effective January 1, 1997. Operative July 1, 1997.)

Article 4.5. Capital Notes and Debentures
(Heading of Article 4.5 added by Stats. 1978, Ch. 965.)

670. A bank at any time may, with the approval of its board, issue, sell or hypothecate its capital notes or debentures which may be payable upon such terms and may bear such rate of interest, if any, as may be provided therein or which may be convertible into shares. Such capital notes and debentures shall be subordinate to the claims of creditors and depositors and it shall be provided in any such capital notes or debentures that in the event of liquidation all depositors and other creditors of the bank shall be entitled to be paid in full with such interest as may be provided by law before any payment shall be made on account of principal of or interest on such capital notes or debentures and it may be provided in any such capital notes or debentures that after payment in full of all sums owing to such depositors and creditors the holders of such capital notes or debentures shall be entitled to be paid from the remaining assets of the bank the unpaid principal amount of the capital notes or debentures plus accrued and unpaid interest thereon before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any shares of the bank. It shall be provided in such capital notes or debentures that no payment shall at any time be made on account of the principal thereof, unless following such payment the aggregate of the shareholders' equity and capital notes or debentures thereafter outstanding shall be the equal of such aggregate at the date of the original issue of such capital notes or debentures, or as may be otherwise authorized by the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 123. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. Directors
(Article 5 enacted by Stats. 1951, Ch. 364.)

679. Any reference in this article to the time a notice is given or sent shall be construed in accordance with Section 118 of the Corporations Code.
(Added by Stats. 1978, Ch. 965.)

680. The board of a bank or trust company hereafter organized shall consist of not less than five nor more than 25 directors, and no bank or trust company shall amend its articles or bylaws so as to reduce the number of directors below five.
(Amended by Stats. 1978, Ch. 965.)

683. The board of each bank and of each trust company shall hold a meeting not less than once each calendar quarter. Regular meetings of the board shall be held within this state. Any regular or special meeting is valid wherever held if held upon written consent of all members of the board given either before or after the meeting and filed with the secretary of the corporation. Special meetings of the board may be held upon four days' notice by mail, unless the articles or bylaws provide otherwise, or 24 hours' notice delivered personally or by telephone or by telegraph, unless the articles or bylaws provide for a shorter period.
(Amended by Stats. 1983, Ch. 211, Sec. 1.)

684. (a) The commissioner, whenever in his opinion such action is necessary or appropriate to carry out the purposes and provisions of this division, may call a meeting of the board of a bank.

(b) A meeting of the board of a bank called by the commissioner shall be held upon four days' notice by mail or 24 hours' notice delivered personally or by telephone or telegraph. Such notice shall be given by the commissioner or, if the commissioner so orders, by an officer of such bank.

(c) A meeting of the board of a bank called by the commissioner shall be held at such place within this state as may be designated by the commissioner and specified in the notice of such meeting.

(d) The expenses of a meeting of the board of a bank called by the commissioner shall be paid by such bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 124. Effective January 1, 1997. Operative July 1, 1997.)

685. The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 709 of the Corporations Code to determine the validity of any election or appointment of any director of a bank to the same extent as a shareholder of such bank might bring such an action.
(Amended by Stats. 1996, Ch. 1064, Sec. 125. Effective January 1, 1997. Operative July 1, 1997.)

686. (a) The commissioner shall be deemed to be a party in interest within the meaning of Section 306 of the Corporations Code with respect to a bank and may, in the name of the people of this state, bring or intervene in an action under Section 306 of the Corporations Code for the appointment of directors of a bank.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 308 of the Corporations Code for the appointment of a provisional director or directors of a bank to the same extent as a shareholder who held 50 percent of the voting power of such bank might bring such an action.
(Amended by Stats. 1996, Ch. 1064, Sec. 126. Effective January 1, 1997. Operative July 1, 1997.)

687. (a) For purposes of Section 316 of the Corporations Code, to the extent that the making by a bank or by any majority-owned subsidiary of a bank of a distribution to any shareholder of the bank is contrary to any provision of Article 3 (commencing with Section 640), the making of the distribution shall, to the extent, be deemed to be contrary to the provisions of Section 500 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 316 of the Corporations Code for the benefit of a bank against any or all of the directors of the bank or of any majority-owned subsidiary of the bank on account of the making of a distribution to any shareholder of the bank contrary to any provision of Article 3 (commencing with Section 640) or any provision of Sections 501, 502, and 503 of the Corporations Code, to the same extent as a creditor of the bank who did not consent to the illegal distribution and who had a valid claim against the bank which arose prior to the time of the illegal distribution, and which exceeded the amount of the illegal distribution, may bring the action in the name of the bank.

(c) As an alternative to the action provided for in subdivision (b), the commissioner my levy a civil penalty against thebank pursuant to Section 216.3.
(Amended by Stats. 2003, Ch. 445, Sec. 6. Effective January 1, 2004.)

688. (a) For purposes of Section 316 of the Corporations Code, the making of a loan or guarantee by a bank or any other extending of credit by a bank contrary to any provision of this division shall be deemed to be contrary to Section 315 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 316 of the Corporations Code for the benefit of a bank against any or all of the directors of the bank on account of the making of a loan or guarantee or any other extending of credit contrary to any provision of this division, to the same extent as a creditor of the bank who did not consent to the illegal making of the loan or guarantee or the other illegal extending of credit and who had a valid claim against the bank which arose prior to the time of the illegal making of the loan or guarantee or the other illegal extending of credit and which exceeded the amount of loss suffered by the bank as a result of the illegal making of the loan or guarantee or the other illegal extending of credit, might bring the action in the name of the bank.

(c) As an alternative to the action provided for in subdivision (b), the commissioner may levy a civil penalty against the bank pursuant to Section 216.3.

(Amended by Stats. 2003, Ch. 445, Sec. 7. Effective January 1, 2004.)

Article 5.5. Shareholders
(Article 5.5 added by Stats. 1978, Ch. 965.)

689. (a) Paragraph (1) of subdivision (b) of Section 1501 of the Corporations Code does not apply to the annual report of any bank with respect to any transaction consisting of an extension of credit by such bank or by any of its majority-owned subsidiaries.

(b) The annual report of a bank which would, but for the provisions of subdivision (a), be subject to paragraph (1) of subdivision (b) of Section 1501 of the Corporations Code, shall disclose such information regarding debts owing to such bank or to any of its majority-owned subsidiaries and transactions consisting of extensions of credit by the bank or by any of its majority-owned subsidiaries, as the commissioner may by regulation require. In issuing any such regulation, the commissioner shall give due consideration to regulations regarding such matters issued by federal bank regulatory agencies under the Securities Exchange Act of 1934.

(Amended by Stats. 1996, Ch. 1064, Sec. 129. Effective January 1, 1997. Operative July 1, 1997.)

Article 6. Sale of Securities
(Article 6 added by Stats. 1969, Ch. 876.)

690. Unless the context otherwise requires, in this article:

(a) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security for value.

(b) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security for value. "Sale" or "sell" includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(c) "Security" means any stock, capital note, or debenture, or any warrant, right, or option to subscribe to or purchase any of the foregoing.

(d) The terms defined in subdivisions (a) and (b) do not include any stock dividend payable with respect to common stock of a bank solely (except for any cash or scrip paid for fractional shares)in shares of such common stock, if such bank has no other class of voting stock outstanding, provided that shares issued in any such dividend shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

(Amended by Stats. 2004, Ch. 183, Sec. 100. Effective January 1, 2005.)

691. No bank organized under the laws of this state shall offer or sell any security issued by it unless the commissioner has issued a permit authorizing such sale.

(Amended by Stats. 1996, Ch. 1064, Sec. 131. Effective January 1, 1997. Operative July 1, 1997.)

692. An application for a permit shall be in such form and contain such information as the commissioner may prescribe.

(Amended by Stats. 1996, Ch. 1064, Sec. 132. Effective January 1, 1997. Operative July 1, 1997.)

692.1. The commissioner shall charge and collect fees for applications filed under this article as fixed in this section.

(a) The fee for a negotiating permit shall be fifty dollars ($50).

(b) The fee for a permit to exchange a security or to make any change in the rights, preferences, privileges, or restrictions of or on outstanding securities shall be fifty dollars ($50).

(c) The fee for any permit to sell securities other than as specified in subdivision (b) shall be one hundred dollars ($100) plus one-tenth of one percent (0.1%) of the aggregate value of the securities sought to be sold, up to a maximum aggregate fee of one thousand seven hundred fifty dollars ($1,750).
(Amended by Stats. 1996, Ch. 1064, Sec. 133. Effective January 1, 1997. Operative July 1, 1997.)

693. If the commissioner finds that the proposed sale of securities is fair, just, and equitable, he or she shall issue to the applicant a permit authorizing it to offer and sell the securities in such amount and upon such terms and conditions as he or she may provide in the permit. If the commissioner finds otherwise, he or she shall deny the application.
(Amended by Stats. 1996, Ch. 1064, Sec. 134. Effective January 1, 1997. Operative July 1, 1997.)

694. The commissioner may impose conditions in any permit issued under Section 693, requiring the deposit in escrow of securities, imposing a legend condition restricting the transferability thereof, impounding the proceeds from the sale thereof, limiting the expense in connection with the sale thereof, or such other conditions as he or she deems reasonable and necessary or advisable in the public interest.
(Amended by Stats. 1996, Ch. 1064, Sec. 135. Effective January 1, 1997. Operative July 1, 1997.)

695. Every permit issued pursuant to Section 693 shall recite that it is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be sold.
(Added by Stats. 1969, Ch. 876.)

696. The commissioner may amend, alter, suspend, or revoke any permit issued pursuant to Section 693.
(Amended by Stats. 1996, Ch. 1064, Sec. 136. Effective January 1, 1997. Operative July 1, 1997.)

696.5. Whenever a bank applies for a permit to issue any security or to deliver any other consideration (whether or not such security or such transaction is exempt from, or not subject to, the provisions of Section 691) in exchange for one or more bona fide outstanding securities (as defined in Section 25019 of the Corporations Code), claims, or property interests, or partly in such exchange and partly for cash, the commissioner is authorized to approve the terms and conditions of such issuance and exchange or such delivery and exchange and the fairness of such terms and conditions and is authorized to hold a hearing on the fairness of such terms and conditions, at which all persons to whom it is proposed to issue any security or to deliver any other consideration in such exchange shall have the right to appear.
(Amended by Stats. 1996, Ch. 1064, Sec. 137. Effective January 1, 1997. Operative July 1, 1997.)

697. There shall be exempted from the provisions of Section 691 any transaction or security which the commissioner by regulation or order exempts as not being comprehended within the purposes of this article and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of investors.
(Amended by Stats. 1996, Ch. 1064, Sec. 138. Effective January 1, 1997. Operative July 1, 1997.)

698. Nothing contained in this article shall affect the Corporate Securities Law of 1968, Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code.
(Added by Stats. 1969, Ch. 876.)

Article 7. Acquisition of Control
(Article 7 added by Stats. 1973, Ch. 744.)

700. Unless the context otherwise requires, in this article:

(a) "Bank" means a bank organized under the laws of this state.

(b) "Control" means possession, direct or indirect, of the power:

(1) To vote 25 percent or more of any class of the voting securities issued by a person; or

(2) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise; provided, however, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

For purposes of paragraph (2) of this subdivision, a person who, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the then outstanding voting securities issued by another person is presumed to control such other person.

For purposes of this article, the commissioner may determine whether a person in fact controls another person.

(c) "Controlling person" means a person who, directly or indirectly, controls a bank.

(d) "Person" means an individual, a corporation, an association, a syndicate, a partnership, a limited liability company, a business trust, an estate, a trust, or an organization of any kind, or any combination of any of the foregoing acting in concert.

(e) "Shareholder" means:

(1) In the case of a corporation, a holder of a share of any class or series.

(2) In the case of a nonprofit or charitable corporation, an unincorporated association, or a syndicate, a member.

(3) In the case of a partnership, a partner.

(4) In the case of a business trust, an estate, or a trust, a holder of a beneficial interest.

(5) In the case of an organization of any other kind, a holder of an ownership interest.

(Amended by Stats. 1996, Ch. 1064, Sec. 139. Effective January 1, 1997. Operative July 1, 1997.)

701. No person shall, directly or indirectly, unless the commissioner has approved such acquisition of control, do any of the following:

(a) Make a tender offer for, a request or invitation for tenders of, or an offer to exchange securities for, any voting security or any security convertible into a voting security of a bank or a controlling person if the person making such tender offer, request or invitation for tenders, or offer to exchange securities would, by consummation thereof, directly or indirectly, acquire control of such bank or such controlling person.

(b) Solicit approval of any shareholder of a controlling person for a merger, consolidation, sale of assets, or other transaction by which any person other than such controlling person would acquire control of the bank controlled by such controlling person.

(c) Acquire control of a bank or a controlling person; provided, however, that nothing in this subdivision shall be deemed to prohibit any person from negotiating to acquire (but not acquiring) control of a bank or a controlling person.

(Amended by Stats. 1996, Ch. 1064, Sec. 140. Effective January 1, 1997. Operative July 1, 1997.)

701.1. Notwithstanding any other provision of this article, except for those persons approved by the commissioner prior to September 1, 2002, and for those persons who control industrial banks as of September 1, 2002, no person may directly or indirectly, including through any merger, consolidation, or any other type of business combination, acquire control of an industrial bank, as defined in Section 105.5, unless the person is engaged only in the activities permitted for financial holding companies, as provided in Section 103 of the federal Gramm-Leach-Bliley Act (12 U.S.C. Sec. 1843(k)(1)), or is a credit union, as defined in Section 134.5, when the industrial bank is a credit union service organization, as defined in Section 14651. Nothing in this section shall be construed to exempt a person seeking to acquire control of a bank that otherwise qualifies to do so pursuant to this section, from the requirements of Sections 700 to 711, inclusive. For the purposes of this section, the term "control" has the same meaning as in subdivision (b) of Section 700.

(Added by Stats. 2002, Ch. 1162, Sec. 2. Effective January 1, 2003.)

702. An application for approval to acquire control of a bank or a controlling person shall be in such form and contain such information as the commissioner may require by regulation or order and shall be accompanied by the following fee:

(a) In case the applicant has been a director or officer of the bank for not less than two years (or, if the bank has been in business for less than two years, for such lesser period), a fee of five hundred dollars ($500); and

(b) In any other case, a fee of one thousand five hundred dollars ($1,500).

(Amended by Stats. 1996, Ch. 1064, Sec. 141. Effective January 1, 1997. Operative July 1, 1997.)

703. If the commissioner finds, with respect to the proposed acquisition of control of a bank or a controlling person, that any of the factors set forth in subdivisions (a) to (g), inclusive, is true, he or she shall deny the application. If the commissioner finds that none of such factors is true, he or she shall approve the application.

(a) That the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of this state;

(b) That the effect of the proposed acquisition of control in any section of the state may be substantially to lessen competition or to tend to create a monopoly or that the proposed acquisition of control would in any other manner be in restraint of trade, and that the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) That the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or the controlling person, or prejudice the interests of the depositors, creditors, or shareholders of the bank or the controlling person;

(d) That plans or proposals to liquidate the bank or the controlling person, to sell the assets of the bank or the controlling person, to merge or consolidate the bank or the controlling person, or to make any other major change in the business, corporation structure or management of the bank or the controlling person are not fair and reasonable to the depositors, creditors, and shareholders of the bank or the controlling person;

(e) That the competence, experience, or integrity of any acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of the bank or the controlling person or in the interest of the public to permit such person to control the bank or the controlling person;

(f) That the proposed acquisition is unfair, unjust, or inequitable to the bank or the controlling person or to the depositors, creditors, or shareholders of the bank or the controlling person; or

(g) That the applicant neglects, fails, or refuses to furnish to the commissioner all the information required by the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 142. Effective January 1, 1997. Operative July 1, 1997.)

703.5. (a) In this section, "officer" has the meaning set forth in Section 33057.

(b) For purposes of Section 703, the commissioner may find:

(1) That the integrity of an acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of a bank or controlling person or in the interest of the public to permit the acquiring person to control the bank or controlling person if the acquiring person or any director or officer of the acquiring person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(2) That a plan to make a major change in the management of a bank or controlling person is not fair and reasonable to the depositors, creditors, or shareholders of the bank or controlling person if the plan provides for a person who has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty to become a director or officer of the bank or controlling person.

(c) Subdivision (b) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 703, that the integrity of an acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of a bank or controlling person or in the interest of the public to permit the acquiring person to control the bank or controlling person or that a plan to make a major change in the management of a bank or controlling person is not fair and reasonable to the depositors, creditors, or shareholders of the bank or controlling person.

(Amended by Stats. 1996, Ch. 1064, Sec. 143. Effective January 1, 1997. Operative July 1, 1997.)

704. The commissioner may, in approving a proposal to acquire control of a bank or a controlling person pursuant to Section 703, impose such conditions as the commissioner deems reasonable or necessary or advisable in the public interest.

(Amended by Stats. 1996, Ch. 1064, Sec. 144. Effective January 1, 1997. Operative July 1, 1997.)

705. The commissioner may, for good cause, amend, alter, suspend, or revoke any approval of a proposal to acquire control of a bank or a controlling person issued pursuant to Section 703.

(Amended by Stats. 1996, Ch. 1064, Sec. 145. Effective January 1, 1997. Operative July 1, 1997.)

706. Notwithstanding any other provision of this article, any application for approval to acquire control of a bank or a controlling person which is not denied or approved by the commissioner within a period of 60 days after such application is filed with the commissioner or, if the applicant consents to an extension of the period within which the commissioner may act, within such extended period, shall be deemed to be approved by the commissioner as of the first day after such period of 60 days or such extended period, as the case may be.

For purposes of this section, an application for approval to acquire control of a bank or a controlling person is deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all the information in the form required by the commissioner, is received by him or her.

(Amended by Stats. 1996, Ch. 1064, Sec. 146. Effective January 1, 1997. Operative July 1, 1997.)

707. (a) The commissioner, before determining whether, for purposes of this article, a person controls another person or before denying or approving an application for approval to acquire control of a bank or controlling person, may hold a hearing.

(b) After determining whether, for purposes of this article, a person controls another person or after denying or approving an application for approval to acquire control of a bank or controlling person, the commissioner, upon the filing of a written request for a hearing by any person prejudiced by the commissioner's decision, shall hold a hearing and upon such hearing shall affirm, modify, or reverse his or her decision. Any such hearing shall commence within a period of 30 days after the written request for the hearing is filed with the commissioner or, if the person filing the written request for the hearing consents to an extension of the period within which the hearing is to commence, within such extended period.

(Amended by Stats. 1996, Ch. 1064, Sec. 147. Effective January 1, 1997. Operative July 1, 1997.)

708. There shall be exempted from the provisions of Section 701 any transaction which the commissioner by regulation or order exempts as not being comprehended within the purposes of this article and the regulation of which the commissioner finds is not necessary or appropriate in the public interest or for the protection of a bank, a controlling person, or the depositors, creditors, or shareholders of a bank or a controlling person.
(Amended by Stats. 1996, Ch. 1064, Sec. 148. Effective January 1, 1997. Operative July 1, 1997.)

709. Whenever it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this article or of any regulation or order of the commissioner issued pursuant to this article, the commissioner may apply to the superior court for an order enjoining such person from violating or continuing to violate this article or any such regulation or order and for other equitable relief as the nature of the case or the interests of the bank, the controlling person, the depositors, creditors, or shareholders of such bank or such controlling person, or the public may require.
(Amended by Stats. 1996, Ch. 1064, Sec. 149. Effective January 1, 1997. Operative July 1, 1997.)

710. No person shall be entitled to vote or to give a written consent with respect to any security acquired in contravention of any provision of this article or of any regulation or order of the commissioner issued pursuant to this article for a period of three years after such acquisition. If a security of a bank or a controlling person is acquired in contravention of this article or any such regulation or order, such bank, such controlling person, any shareholder of such bank or such controlling person, or the commissioner may apply to the superior court for equitable relief, including costs and (except with respect to the commissioner) attorney fees, to enjoin prospectively any person from voting or giving any written consent with respect to such security for a period of three years after such acquisition, and the commissioner may apply to the superior court for equitable relief, including costs, to void any voting or any giving of a written consent with respect to such security which has occurred since such acquisition.
(Amended by Stats. 1996, Ch. 1064, Sec. 150. Effective January 1, 1997. Operative July 1, 1997.)

711. If any provision or clause of this article or the application thereof to any person or circumstance is held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other provisions or applications of this article which can be given effect without the invalid, illegal, or unenforceable provision or application, and to this end, the provisions of this article are declared to be severable.
(Added by Stats. 1973, Ch. 744.)

CHAPTER 6. POWERS AND MISCELLANEOUS PROVISIONS

(Chapter 6 enacted by Stats. 1951, Ch. 364.)

750. A bank or trust company may purchase, acquire, hold, or lease real property or an interest therein only as follows:

(a) Such as may be necessary or convenient for the use, operation or housing of its head office and branch offices, or for the storage of records or other personal property, or for office space for use by its officers or employees, or which may be reasonably necessary for future expansion of its business, or which is otherwise reasonably related to the conduct of its business. Real property used by a bank as its banking premises may include in addition to the space required for the transaction of its business other space which may be let as a source of income.

(b) Such as may be conveyed to it in satisfaction in whole or in part of debts previously contracted in the course of its business.

(c) Such as it may purchase or acquire at foreclosure sales under mortgages or deeds of trust held by it, or under judgments or decrees in its favor.

(d) Such as it may purchase or otherwise acquire when necessary to minimize or prevent the loss or destruction of any lien or interest therein.

(e) Such as it may purchase or otherwise acquire pursuant to Section 751.3. A bank or trust company may sell, lease, or encumber real property or any interest therein owned by it, or, with the written approval of the commissioner, exchange the same for other real property.

(Amended by Stats. 1996, Ch. 1064, Sec. 151. Effective January 1, 1997. Operative July 1, 1997.)

751. Any real property not held for any purpose permitted by subdivisions (a) and (e) of Section 750 shall be sold whenever the same can be sold for an amount sufficient to reimburse the bank or trust company for all loss arising out of the loan for which such real property was security or arising out of the original investment. A bank or trust company shall not by the retention of any real property acquired pursuant to this section engage in any business not authorized by this division except to the extent necessary in the orderly liquidation of an indebtedness owing to the bank.

(Amended by Stats. 1982, Ch. 1196, Sec. 3.)

751.3. (a) The Legislature finds and declares:

(1) That it is necessary to increase job opportunities in real estate development and construction and to provide additional housing and commercial facilities in this state.

(2) That within the commercial banking community there exists the expertise and ability to promote and assist in expansion of real estate development projects in this state.

(3) That it is proper and appropriate to utilize that expertise and ability by authorizing commercial banks to engage in real estate development and management on an entrepreneurial basis.

(b) As used in this section, "real property investment" means all forms of investing in real property, whether direct or in the form of partnerships, joint ventures, or other methods of investment. It includes, but is not limited to, the purchasing, subdividing, and developing of real property or any interest therein, the building of residential housing or commercial improvements, and the owning, renting, leasing, managing, operating for income, or selling of that property.

(c) Notwithstanding Section 1335, a commercial bank may acquire and hold stock of one or more corporations the primary activities of which are engaging in real property investment, in which event the sum of (1) investments made by a commercial bank pursuant to the authority of this subdivision, (2) any loans and guarantees extended by a commercial bank to, or for the benefit of, corporations whose stock it holds pursuant to the authority of this subdivision, and (3) real property investments made pursuant to the authority of subdivision (d), unless a higher percentage is approved by the commissioner in writing, shall not exceed 10 percent of the total assets of the bank.

(d) A commercial bank may engage in real property investment. The total of all real property investments made pursuant to the authority of this subdivision, unless a higher percentage is approved by the commissioner in writing, shall not exceed the total shareholders' equity of the bank.

(e) Prior to initially engaging in real property investment activities authorized by this section, a commercial bank shall make application with the commissioner for approval of its general plan of real property investment. The application for approval shall be in letter form, shall contain a copy of the general plan for real property investment as approved or adopted by the board of directors of the bank, which shall include a brief description of either the activities of the corporations the bank will invest in or the activities the bank will engage in, or both, the approximate amount to be invested, the extent, if any, of diversification of those activities or investment, and the approximate date of the initial investment, and shall be signed by the chief executive officer of the bank. Unless the commissioner finds (1) that the

capital, assets, management, earnings, and liquidity of the commercial bank are, on a composite basis, not satisfactory, or (2) that the plan for the commercial bank to engage in real property investment or to acquire and hold the stock of one or more real property investment corporations is unsafe or unsound, the commissioner shall approve the application. An application for approval shall be deemed approved on the 46th day after the application is filed with the commissioner, unless the commissioner earlier makes a final decision on the application or extends the period for approving or denying the application. For purposes of this subdivision, an application for approval shall be deemed to be filed with the commissioner on the date when the application, substantially in compliance with the requirements of this subdivision, is received by the commissioner. Upon the filing of the application for approval, the applicant shall pay to the commissioner a filing fee of five hundred dollars ($500).

(f) The legality of any investment lawfully made pursuant to this section as it read prior to the amendment of this section shall not be affected by the existing form of this section, nor shall this section be construed to require the changing of any investments heretofore lawfully made.

(Amended by Stats. 1996, Ch. 1064, Sec. 152. Effective January 1, 1997. Operative July 1, 1997.)

751.7. A commercial bank may provide real estate appraisal services and may charge a fee therefor.

(Amended by Stats. 1983, Ch. 181, Sec. 1. Effective July 11, 1983. Section operative July 11, 1983, pursuant to this amendment.)

752. A bank or trust company may purchase, acquire, and hold not less than 75 percent of the outstanding shares of a corporation engaged exclusively in holding real property of the character described in subdivision (a) of Section 750 for the purposes therein set forth or in holding, separately or in addition to that real property, tangible personal property necessary or convenient for the use of the bank or trust company in the conduct of its business or for future expansion of its business. The purchase or acquisition of stock of any such corporation shall be approved by two-thirds of all the directors of the bank or trust company and be approved in writing by the commissioner. An application for approval shall be in such form and contain such information as the commissioner may by order or regulation require and shall be accompanied by a fee of five hundred dollars ($500).

(Amended by Stats. 1996, Ch. 1064, Sec. 153. Effective January 1, 1997. Operative July 1, 1997.)

753. (a) (1) In this section, "federal law" includes, but is not limited to, the United States Constitution, any federal statute, any federal court decision, and any regulation, circular, bulletin, interpretation, decision, order, and waiver issued by a federal agency.

(2) The definitions set forth in Section 1700 apply to this section.

(b) (1) Notwithstanding any other provision of law, except as provided in subdivision (c), if the commissioner finds that any provision of federal law applicable to national banking associations doing business in this state is substantively different from the provisions of this code applicable to banks organized under the laws of this state, the commissioner may by regulation make that provision of federal law applicable to banks organized under the laws of this state.

(2) If the commissioner finds that any provision of federal law applicable to foreign (other nation) banks with respect to federal agencies or federal branches in this state is substantively different from the provisions of this code applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5 (commencing with Section 1700), the commissioner may by regulation make that provision of federal law applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5.

(c) (1) Section 11343.4 and Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do not apply to any regulation adopted under subdivision (b).

(2) The commissioner shall file any regulation adopted pursuant to subdivision (b), together with a citation to this section as authority for the adoption and a citation to the provisions of federal law made applicable by the regulation, with the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(3) Any regulation adopted under subdivision (b) shall become effective on the date when it is filed with the Secretary of State unless the commissioner prescribes a later date in the regulation or in a written instrument filed with the regulation.

(4) Any regulation adopted under subdivision (b) shall expire at 12 p.m. on December 31 of the year following the calendar year in which it becomes effective.

(5) Any regulation adopted pursuant to subdivision (b) shall be subject to the following restrictions:

(A) The commissioner shall not renew or reinstate the regulation adopted pursuant to subdivision (b).

(B) The commissioner shall not adopt a new regulation pursuant to subdivision (b), to address the same conformity issue that was addressed by the regulation that expired pursuant to subdivision (c).

(d) The commissioner may adopt regulations pursuant to subdivision (b) that are exempt from the expiration and restrictions of subdivision (c) if the regulations are adopted in compliance with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, including those listed in paragraph (1) of subdivision (c).

(Amended by Stats. 1996, Ch. 1112, Sec. 1.5. Effective January 1, 1997. Operative July 1, 1997, by Sec. 3 of Ch. 1112.)

754. A bank or trust company may become a member of the Federal Reserve System, may subscribe for, purchase, and hold the amounts of the capital stock of the Federal Reserve bank serving the district in which the bank or trust company is located as may be required to maintain the membership and, when not in conflict with the laws of this state, may exercise all powers conferred upon the members and may assume and discharge all obligations required of the members.

A bank or trust company may become a member of a federal home loan bank in the manner provided in the Federal Home Loan Bank Act, and, for the purpose of becoming a member, may invest any part of its shareholders' equity in the capital stock of the federal home loan bank as may be required by the provisions of the Federal Home Loan Bank Act.

(Amended by Stats. 1996, Ch. 1063, Sec. 23. Effective January 1, 1997.)

755. A bank may become a member of the Federal Deposit Insurance Corporation or of any successor corporation having for its purpose the insurance of deposits and may do all things and assume and discharge all obligations required of such members when not in conflict with the laws of this State.

(Enacted by Stats. 1951, Ch. 364.)

756. A bank or trust company may become a member of any federal agency, membership in which is open to banking institutions, and may comply with all the requirements and conditions imposed upon such members when not in conflict with the laws of this state, except that the power conferred by this section shall not be exercised unless the commissioner makes a general order authorizing banks generally as a class, or trust companies generally as a class, or banks doing a commercial or trust business, respectively, as a class, to become such members upon such terms and conditions as may be prescribed in such order.

(Amended by Stats. 1996, Ch. 1064, Sec. 156. Effective January 1, 1997. Operative July 1, 1997.)

757. (a) A bank or trust company may engage in the business of renting safe deposit boxes and may receive personal property for safekeeping and storage on its banking premises.

(b) A copy of any safe deposit rental agreement, or personal property safekeeping and storage agreement, which is prepared by the bank or trust company and signed by the customer shall be delivered to the customer at the time the agreement is signed if the agreement is signed at a place of business of the bank or trust company. If the agreement is not signed at a place of business of the bank or trust company, the bank or trust company shall mail or deliver a copy of the agreement to the customer within 10 calendar days after the bank or trust company receives it. The contract shall not contain any blank spaces to be filled in after the customer signs the contract. If more than one customer has signed the agreement, the bank or trust company may comply with this section by mailing or delivering the copy to any one of the customers who reside at the same address. A copy shall also be mailed or delivered to any other customer who has signed the agreement and who does not reside at the same address. As used in this section, "copy" means a reproduction, facsimile, or duplicate. A bank or trust company which fails to comply with this section is liable to its customer for any actual damages suffered by the customer as a result of that failure. The remedy provided by this section is nonexclusive and is in addition to any remedies or penalties available under other laws of this state.

(Amended by Stats. 1996, Ch. 1063, Sec. 24. Effective January 1, 1997.)

758. With the prior written consent of the commissioner, a bank or trust company may purchase and hold not less than 75 percent of the outstanding shares of the stock of a corporation authorized to conduct a safe deposit business, organized and existing under the laws of this state and conducting a safe deposit business in the same city or locality in which an office of such bank or trust company is situated. No such safe deposit corporation shall conduct a safe deposit business in any city or locality in which such bank or trust company does not maintain an office. The aggregate investment of any bank or trust company in such corporation at any one time shall not exceed 10 percent of the shareholders' equity of such bank or trust company.

(Amended by Stats. 1996, Ch. 1064, Sec. 157. Effective January 1, 1997. Operative July 1, 1997.)

759. With the prior written consent of the commissioner, a bank may purchase and hold the whole or any part of the stock of not more than one corporation authorized to conduct a trust business, organized and existing under the laws of this state and transacting a trust business in the same county in which the head office of such bank is situated. An application for consent shall be in such form and contain such information as the commissioner may by order or regulation require and shall be accompanied by a fee of five hundred dollars ($500). No bank's investment in any such corporation

at any one time shall exceed 25 percent of the bank's shareholders' equity. No such trust company shall engage in or combine the business of a commercial bank or a title insurance company.
(Amended by Stats. 1996, Ch. 1064, Sec. 158. Effective January 1, 1997. Operative July 1, 1997.)

760.1. A bank may invest in shares of the stock of one or more corporations which are engaged primarily in civic, public, or social welfare activities. The total amount invested by a bank in shares of the stock of any one such corporation shall not exceed 2 percent of the bank's shareholders' equity and the total amount invested by a bank in shares of the stock of all such corporations shall not exceed 5 percent of the bank's shareholders' equity.
(Amended by Stats. 1978, Ch. 965.)

761. No bank shall purchase, acquire, or hold the stock of any corporation except as expressly authorized by this division, or pursuant to a plan of reorganization approved by the commissioner by which all of the stock of one or more banks organized under the laws of this state shall be acquired and immediately reissued proportionately to the stockholders of the acquiring bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 159. Effective January 1, 1997. Operative July 1, 1997.)

761.5. (a) In this section:

(1) "Depository institution" has the meaning set forth in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(2) "Depository institution holding company" has the meaning set forth in Section 3(w) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(w)).

(b) Notwithstanding any provision of this code to the contrary, and except as the commissioner may otherwise order, a California state bank may purchase for its own account shares of the stock of an insured bank or of a holding company that owns or controls an insured bank if the stock of the bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies and if the bank or company and all subsidiaries thereof are engaged exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of these institutions and companies and in providing correspondent banking services at the request of other depository institutions or their holding companies.
(Amended by Stats. 2001, Ch. 159, Sec. 91. Effective January 1, 2002.)

762. A bank or trust company may acquire stock in settlement or reduction of a loan or in exchange for an investment previously made in good faith where the acquisition of such stock is necessary in order to minimize or avoid loss arising out of such loan or investment. Whenever any such stock can be sold for an amount sufficient to reimburse the bank or trust company for all loss arising out of the loan for which such stock was security or arising out of the original investment the bank or trust company shall sell the same. A bank or trust company shall not by the retention of any stock acquired pursuant to this section engage in any business not authorized by this division except to the extent necessary in the orderly liquidation of an indebtedness owing to the bank.
(Amended by Stats. 1978, Ch. 965.)

763. The amount of funds of a bank or trust company which are deposited in any other financial institution (except a Federal Reserve bank) shall not at any time exceed 10 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the depositing bank or trust company unless the financial institution has been designated as a depositary for the funds of the depositing bank or trust company by the vote of a majority of the directors of the depositing bank or trust company, and unless the financial institution has been approved by the commissioner as a depositary for the purposes of this section. The commissioner may in his or her discretion revoke his or her approval of any such depositary and may in his or her discretion limit the amount of funds that may be deposited by any bank or trust company with any other financial institution. A deposit by one bank or trust company with another financial institution shall not be regarded as a loan.
(Amended by Stats. 1996, Ch. 1064, Sec. 160. Effective January 1, 1997. Operative July 1, 1997.)

764. Any court having jurisdiction of any estate in process of administration or of any other proceeding, on application of any person interested therein and after a hearing on such notice as the court may direct or without notice if all parties in interest consent thereto, may order any executor, administrator, guardian, conservator, assignee, receiver, depositary, or trustee, whether such officer or trustee has qualified as such or not, to deposit with any bank or trust company any money then in his hands or under his control or which may thereafter come into his hands until the further order of the court. Upon such deposit being made and while such moneys remain on deposit with such bank or trust company, the officer or trustee making the deposit shall be relieved of all responsibility therefor, and the court by order shall reduce the bond to be given or theretofore given by such officer or trustee so as to cover only the estate remaining

in his hands. The money so deposited shall be held by the bank or trust company under the direction of the court and shall be repaid only on order of the court. If the amount sought to be deposited in any one bank does not exceed the amount which will be covered by insurance of the Federal Deposit Insurance Corporation an order for deposit hereunder may be made ex parte without notice or hearing.
(Amended by Stats. 1979, Ch. 730.)

765. When the court has ordered the deposit of money or assets of an estate with a bank or trust company pursuant to Section 764 or Section 1586 of this code, any bank or trust company having possession or control of any such money or assets, upon the demand of the bank or trust company which has been ordered to receive such deposit, whether the officer or trustee directed to make such deposit has or has not duly qualified, shall deliver such money or assets to the bank or trust company named by the court to receive such deposit. The acceptance of such money or assets by the bank or trust company named to receive the same shall relieve the bank which has been in possession thereof from all further responsibility therefor.
(Enacted by Stats. 1951, Ch. 364.)

766. For the purpose of determining whether any loan or investment is secured by a first lien on real property as required by any provision of this division, none of the following shall be deemed a prior encumbrance unless any installment or payment thereunder other than a rental or royalty under a lease, is due and delinquent:

(a) The lien of any tax, assessment, or bond levied or issued by any state or territory of the United States or by any district, political subdivision, or municipal corporation thereof, except the lien of an assessment levied against a particular parcel of real property and of any bond given or issued pursuant to law in lieu of the payment of such assessment.

(b) A lien created by a contract and given to secure the payment for water to be furnished under such contract for the irrigation of the real property or any part thereof.

(c) A lease of the real property under which all rents or royalties are reserved to the owner.

(d) The lien of a bond given or issued pursuant to law in lieu of the payment of an assessment levied against a particular parcel of real property and the lien of any assessment levied to pay such bond, if the unpaid balance of such bond and the amount of such loan or investment combined do not exceed the percentage of the sound market value of the real property permitted to be so loaned or invested by any such provision of this division.

(e) A lien given to secure the payment of any assessment or subscription to meet the requirements of any law of the United States in respect to any irrigation project of the United States in any state or territory of the United States which may be levied, made, or received by any corporation or association formed to carry out the provisions of any such law, if the unpaid balance of such assessment or subscription and the amount of such loan or investment combined do not exceed the percentage of the sound market value of the real property permitted to be so loaned or invested by any such provision of this division.
(Amended by Stats. 1959, Ch. 392.)

768. No loan made by any bank in excess of any limitations contained in this division or which is made in violation of any of the provisions of this division shall be invalid or illegal as to the lender for that reason, nor shall any loan made to any bank in excess of the amounts permitted by this division be invalid or illegal as to the lender for that reason.
(Enacted by Stats. 1951, Ch. 364.)

769. A bank may purchase and hold the stock of small business investment companies authorized to operate under the Small Business Investment Act, as amended, in an amount not aggregating more than 10 percent of the bank's shareholders' equity.
(Amended by Stats. 1978, Ch. 965.)

771. Two or more banks may invest in the stock of a corporation engaged exclusively in the business of performing for one or more banks such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank; provided that the aggregate investment of any bank in the corporation at any one time shall not exceed 10 percent of the shareholders' equity of the bank; and provided, further, that the corporation shall furnish to the commissioner satisfactory assurances that the performance of services by the corporation will be subject to regulation and examination by the commissioner to the same extent as if the services were being performed by the bank itself on its own premises.
(Amended by Stats. 1996, Ch. 1064, Sec. 161.1. Effective January 1, 1997. Operative July 1, 1997.)

772. Notwithstanding the provisions of Section 1335, except as provided in Section 1336, and subject to regulations and rules the commissioner may prescribe, a bank may invest in equity or other securities of one or more corporations, limited liability corporations, limited liability companies, limited partnerships, trusts, business trusts, or other similar business organizations.

Any reference to "corporation" in regulations adopted by the commissioner to implement this section shall be deemed to include limited liability corporations, limited liability companies, limited partnerships, trusts, business trusts, or other similar business organizations.
(Amended by Stats. 2003, Ch. 404, Sec. 2. Effective January 1, 2004.)

773. Subject to such regulations and rules as the superintendent may prescribe, a bank may issue and sell securities which are guaranteed pursuant to Section 306(g) of the National Housing Act, as amended.
(Added by Stats. 1969, Ch. 493.)

774. Subject to such regulations and rules as the commissioner may prescribe, a bank may acquire and hold shares of stock issued by a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to Section 907(a) or 907(c) of such act.
(Amended by Stats. 1996, Ch. 1064, Sec. 163. Effective January 1, 1997. Operative July 1, 1997.)

775. Notwithstanding any other provision of law, any commercial bank (as defined in Section 105) and any trust company (as defined in Section 107) holding securities in a fiduciary capacity or while engaged in a trust business (as defined in Section 106), or while acting in any capacity under a court or private trust, or while acting in such capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating such trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit of such securities in a securities depository, as defined in Section 30004, which is licensed under Section 30200 or exempted from licensing thereunder by Section 30005 or 30006. When such securities are so deposited, they may be held in the custody of the securities depository in which they are deposited or in the custody of any other securities depository so licensed or exempted and in which the securities depository in which such securities were deposited maintains an account, or in the custody of any bank or trust company with authority to accept custody of such securities, which accepts custody of such securities on behalf of a securities depository. Such securities may be held in the name of the nominee of the securities depository in which they are deposited, or in the name of the nominee of any other securities depository with which the securities depository in which they are deposited maintains an account. The custodian of securities so deposited may merge certificates representing securities of the same class of the same issuer and may hold such certificates in bulk with any other securities deposited in any securities depository by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. Any commercial bank or trust company which deposits or arranges for the deposit of such securities in such a securities depository shall maintain records which at all times show the ownership of the securities so deposited. A commercial bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as in the case of state-chartered institutions, the commissioner and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue.

This section shall apply to securities now held or hereafter held by a commercial bank or trust company in the above designated capacities. A commercial bank or trust company may but shall not be required to own capital stock of a securities depository in which it deposits securities pursuant to this section.
(Amended by Stats. 1996, Ch. 1064, Sec. 164. Effective January 1, 1997. Operative July 1, 1997.)

775.1. Notwithstanding any other provision of law, any commercial bank (as defined in Section 105) and any trust company (as defined in Section 107) holding securities in a fiduciary capacity or while engaged in a trust business (as defined in Section 106), or while acting in any capacity under a court or private trust, or while acting in such capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating such trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit with a federal reserve bank of any such securities the principal and interest of which the United States or any department, agency or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of such federal reserve bank in the name of such commercial bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. Any commercial bank or trust company which deposits or arranges for the deposit of such securities pursuant to this section shall maintain records which at all times show the ownership of the securities so deposited. A commercial bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as in the case of state-chartered institutions, the commissioner and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said federal reserve bank without physical delivery of any securities. A commercial bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by such commercial bank or trust

company pursuant to this section for the account of the fiduciary. A fiduciary shall, on demand by any party to its accounting, certify in writing to such party the securities deposited for its account as such fiduciary pursuant to this section. This section shall apply to all fiduciaries and custodians for fiduciaries, acting on the effective date of this section or who thereafter may act regardless of the state of the instrument or court order by which they are appointed.
(Amended by Stats. 1996, Ch. 1064, Sec. 165. Effective January 1, 1997. Operative July 1, 1997.)

776. (a) Every bank and branch shall conduct all of its business in one building or in adjoining buildings except that under special circumstances a bank or branch may conduct a portion of its business at an extension office elsewhere in the same vicinity provided the notice requirements of subdivision (b) are complied with and provided further that the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(b) The California state bank shall file a notice with the commissioner no fewer than 30 days prior to conducting any portion of its business at an extension office, which notice shall provide the following information:

(1) The name of the California state bank, and, if applicable, the popular name of the branch whose business will be conducted at an extension office.

(2) The address of the proposed extension office.

(3) A description of the proposed business to be conducted at the extension.

(4) The date on which the bank proposes to commence business at the extension.

(5) Any other information that the commissioner may, by regulation or order, require.
(Amended by Stats. 1996, Ch. 1064, Sec. 166.1. Effective January 1, 1997. Operative July 1, 1997.)

777. A commercial bank may provide management consulting advice and services and may charge a fee therefor.
(Amended (as added by Stats. 1982, Ch. 1196) by Stats. 1983, Ch. 181, Sec. 2. Effective July 11, 1983. Section operative July 11, 1983, pursuant to this amendment.)

777.5. (a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, a bank or any affiliate thereof, licensed under the laws of any state or of the United States, or any officer or employee thereof, may deliver fingerprints taken of a director, an officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the person fingerprinted relating to convictions, and to any arrest for which that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the bank or affiliate responsible for the final decision regarding employment of the person fingerprinted, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the bank or affiliate, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the bank or affiliate determines that employment of the person fingerprinted would constitute an unreasonable risk to that bank or affiliate or its customers, the person may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting bank or affiliate pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the person fingerprinted.

(d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(e) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a bank, whether directly, indirectly, or through one or more intermediaries.
(Amended by Stats. 2004, Ch. 183, Sec. 101. Effective January 1, 2005.)

778. (a) A commercial bank may provide electronic data-processing services and may charge a fee therefor.

(b) As used in this section, "electronic data-processing" means the process that encompasses all computerized and auxiliary automated information handling, including systems analysis and design, conversion of data, computer programming, information storage and retrieval, data transmission, requisite system controls, simulation, and all the related operator-machine interaction.
(Amended by Stats. 1983, Ch. 181, Sec. 3. Effective July 11, 1983. Section operative July 11, 1983, pursuant to this amendment.)

779. (a) Notwithstanding Section 726 of the Code of Civil Procedure or any other provision of law to the contrary, a state or nationally chartered bank, its subsidiaries or affiliates transacting business in this state, or any successor in interest thereto, that originates, acquires, or purchases, in whole or in part, any loan secured directly or collaterally, in whole or in part, by a mortgage or deed of trust on real property, or any interest therein, may bring an action for recovery of damages, including exemplary damages not to exceed 50 percent of the actual damages, against a borrower where the action is based on fraud under Section 1572 of the Civil Code and the fraudulent conduct by the borrower induced the original lender to make that loan.

(b) The provisions of this section shall not apply to loans secured by single-family, owner-occupied residential real property, when the property is actually occupied by the borrower as represented to the lender in order to obtain the loan and the loan is for an amount of one hundred fifty thousand dollars ($150,000) or less, as adjusted annually, commencing on January 1, 1987, to the Consumer Price Index as published by the United States Department of Labor.

(c) Any action maintained under this section for damages shall not constitute a money judgment for deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d of the Code of Civil Procedure.
(Amended by Stats. 1986, Ch. 173, Sec. 1.)

782. Notwithstanding Section 1335, a bank may invest in shares of an investment company (1) registered with the Securities and Exchange Commission pursuant to the federal Investment Company Act of 1940, as amended (15 U.S.C. Sec. 80a-1 et seq.) and for which the shares are registered under the federal Securities Act of 1933, as amended (15 U.S.C. Sec. 77a et seq.), and (2) the portfolio of which consists solely of the following:

(a) Debt obligations in which a bank is permitted to invest without limitation pursuant to subdivision (a), (b), (c), or (d) of Section 1336 and repurchase agreements fully collateralized by those obligations.

(b) Loans of federal funds and similar loans of unsecured day(s) funds, maturing in six months or less to institutions insured by the Federal Deposit Insurance Corporation ñFederal Funds‡. Loans under this subdivision are limited to transactions described in subsection (a) or (b) of Section 32.102 of Title 12 of the Code of Federal Regulations involving investment companies in which the entire beneficial interest is held exclusively by depository institutions, as permitted by Section 204.123 of Title 12 of the Code of Federal Regulations.

The commissioner may, by regulation, prescribe further conditions respecting investment by banks under this section as may be necessary for the safety or soundness of banks or as may otherwise be in the public interest.
(Amended by Stats. 1996, Ch. 1064, Sec. 167. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 6.5. AGENCY ACTIVITIES

(Chapter 6.5 added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

Article 1. General Provisions

(Heading of Article 1 amended by Stats. 1996, Ch. 887, Sec. 1.9. Effective September 25, 1996.)

800. In this chapter, unless the context otherwise requires:

(a) "Authorized agency activities" means receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations. "Authorized agency activities" includes ministerial functions such as providing loan applications, assembling documents, providing a location for returning documents necessary for making a loan, providing loan account information, receiving payments, disbursing loan funds, evaluating loan applications, and other activities that the commissioner may specify by order or regulation. However, "authorized agency activities" does not include any other activities that the commissioner may specify by order or regulation.

(b) "Insured depository institution" means any bank, savings and loan association, savings association, savings bank, or industrial loan company the deposits of which are insured by the Federal Deposit Insurance Corporation. "Insured depository institution" includes any depository institution affiliate within the meaning of Section 18® of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828®).

(Amended by Stats. 1996, Ch. 1064, Sec. 168.1. Effective January 1, 1997. Operative July 1, 1997.)

801. This chapter does not apply to a California state bank having an insured depository institution engage in authorized agency activities as its agent or to a California state bank engaging in authorized agency activities as agent for an insured depository institution in any case other than a case where, but for the provisions of Sections 815 and 825, an office of the agent would for regulatory purposes be considered to be an office of the principal.

(Added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

802. (a) In this section, "affiliated," when used with respect to a California state bank and an insured depository institution, means that the California state bank controls the insured depository institution, the insured depository institution controls the California state bank, or the California state bank and the insured depository institution are under common control, directly or indirectly through one or more intermediaries. For purposes of this subdivision, "control" has the meaning set forth in Section 700.

(b) In case a California state bank and an insured depository institution are affiliated, the prior approval requirement set forth in Section 810 or 820 is deemed to be satisfied if the California state bank files a notice with the commissioner and, within 30 days or any longer period to which the California state bank consents, the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(c) (1) A notice filed by a California state bank under subdivision (b) shall contain the following information:

(A) The name of the California state bank.

(B) The name and location of the main or head office of the affiliated insured depository institution.

(C) A description of the proposed agency, including identification of the institution that is to be the principal, identification of the institution that is to be the agent, and specification of the activities in which the agent is to engage on behalf of the principal.

(D) Any other information that the commissioner may require.

(2) A notice filed by a California state bank under subdivision (b) shall be in the form, shall be signed in the manner, and shall, if the commissioner requires by regulation or order, be verified in the manner that the commissioner may by regulation or order require.

(3) A notice filed by a California state bank under subdivision (b) shall be accompanied by a filing fee of two hundred fifty dollars ($250).

(d) For purposes of subdivision (b), a notice by a California state bank is deemed to be filed with the commissioner at the time when the complete notice, including any amendments or supplements, containing all the information required by the commissioner, and otherwise complying with subdivision (c) is received by the commissioner.

(e) In determining whether or not to object to a notice by a California state bank, the commissioner shall consider the factors set forth in Section 813 or 823, as the case may be.

(Amended by Stats. 1996, Ch. 1064, Sec. 169. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. California State Bank as Principal
(Article 2 added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

810. Notwithstanding the provisions of Chapter 4 (commencing with Section 500) and Section 776, a California state bank may, with the prior approval of the commissioner and subject to any regulations that the commissioner may prescribe, have an insured depository institution engage in authorized agency activities as its agent.
(Amended by Stats. 1996, Ch. 1064, Sec. 170. Effective January 1, 1997. Operative July 1, 1997.)

811. An application by a California state bank for approval to have an insured depository institution engage in authorized agency activities as its agent shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires by regulation or order, be verified in the manner that the commissioner may, by regulation or order, require.
(Amended by Stats. 1996, Ch. 1064, Sec. 171. Effective January 1, 1997. Operative July 1, 1997.)

812. An application by a California state bank for approval to have an insured depository institution engage in authorized agency activities as its agent shall be accompanied by a filing fee of two hundred fifty dollars ($250).
(Added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

813. In determining whether to approve or deny an application by a California state bank for approval to have an insured depository institution engage in authorized agency activities as its agent, the commissioner shall consider both of the following:

(a) Whether the proposed agency arrangement is consistent with the safe and sound operation of the California state bank.

(b) Any other factors that the commissioner deems relevant.
(Amended by Stats. 1996, Ch. 1064, Sec. 172. Effective January 1, 1997. Operative July 1, 1997.)

814. No California state bank may have an insured depository institution conduct as its agent any activity that the California state bank is prohibited from conducting itself.
(Added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

815. No office of an insured depository institution that is performing authorized agency activities as agent for a California state bank in accordance with this article shall, on that account, be deemed to be an office of the California state bank.
(Added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

816. If the commissioner finds that any activity performed by an insured depository institution as agent for a California state bank is not an authorized agency activity or that the agency arrangement is inconsistent with safe and sound banking practices, the commissioner may order the California state bank to terminate the agency arrangement.
(Amended by Stats. 1996, Ch. 1064, Sec. 173. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. California State Bank as Agent
(Article 3 added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

820. Notwithstanding the provisions of Chapter 4 (commencing with Section 500) and Section 776, a California state bank may, with the prior approval of the commissioner and subject to any regulations that the commissioner may prescribe, engage in authorized agency activities as agent for an insured depository institution.
(Amended by Stats. 1996, Ch. 1064, Sec. 174. Effective January 1, 1997. Operative July 1, 1997.)

821. An application by a California state bank for approval to engage in authorized agency activities as agent for an insured depository institution shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires by regulation or order, be verified in the manner that the commissioner may, by regulation or order, require.
(Amended by Stats. 1996, Ch. 1064, Sec. 175. Effective January 1, 1997. Operative July 1, 1997.)

822. An application by a California state bank for approval to engage in authorized agency activities as agent for an insured depository institution shall be accompanied by a filing fee of two hundred fifty dollars ($250).
(Added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

823. In determining whether to approve or deny an application by a California state bank for approval to engage in authorized agency activities as agent for an insured depository institution, the commissioner shall consider both of the following factors:

(a) Whether the proposed agency arrangement is consistent with the safe and sound operation of the California state bank.

(b) Any other factors that the commissioner deems relevant.

(Amended by Stats. 1996, Ch. 1064, Sec. 176. Effective January 1, 1997. Operative July 1, 1997.)

824. No California state bank may conduct any activity as an agent for an insured depository institution that the California state bank would be prohibited from conducting as a principal.

(Added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

825. (a) No office of a California state bank that conducts authorized agency activities as agent for an insured depository institution in accordance with this article shall, on that account, be deemed to be an office of the insured depository institution.

(b) For purposes of this division, no insured depository institution that has a California state bank engaged in authorized agency activities as its agent shall on that account be deemed to be transacting business in this state.

(Added by Stats. 1995, Ch. 480, Sec. 44. Effective October 2, 1995.)

826. If the commissioner finds that any activities performed by a California state bank as agent for an insured depository institution are not authorized agency activities or that the agency arrangement is inconsistent with safe and sound banking practices, the commissioner may order the California state bank to terminate the agency arrangement.

(Amended by Stats. 1996, Ch. 1064, Sec. 177. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 7. DEPOSITS

(Chapter 7 enacted by Stats. 1951, Ch. 364.)

Article 1. Depositors

(Article 1 enacted by Stats. 1951, Ch. 364.)

850. A bank account by or in the name of a minor shall be held for the exclusive right and benefit of such minor and shall be paid to such minor or to his order and payment so made is a valid release and discharge to the bank for such deposit or any part thereof.
(Enacted by Stats. 1951, Ch. 364.)

851. A bank account by or in the name of a married person shall be held for the exclusive right and benefit of the person, shall be free from the control or lien of any other person except a creditor, and shall be paid to the person or to the order of the person, and payment so made is a valid and sufficient release and discharge to the bank for the deposit or any part thereof.
(Amended by Stats. 1974, Ch. 752.)

852. A bank account that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part 2 (commencing with Section 5100) of Division 5 of the Probate Code.
(Amended by Stats. 1990, Ch. 79, Sec. 3. Operative July 1, 1991, by Sec. 37 of Ch. 79, as amended by Stats. 1990, Ch. 710, Sec. 46.)

854. No bank, directly or indirectly, by any device whatever, shall pay any interest on any demand deposit except to the extent that the payment of interest on demand deposits is permitted to member banks of the Federal Reserve System or to banks whose deposits are insured by the Federal Deposit Insurance Corporation or any successor federal agency insuring bank deposits. This section shall not apply to any deposit which is payable only at an office of the bank located outside of the states of the United States and the District of Columbia.
(Enacted by Stats. 1951, Ch. 364.)

854.1. Notwithstanding Section 10145 of the Business and Professions Code or any other provision of law, but subject to the limitations of Section 854, benefits accruing from the placement in a non-interest bearing account of a commercial bank (including a national banking association) of funds received by a real estate broker who collects payments or provides services in connection with a loan secured by a lien on real property under subdivision (d) of Section 10131 or Section 10131.1 of the Business and Professions Code shall inure to the broker, unless otherwise agreed in writing by the broker and the lender or note owner on the loan. A borrower shall receive at least two percent simple interest per annum on impound account payments covered by Section 2954.8 of the Civil Code.
(Amended by Stats. 1994, Ch. 289, Sec. 1. Effective January 1, 1995.)

857. (a) In this section:
(1) "Creditor" includes, but is not limited to, a depositor.
(2) "Insolvency," when used with respect to a bank, means that the bank is unable to pay its debts as they come due.
(b) This section does not apply to any of the following:
(1) Any transaction authorized under Section 1203 or 1205.
(2) Any transaction made by a bank in the ordinary course of its business.
(c) No bank may pay or secure a creditor if the bank does so (1) after committing an act of insolvency or in contemplation of insolvency and (2) with a view to preventing the application of its assets in the manner prescribed in Article 1 (commencing with Section 3100) of Chapter 17 or with a view to the preference of one creditor to another.
(d) Any transaction made by a bank in violation of this section is void.
(Repealed and added by Stats. 1995, Ch. 754, Sec. 3.5. Effective January 1, 1996.)

858. An overdraft of more than 90 days standing shall not be allowed as an asset of any bank.
(Enacted by Stats. 1951, Ch. 364.)

860. A bank may act as a depositary, paying agent, trustee, or fiscal agent for the holding or handling of public funds or securities notwithstanding the fact that a member of the legislative body or an officer or employee of the depositor is an officer, employee, or stockholder of such bank, or of a holding company that owns any of the stock of such bank. Such member of a legislative body, or such officer or employee thereof, shall not be deemed "interested in any contract" as that phrase is used in Section 1090 of the Government Code, if his sole interest is the fact that he is an officer, employee, or stockholder of the bank selected to act as such depositary, paying agent or fiscal agent.

An officer or employee of a local public agency shall be deemed to have only a "remote interest" in a contract, as that phrase is used in Section 1091 of the Government Code, where such contract is entered into without competitive bidding under a procedure established by law, if his sole interest is that of an officer, director, or employee, of a bank, bank holding company, or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor, and if the conditions of subdivision (a) of Section 1091 of the Government Code are met.
(Amended by Stats. 1970, Ch. 226.)

861. When a statement of account has been rendered by a bank to a depositor accompanied by vouchers, if any, which are the basis for debit entries in such account, such account shall, after the period of four years from the date of its rendition, in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the correctness of such account for any cause.

A statement of account within the meaning of this section shall be deemed to have been rendered on a savings or time account when the bank, by making a notation in the depositor's bank book or in some other manner reasonably calculated to give notice thereof to the depositor indicates that a certain sum is the correct balance of the account.

Nothing herein shall be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty; nor to prevent the application of subsection (3) of Section 340 of the Code of Civil Procedure to cases governed thereby.
(Added by Stats. 1955, Ch. 245.)

863. (a) No bank shall impose any charge on a savings account or on a depositor for the failure of a depositor to deposit, or for the late deposit of, any agreed periodic installment deposit into that account. A bank shall pay interest on savings accounts as to which a depositor has agreed to make periodic installment deposits at a rate of interest per annum that is not less than the lowest rate paid on other types of savings deposits.

(b) As used in this section "savings account" means a Christmas club account, a vacation club account, or other similar periodic installment deposit account maintained by a natural person, irrespective of its classification as a savings deposit or time deposit open account for purposes of state or federal law or regulations.
(Amended by Stats. 1988, Ch. 718, Sec. 1.)

864. (a) For the purposes of this section:

(1) "Customer" means one or more natural persons.

(2) "Debt" means an interest-bearing obligation or an obligation which by its terms is payable in installments, which has not been reduced to judgment, arising from an extension of credit to a natural person primarily for personal, family, or household purposes, and does not mean a charge for bank services or a debit for uncollected funds or for an overdraft of an account imposed by a bank on a deposit account.

(b) A bank is limited in exercising any setoff for a debt claimed to be owed to the bank by a customer in that a setoff shall not result in an aggregate balance of less than one thousand dollars ($1,000) as shown on the records of the bank for all demand deposit accounts maintained by a customer with the bank or any branch thereof.

(c) Not later than the day following the exercise of any setoff with respect to a deposit account for any debt claimed to be owed to the bank by a customer, the bank shall deliver to each customer personally or send by first-class mail postage prepaid to the address of each customer as shown on the records of the bank a written notice in at least 10-point type containing the following:

(1) A statement that the bank has set off a debt or a portion thereof against the customer's deposit account, identifying the account, and giving the respective balances before and after the setoff.

(2) A statement identifying the debt set off against the account and giving the respective balances due before and after the setoff.

(3) A statement that if the customer claims that the debt has been paid or is not now owing, or that the funds in the deposit account consist of moneys expressly exempt pursuant to Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, and listed in the notice, the customer may execute and return the notice to the bank by mail at the address shown or personally to the bank branch where the customer's account is maintained not later than 20 days after the date of mailing or personal delivery.

(4) A statement that if the notice is executed and returned, the bank may file an action in court to collect the debt; that if a lawsuit is filed, the customer will be notified and have an opportunity to appear and defend; and that if the bank is successful, the customer will be liable for court costs, and attorney's fees, if the debt so provides.

(5) A response form in at least 10-point type containing substantially the following:

"The debt described in the Notice of Setoff received from the bank is ____ is not ____ my debt or the debt of another person in whose name the account is maintained.

Date

"I claim that the debt:

____ has been paid.

____ is not now owing.

____ is not subject to setoff because the money in the account is:

- ____ Paid earnings (CCP 704.070)
- ____ Proceeds from execution sale of or insurance for loss of a motor vehicle (CCP 704.010)
- ____ Proceeds from execution sale of household furnishings or other personal effects (CCP 704.020)
- ____ Relocation benefits (CCP 704.180)
- ____ Life insurance proceeds (CCP 704.100)
- ____ Disability and health insurance benefits (CCP 704.130)
- ____ Workers' compensation benefits (CCP 704.160)
- ____ Unemployment or strike benefits (CCP 704.120)
- ____ Retirement benefits including, but not limited to, social security benefits (CCP 704.080, 704.110, 704.115)
- ____ Public assistance benefits including welfare payments and supplemental security income (SSI) or charitable aid (CCP 704.170)
- ____ Proceeds from sale of or insurance for damage or destruction of a dwelling (CCP 704.720, 704.960)
- ____ Proceeds from execution sale of or insurance for loss of tools of a trade (CCP 704.060)
- ____ Award of damages for personal injury (CCP 704.140) or wrongful death (CCP 704.150)
- ____ Financial aid paid by an institution of higher education to a student for expenses while attending school (CCP 704.190)

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ Signed: _____"

(Customer)

(d) If the response form described in subdivision (c) executed by the customer is received by the bank not later than 20 days after the date of mailing or personal delivery of the written notice, the amount of the setoff for any debt claimed to be owed to the bank by a customer, and any bank service charges resulting from the setoff, shall be reversed and such amount shall be credited to the deposit account not later than the end of the business day following receipt of such executed response form.

(e) The limitations provided in this section do not apply to a deposit account, other than a demand deposit account, in which the bank has a security interest expressed by a written contract as collateral for the debt owing to the bank by the customer.

(f) The limitations provided in this section do not apply when a customer previously has authorized a bank in writing to periodically debit a deposit account as the agreed method of payment of the debt.

(g) The limitations provided in this section shall apply only to the exercise by a bank a setoff with respect to debts claimed to be owing to it by customers on or after July 1, 1976.

(h) Nothing in this section shall prejudice a person's right to assert exemptions under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, or to assert a claim or defense as to the validity of the debt, in a judicial proceeding.

(Amended by Stats. 1983, Ch. 155, Sec. 24. Effective June 30, 1983. Operative July 1, 1983, by Sec. 32 of Ch. 155.)

Article 1.8. Disclosure of Delayed Availability Policy
(Article 1.8 added by Stats. 1983, Ch. 1011, Sec. 2.)

866. As used in this article:

(a) "Depository institution" means any of the following:

(1) Any insured bank as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.) or any bank which is eligible to make application to become an insured bank under Section 5 of the act.

(2) A mutual savings bank as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.) or any bank which is eligible to make application to become an insured bank under Section 5 of the act.

(3) A savings bank as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.) or any bank which is eligible to make application to become an insured bank under Section 5 of the act.

(4) An insured credit union as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1751 et seq.) or any credit union which is eligible to make application to become an insured credit union pursuant to Section 201 of that act.

(5) Any member as defined in Section 2 of the Federal Home Loan Bank Act (12 U. S.C. Sec. 1421 et seq.).

(6) Any insured institution as defined in Section 401 of the National Housing Act (12 U.S.C. Sec. 1701 et seq.) or any institution which is eligible to make application to become an insured institution under Section 403 of that act.

(b) "Deposit account" means an account in a depository institution on which the account holder is permitted to make withdrawals from time to time in person by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. The term includes demand deposits, negotiable order of withdrawal draft accounts, savings deposits subject to automatic transfers, share draft accounts, and all savings deposits and share accounts, other than time deposits.
(Added by Stats. 1983, Ch. 1011, Sec. 2.)

866.2. (a) Prior to opening a deposit account a depository institution shall provide a written disclosure to the potential customer of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account.

(b) A depository institution shall furnish its customers preprinted deposit slips, envelopes for automatic teller machine deposits, or other individual notice bearing a conspicuous summary statement of its general policy with respect to when a customer may withdraw funds deposited by check or similar instrument into the customer's deposit account; and, in the case of a particular deposit by check or similar instrument into a deposit account for which funds may not be immediately available for withdrawal, provide specific notice of the time the customer may withdraw such funds.
(Added by Stats. 1983, Ch. 1011, Sec. 2.)

866.3. For the purposes of computing the amount of interest or dividends payable with respect to an interest-bearing deposit account, a depository institution shall not delay beginning to compute interest on funds deposited by check or similar instrument to such an account beyond the date on which that depository institution receives provisional credit for the check or similar instrument. However, the payment of interest with respect to funds deposited by check or similar instrument which is returned unpaid shall not be required.
(Added by Stats. 1983, Ch. 1011, Sec. 2.)

866.4. Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed pursuant to this article shall be liable to the aggrieved party in an amount equal to the sum of any actual damage sustained by the person as a result of the failure; and, in the case of an individual action an additional amount as the court may allow, except that the amount shall not be less than fifty dollars ($50) or greater than five hundred dollars ($500); or, in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of five hundred thousand dollars ($500,000) or 1 percentum of the net worth of the depository institution; and, in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance, the resources of the depository institution, the number of persons adversely affected, and the extent to which the failure of compliance was intentional.

A depository institution may not be held liable in any action brought under this section for a violation of this article if the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this article shall not constitute a bona fide error.

Any action under this section may be brought in any court of competent jurisdiction, within one year from the date of the occurrence of the violation.

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Federal Reserve Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the board to issue interpretations or approvals under such procedures as the board may prescribe therefor, notwithstanding that after any act or omission has occurred, the rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(Added by Stats. 1983, Ch. 1011, Sec. 2.)

866.5. The commissioner shall issue administrative regulations to define a reasonable time for permitting customers to draw on items received for deposit in the customer's account. It is the public policy of this state to provide retail banking customers with the right to withdraw against items deposited with any depository institution located in this state within a reasonable period of time.

(Amended by Stats. 1996, Ch. 1064, Sec. 178. Effective January 1, 1997. Operative July 1, 1997.)

866.6. Pursuant to Section 866.5, the commissioner shall promulgate regulations which shall be reviewed annually to establish a reasonable period of time within which a depository institution must permit a customer to draw as a matter of right on an item which has been received for deposit in the customer's account.

In determining what constitutes a reasonable period of time the commissioner shall consider the following factors:

(a) The actual time for processing and transport between the depository and payer institutions.

(b) The fastest air transport time between depository and payer institutions to be used for purposes of setting the reasonable time for transport.

(c) The most expeditious route and means for processing of returned items.

(Amended by Stats. 1996, Ch. 1064, Sec. 179. Effective January 1, 1997. Operative July 1, 1997.)

866.7. The commissioner is authorized to gather from depository institutions such information as may be necessary for the formulation and promulgation of the regulations required by Section 866.5.

(Amended by Stats. 1996, Ch. 1064, Sec. 180. Effective January 1, 1997. Operative July 1, 1997.)

866.8. The first regulations issued pursuant to this article shall be issued on or before July 1, 1984.

(Added by Stats. 1983, Ch. 1011, Sec. 2.)

866.9. The commissioner is authorized to issue regulations which provide for a different period of time for withdrawal as a matter of right against deposited items, if there has been a determination that the application of the regulations adopted pursuant to this article would result in unsafe or unsound practices by a depository institution subject to the regulatory jurisdiction of the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 181. Effective January 1, 1997. Operative July 1, 1997.)

867. (a) Funds deposited in an account at a depository institution shall be available on the second business day after the business day on which those funds are deposited in the case of a cashier's check, certified check, teller's check, or depository check subject to the following:

(1) The check is endorsed only by the person to whom it was issued.

(2) The check is deposited in a receiving depository institution that is staffed by individuals employed by that institution.

(3) The check is deposited with a special deposit slip that indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be.

(4) The check is deposited into an account in the name of a customer that has maintained any account with the receiving depository institution for a period of 60 days or more.

(5) The face amount of the check is for five thousand dollars ($5,000) or less.

In the case of funds deposited on any business day in an account at a depository institution by depository checks, the aggregate amount of which exceeds five thousand dollars ($5,000), this subdivision shall apply only with respect to the first five thousand dollars ($5,000) of the aggregate amount.

(b) Subdivision (a) does not apply to a depository check if the receiving depository institution reasonably believes that the check is uncollectible from the originating depository institution. For purposes of this subdivision, "reasonable cause

to believe" requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. These reasons shall include, but not be limited to, a belief that (1) the drawer or drawee of the depository check has been, or will imminently be, adjudicated a bankrupt or placed in receivership or (2) the depository check may be involved in a fraud or in a scheme commonly known as "kiting." In these situations, the depository institution electing to proceed under this subdivision shall so notify the drawer and drawee no later than the close of the next business day following deposit of the depository check.

(c) For purposes of this section, the following terms have the following meanings:

(1) "Account" means any demand deposit account and any other similar transaction account at a depository institution.

(2) "Business day" means any day other than a Saturday, Sunday, or legal holiday.

(3) "Cashier's check" means any check that is subject to the following:

(A) The check is drawn on a depository institution.

(B) The check is signed by an officer or employee of the depository institution.

(C) The check is a direct obligation of the depository institution.

(4) "Certified check" means any check with respect to which a depository institution certifies the following:

(A) That the signature on the check is genuine.

(B) The depository institution has set aside funds that are equal to the amount of the check and will be used only to pay that check.

(5) "Depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument, as determined by the Board of Governors of the Federal Reserve System or the commissioner.

(6) "Depository institution" has the meaning given in clauses (i) to (vi), inclusive, of Section 19(b)(1)(A) of the Federal Reserve Act.

(7) "Teller's check" means any check issued by a depository institution and drawn on another depository institution.

(d) Except for the specific circumstances and checks described in this section, this section is not intended to restrict or preempt the regulatory authority of the commissioner.

(e) In the event of a suspension or modification of any similar provisions in the federal Expedited Funds Availability Act, the effect of this section shall be similarly suspended or modified.

(Amended by Stats. 2004, Ch. 183, Sec. 102. Effective January 1, 2005.)

Article 2. Dormant Accounts

(Article 2 enacted by Stats. 1951, Ch. 364.)

874. Any bank which delivers or has heretofore delivered to the State Treasurer pursuant to law any unclaimed or abandoned deposit shall not thereafter be liable to any person for the same and any action which may be brought by any person against a bank for money so delivered to the State Treasurer shall be defended by the Attorney General without cost to the bank.

(Amended by Stats. 1961, Ch. 8.)

CHAPTER 8. WITHDRAWALS AND COLLECTIONS

(Chapter 8 enacted by Stats. 1951, Ch. 364.)

Article 1. General

(Article 1 enacted by Stats. 1951, Ch. 364.)

952. Notice to any bank of an adverse claim (the person making the adverse claim being hereinafter called "adverse claimant") to a deposit standing on its books to the credit of or to personal property held for the account of any person shall be disregarded, and the bank, notwithstanding the notice, shall honor the checks, notes, or other instruments requiring payment of money by or for the account of the person to whose credit the account stands and on demand shall deliver that property to, or on the order of, the person for whose account the property is held, without any liability on the part of the bank; subject, however, to the exceptions provided in subdivisions (a) and (b):

(a) If an adverse claimant delivers to the bank at the office at which the deposit is carried or at which the property is held an affidavit of the adverse claimant stating that of the adverse claimant's own knowledge the person to whose credit the deposit stands or for whose account the property is held is a fiduciary for the adverse claimant and that the adverse claimant has reason to believe the fiduciary is about to misappropriate the deposit or the property, and stating the facts on which the claim of fiduciary relationship and the belief are founded, the bank shall refuse payment of the deposit and shall refuse to deliver the property for a period of not more than three court days (including the day of delivery) from the date that the bank received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the bank at the office at which the deposit is carried or at which the property is held a restraining order, injunction, or other appropriate order against the bank from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the deposit stands or for whose account the property is held are parties, the bank shall comply with the order or injunction, without liability on its part.

(c) This section shall be applicable even though the name of the person appearing on the bank's books to whose credit the deposit stands or for whose account the property is held is modified by a qualifying or descriptive term such as "agent", "trustee", or other word or phrase indicating that the person may not be the owner in his or her own right of the deposit or property.

(d) Nothing in the California Multiple-Party Accounts Law contained in Part 2 (commencing with Section 5100) of Division 5 of the Probate Code limits the applicability of this section.

(Amended by Stats. 1990, Ch. 79, Sec. 4. Operative July 1, 1991, pursuant to Stats. 1990, Ch. 710, Sec. 46.)

953. When the depositor of a commercial or savings account has authorized any person to make withdrawals from the account, the bank, in the absence of written notice otherwise, may assume that any check, receipt, or order of withdrawal drawn by such person in the authorized form or manner, including checks drawn to his personal order and withdrawal orders payable to him personally, was drawn for a purpose authorized by the depositor and within the scope of the authority conferred upon such person.

(Enacted by Stats. 1951, Ch. 364.)

954. A bank need not recognize or give any effect to (1) any claim to a deposit of cash or securities standing on its books to the credit of, or held by it for the account of, any corporation, firm or association in occupied territory or (2) any advice, statute, rule or regulation purporting to cancel or to give notice of the cancellation of the authority of any person at the time appearing on the books of such bank as authorized to withdraw or otherwise dispose of cash or securities of such corporation, firm or association, unless such bank is required so to do by appropriate process procured against it in a court of competent jurisdiction in the United States in a cause therein instituted by or in the name of such corporation, firm or association, or unless the person making such claim or giving such advice or invoking such statute, rule or regulation, as the case may be, shall execute to such bank, in form and with sureties acceptable to it, a bond indemnifying it from any and all liability, loss, damage, costs and expenses for and on account of recognizing or giving any effect to such claim, advice, statute, rule or regulation.

For the purposes of this section (1) the term "occupied territory" shall mean territory occupied by a dominant authority asserting governmental, military or police powers of any kind in such territory, but not recognized by the United States as the de jure government of such territory, and (2) the term "corporation, firm or association in occupied territory" shall mean a corporation, firm or association which has, or at any time has had, a place of business in territory which has at any time been occupied territory.

The provisions of this section shall be effective only in cases where (1) such claim or advice purports or appears to have been sent from or is reasonably believed to have been sent pursuant to orders originating in, such occupied territory during the period of occupation, or (2) such statute, rule or regulation appears to have emanated from such dominant authority and purports to be or to have been in force in such occupied territory during the period of occupation.

This section applies to claims, advices, statutes, rules or regulations given or invoked either before or after the effective date of this section.

(Enacted by Stats. 1951, Ch. 534.)

Article 2. Certified Checks

(Article 2 enacted by Stats. 1951, Ch. 364.)

970. Whenever a bank certifies a check, the amount thereof shall be immediately charged against the account of the drawer.

(Enacted by Stats. 1951, Ch. 364.)

971. It shall be unlawful for any officer or employee of a bank to certify any check drawn upon such bank, unless the drawer has on deposit with the bank, at the time such check is certified, an amount to his credit on the books of the bank not less than the amount specified therein.

Any bank officer or employee who wilfully violates the provisions of this section or who resorts to any device or receives any fictitious obligations directly or indirectly in order to evade the provisions of this section is guilty of a felony.

(Enacted by Stats. 1951, Ch. 364.)

CHAPTER 9. LEGAL INVESTMENTS FOR SAVINGS BANKS

(Chapter 9 added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1000. As used in this chapter, unless the context requires otherwise, the following terms have the following meanings:

(a) "Net direct debt" of any public corporation means all indebtedness of every kind after deducting from the indebtedness sinking funds available for the payment thereof, any indebtedness evidenced by tax anticipation notes for the payment of which nondelinquent taxes are pledged, obligations payable only from special assessments, revenue obligations payable only from special revenues pledged for their payment, and such proportion of any indebtedness issued for revenue producing works, properties, or utilities that have been in operation for at least one year as the amount of the annual net revenue therefrom bears to the amount of the annual debt service requirements of those bonds.

(b) "Net overlapping debt" of any public corporation means the proportion of the net direct debt as above defined of any other public corporation (herein called overlapping corporation) that lies wholly or partially within the boundaries of the public corporation as the assessed valuation of the taxable property of the overlapping public corporation lying within the boundaries of the public corporation as shown by the last official equalized county assessment roll bears to the assessed valuation of all taxable property of the overlapping public corporation as shown by the last official equalized county assessment roll.

(c) "Funded debt," as used in this chapter, means all interest-bearing indebtedness of a corporation not maturing within one year of the date the indebtedness was incurred.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1001. Any securities or other assets that are described in Sections 1003 to 1018, inclusive, are legal investments for savings banks.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1002. Where any laws of this state provide that the moneys of any pension fund, retirement plan, trust fund, or the moneys of any special fund the investment of which is governed by law, or the funds of any political subdivision or public corporation may or shall be invested in securities which are a legal investment for savings banks, that law shall be deemed to authorize or require, as the case may be, that those moneys be invested in securities in which savings banks were authorized to invest their funds by the provisions of the Bank Act as it read prior to January 1, 1949, other than paragraph (f) of subdivision 5 of Section 61 of that act, or in bonds, debentures, and notes legal for investments for savings banks in the State of New York or the State of Massachusetts as of the time the investment is made or in securities in which commercial banks are authorized to invest their funds by the provisions of Sections 1003 to 1018, inclusive.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1003. Gold and silver bullion and United States mint certificates of ascertained value.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1004. Stock of a federal reserve bank or of a federal home loan bank to the extent authorized by Section 754.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1005. Bonds or other interest-bearing notes and obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1006. Bonds of the State of California and those for which the faith and credit of the State of California are pledged for the payment of principal and interest and in registered warrants of the State of California.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1007. Bonds of any flood control and water conservation districts, or any zone thereof, having an assessed valuation on taxable real property of not less than one million dollars ($1,000,000), county, city and county, city, metropolitan water district, municipal utility district, special districts established by and within any municipal utility district, transit district, rapid transit district including sales tax revenue bonds of the district, metropolitan transit authority, flood control district, or school district of the State of California (herein referred to generally as public corporation) except the bonds of any particular such public corporation which may be declared ineligible for investment by savings banks by regulations of the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 182.1. Effective January 1, 1997. Operative July 1, 1997.)

1008. Bonds of any other political subdivision, public corporation, or district of the State of California (herein referred to generally as public corporations) having the power, without limit as to rate or amount; to levy taxes to pay the

principal and interest of the bonds upon all property within its boundaries subject to taxation by such public corporation, provided the net direct debt of such public corporation together with its net overlapping debt does not exceed 25 percent of the assessed valuation of the taxable property within its boundaries according to the last official equalized county assessment roll.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1009. (a) Any of the following subject to the conditions set forth in subdivision (b) to (d), inclusive.

(1) Bonds or other evidences of indebtedness of, or which are unconditionally guaranteed by the Dominion of Canada, the State of Israel, the United States of Mexico, the Commonwealth of Puerto Rico, or any state of the United States other than California, for the payment of both principal and interest of which in United States dollars, the faith and credit of the entity is pledged.

(2) Limited obligations of any state of the United States, other than California, or the Commonwealth of Puerto Rico, payable only from special taxes that are pledged to the payment of principal and interest of the limited obligations.

(3) Bonds or other evidences of indebtedness of any city, county, political subdivision, public corporation, or district (herein referred to generally as public corporations) of any state of the United States, other than California, or of the Dominion of Canada, or of the State of Israel, or of the United States of Mexico or of the Commonwealth of Puerto Rico, having the power without limit as to rate or amount to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the public corporation.

(b) In the case of bonds constituting general obligations of any such state, commonwealth, dominion, or country, such state, commonwealth, dominion, or country has not within 10 years prior to the investment defaulted for a period of more than 90 days in the payment of any part of either principal or interest of any of its debts.

(c) In the case of limited obligations of any state, or commonwealth, all of the following conditions are met:

(1) The state or commonwealth has not, within 10 years prior to the date of the investment, defaulted for a period of more than 90 days in the payment of either principal or interest of any of its debts.

(2) The special taxes pledged for the payment of the limited obligations shall have been collected for five years and shall have averaged at least one and one-half times the debt service requirements, including those for principal, interest, and sinking fund, on all special obligations existing at the time.

(3) The special taxes for each of the five fiscal years shall have equaled at least the amount of all the debt service requirements on the special obligations.

(d) In the case of bonds or other evidences of indebtedness of any public corporation of any state other than California, or of any commonwealth, all of the following conditions are met:

(1) The public corporation has had a corporate existence or been otherwise established and functioning for at least 10 years prior to the time of the investment.

(2) The public corporation has a population of at least 50,000 inhabitants according to the last federal or state census.

(3) The public corporation for a period of at least 10 years prior to the investment has not defaulted in the payment of any part of the principal or interest of any of its debts for a period of more than 90 days.

(4) The net direct debt together with the net overlapping debt of the public corporation does not exceed 10 percent of the assessed valuation of the property subject to taxation by the public corporation according to the last official equalized assessment roll or list upon the basis of which taxes for debt service are based.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1010. Bonds of any irrigation district, water storage district, water conservation district, county water district, reclamation district, drainage district, and any district the primary function of which is the irrigation, reclamation or drainage of land within its boundaries, located in California, other than bonds referred to in Section 1007, provided either of the following conditions are met:

(a) The bonds qualify under Section 1008.

(b) The bonds have been certified as legal securities for savings banks pursuant to Chapter 1 (commencing with Section 20000) of Division 10 of the Water Code and the certification remains unrevoked and the total outstanding bonded indebtedness of the district including bonds authorized but not issued, but excluding bonds payable solely from revenues and not directly or indirectly from assessments, does not exceed 50 percent of the aggregate of the assessed value of the lands, exclusive of improvements, subject to assessment by the district, and the value of the property owned by the district or to be acquired or constructed with the proceeds of the bonds under consideration.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1011. (a) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, and the Farm Credit Act of 1971.

(b) Debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, and the Farm Credit Act of 1971.

(c) Bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act.

(d) Bonds of any federal home loan bank established under the Federal Home Loan Bank Act.

(e) Stocks, bonds, debentures, participations and other obligations of or issued by the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1012. Bonds, notes or other obligations issued by the Federal Financing Bank, the United States Postal Service, or issued or assumed by the International Bank for Reconstruction and Development, the Tennessee Valley Authority, the Inter-American Development Bank, the Government Development Bank for Puerto Rico, the Asian Development Bank, the International Finance Corporation, or the African Development Bank.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1013. (a) Notes with a maturity not exceeding 15 months after the date of issue, issued in anticipation of uncollected taxes, income, revenue, cash receipts, and other moneys of the State of California or any city, county, city and county, or school district thereof; provided the notes and warrants and the interest thereon shall be a first lien and charge against, and shall be payable from, the first moneys received by the local agency from such pledged moneys; provided the total amount of the notes issued at any one time or during any specified period does not exceed 85 percent of the receipts or revenues.

(b) Grant anticipation notes issued by the agencies and payable not later than 36 months after the date of issue, provided that the total amount of the notes and interest payable thereon issued at any one time or during any specified period does not exceed 80 percent of the grant funds stated in writing by the granting authority as committed or appropriated, and shall be paid on a specified date or dates within a 36-month period from the dating of the notes.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1014. Revenue securities of any state of the United States, or of the Commonwealth of Puerto Rico, and of any city, county, city and county, political subdivision, public corporation, or district (herein referred to generally as public corporations) of any state or commonwealth and of any department, board, agency, or authority of any state or commonwealth or of any public corporation, if the following conditions are met:

(a) The revenue securities constitute obligations payable out of the revenues from a revenue-producing property owned, controlled, or operated by a state, commonwealth, public corporation, or by a department, board, agency, or authority thereof and are secured by the revenues.

(b) Either of the following paragraphs apply:

(1) (A) The net income from the property available for the payment of the securities for the five fiscal years next preceding any such investment, shall have averaged at least one and one-tenth times all debt service requirements for principal, interest, and sinking fund of all revenue securities payable only out of the revenues from that property during each of those fiscal years, and for each of the five fiscal years shall have equaled at least all debt service requirements for principal, interest, and sinking fund of the securities, and for the last fiscal year shall have amounted to at least the maximum annual debt service requirement for any fiscal year thereafter on all such securities that were outstanding during such last fiscal year and which will be outstanding in any fiscal year thereafter.

(B) The gross income from the property, the net income from which is pledged for the payment of the securities, in the last fiscal year prior to the investment was not less than one million dollars ($1,000,000) if located in California, and was not less than five million dollars ($5,000,000) if located elsewhere.

(C) The issuer is obligated to maintain rates at least sufficient to meet debt service requirements and such obligation is legally enforceable.

(2) (A) The issuer of the securities is entitled to receive under a legally enforceable contract with a corporation any of the securities of which are a legal investment for savings banks under this chapter annual payments averaging not less than nine hundred thousand dollars ($900,000) a year commencing with the completion of a project or projects as fixed in the construction contract therefor and continuing during the maximum term for which said revenue securities are to mature.

(B) The issuer of the securities is obligated to maintain rates to produce revenue, or will receive contract payments, either or both of which will be sufficient to meet debt service requirements and such obligation or contract is legally enforceable.

(c) The public corporation or any department, board, agency, or authority thereof which issues the securities, if existing elsewhere than in California, has not within 10 years prior to such investment defaulted for a period of more than 90 days in the payment of principal or interest on any of its debts.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1015. Bonds of any local public housing agency (as defined in the United States Housing Act of 1937, as amended) that are secured by either of the following:

(a) An agreement between the public housing agency and the Public Housing Administration in which the public housing agency agrees to borrow from the Public Housing Administration, and the Public Housing Administration agrees to lend to the public housing agency, prior to the maturity of the obligations (which obligations shall have a maturity of not more than 18 months), moneys in an amount that (together with any other moneys irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of the obligations with interest to maturity thereon, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity.

(b) A pledge of annual contributions under an annual contributions contract between such public housing agency and the Public Housing Administration if the contract shall contain the covenant by the Public Housing Administration that is authorized by subsection (b) of Section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to that subsection 22(b) shall not be less than the annual amount and the period for payment that are requisite to provide for the payment when due of all installments of principal and interest on the obligations.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1015.5. Bonds secured by an insurance commitment of the Federal Housing Administration.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1016. Evidences of indebtedness of companies incorporated in the United States and, directly or indirectly, engaged in manufacturing, extraction, merchandising, or commercial financing and in bonds of authorities established pursuant to the California Industrial Development Financing Act (Title 10 (commencing with Section 91500) of the Government Code), to which these companies are obligated with respect to payment subject to the following conditions:

(a) Any unsecured evidences of indebtedness shall be issued by a company substantially all of whose property is free of mortgage and shall carry a covenant by the obligor that they will be secured equally with any mortgage bond, except a purchase money mortgage, which may be later issued.

(b) The company is of a size as to attract at least statewide interest in its publicly held securities and its gross income shall have averaged not less than ten million dollars ($10,000,000) and its net income shall have averaged not less than one million dollars ($1,000,000) for the five fiscal years preceding the investment and its gross income was not less than ten million dollars ($10,000,000) and its net income not less than one million dollars ($1,000,000) for at least three of these five fiscal years.

(c) Working capital, as measured by consolidated current assets less consolidated current liabilities as shown in the latest published balance sheet, shall exceed 150 percent of the total of consolidated debt due in longer than one year and "minority interest." For that purpose, "minority interest" means any outstanding interest in a subsidiary having a prior claim on the earnings of the subsidiary. However, the foregoing ratio requirement shall not apply in the case of evidences of indebtedness of any corporation whose consolidated gross assets less any valuation reserves exceed five hundred million dollars ($500,000,000) and whose consolidated current assets exceed consolidated current liabilities by at least one hundred million dollars ($100,000,000) as shown by the latest published balance sheet. When new financing is involved, the changes in gross assets, capital structure and working capital shall be considered and reliance may be placed on the representations made in the official prospectus prepared under the rules of the Securities and Exchange Commission as to the application of the proceeds of the financing.

(d) The total consolidated debt of the company including current liabilities and "minority interest," as shown on the latest published balance sheet, does not exceed 33 1/3 percent of its gross assets less valuation reserves.

(e) The consolidated annual net income for the five fiscal years next preceding the investment, before deduction of state and federal taxes imposed on or measured by income or profits but after deducting all charges, including reserves, regularly recurring charges for amortization of discount, and expense allocable to funded debt (1) shall have

averaged not less than six times the annual consolidated interest charges existing at the time the investment is made; (2) in at least three of the five fiscal years shall have been at least four times the annual consolidated interest charges for the same year; and

(3) for the fiscal year next preceding the investment shall have been not less than six times the consolidated interest charges for that year and not less than six times the annual consolidated charges on the funded debt outstanding at the time of the investment.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1017. Fixed interest railroad bonds meeting the requirements of subdivisions (a) and (b); bonds secured by a mortgage on jointly operated railroad facilities meeting the requirements of subdivision (c); and railroad equipment trust certificates meeting the requirements of subdivision (d).

(a) The railroad bonds are issued by or are assumed, guaranteed, or provision made unconditionally for the payment of principal and interest on specified dates, by a solvent railroad company that meets all of the following conditions:

(1) Operates at least 500 miles of standard gauge road within the continental United States and which has had average annual operating revenues of at least ten million dollars ($10,000,000) during the five years next preceding the investment.

(2) Has an average annual balance of income available for fixed charges for the last 15 years for which the necessary statistical data are available, when divided by an amount equal to its fixed charges for the last fiscal year, shall produce a quotient which is at least 15 percent higher than the quotient obtained by dividing the average annual balance of income available for fixed charges of all class 1 railroads for the same one 5-year period by an amount equal to the fixed charges of all class 1 railroads for the last year in the period.

(3) Has an average "balance of net income" (computed by deducting the sum of its fixed charges and contingent interest charges for the latest fiscal year from the average annual balance available for fixed charges for the latest 15 years for which the necessary statistical data are available) when divided by its average annual railroad operating income for the same 15-year period, shall produce a quotient at least 15 percent greater than the quotient obtained by dividing the average balance of income of all class 1 railroads, computed in the same manner, by the average annual railway operating income of all class 1 railroads for the same 15-year period.

(4) Has an average balance of income available for fixed charges for the last three fiscal years preceding the investment that has not been less than one and one-half times its fixed charges for the last fiscal year.

(b) The railroad bonds are secured by any of the following:

(1) A mortgage, either direct or collateral, which shall be a first mortgage on not less than 75 percent of the mileage subject to the mortgage.

(2) A first mortgage on terminal properties comprising the company's principal freight or passenger terminal in a city of not less than 250,000 population according to the latest federal or state census.

(3) A refunding mortgage on not less than 75 percent of the railroad mileage owned or operated by the issuing company under which bonds may be issued for retirement or refunding of all debts secured by prior liens on all or any part of the property (other than liens on equipment) subject to the mortgage; provided, that the amount of debt senior to the refunding mortgage is not more than 50 percent of the sum of all senior debt and the refunding mortgage, or that underlying mortgage bonds in an amount equal to at least 50 percent of the debt outstanding under the refunding mortgage are pledged as security under the refunding mortgage.

(4) A first mortgage on railroad property leased to and operated by the company where the lease extends beyond the maturity date of the bonds and the company has guaranteed, assumed, or committed itself under the terms of the lease to pay principal and interest on the bonds.

(c) Bonds secured by a mortgage on jointly operated railroad facilities must be secured by a first mortgage on a terminal, depot, tunnel, or bridge used by or leased to two or more railroads which have jointly and severally agreed unconditionally to pay the interest and principal of the bonds or have unconditionally guaranteed or assumed such payment, one of which railroads must meet the requirements set forth in subdivision (a).

(d) Railroad equipment trust certificates must be issued by a solvent class 1 railroad whose average balance of income available for fixed charges for the last three fiscal years preceding the investment shall be not less than one and one-half times its fixed charges for the last fiscal year. The certificates must be issued to provide funds for the construction or acquisition of new standard gauge railroad equipment made with the approval of the Interstate Commerce Commission and be secured by equipment trust, lease, conditional sales contract, or first lien on such equipment. The aggregate principal amount of such obligations shall not exceed 80 percent of the purchase price of the equipment and the certificates shall mature within 15 years from date of issuance in equal annual, semiannual, or monthly installments, beginning not later than one year after the date of issuance.

(e) As used in this section, the terms "balance of income available for fixed charges," "fixed charges," "contingent interest," and "railway operating income" shall have the same meaning as in the accounting reports filed by common carriers by rail pursuant to regulations of the Interstate Commerce Commission except that "balance of income available for payment of fixed charges" shall be computed before deduction of federal income or excess profits taxes, and "fixed charges" and "contingent interest" of the railroad shall be such charges existing as of the time the computation is made excluding charges with respect to debt which has been retired or will be retired within six months and for the payment of which funds have been or are contemporaneously being set aside in trust but including charges with respect to new debt issued or in the process of being issued.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

1018. Bonds and debentures of gas, electric, or gas and electric companies meeting the requirements of subdivision (a); bonds and debentures of telephone companies meeting the requirements of subdivision (b); and bonds and debentures of water companies meeting the requirements of subdivision (c).

(a) Bonds or debentures of a gas, electric, or gas and electric company shall be of an issue that originally amounted to not less than one million dollars ($1,000,000) and, if bonds, be secured by a mortgage on substantially all of its physical property, and, if debentures, shall be issued by a company substantially all of whose physical property is free of mortgage and must carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a public utility corporation that meets all of the following conditions:

(1) Derives more than 50 percent of its gross operating revenue from the business of supplying electricity, artificial gas, or natural gas or all or any of them, and at least 80 percent of its gross operating revenue from all or any of the public utility businesses enumerated in this section.

(2) Shall have had a gross operating revenue of not less than seven million five hundred thousand dollars ($7,500,000) for its most recent fiscal year.

(3) Has a funded debt not exceeding two-thirds of the value of its physical property as shown by the books of the corporation or by a statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves for depreciation, retirement, or amortization of that physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(4) Shall have had earnings including earnings of subsidiaries mentioned in paragraph (3), available for interest payments, before deduction of state and federal taxes imposed on or measured by income or profits, during four of the five most recent fiscal years and during the most recent fiscal year equal to at least twice the existing annual interest charges on the corporation's total funded debt during those respective fiscal years.

(b) Bonds or debentures of telephone companies shall be of an issue originally amounting to at least one million dollars ($1,000,000) and, if bonds, be secured by a mortgage on substantially all of the physical property of the company, and if debentures shall be issued by a company substantially all of whose physical property is free of mortgage and shall carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a company that meets all of the following conditions:

(1) During its last fiscal year had gross revenues of at least seven million five hundred thousand dollars ($7,500,000), more than 50 percent of which was derived from owned properties used in furnishing telephone and other communication services and at least 80 percent of its gross revenues from all or any of the public utility businesses enumerated in this section.

(2) Whose funded debt does not exceed two-thirds of the value of its physical property as shown by the books of the corporation or by a statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves shown on the statement for depreciation, retirement or amortization of such physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) Which for four of the five most recent fiscal years and for the last fiscal year had earnings including earnings of subsidiaries mentioned in paragraph (2) available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, at least equal to twice the interest charges on the company's total funded debt during such respective fiscal years.

(c) Water company bonds or debentures shall be of an issue originally amounting to at least one million dollars ($1,000,000) and if bonds, be secured by a first mortgage on the company's property, and if debentures, shall be issued by a company substantially all of whose property is free of mortgage and shall carry a covenant to be secured equally

with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a company that meets all of the following conditions:

(1) Is the supplier of substantially all water for domestic use in a community or communities having a population of not less than 25,000.

(2) Whose funded debt does not exceed two-thirds of the value of its physical property as shown by the published statement of the company for its next preceding fiscal period, less the amount of any reserves shown for depreciation, retirement or amortization of such physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) Which for four out of the five most recent fiscal years and for the most recent fiscal year shall have had earnings including those of subsidiaries mentioned in paragraph (2) available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, of at least one and one-half times the interest charges on the company's total funded debt during the respective fiscal years.

(Added by Stats. 1996, Ch. 1063, Sec. 28. Effective January 1, 1997.)

CHAPTER 10. COMMERCIAL BANKS

(Chapter 10 enacted by Stats. 1951, Ch. 364.)

Article 1. General

(Article 1 enacted by Stats. 1951, Ch. 364.)

1200. A commercial bank shall not rediscount, borrow money, or hypothecate its assets as security for money borrowed except to the extent and upon the conditions set forth in this division.
(Enacted by Stats. 1951, Ch. 364.)

1201. Assets hypothecated by a commercial bank as security for moneys borrowed shall not exceed in value the amount borrowed by more than 50 percent except with the prior written consent of the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 183. Effective January 1, 1997. Operative July 1, 1997.)

1202. A commercial bank may borrow money by discounting or otherwise, and may borrow money secured by real property owned by the bank, to an amount not in excess of its shareholders' equity, but shall not borrow money except as provided in Sections 1204 and 1205 in excess of such amount without the prior written approval of the commissioner.

The amounts of moneys so borrowed by a commercial bank together with the amount of any of its deposits secured by surety bonds shall not at any one time exceed the amount of its shareholders' equity without the prior written approval of the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 184. Effective January 1, 1997. Operative July 1, 1997.)

1203. A commercial bank may hypothecate its assets in any manner provided by law to secure the deposits of moneys of the United States, of postal savings funds, of bankrupt estates, of the State of California, or of any political subdivision, public corporation, or district of the State of California. With the prior approval of the commissioner a bank may hypothecate its assets to secure moneys payable to other states.
(Amended by Stats. 1996, Ch. 1064, Sec. 185. Effective January 1, 1997. Operative July 1, 1997.)

1204. A commercial bank may borrow for the purpose of buying from the United States, United States bonds, United States Treasury certificates, or notes or other obligations of the United States.
(Enacted by Stats. 1951, Ch. 364.)

1205. A commercial bank may rediscount with, borrow money from, or hypothecate its assets as security for money borrowed from a Federal Reserve bank, the Federal Deposit Insurance Corporation, or the Federal Home Loan Bank.
(Amended by Stats. 1991, Ch. 180, Sec. 4.)

1206. A commercial bank may issue negotiable certificates of deposit transferable by endorsement and delivery and nonnegotiable certificates transferable only on the books of the bank.
(Amended by Stats. 1973, Ch. 744.)

1208. A commercial bank located in a place the population of which does not exceed 5,000 persons according to the most recent official federal or state census may act as agent for any fire, life, or other insurance company authorized to do business in California by soliciting and selling insurance and collecting premiums and may receive for such services such fees and commissions as may be agreed upon with the insurance company if the bank is engaged in such business on October 1, 1949, and is duly licensed under the Insurance Code, and may act also as the broker or agent for others in making or procuring loans on real property located within 100 miles of the place in which the bank is located and may receive for such services a fee or a commission if it is engaged in such business on October 1, 1949, and is duly licensed. In engaging in either of such businesses the bank shall comply with all rules and regulations of the commissioner relating thereto and shall not guarantee either the principal or interest of any loan procured by it as broker or agent or assume or guarantee the payment of any premium on insurance policies written through it as agent or broker or guarantee the truth of any statement made by an insured in filing an application for insurance.
(Amended by Stats. 1996, Ch. 1064, Sec. 186. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Loan Limits

(Article 2 enacted by Stats. 1951, Ch. 364.)

1220. For the purpose of this article:

(a) "Obligations" means the total sums for the payment of which a person is obligated, primarily or secondarily, to a commercial bank.

(b) Obligations of a person include obligations of others to a commercial bank arising out of loans made by the bank for the benefit of the person.

(c) Obligations of an individual include the obligations of a partnership or association for which obligations the individual is liable.

(d) Obligations of a partnership include the obligations of its members who are liable for its obligations.

(e) Obligations of a corporation include the obligations of all subsidiaries in which it owns or controls a majority interest, except to the extent and under such restrictions as the commissioner may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

(f) Obligations of a sovereign government or agency include the obligations of instrumentalities or political subdivisions of the government or agency, except to the extent and under such restrictions as the commissioner may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

(g) Obligations of a limited liability company include the obligations of all subsidiaries in which it owns or controls a majority interest, except to the extent and under any restrictions the commissioner may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

(Amended by Stats. 1996, Ch. 1064, Sec. 187. Effective January 1, 1997. Operative July 1, 1997.)

1221. The obligations, as defined in Section 1220, excepting the obligations described in Section 1226 and the obligations described in Section 1224, of any one person owing to a commercial bank at any one time shall not exceed the following limitations:

(a) Obligations which are unsecured shall not exceed 15 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the bank.

(b) Obligations, secured and unsecured, in all shall not exceed 25 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the bank.

Obligations arising out of the discount of commercial or business paper actually owned by the person negotiating the same and endorsed by such person without limitation, together with the secured and unsecured obligations, if any, of such person, shall not exceed 40 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the bank.

No commercial bank shall be required, solely by reason of the amendments of this article, to dispose of or reduce any loan which complied with the applicable limitations of this division at the time such loan was made, nor shall any such bank be prevented solely by reason of the provisions of this article from renewing any such loan from time to time.

(Amended by Stats. 1983, Ch. 852, Sec. 3.)

1223. An obligation shall not be deemed secured by personal property or collateral unless the personal property or collateral held as security is of a kind which has not been declared ineligible by the commissioner and unless it has a market value at least 15 percent greater than the amount of the obligations secured thereby or, if the security is a bank deposit, it shall have a face value at least equal to the amount of the obligations secured thereby. The commissioner may by general regulation declare any particular kinds or classes of personal property ineligible as security. An obligation shall not be deemed secured by real property unless the obligation and the lien securing the same conform to the provisions of Section 1227, 1228, 1236, 1238, or 1239 or the first sentence of Section 1235. Secured and unsecured loans shall be represented by separate notes and shall not be combined in any way within one note or notes.

(Amended by Stats. 1996, Ch. 1064, Sec. 188. Effective January 1, 1997. Operative July 1, 1997.)

1224. (a) In addition to the limitations contained in Section 1221 a commercial bank may issue letters of credit and a commercial bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. A commercial bank shall not accept such drafts or bills in the aggregate to an amount exceeding 150 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures or, when authorized by the commissioner, to an amount exceeding 200 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures. A commercial bank shall not accept such drafts or bills for any one person to an amount exceeding 10 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures, unless the bank is and remains secured by either attached documents or some other actual security growing out of the same transaction as the acceptance.

(b) With respect to a bank which issues an acceptance, the limitations contained in this section shall not apply to that portion of an acceptance which is issued by such bank and which is covered by a participation agreement sold to another institution.

(Amended by Stats. 1996, Ch. 1064, Sec. 189. Effective January 1, 1997. Operative July 1, 1997.)

1225. With the approval of the commissioner a commercial bank may accept drafts or bills of exchange drawn upon it having not more than three months' sight to run, exclusive of days of grace, drawn by banks or bankers in foreign countries for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries; provided, no commercial bank shall accept such drafts or bills of exchange for any one bank to any amount exceeding 10 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or unless the bank is secured by some other adequate security. A commercial bank shall not accept such drafts or bills, whether secured or unsecured, in the aggregate to an amount exceeding 50 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures.

(Amended by Stats. 1996, Ch. 1064, Sec. 190. Effective January 1, 1997. Operative July 1, 1997.)

1226. The limitations of Section 1221 shall not apply to the following and the following shall not be included among the obligations of a person for the purpose of applying these limitations:

(a) Loans secured by obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States, having a market value at least 10 percent in excess of the loans secured thereby.

(b) Loans in an amount and of a type or class previously approved in writing by the commissioner that are secured by not less than a like amount of obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States.

(c) Loans to the extent that they are covered by guarantees or by commitments to take over or to purchase without recourse made by (1) any Federal Reserve bank, (2) the United States, (3) any department, bureau, board, commission, agency, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States, or (4) any small business development corporation, urban development corporation, or rural development corporation incorporated pursuant to the California Job Creation Law (Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code).

(d) Drafts or bills of exchange drawn in good faith against actual existing values with negotiable bills of lading attached, whether or not accepted by the drawee.

(e) Bankers' acceptances of other banks which are eligible for rediscount with a Federal Reserve bank.

(f) Obligations resulting from daily clearances through any clearinghouse association.

(g) Obligations that are fully guaranteed or fully insured or covered by a commitment to fully guarantee or fully insure by the Federal Housing Administrator.

(h) Obligations described in Section 1336.

(i) Obligations, including portions thereof, to the extent secured by a segregated deposit account in the lending bank, provided a security interest in the deposit has been perfected under applicable law, and subject to all of the following conditions:

(1) Where the deposit is eligible for withdrawal before the secured obligation matures, the lending bank shall establish internal procedures to prevent release of the security without the lending bank's prior consent.

(2) A deposit that is denominated and payable in a currency other than that of the obligation that it secures may be eligible for this exception if the currency is freely convertible to United States dollars.

(A) This exception applies only to that portion of the obligation that is covered by the United States dollar value of the deposit.

(B) The lending bank shall establish procedures to periodically revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.

(Amended by Stats. 2003, Ch. 62, Sec. 92. Effective January 1, 2004.)

1227. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if:

(a) The term of the loan does not exceed 10 years and the amount does not exceed 60 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(b) The term of the loan does not exceed 30 years, is repayable in substantially equal installments not less often than monthly (or a variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), with payments commencing not later than 60 days from the date of the loan or, in the case of a construction loan, commencing not later than one year from the date of the loan, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made

subject to the lien, as determined by proper appraisal, provided, however, the loan may exceed 90 percent of the sound market value of the property or leasehold if that portion of the loan which is in excess of 90 percent is guaranteed or insured by a private insurer licensed by the Insurance Commissioner.

(c) The loan is made pursuant to and in conformance with regulations adopted under Section 1916.12 of the Civil Code.

(d) The loan is on a farm or productive agricultural lands, the term does not exceed 30 years, is repayable in substantially equal installments not less often than annually, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(e) The term of the loan does not exceed six months and the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(f) The term of the loan does not exceed 60 months, the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, and the loan is for the purpose of financing building operations under a plan providing for payment of the loan or providing for refinancing by loans otherwise permitted by this chapter.

A commercial bank may make a loan without regard to the above restrictions when necessary to facilitate the sale of real property owned by the bank.

(Amended by Stats. 1996, Ch. 1064, Sec. 192.1. Effective January 1, 1997. Operative July 1, 1997.)

1227.2. (a) The provisions of any deed of trust or mortgage on real property which authorize any state or nationally chartered bank to accelerate the maturity date of the principal and interest on any loan secured thereby or to exercise any power of sale or other remedy contained in the deed of trust or mortgage, upon the failure of the trustor or mortgagor to pay, at the times provided under the terms of the deed of trust or mortgage, any taxes, rents, assessments, or insurance premiums with respect to the real property securing the loan, or upon the failure to pay any advances made with respect to the deed of trust or mortgage by the state or nationally chartered bank, shall be enforceable whether or not an impairment of the security interest in the real property has resulted from the failure of the trustor or mortgagor to pay the taxes, rents, assessments, insurance premiums, or advances.

(b) "State or nationally chartered bank," as used in this section and Section 1227.3, includes any person authorized by this state to make or arrange loans secured by real property, or a holding company of a state or nationally chartered bank or any successor in interest.

(Added by Stats. 1987, Ch. 397, Sec. 1.)

1227.3. The provisions of any deed of trust or mortgage on real property which authorize any state or nationally chartered bank to receive and control the disbursement of the proceeds of any policy of fire, flood, or other hazard insurance respecting the real property shall be enforceable whether or not an impairment of the security interest in the property has resulted from the event that caused the proceeds of the insurance policy to become payable.

(Added by Stats. 1987, Ch. 397, Sec. 2.)

1228. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if the criteria of any of the following subdivisions are satisfied:

(a) The loan is fully guaranteed or insured or covered by a commitment to guarantee or insure by the United States, the Federal Housing Administrator, or by any other agency of the United States which the commissioner shall have approved for the purposes of this subdivision as an issuer of insurance or guarantees of loans on real property, whether the proceeds of the guarantee or insurance is payable in cash or in obligations of the United States.

(b) The loan is fully guaranteed by the United States or any agency thereof pursuant to the "Servicemen's Readjustment Act of 1944" or any act of Congress supplementary or amendatory thereof, or, if a portion of the loan is so guaranteed, then if the unguaranteed portion of the loan does not exceed 80 percent of the sound market value of the property or leasehold for loan purposes as determined by proper appraisal.

(c) The loan is one in which the Small Business

Administration cooperates through agreements to participate on an immediate or deferred basis under the Small Business Act, as amended.

(Amended by Stats. 1996, Ch. 1064, Sec. 193. Effective January 1, 1997. Operative July 1, 1997.)

1229. A commercial bank shall not lend in the aggregate more than 5 percent of its assets upon the security of the stock of any one corporation or upon the security of the bonds of any one obligor except bonds of the United States or for

the payment of which the credit of the United States is pledged, bonds of the State of California or for the payment of which the credit of the State of California is pledged, and bonds of any county, city and county, city, metropolitan water district, school district, or irrigation district of the State of California which qualify as investments for savings banks.
(Enacted by Stats. 1951, Ch. 364.)

1231. No loan shall be made by any commercial bank upon the securities of one or more corporations, the payment of which loan is undertaken, in whole or in part, severally, but not jointly, by two or more persons in any of the following circumstances:

(a) If the borrowers or underwriters are obligated absolutely or contingently to purchase the securities, or any of them, collateral to the loan, unless the borrowers or underwriters have paid on account of the purchase of the securities an amount in cash, or its equivalent, equal to at least 25 percent of the several amounts for which they remain obligated in completing the purchase of the securities.

(b) If the commercial bank making the loan is liable, directly or indirectly, or contingently, for the repayment of the loan or any part thereof.

(c) If its term, including any renewal thereof by agreement, express or implied, exceeds the period of one year.

(d) Or to an amount under any circumstances in excess of 25 percent of the sum of the commercial bank's shareholders' equity, allowance for loan losses, capital notes, and debentures.
(Amended by Stats. 1982, Ch. 1325, Sec. 10.)

1232. A commercial bank shall not make a loan upon the capital stock of any other bank unless such bank has been in existence at least two years and has earned and paid a dividend on its capital stock, nor, without the written approval of the commissioner, shall it make a loan on the security of the capital stock of another bank if by the making of such loan the capital stock of such other bank owned or held as collateral by the lending bank will exceed in the aggregate 25 percent of the stock of such other bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 194. Effective January 1, 1997. Operative July 1, 1997.)

1234. Nothing in this chapter restricts a commercial bank in taking any lien on or pledge of any property as additional security for a loan already made in good faith.
(Enacted by Stats. 1951, Ch. 364.)

1235. A commercial bank holding a first lien on real property may take, or purchase and hold, or loan upon another and immediately junior lien but all such loans shall not exceed in the aggregate 90 percent of the sound market value of the property as determined by proper appraisal. A commercial bank may loan not to exceed the face value of a deed of trust or mortgage which constitutes a first lien upon real property, but in no event shall any such loan exceed 90 percent of the sound market value of the property covered by said mortgage or deed of trust as determined by proper appraisal.
(Added by Stats. 1973, Ch. 963.)

1236. A commercial bank may lend on the security of a first security interest on stock or a membership certificate issued to a tenant-stockholder or resident-member by a completed fee simple cooperative housing corporation, as defined in Section 216 of the U.S. Internal Revenue Code, and the assignment by way of security of the borrower's interest in the proprietary lease or right of tenancy in property issued by such cooperative housing corporation, provided all of the real property owned by such corporation is located within the state, and further provided, that:

(a) The term of the loan does not exceed 30 years, is repayable in substantially equal installments (or such variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), not less often than monthly, with payments commencing not later than 60 days from the date of the loan, and the amount does not exceed 80 percent of the sound market value of such certificates of stock or membership certificates; and

(b) The proprietary lease or right of tenancy in the property provides:

(1) That no sublease in excess of one year, amendment or modification to such proprietary lease or right of tenancy in the property shall be permitted or created without the lender's prior written consent, and

(2) That in the event of the borrower's default under such loan, the lender shall have the right, without the prior consent or approval of the cooperative housing corporation, to sell such shares or membership certificates at public or private sale following at least 30 days prior written notice to the borrower and to the cooperative housing corporation, at the address of the premises subject to the proprietary lease or right of tenancy in the property, and assign such proprietary lease or right of tenancy in the property to the purchaser who shall agree as a condition of such assignment to cure any defaults thereunder.

For all purposes of this division, such loan shall be considered a secured residential real estate loan and shall be subject to rules and regulations implementing the provisions of this section issued by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 195. Effective January 1, 1997. Operative July 1, 1997.)

1238. (a) A commercial bank may make amortized loans upon the security of residential real property to finance the purchase and installation of material or equipment designed to promote energy conservation or the efficient use of energy in the residential real property securing the loan, if,

(1) The residential real property securing the loan consists of not more than four dwelling units;

(2) The loan is made in connection with a concurrent loan authorized under Section 1227; and

(3) The loan is in an amount not to exceed 10 percent of the loan made under the authority of Section 1227.

(b) A commercial bank may make additional advances, or additional loans, to an existing borrower in order to finance the purchase and installation of material and equipment designed to promote energy conservation or the efficient use of energy in the residential real property securing the loan, if,

(1) The residential real property securing the loan consists of not more than four dwelling units; and

(2) The aggregate of the additional loan or advance and the unpaid balance of the existing loan will not exceed that percent of the appraised value of the residential real property securing the loan permitted by Section 1227 immediately after the purchase and installation of such material and equipment.

(Added by Stats. 1978, Ch. 413.)

Article 4. Investments
(Article 4 added by Stats. 1955, Ch. 729.)

1335. (a) A commercial bank may invest in gold and silver bullion and United States mint certificates of ascertained value, and purchase securities, except corporation shares, for its own account which in the informed opinion of the bank it is prudent to invest the funds of its depositors.

(b) Notwithstanding the provisions of subdivision (a), a commercial bank may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation if the stock of such bank is owned exclusively by other banks, except to the extent that any provision of law requires directors' qualifying shares, and if such bank is engaged exclusively in providing services for other banks and their officers, directors, or employees.

(Amended by Stats. 1982, Ch. 1196, Sec. 10.)

1336. Unless otherwise approved by the commissioner, a commercial bank shall not invest an amount exceeding 15 percent of its shareholders' equity in the securities of any one obligor or maker, except:

(a) Obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds, consolidated bonds, collateral trust debentures, or other obligations issued by the Federal Financing Bank, the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended; in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended; in consolidated notes, bonds, debentures and other obligations issued by federal land banks, federal intermediate credit banks, and banks for cooperatives under the Farm Credit Act of 1971; in the bonds of any federal home loan bank established under the Federal Home Loan Bank Act; and in stock, bonds, debentures, participations, and other obligations of or issued by the Student Loan Marketing Association, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(c) Obligations of the State of California and those for which the credit of the State of California is pledged for the payment of principal and interest.

(d) Obligations of a local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the local agency or district.

(Amended by Stats. 1996, Ch. 1064, Sec. 196.1. Effective January 1, 1997. Operative July 1, 1997.)

1337. If any commercial bank has made investments which it was authorized to make at the time they were made it shall not be required to dispose of such investments by reason of adoption of the Banking Code, this code, or any amendments to this article.

(Amended by Stats. 1973, Ch. 963.)

1338. A commercial bank may organize, sponsor, operate, control, or render investment advice to, an investment company, or underwrite, distribute, or sell securities of any investment company which has qualified to sell its securities in this state pursuant to Part 2 (commencing with Section 25100) of Division 1 of Title 4 of the Corporations Code, if the

officers and employees of the bank who sell these securities meet such standards with respect to training, experience, and sales practices as established by the Secretary of the Business, Transportation and Housing Agency or the secretary's designee. For the purpose of this section, "investment company" means an investment company as defined in the Investment Company Act of 1940 (15 U.S.C., Sec. 80a-1 et seq.).
(Added by Stats. 1982, Ch. 1050, Sec. 2. Operative July 1, 1984, or earlier, as prescribed by Sec. 6 of Ch. 1050.)

Article 5. Miscellaneous
(Article 5 added by Stats. 1973, Ch. 963.)

1380. Whenever the public administrator becomes the administrator of the estate of a decedent who at the time of his death left money on deposit with a commercial bank, the public administrator may allow such deposit to remain in the commercial bank and may deposit therein to the account of the decedent any moneys of said estate not required for current expenses of administration, and in such cases the public administrator need not deposit the same with the county treasurer. Moneys so deposited, whether by the decedent or by the public administrator, may be withdrawn upon the order of the public administrator countersigned by a judge of the superior court when required for the purpose of administration or otherwise.
(Repealed and added by Stats. 1973, Ch. 963.)

1381. A commercial bank accepting savings deposits shall provide by its bylaws or by contract with its savings depositors the time and condition on which repayment is to be made to such depositors. The bank shall not waive any requirement of notice before payment of any savings deposit except as to all savings deposits.

Whenever there is any call by savings depositors for repayment of a greater amount than the bank may have disposable for that purpose, the bank must not make any new loan or investment until such excess call has ceased.
(Amended by Stats. 1981, Ch. 218, Sec. 1.)

1382. For the purposes of any law authorizing or providing for the deposit of funds with a savings bank, a commercial bank accepting savings deposits shall be deemed a savings bank.
(Repealed and added by Stats. 1973, Ch. 963.)

CHAPTER 11. INDUSTRIAL BANKS

(Chapter 11 added by Stats. 2000, Ch. 1015, Sec. 23. Effective September 30, 2000.)

Article 1. General Provisions

(Article 1 added by Stats. 2000, Ch. 1015, Sec. 23. Effective September 30, 2000.)

1400. Chapter 11 (commencing with Section 1400) of Division 1 is a restatement of Division 7 (commencing with Section 18000) as that division pertains to the licensing and regulation of industrial banks and to the insurance of deposits of industrial banks. Chapter 11 is a continuation, simplification, and recodification of the licensing and regulation of deposit-taking industrial banks.

(Added by Stats. 2000, Ch. 1015, Sec. 23. Effective September 30, 2000.)

1401. (a) Any reference in a provision of any statute or regulation of this state to banks or commercial banks includes industrial banks.

(b) Subdivision (a) does not apply in any of the following cases:

(1) In case the provision or a related provision expressly provides otherwise.

(2) In the case of any provision of Division 1.5 (commencing with Section 4800) or this division.

(Added by Stats. 2000, Ch. 1015, Sec. 23. Effective September 30, 2000.)

1402. The Industrial Loan Account of the Financial Institutions Fund is renamed to be the Industrial Bank Account.

(Added by Stats. 2000, Ch. 1015, Sec. 23. Effective September 30, 2000.)

1403. (a) The commissioner shall annually levy on and collect from industrial banks authorized to transact industrial banking business in this state, pro rata on the basis of total assets, an assessment in a total amount that is sufficient in the commissioner's judgment to (1) meet the expenses of the department in administering laws relating to industrial banks or to the industrial banking business that are not otherwise provided for and (2) provide a reasonable reserve for contingencies.

(b) The amount of the annual assessment on any industrial bank authorized to transact the industrial banking business shall be the greater (1) five thousand dollars ($5,000) or (2) the sum of the products determined by multiplying (A) increments of the bank's or trust company's total assets by (B) percentages of the base assessment rate according to the following table:

Total Assets (In Percentage of Base Millions)	Assessment Rate
First $2	100.0
Next $18	50.0
Next $80	12.0
Next $100	6.25
Next $800	6.0
Next $1,000	4.0
Next $4,000	3.5
Next $14,000	3.0
Next $20,000	2.5
Excess over $40,000	1.5

(c) (1) For purposes of the annual assessment, the total assets of an industrial bank authorized to transact industrial banking business shall be determined as of a date fixed by the commissioner. However, if an industrial loan company is not authorized to transact industrial banking business as of that date but is so authorized as of the date when the annual assessment is levied, its total assets for purposes of the annual assessment shall be determined as of the date of the levy.

(2) (A) In determining for purposes of the annual assessment on the total assets of industrial banks that are authorized to transact industrial banking business and that have one or more foreign (other state) branch offices or facilities, the assets of the foreign (other state) branch offices and facilities shall be excluded from total assets. However, the commissioner may order the assets of foreign (other state) branch offices and facilities to be included in total assets if and to the

extent that it is necessary or advisable in the commissioner's judgment to (i) meet the expenses of the department on account of foreign (other state) branch offices and facilities that are not otherwise provided for and (ii) provide a reasonable reserve for contingencies.

(B) If the commissioner finds that an industrial bank authorized to transact industrial banking business allocated any asset to a foreign (other state) branch office or facility for the purpose, in whole or in part, of reducing its annual assessment, the commissioner may, for purposes of calculating the annual assessment on the industrial bank, reallocate the asset to the industrial bank's head office.

(d) The base assessment rate for each annual assessment shall be fixed by the commissioner but shall not exceed two dollars and twenty cents ($2.20) per one thousand dollars ($1,000) of total assets.

(Added by Stats. 2000, Ch. 1015, Sec. 23. Effective September 30, 2000.)

Article 2. Business of Industrial Banks

(Article 2 added by Stats. 2000, Ch. 1015, Sec. 23. Effective September 30, 2000.)

1410. Each industrial bank shall be an insured bank at all times while it is engaged in the industrial banking business.

(Added by Stats. 2000, Ch. 1015, Sec. 23. Effective September 30, 2000.)

1411. Subject to any order or regulation of the commissioner, an industrial bank may accept deposits evidenced by a deposit account or by certificates, that are redeemable prior to their stated maturity, but may not accept demand deposits.

(Amended by Stats. 2001, Ch. 61, Sec. 1. Effective January 1, 2002.)

1412. In addition to other provisions of this division that are otherwise applicable to an industrial bank, the following provisions of this division apply to the industrial bank as if it were a California state commercial bank:

(a) Chapter 4 (commencing with Section 490).
(b) Chapter 5 (commencing with Section 600).
(c) Chapter 6 (commencing with Section 750).
(d) Chapter 6.5 (commencing with Section 800).
(e) Chapter 7 (commencing with Section 850).
(f) Chapter 8 (commencing with Section 952).
(g) Chapter 10 (commencing with Section 1200).
(h) Chapter 12 (commencing with Section 1500).
(i) Chapter 13 (commencing with Section 1650).
(j) Chapter 15 (commencing with Section 1900).
(k) Chapter 17 (commencing with Section 3100).
(l) Chapter 18 (commencing with Section 3350).
(m) Chapter 20 (commencing with Section 3600).
(n) Chapter 21 (commencing with Section 3700).
(o) Chapter 21.5 (commencing with Section 3750).
(p) Chapter 22 (commencing with Section 3800).
(q) Division 1.5 (commencing with Section 4800).

(Added by Stats. 2000, Ch. 1015, Sec. 23. Effective September 30, 2000.)

CHAPTER 12. TRUST COMPANIES

(Chapter 12 enacted by Stats. 1951, Ch. 364.)

Article 1. General Provisions

(Article 1 enacted by Stats. 1951, Ch. 364.)

1500. No corporation shall engage in the trust business unless:

(a) Its articles comply with the requirements of subdivision (b), (d), or (e) of Section 600; and

(b) It has received from the commissioner a certificate of authority pursuant to Section 401 to engage in the trust business, or, if it is a bank, has received the authorization of the commissioner to engage in the trust business pursuant to Section 1500.1; and

(c) It has deposited with the State Treasurer money or securities in compliance with Article 3 (commencing with Section 1540) of this chapter.

(Amended by Stats. 2003, Ch. 404, Sec. 3. Effective January 1, 2004.)

1500.1. Any commercial bank or industrial bank, with the prior authorization of the commissioner, may engage in the trust business, if its articles comply with the requirements of subdivision (b) of Section 600. Any bank so authorized shall, in the conduct of its trust business, comply with and be governed by all of the provisions of this chapter, except the provisions of Section 1560. An application for such authorization shall be in such form and contain such information as the commissioner may require, and be accompanied by a fee of one thousand dollars ($1,000).

(Amended by Stats. 2000, Ch. 1015, Sec. 24. Effective September 30, 2000.)

1500.6. No California state bank may engage in trust business at a place unless the place is its head office, an authorized branch office, or an authorized place of business.

(Added by Stats. 2000, Ch. 204, Sec. 8. Effective January 1, 2001.)

1501.2. Nothing in this division shall prohibit a nonprofit corporation from acting as a receiver pursuant to the appointment of any court.

(Added by Stats. 1978, Ch. 134.)

1502. In this section, "subject national banking association" means a national banking association that (a) maintains its main office or a branch office in this state, (b) is authorized to transact a trust business, and (c) has complied with the requirements of Article 3 (commencing with Section 1540) of this chapter and of all other laws of this state relating to the deposit of securities for the protection of court and private trusts. A subject national banking association may engage in and conduct a trust business and may be appointed by any court to act in any fiduciary capacity in which a trust company is authorized to act. All acts provided in this code to be performed by the commissioner, the State Treasurer, or other public officials for or in respect to the deposit of securities by trust companies, shall be performed for subject national banking associations equally with trust companies. Every subject national banking association shall be permitted to use the word "trust" in its corporate name and to advertise its authority to engage in and conduct a trust business and to advertise for and solicit trust business in this state, notwithstanding any contrary provision in this division or in any other law. The commissioner shall have access to reports of examination made by the Comptroller of the Currency insofar as they relate to the trust department of a subject national banking association. For purposes of Article 3 (commencing with Section 1540), the principal place of business of a national banking association that maintains its main office in another state of the United States and maintains a California branch office shall be deemed to be situated in the city where the California branch office is located or, if the national banking association maintains California branch offices in two or more cities, in the city with the largest population.

(Amended by Stats. 1996, Ch. 1064, Sec. 203. Effective January 1, 1997. Operative July 1, 1997.)

1503. No foreign corporation, other than a national banking association or a foreign (other state) state bank that is authorized to conduct a trust business in this state, shall have or exercise the powers of a trust company nor directly or indirectly transact or conduct in this state a trust business as defined in Section 106. However, a foreign corporation that is authorized by its articles to exercise trust powers may act as trustee for the following purposes:

(a) To deliver bonds and receive payments therefor.

(b) To deliver permanent bonds in exchange for temporary bonds of the same issue.

(c) To deliver refunding bonds in exchange for those of a prior issue or issues.

(d) To register bonds or to exchange registered bonds for coupon bonds or coupon bonds for registered bonds.

(e) To pay interest on the bonds, and take up and cancel coupons representing the interest payment.

(f) To redeem and cancel bonds when called for redemption or to pay and cancel bonds when due.

(g) To certify registered bonds for the purpose of exchanging registered bonds for coupon bonds.

A foreign corporation that is authorized by its articles to exercise trust powers may be appointed and may accept appointment and act as trustee under any mortgage, deed of trust, or other instrument securing bonds or other obligations issued or to be issued by any railroad corporation that owns a railroad operating in the State of California and extending into another state.

A foreign corporation exercising in this state the powers conferred by this section shall not establish or maintain directly or indirectly any branch office or agency in this state unless it has complied with all of the applicable provisions of Chapter 13.5 (commencing with Section 1700) or of Chapter 22 (commencing with Section 3800).
(Amended by Stats. 1995, Ch. 480, Sec. 47. Effective October 2, 1995.)

1504. Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made or arranged by, or forbearances of, any of the following that is authorized to engage in the trust business, when acting in its fiduciary capacity:

(a) Any California state bank.

(b) Any national bank that maintains its main office or a branch office in this state.

(c) Any foreign (other state) state bank that maintains a branch office in this state.

This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the Constitution.

This section does not exempt a bank authorized to transact a trust business or a subsidiary thereof from complying with all other laws and regulations governing the business in which the bank or subsidiary is engaged.
(Amended by Stats. 1995, Ch. 480, Sec. 48. Effective October 2, 1995.)

1505. The Legislature finds and declares that it is important to inform taxpayers that they may make voluntary contributions to certain funds or programs, as provided on the state income tax return. The Legislature further finds and declares that many taxpayers remain unaware of the voluntary contribution check-offs on the state income tax return. Therefore, it is the intent of the Legislature to encourage all persons who prepare state income tax returns to inform their clients in writing, prior to the completion of any tax return, that they may make a contribution to any voluntary contribution check-off on the state income tax return if they so choose.
(Amended by Stats. 1998, Ch. 485, Sec. 70. Effective January 1, 1999.)

Article 2. Fiduciary Activities
(Article 2 added by Stats. 2004, Ch. 176, Sec. 4.
Effective January 1, 2005.)

1520. It is the intent of the Legislature that the provisions of this article, insofar as they are contained in the regulations regarding fiduciary activities of national banks (12 C.F.R. Sec. 9.1 and following) of the Office of the Comptroller of the Currency, conform, and be interpreted by anyone construing the provisions of this article to so conform, to those regulations, any rule or interpretation promulgated thereunder by the Office of the Comptroller of the Currency, and to any interpretation issued by an official or employee of the Office of Comptroller of the Currency duly authorized to issue the interpretation.
(Added by Stats. 2004, Ch. 176, Sec. 4. Effective January 1, 2005.)

1521. As used in this article, the following terms have the following meanings:

(a) "Bank" means any of the following:

(1) A commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(2) A foreign (other state) bank that may establish a branch office in this state in accordance with Article 2 (commencing with Section 3820) of Chapter 22 of Division 1.

(b) "Fiduciary Regulations" means the regulations regarding fiduciary activities of national banks promulgated by the Office of the Comptroller of the Currency (Part 9 (commencing with Section 9.1) of Title 12 of the Code of Federal Regulations) of the Office of the Comptroller of the Currency, as amended from time to time.

(c) All reference to the term "national bank" or "national banks" used in the Fiduciary Regulations shall mean "bank" or "banks" for purposes of this article.
(Added by Stats. 2004, Ch. 176, Sec. 4. Effective January 1, 2005.)

1522. Sections 9.1 to 9.20, inclusive, of the Fiduciary Regulations in all of their particular, including footnotes, are hereby referred to, incorporated by reference into this article, and adopted.
(Added by Stats. 2004, Ch. 176, Sec. 4. Effective January 1, 2005.)

Article 3. Deposits with State Treasurer
(Article 3 enacted by Stats. 1951, Ch. 364.)

1540. Every trust company shall deposit with the State Treasurer money or securities of the character described in Section 1542 as security for its court and private trusts as follows:

(a) If the trust company's principal place of business is situated in a city the population of which does not exceed 100,000 persons, it shall deposit with the State Treasurer money or securities having a market value of at least fifty thousand dollars ($50,000) as security for the faithful performance and execution of all court trusts accepted by it, and money or securities having a market value of at least fifty thousand dollars ($50,000) as security for the faithful performance and execution of all private trusts accepted by it.

Whenever any such trust company receives trust funds or property, other than real property, from court trusts accepted by it to the amount of five hundred thousand dollars ($500,000), it shall forthwith give the commissioner written notice thereof, and within 30 days thereafter shall make an additional deposit with the State Treasurer of money or securities having a market value of fifty thousand dollars ($50,000) as security for its court trusts, and money or securities having a market value of fifty thousand dollars ($50,000) as additional security for its private trusts.

(b) If the trust company's principal place of business is situated in a city the population of which exceeds 100,000 persons, it shall deposit with the State Treasurer money or securities having a market value of at least one hundred thousand dollars ($100,000) as security for the faithful performance and execution of all court trusts accepted by it, and money or securities having a market value of at least one hundred thousand dollars ($100,000) as security for the faithful performance and execution of all private trusts accepted by it.

(Amended by Stats. 1996, Ch. 1064, Sec. 204. Effective January 1, 1997. Operative July 1, 1997.)

1541. Whenever any trust company receives trust funds or property, other than real property, from court trusts accepted by it to the amount of one million dollars ($1,000,000), it shall forthwith give the commissioner written notice thereof, and within 30 days thereafter shall make an additional deposit with the State Treasurer of money or securities having a market value of fifty thousand dollars ($50,000). For each additional five hundred thousand dollars ($500,000) of such trust funds thereafter received by any trust company from court trusts a similar notification in writing shall forthwith be given to the commissioner and a further deposit of money or securities having a market value of twenty-five thousand dollars ($25,000) shall be made within 30 days thereafter by such trust company with the State Treasurer until money or securities having a market value of five hundred thousand dollars ($500,000) have been so deposited.

(Amended by Stats. 1996, Ch. 1064, Sec. 205. Effective January 1, 1997. Operative July 1, 1997.)

1542. Security deposited with the State Treasurer by trust companies pursuant to Section 1540 or 1541 shall consist of the following:

(a) Bonds or other interest-bearing notes or obligations of the United States or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds of the State of California or those for which the faith and credit of the State of California are pledged for the payment of principal and interest or in registered warrants of the State of California.

(c) Bonds and revenue securities of any city, county, city and county, political subdivision, public corporation, or district of the State of California (herein referred to generally as "public corporations"), and of any department, board, agency, or authority of any such public corporation, which qualify as an investment for the funds of commercial banks under the provisions of Article 4 (commencing with Section 1335) of Chapter 10 of this division.

(d) Bonds of any state of the United States which qualify as an investment for the funds of commercial banks under the provisions of Article 4 (commencing with Section 1335) of Chapter 10 of this division.

(e) Loans secured by a first lien on real property and otherwise complying with the provisions of subdivision (a) of Section 1227.

(f) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the International Finance Corporation, or the African Development Bank.

(Amended by Stats. 1991, Ch. 1206, Sec. 2.)

1543. Such money or securities shall be approved by the commissioner and be deposited with the Treasurer upon the written order of the commissioner. Upon receiving any such deposit the Treasurer shall give his or her receipt therefor and thereafter subject to the provisions of this chapter shall hold such deposits for the sole benefit of the beneficiaries of the class of trust business for the security and protection of which the same were deposited. The state is responsible for

the custody and safe return of any money or securities so deposited. The Treasurer shall deposit any such moneys under the provisions of Sections 16370 to 16375 of the Government Code.
(Amended by Stats. 1996, Ch. 1064, Sec. 206. Effective January 1, 1997. Operative July 1, 1997.)

1544. Securities deposited pursuant to this article may be exchanged from time to time, with the approval of the commissioner, for other like securities of equal market value. Upon written request to the commissioner, any trust company shall be entitled to withdraw from the Treasurer, from time to time, any amount of its securities so deposited in excess of the amount it is required to maintain on deposit in order to conform with the requirements of this article. Upon receiving a written request for such withdrawal or exchange, and satisfactory proof of the facts warranting the same, the commissioner shall forthwith deliver to the Treasurer a written order directing the withdrawal or exchange of such securities so as to conform with the provisions of this section. The Treasurer shall comply with such written order. So long as the trust company so depositing such securities shall continue solvent, it shall have the right and shall be permitted by the Treasurer to receive the interest and dividends on any securities deposited by it.
(Amended by Stats. 1996, Ch. 1064, Sec. 207. Effective January 1, 1997. Operative July 1, 1997.)

1545. Should any security deposited pursuant to this article so depreciate in value as to reduce the deposit below the amount required by this article, additional money or securities shall be deposited promptly in amount sufficient to meet such requirements. The commissioner may make an investigation of the value of any security deposited pursuant to this article, at the time such security is presented for deposit or at any time thereafter, whenever in his judgment such investigation is necessary. The commissioner may make such charge as may be reasonable and proper for such investigation.
(Amended by Stats. 1996, Ch. 1064, Sec. 208. Effective January 1, 1997. Operative July 1, 1997.)

1545.5. When any revaluation of securities is made by the commissioner pursuant to Section 1545, other than at the time such securities are presented for deposit, United States Government securities having a maturity date less than five years from the date of such revaluation shall be valued at not less than par.
(Amended by Stats. 1996, Ch. 1064, Sec. 209. Effective January 1, 1997. Operative July 1, 1997.)

1546. The money and securities deposited pursuant to this article shall be subject to sale and the same or the proceeds thereof shall be subject to disposal by the State Treasurer only on the order of a court of competent jurisdiction and for the benefit respectively of the beneficiaries of that class of trust business for the security and protection of which the securities were deposited.
(Enacted by Stats. 1951, Ch. 364.)

1547. The commissioner may, pursuant to Section 216.3, levy a civil penalty against any trust company that fails to comply with this article.
(Amended by Stats. 2003, Ch. 445, Sec. 8. Effective January 1, 2004.)

Article 4. Investments
(Article 4 enacted by Stats. 1951, Ch. 364.)

1560. A trust company may invest its contributed capital only in the securities and properties in which a commercial bank is permitted to invest its funds pursuant to Sections 1000 to 1018, inclusive, and in loans on real property which commercial banks are permitted to make pursuant to Article 2 (commencing with Section 1220) of Chapter 10.
(Amended by Stats. 2003, Ch. 404, Sec. 4. Effective January 1, 2004.)

1561. Trust funds received by any trust company in connection with its trust business, if invested, shall be invested as provided in Part 4 (commencing with Section 16000) of Division 9 of the Probate Code.
(Amended by Stats. 1986, Ch. 820, Sec. 25. Operative July 1, 1987, by Sec. 43 of Ch. 820.)

1561.1. (a) As used in this section:

(1) "Fund" means any investment company registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), as amended from time to time.

(2) "Trust" means any court trust or private trust.

(3) "Trust Law" means Division 9 (commencing with Section 15000) of the Probate Code.

(b) Within the standards established by trust law, including, but not limited to, Division 9 (commencing with Section 15000) of the Probate Code, a trust company acting in any capacity under a trust may, in the exercise of its investment discretion unless the trust instrument provides expressly to the contrary, invest and reinvest in the securities of or other interests in any fund to which the trust company or its affiliate is providing services including, but not limited to, services as an investment adviser, sponsor, distributor, custodian, agent, registrar, administrator, servicer, or manager, and for which the trust company or its affiliate receives compensation.

(c) Before or within 30 days after the initial investment upon the exercise of discretionary powers authorized by subdivision (b), the trust company, acting in any capacity under a trust, shall furnish written notice of the exercise of the discretionary powers and a copy of the prospectus relating to the securities to all persons to whom the trust company is required to render statements of account pursuant to applicable provisions of the Trust Law or to whom the trust company regularly provides a statement of account unless specifically waived in writing.

(d) With respect to any trust so invested, the trust company shall disclose to all persons identified in subdivision (c), at least annually by prospectus, statement of account, or other written notice, a brief description of the fees or rates charged by the trust company and its affiliates for its services as investment adviser or investment manager to the fund.

(e) In connection with an investment or reinvestment authorized by subdivision (b), the portion of compensation a trust company receives from the trust reasonably attributable to investment advisory or investment management services to the trust shall be reduced (but not below zero) by an amount equal to compensation that is received by the trust company or its affiliates for providing investment advisory or investment management services to the fund for the portion of the trust invested in the fund.

(Amended by Stats. 2002, Ch. 433, Sec. 1. Effective January 1, 2003.)

1562. Any trust company or bank authorized to engage in the trust business holding trust funds awaiting investment or distribution may deposit or leave on deposit such funds with any state or national bank. Such funds shall not, however, be deposited or left with the same corporation or association depositing or leaving on deposit such funds or with any corporation or association holding or owning a majority of the capital stock of the trust company or bank making or leaving such deposit, unless such corporation or association shall first pledge, as security for such deposit, securities eligible for investment by savings banks having a market value of not less than the funds so deposited. No security shall be required with respect to any part of such deposits which is insured under the provisions of any law of the United States.

(Amended by Stats. 1957, Ch. 562.)

1563. Any trust company acting in any capacity under a court or private trust or when acting in such capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating such trust contains a provision to the contrary, may, with the consent of such cofiduciary or cofiduciaries cause any stock or other securities held in any such capacity to be registered in the name of a nominee or nominees of such trust company and any trust company when acting as depositary or custodian for the trustee of any other court or private trust, unless the instrument creating the trust contains a provision to the contrary, may, with the consent of the trustee of such other trust, cause any stock or other securities held by it in such capacity to be registered in the name of a nominee or nominees of such trust company. Any such trust company shall be liable for any loss occasioned by the acts of any nominee of such trust company with respect to such stock or other securities so registered. The records of such trust company shall at all times show the ownership of any such stock or other securities and of those held in bearer form. Such stock or other securities and those held in bearer form shall at all times be kept by such trust company separate and apart from its other assets and may be kept by such trust company:

(a) In a manner such that all certificates representing the stock or other securities from time to time constituting the assets of a particular estate, trust or other fiduciary account are held separate from those of all other estates, trusts or accounts; or

(b) In a manner such that, without certification as to ownership attached, certificates representing stock or other securities of the same class of the same issuer and from time to time constituting assets of particular estates, trusts or other fiduciary accounts are held in bulk, including, to the extent feasible, the merging of certificates of small denomination into one or more certificates of large denomination, provided that a trust company, when operating under the method of safekeeping security certificates described in this subdivision, shall be subject to such rules and regulations as, in the case of state chartered institutions, the commissioner and, in the case of national bank associations, the Comptroller of the Currency, may from time to time issue. Such trust company shall, on demand by any party to an accounting by such trust company as fiduciary or on demand by the attorney for such party, certify in writing the stock or other securities held by such trust company as such fiduciary for such party.

No domestic or foreign corporation or the registrar or transfer agent of any such corporation shall be liable for registering or causing to be registered on the books of such corporation any share or shares or other securities in the name of any nominee of such trust company or for transferring or causing to be transferred on the books of any such corporation any share or shares or other securities theretofore registered by such corporation in the name of any nominee of such trust company as herein provided when the transfer is made upon the authorization of such nominee.

(Amended by Stats. 1996, Ch. 1064, Sec. 210. Effective January 1, 1997. Operative July 1, 1997.)

1564. (a) For purposes of this section, two or more trust companies shall be deemed to be affiliated if they are members of the same affiliated group, within the meaning of Section 1504 of the Internal Revenue Code.

(b) Any trust company may establish and administer common trust funds composed of property permitted by law for the investment of trust funds, for the purpose of furnishing investments to any one or more of the following: (1) itself, as fiduciary; (2) itself and others, as cofiduciaries; (3) any affiliated trust company including, without limitation, any foreign (other state) affiliated trust company, as fiduciary; and (4) any affiliated trust company including, without limitation, any foreign (other state) affiliated trust company and others, as cofiduciaries. Any trust company may as such fiduciary or cofiduciary invest funds which it lawfully holds for investment in interests in common trust funds administered by itself or by any affiliated trust company including, without limitation, any foreign (other state) affiliated trust company, if such investment is not prohibited by the instrument, judgment, decree, order, or statute creating or governing such fiduciary relationship, and if, in the case of cofiduciaries, the trust company procures the consent of its cofiduciaries to such investment.

(c) Each common trust fund established hereunder shall be treated as an entity separate and distinct from the fiduciary relationships participating therein. No fiduciary in administering a participating fiduciary relationship shall be required to make any apportionment or allocation between the principal and income of this relationship different from that made for the common trust fund. No participating fiduciary relationship, nor any person having an interest in that relationship, shall have or be deemed to have any ownership in any particular property of the common trust fund, but each participating fiduciary relationship shall have a proportionate undivided interest in the fund and its income, and the ownership of all property of the common trust fund shall be in the trustee of the fund.

(d) This section shall apply to fiduciary relationships now in existence or hereafter established, whether the same be revocable or irrevocable. The commissioner, at his or her direction, may make an examination of any common trust fund established hereunder at the times and to the extent as he or she may deem advisable. The provisions of the Corporate Securities Law shall not apply to the creation, administration, or termination of common trust funds, nor to participation therein.

(Amended by Stats. 1996, Ch. 1064, Sec. 211. Effective January 1, 1997. Operative July 1, 1997.)

1565. With regard to any participation certificates heretofore issued by any trust company, secured by a trust deed or mortgage, the full legal title in the deed or mortgage and debt (referred to in this section as "security") shall be held by the trust company issuing the certificates as trustee of an express trust, with all powers necessary to extend, renew, enforce, collect, and liquidate the same, acquire title to the property covered thereby either through foreclosure or by voluntary conveyance; manage, lease, sell (either for cash or upon deferred payments), exchange, or otherwise realize upon the security or property and distribute the net proceeds thereof. All sums so realized shall, as and when received by such trustee, after payment of its compensation and all costs, charges, and expenses, including brokers' commissions and advances for taxes and assessments, incurred or made in connection with the protection, administration, and liquidation of the security or property, be distributed to the trusts or persons who are beneficiaries of the trust, as their interests may appear therein. The rights and interests therein of any such beneficiary failing to contribute on demand its or his pro rata of sums advanced, expended, or required by the trust company in the protection, administration, or liquidation of the trust shall be subject to a lien for all sums, with legal interest thereon advanced, expended, or required for any of such purposes by the trustee or by any other beneficiary of the trust.

The trust in such security or property shall continue in the trust company so long as any of the certificates are outstanding, irrespective of any distribution of the certificates from the trust in which the same are held.

The purpose of this section is to define and clarify the rights and obligations of trust companies and of all persons and trusts interested in participation certificates issued under any authority of law.

(Enacted by Stats. 1951, Ch. 364.)

Article 5. General
(Article 5 enacted by Stats. 1951, Ch. 364.)

1580. A trust company has the following powers:

(a) It may act, or may be appointed by any court to act, in like manner as an individual, as executor, administrator, guardian or conservator of estates, assignee, receiver, depositary, trustee, custodian, or in any other fiduciary or representative capacity for any purpose permitted by law, may act as transfer agent or registrar of corporate stocks and bonds, may buy and sell securities for the account of customers, and may accept and execute any trust business permitted by any law of this or any other state or of the United States to be taken, accepted, or executed by an individual; and

(b) A trust company, upon becoming a member of the Federal Reserve System, shall continue to have such powers as may then or thereafter be conferred upon it by the laws of this State, subject to such federal rules, regulations, and laws as may govern state banks exercising trust powers or trust companies which become members of the Federal Reserve System.
(Amended by Stats. 1959, Ch. 391.)

1581. For the purposes of this chapter, all trusts and other business permitted to be accepted or executed by a trust company are hereby classified and defined as either court trusts or private trusts.

A "court trust" is one in which a trust company acts under appointment, order, or decree of any court, as executor, administrator, guardian, conservator, assignee, receiver, depositary, or trustee, or in which it receives on deposit money or property from a public administrator, under any provision of this code, or from any executor, administrator, guardian, assignee, receiver, depositary, or trustee, under any order or decree of any court.

A "private trust" is every other trust, agency, fiduciary relationship, or representative capacity.
(Amended by Stats. 1959, Ch. 391.)

1582. A trust company, its officers and employees, shall not disclose any information to any person concerning the existence, condition, management, and administration of any private trust confided to it, except:

(a) Where such disclosure is specifically authorized by the terms of the trust.

(b) Where such disclosure is determined by an officer of the trust company to be necessary in the administration of such trust.

(c) Where such disclosure is required by a court of competent jurisdiction or by a subpoena issued by an attorney pursuant to Section 1985 of the Code of Civil Procedure.

(d) Where such disclosure is made to, or upon the instructions of, any party executing the trust instrument.

(e) Where such disclosure refers to an irrevocable trust, to, or upon the instructions of, any beneficiary thereunder whether or not presently entitled to receive benefits therefrom.

(f) Where such disclosure is made to the commissioner in the course of an examination.
(Amended by Stats. 1996, Ch. 1064, Sec. 212. Effective January 1, 1997. Operative July 1, 1997.)

1583. The commissioner shall examine the court trust business of a trust company at least once every two calendar years and shall examine the private trust business at such times and to such extent as he or she may deem necessary or advisable.
(Amended by Stats. 1996, Ch. 1064, Sec. 213. Effective January 1, 1997. Operative July 1, 1997.)

1584. In making the reports to the commissioner required by this division, every trust company shall report, in addition to the other facts called for, separately, the amount of real property and the amount of personal property held by such trust company in both its court trusts and in its private trusts.
(Amended by Stats. 1996, Ch. 1064, Sec. 214. Effective January 1, 1997. Operative July 1, 1997.)

1586. Any court having jurisdiction of any executor, administrator, guardian, conservator, assignee, receiver, depositary, or trustee, upon the application of any such officer or trustee or upon the application of any person having an interest in the estate or property administered by such officer or trustee, after such notice to the other parties in interest as the court may direct, or without notice if all parties in interest consent thereto, and after a hearing upon such application, may authorize or direct such officer or trustee, whether such person has duly qualified or not, to deposit any moneys then in his hands or which may come into his hands thereafter, and such portion or all of the personal assets of such estate as the court shall deem proper for safekeeping, with any such trust company. Upon such deposit being made the court shall by an order of record reduce the bond to be given, or theretofore given, by such officer or trustee so as to cover only the estate remaining in the hands of such officer or trustee. The money and property so deposited shall thereupon and thereafter be held by such trust company under the order and direction of the court.

Such trust company shall not be required to give any bond or security, except as provided in this division, in case of any deposit of moneys or other personal assets with it under this section. Its responsibility for the safekeeping of personal assets so deposited with it shall be that of a bailee for hire.
(Amended by Stats. 1959, Ch. 391.)

1586.5. Securities held by a trust company by direction of any court order issued pursuant to Section 1586 may be deposited, pursuant to the provisions of Section 775, in a securities depository, as defined in Section 30004, which is licensed under Section 30200 or exempted from licensing thereunder by Section 30005 or 30006.
(Added by Stats. 1972, Ch. 1057.)

1587. Whenever an executor, administrator, guardian or conservator of estates, assignee, receiver, depositary, or trustee is required to qualify by taking and subscribing an oath or to make an affidavit, any trust company acting in any such

capacity may satisfy such requirement by the oath or affidavit of its president, vice president, secretary, assistant secretary, manager, trust officer, or assistant trust officer. Any such trust company shall be liable for its failure to perform any of the duties required by law to be performed by an individual acting in like capacity and shall be subject to the same penalties for such failure as would be applicable to an individual.
(Amended by Stats. 1959, Ch. 391.)

1588. Whenever any corporation desires to withdraw from and discontinue doing a trust business, it shall furnish to the commissioner satisfactory evidence of its release and discharge from all the obligations and trusts which it has assumed or which have been imposed on it by law. Thereupon the commissioner shall revoke his or her certificate of authority to do a trust business, and the State Treasurer shall return to it all of the securities deposited by it. Thereafter such corporation shall not be permitted to use and shall not use the word "trust" in its corporate name, or in connection with its business.
(Amended by Stats. 1996, Ch. 1064, Sec. 216. Effective January 1, 1997. Operative July 1, 1997.)

1589. The validity or legality of any act or proceeding done or taken by any trust company, relating to or in connection with the administration of its court and private trusts, shall not be affected or impaired by the neglect or failure of such trust company, or of any officer or employee thereof, to comply with any of the provisions of this division. All such acts and proceedings done or taken prior to the revocation of its certificate of authority to do a trust business by the commissioner, under the provisions of this division, or the revocation by any court or judge thereof of the appointment, order, or decree theretofore entered in such trust matter, shall be as valid and effective for all purposes as if any such neglect or failure had not occurred.
(Amended by Stats. 1996, Ch. 1064, Sec. 217. Effective January 1, 1997. Operative July 1, 1997.)

1590. Nothing in this chapter shall make it unlawful for any person or corporation to engage in the business of receiving and holding money in escrow or of acting as trustee under deeds of trust given solely for the purpose of securing obligations for the repayment of money other than corporate bonds.
(Amended by Stats. 1953, Ch. 428.)

1591. A bank or trust company shall not mingle trust funds received by it with other assets of the corporation or association and such funds shall not be used in the conduct of its business except to the extent that such funds are deposited with the same corporation or association in accordance with the provisions of this division. Any officer of any bank or association who knowingly violates or consents to the violation of this section is guilty of a felony.
(Amended by Stats. 1973, Ch. 963.)

CHAPTER 13. SAFE DEPOSIT

(Chapter 13 enacted by Stats. 1951, Ch. 364.)

Article 1. General

(Article 1 enacted by Stats. 1951, Ch. 364.)

1650. Notice to a bank operating a safety deposit department or to a company conducting a safety deposit business of an adverse claim (the person making the adverse claim being hereinafter in this section called "adverse claimant") to any personal property in a safety deposit box maintained by a bank or company and rented to any person, or to any personal property held by the bank or company in safekeeping or storage for any person shall be disregarded, and the bank or company, notwithstanding such notice, shall permit access to the box to the person to whom it is rented or shall deliver the contents thereof to or on the order of the person or shall deliver the property held in storage or safekeeping to or on the order of the person for whom it is held, without any liability on the part of the bank or company; subject, however, to the exceptions provided in subdivisions (a) and (b) of this section:

(a) If an adverse claimant delivers to the bank at the office at which the safety deposit is maintained or the property is held his affidavit stating that of his own knowledge the person in whose name the box stands or for whom the property is held is a fiduciary for the adverse claimant and that he has reason to believe such fiduciary is about to misappropriate the contents of the box or the property, and stating the facts upon which such claim of fiduciary relationship and such belief are founded, the bank or company shall refuse access to the safety deposit box or refuse to deliver the personal property for a period of not more than three (3) court days (including the day of delivery) from the date that the bank or company received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the bank or company at the office at which the safety deposit box is maintained or the property is held a restraining order, injunction, or other appropriate order against the bank or company from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names said box stands or for whom the property is held are parties, the bank or company shall comply with such order or injunction, without liability on its part.

(c) The provisions of this section shall be applicable even though the name of the person appearing on the bank's or company's books as the renter of the box or as the depositor of the property held in storage or safekeeping is modified by a qualifying or descriptive term such as "agent", "trustee", or other word or phrase indicating that the person may not be the owner in his own right of the contents of the box or of the property held in storage or safekeeping.

Before giving access to any safe-deposit box, the bank or company may demand payment to it of all costs and expenses of opening the safe-deposit box and all costs and expenses of repairing any damage to the safe-deposit box caused by the opening thereof.

(Amended by Stats. 1974, Ch. 1516.)

Article 2. Remedies for Nonpayment of Rent

(Article 2 enacted by Stats. 1951, Ch. 364.)

1660. Every bank conducting a safe-deposit business shall be entitled to the special remedies set forth in this article in enforcing the liabilities of safe-deposit box renters and of safekeeping and storage depositors.

(Amended by Stats. 1973, Ch. 963.)

1661. If the rental of any safe-deposit box is not paid within six months from the day it is due, the bank, or at any time thereafter and while such rental remains unpaid, may mail a notice to the person in whose name such box stands on its records stating that if the amount due for such rental is not paid on or before a specified day, which must be at least 30 days after the date of mailing such notice, the bank will cause such box to be forced open.

(Enacted by Stats. 1951, Ch. 364.)

1662. At any time after the date specified in such notice, if the rental for such safe-deposit box to the date of payment and the cost of giving such notice have not been paid, the bank, in the presence of two of its employees, one of whom shall be an officer of the bank, may cause such box to be opened and the contents thereof to be removed and inventoried. The inventory shall be signed by such persons.

(Amended by Stats. 1982, Ch. 220, Sec. 1.)

1662.5. The following persons, and no others, are entitled to receive from the bank a copy of the inventory:

(a) An executor of the decedent's will.

(b) The administrator of the decedent's estate.

(c) The attorney for the executor or administrator.

(d) A tenant of the safe-deposit box.

(e) Any heir of the decedent or beneficiary under the decedent's will.

(f) Any person whom the superior court having jurisdiction by order directs should be allowed to obtain a copy of the inventory.

(Amended by Stats. 1982, Ch. 220, Sec. 2.)

1663. All contents removed from a safe-deposit box pursuant to Section 1662 shall be retained by the bank for at least two years unless sooner delivered to or on the order of the person in whose name such box stood on the records of the bank. The bank shall deliver the contents of such box to or on the order of the person in whose name such box stood on its records, upon payment to it before such contents are sold or destroyed, of all rental due at the time of opening the box, the cost of giving notice, the charges for opening the box and for custody of the contents, and any other proper charges. The bank may deliver such contents on the order of the person in whose name such box stood on its records, irrespective of any information disclosed by the contents indicating ownership thereof by any other person.

(Enacted by Stats. 1951, Ch. 364.)

1664. At any time after two years from the day when a safe-deposit box has been opened pursuant to this article, the bank may mail a notice to the person in whose name such box stood on its records, stating that unless the amounts due to the bank for rental, for the cost of mailing and publishing notice of sale, and for its charges for opening the box and for custody of its contents, and any other proper charges, giving the total amount thereof, are paid, the bank will offer for sale the contents thereof at a time and place named in such notice, which time shall be at least 30 days after the mailing thereof. If the amounts specified in such notice are not paid before the time of sale designated therein, the bank may sell all or any portion of the contents of such box, other than contents of the character described in Section 1668 and other than bonds and other securities which at the time of sale are listed on an established stock exchange in the United States, at public sale at the time and place given in such notice. Notice of the time and place of sale shall be published in a newspaper of general circulation in the county in which the sale is to be held once at least five days before the date of sale, or if no such newspaper is published in the county such notice shall be posted in three public places in the county at least five days before the date of sale. Such notice need describe the property only in general terms and as the unclaimed contents of a safe-deposit box. Such sale may be postponed from time to time by public pronouncement at the time and place of sale.

(Enacted by Stats. 1951, Ch. 364.)

1665. Notwithstanding any of the provisions of this article, no stocks, bonds, or other securities which, at the time of sale pursuant to Section 1664, are listed on any established stock exchange in the United States may be sold at public sale but may be sold at any time thereafter through an established stock exchange.

(Enacted by Stats. 1951, Ch. 364.)

1666. Upon the making of a sale of any securities, an officer of the bank shall execute and attach to the securities so sold an affidavit reciting facts showing that such securities were sold pursuant to this article and that the provisions of this article governing such sale have been complied with. The affidavit shall be and constitute sufficient authority to any corporation whose stock is so sold or to any registrar or transfer agent of such corporation to cancel the certificates of stock so sold and to issue a new certificate or certificates representing such stock to the purchaser thereof, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser thereof.

(Enacted by Stats. 1951, Ch. 364.)

1667. From the proceeds of any sale the bank shall deduct the amount set forth in such notice and any further charges which may have accrued since the mailing of the notice and shall record the balance of the proceeds, if any, on its books as a liability payable to the person in whose name the safe-deposit box was rented.

(Amended by Stats. 1996, Ch. 1063, Sec. 55. Effective January 1, 1997.)

1668. Any documents, letters, or other articles found in a safe-deposit box opened pursuant to Section 1662, which in the judgment of at least two officers of the bank have no intrinsic or marketable value, need not be offered for sale. Any documents, letters, and articles and any other contents which have been offered for sale and for which no purchaser has been found, shall be retained by the bank for not less than one year from the date when the box was opened. At any time thereafter, unless sooner delivered to or on the order of the person in whose name the box stood on the records of the bank, the documents, letters, and articles and also those contents which have been offered for sale and for which no

purchaser has been found, may be destroyed in the presence of an officer of the bank, but if no notice of intended sale of the contents of the box has been given pursuant to Section 1664, the bank shall mail a notice of its intention to destroy the documents, letters, and articles at least 30 days before the destruction of the same to the person in whose name the box stood on the records of the bank.
(Amended by Stats. 1996, Ch. 1063, Sec. 56. Effective January 1, 1997.)

1669. If, before the effective date of this section, a bank or its predecessor in interest, has caused a safe-deposit box to be opened for nonpayment of rental, and the contents of such box or any part thereof remain in its custody, it shall be entitled to the special remedies in enforcing the liability of the former renter of such box as set forth in Sections 1663 to 1668, inclusive, whether or not such box was rented prior to October 1, 1949.
(Enacted by Stats. 1951, Ch. 364.)

1670. Whenever a bank receives personal property for safekeeping or storage as bailee and issues a receipt therefor, the bank may enforce its lien as warehouseman in accordance with the provisions of the Uniform Commercial Code or at its option in the manner provided in Sections 1671 to 1673, inclusive, of this article.
(Amended by Stats. 1969, Ch. 843.)

1671. If the amount charged by a bank for the safekeeping or storage of personal property is not paid within six months from the day it is due, the bank, at any time thereafter and while such charges remain unpaid, may mail a notice to the person in whose name the receipt was issued, giving the amount then due for such safekeeping or storage and stating that unless such amount and any other charges accruing to the date of payment are paid, the bank will sell such personal property at a time and place named therein, which time shall be at least 30 days after the mailing of such notice. If the amount specified in such notice and all other charges of the bank and expenses of mailing and publishing notice of sale accruing to time of payment are not paid, the bank may sell all or any portion of such personal property at public sale at the time and place given in such notice. Notice of the time and place of sale shall be published once at least five days before the date of sale in a newspaper of general circulation published in the county in which the sale is to be held, or if no such newspaper is published in the county such notice shall be posted in three public places in the county at least five days before the date of sale. Such sale may be postponed from time to time by public pronouncement at the time and place of sale. The bank may include in the notice required to be mailed a statement to the effect that if the amount due at that time is not paid at least 10 days before the date set for the sale, it may cause any container in which any of such personal property may be, to be opened and the contents thereof to be sold at the time and place fixed for the sale with or without such container, or the container may be sold without the contents. If such statement is included in the notice, the bank, at any time within 10 days before the date fixed for the sale, may open any such container and remove the contents in the presence of two employees of the bank, one of whom shall be an officer thereof, both of whom shall make and sign an inventory of the contents. Thereafter, on the day fixed for the sale, the contents may be sold as a whole or separately and with or without the container, or the container may be sold without the contents.
(Enacted by Stats. 1951, Ch. 364.)

1672. From the proceeds of the sale, the bank shall deduct all charges as stated in the final notice, together with any further charges that have accured since the mailing thereof, and reasonable expenses for notices, advertising, and sale, and shall credit the balance of the proceeds, if any, to an account in the name of the person in whose name the receipt for such personal property was issued.
(Enacted by Stats. 1951, Ch. 364.)

1673. Any documents, letters, or other articles which, in the judgment of an officer of the bank, have no apparent intrinsic or marketable value, need not be offered for sale. The documents, letters, and articles and any other articles which have been offered for sale and for which no purchaser has been found, shall be retained by the bank for not less than one year from the date when notice of sale was mailed. At any time thereafter, unless sooner delivered to or on the order of the person in whose name the receipt was issued, the documents, letters and articles may be destroyed in the presence of an officer of the bank and of a notary public.
(Amended by Stats. 1996, Ch. 1063, Sec. 57. Effective January 1, 1997.)

1674. The power conferred on a bank to sell the contents of a safe-deposit box or personal property received for safekeeping or storage for nonpayment of rental or other charges, includes power to sell any bonds, stock certificates, promissory notes, choses in action, or other securities, and any other tangible or intangible property found in such box or in the container in which such personal property was received for safekeeping or storage, regardless of whether it appears from such securities or property that the person in whose name the box stood or to whom the safekeeping or storage receipt was issued, possesses title to any interest in such securities or other property or power to transfer such title or interest.
(Enacted by Stats. 1951, Ch. 364.)

1675. A bank holding a safe-deposit box originally rented from, or personal property against which a safekeeping or storage receipt was issued by, a predecessor in interest, or a bank holding the contents of such box, shall be entitled to the remedies as to such box or the contents thereof or as to the safekeeping or storage of such property in like manner and to the same extent as if such box had been rented from or such safekeeping or storage of personal property had been received by such bank in the first instance.
(Enacted by Stats. 1951, Ch. 364.)

1676. The provisions of this article do not preclude any other remedy by action or otherwise now or hereafter existing for the enforcement of the claims of a bank against the person in whose name the safe-deposit box stood or stands, or in whose name the safekeeping or storage receipt was issued, nor bar the right of a bank to so recover, at its option, either the entire amount of the debt due to it without recourse to sale of the property, if any, or so much of the debt due to it as shall not have been paid by the proceeds of the sale of all or any portion of the property deposited with it.
(Enacted by Stats. 1951, Ch. 364.)

1677. If the principal of, or interest or dividends on, any securities that have come into the possession of any bank by reason of action taken pursuant to this article, is due and payable at the time such securities come into the bank's possession, or thereafter while such securities remain in the possession of the bank, shall become due and payable, the bank at its election may collect such principal, interest, or dividends and from the proceeds thereof may deduct all sums then due to it from the person to whom such safe-deposit box was rented or to whom such safekeeping or storage receipt was issued. The remainder of the money so collected, if any, shall be credited by the bank to the account of the delinquent boxholder or of the person in whose name the safekeeping or storage receipt was issued.
(Enacted by Stats. 1951, Ch. 364.)

1678. (a) Whenever this article requires that notice be sent to a person, and the box stood or stands on the records of the bank or the safekeeping or storage receipt was issued in the names of two or more persons, notice addressed to either or to any one of the two or more persons shall be binding upon and effective as to the remaining person or all remaining persons, and notice addressed to the name of any deceased individual shall be binding upon his or her legal representatives and on his or her heirs and legatees.

(b) Whenever this article requires that notice be published prior to a sale, the notice shall include the name and address of the person in whose name the safe-deposit box stood on the records of the bank or the safekeeping or storage receipt was issued. The names and addresses of all persons whose property is to be sold at the same time and place may be included in a single published notice.

(c) Whenever this article requires that an amount be credited to the account of a person in whose name a safe-deposit box stood on the records of the bank or a safekeeping or storage receipt was issued, and the box stood or the receipt was issued in two or more names, the account shall be in both or all the names, subject to withdrawal by or upon the written order of any one or more of those persons, or by their successors or legal representatives.

(d) Whenever this article requires that a notice shall be mailed to the person in whose name the safe-deposit box stood on the records of the bank or a safekeeping or storage receipt was issued, the notice shall be deemed to have been so mailed if it is enclosed in a sealed envelope addressed to the person in whose name the safe-deposit box stood in the office of the bank at which the records of the safe-deposit box rentals are kept, or to the person in whose name the receipt was issued, as the case may be, addressed to the person at the address or place appearing on the safe-deposit or storage records of the office, and the envelope with postage prepaid has been deposited by at least first-class mail in the United States mail.
(Amended by Stats. 1996, Ch. 1063, Sec. 58. Effective January 1, 1997.)

1679. Whenever an amount of safe-deposit rental, custody, safekeeping, or other charge is to be paid or deducted pursuant to this article, there shall be added to and paid or deducted with said amount, the amount of any tax imposed by laws and regulations.
(Enacted by Stats. 1951, Ch. 364.)

1680. Any bank or trust company may receive bonds issued by the United States Government for safekeeping, collection, or storage, and shall receipt therefor to the depositor and shall maintain adequate records of all transactions therewith. In every case of such deposit the depositary bank shall have the right to return to the depositor either the identical bonds deposited by him or other bonds of the same issue, par value, and character.
(Enacted by Stats. 1951, Ch. 364.)

CHAPTER 13.5. FOREIGN (OTHER NATION) BANKS

(Heading of Chapter 13.5 amended by Stats. 1995, Ch. 480, Sec. 49. Effective October 2, 1995.)

Article 1. General Provisions

(Article 1 added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1700. In this chapter, unless the context otherwise requires:

(a) "Agency" means a depositary agency or a nondepositary agency.

(b) "Branch office" means a limited branch office, a retail branch office, or a wholesale branch office.

(c) "Business in this state," when used with respect to a foreign (other nation) bank which is licensed to maintain one or more agencies or branch offices, includes (without limitation) the aggregate business of all the offices.

(d) "Controlling person," when used with respect to a foreign (other nation) bank, means any person who, directly or indirectly, controls the bank. For purposes of this subdivision, "control" has the meaning set forth in subdivision (b) of Section 700, and "person" has the meaning set forth in subdivision (d) of Section 700.

(e) "Depositary agency," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business but at which it does not transact the business of receiving deposits, except as permitted under paragraph (2) of subdivision (a) of Section 1755.

(f) "Executive officer," when used with respect to a foreign (other nation) bank or a controlling person of a foreign (other nation) bank, means the chief executive officer, the chief operating officer, the chief financial officer, and any other person who participates or has authority to participate in major policy-making functions of the bank or controlling person. "Executive officer," when used with respect to a foreign (other nation) bank, includes the head of the international division (or, if there is no such division, the closest equivalent division or unit) of such bank.

(g) "Federal agency" has the meaning set forth in Section 1(b) of the International Banking Act of 1978.

(h) "Federal branch" has the meaning set forth in Section 1(b) of the International Banking Act of 1978.

(i) (1) "License" means a license issued under this chapter, authorizing a foreign bank to maintain an office.

(2) To be "licensed" means to be issued or to hold a license.

(3) To be "licensed to transact business in this state," when used with respect to a foreign (other nation) bank, means that the bank is licensed to maintain an agency or branch office.

(j) "Limited branch office," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business but at which it does not transact the business of receiving deposits except as permitted under paragraph (3) of subdivision (a) of Section 1755.

(k) "Nondepositary agency," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business, except the business of receiving deposits.

(l) "Office," when used with respect to a foreign (other nation) bank, means any agency, branch office, or representative office of the bank.

(m) "Primary office," when used with respect to a foreign (other nation) bank that is licensed to maintain a single agency or branch office, means the agency or branch office and, when used with respect to a foreign (other nation) bank that is licensed to maintain two or more agencies or branch offices, means that one of the offices which the bank has designated as its primary office in accordance with Section 1714.

(n) "Representative office," when used with respect to a foreign (other nation) bank, means an office in this state at which the bank engages in representational functions but at which it does not transact commercial banking business.

(o) "Retail branch office," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business, including (without limitation) the business of receiving deposits.

(p) "Wholesale branch office," when used with respect to a foreign (other nation) bank, means a place in this state at which the bank transacts commercial banking business but at which it does not transact the business of receiving deposits except as permitted under paragraph (4) of subdivision (a) of Section 1755.

(Amended by Stats. 1995, Ch. 480, Sec. 50. Effective October 2, 1995.)

1700.3. Nothing in this chapter, except Section 1707, applies to a federal agency or branch in this state.

(Added by Stats. 1995, Ch. 480, Sec. 51. Effective October 2, 1995.)

1700.5. (a) In this section, "subject bank" means a bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(b) Nothing in this chapter, except subdivision (c), shall apply to a subject bank that maintains a branch office in this state as a foreign (other state) state bank pursuant to Chapter 22 (commencing with Section 3800), Section 13(f), 13(k), 18(d), or 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(f), 1823(k), 1828(d), or 1831u), or Section 9 of the Federal Reserve Act (12 U.S.C. Sec. 321).

(c) No subject bank shall at the same time maintain (1) as a foreign (other nation) bank, an office in this state licensed under this chapter and (2) as a foreign (other state) state bank, a branch office in this state pursuant to Chapter 22 (commencing with Section 3800), Section 13(f), 13(k), 18(d), or 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(f), 1823(k), 1828(d), or 1831u), or Section 9 of the Federal Reserve Act (12 U.S.C. Sec. 321).

(Added by Stats. 1995, Ch. 480, Sec. 52. Effective October 2, 1995.)

1701. For purposes of this chapter, offices of foreign (other nation) banks are divided into classes and ranked in ascending order, as follows:

(a) Representative office.

(b) Nondepositary agency.

(c) Depositary agency.

(d) Limited branch office.

(e) Wholesale branch office.

(f) Retail branch office.

(Amended by Stats. 1995, Ch. 480, Sec. 53. Effective October 2, 1995.)

1701.5. (a) For purposes of this chapter:

(1) Changing a lower class office into a higher class office shall be treated as establishing the higher class office, but not as closing the lower class office.

(2) Changing a higher class office into a lower class office shall be treated as closing the higher class office, but not as establishing the lower class office.

(b) In the case of changing a higher class office into a lower class office, when the application for approval to close the higher class office has been approved and all conditions precedent to the closing have been fulfilled, the foreign (other nation) bank may change the higher class office into the lower class office, and the commissioner shall issue a license authorizing the bank to maintain the lower class office.

(Amended by Stats. 1996, Ch. 1064, Sec. 218. Effective January 1, 1997. Operative July 1, 1997.)

1702. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application by a foreign (other nation) bank that is not licensed to transact business in this state for approval to establish a branch office shall be two thousand dollars ($2,000).

(b) The fee for filing with the commissioner an application by a foreign (other nation) bank that is not licensed to transact business in this state for approval to establish an agency shall be one thousand five hundred dollars ($1,500).

(c) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to transact business in this state for approval to establish a branch office shall be one thousand dollars ($1,000).

(d) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to transact business in this state for approval to establish an agency shall be seven hundred fifty dollars ($750).

(e) The fee for filing with the commissioner an application by a foreign (other nation) bank for approval to establish a representative office shall be two hundred fifty dollars ($250).

(f) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to maintain an agency or branch office for approval to relocate or to close the office shall be two hundred fifty dollars ($250).

(g) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to maintain a representative office for approval to relocate or to close the representative office shall be one hundred dollars ($100).

(h) The fee for issuing a license shall be twenty-five dollars ($25).

(i) Each foreign (other nation) bank that on June 1st of any year is licensed to maintain a representative office but is not licensed to transact business in this state shall pay, on or before the following July 1st, a fee of two hundred fifty dollars ($250) for each such representative office.

(Amended by Stats. 1996, Ch. 1064, Sec. 219. Effective January 1, 1997. Operative July 1, 1997.)

1703. Each application filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

(Amended by Stats. 1996, Ch. 1064, Sec. 220. Effective January 1, 1997. Operative July 1, 1997.)

1704. (a) In this section, "act" includes (without limitation) omission.

(b) For purposes of making findings on an application by a foreign (other nation) bank for approval to establish an office:

(1) The commissioner may, in the absence of credible evidence to the contrary, presume that the directors, executive officers, and any controlling person of the bank and the directors and executive officers of any controlling person of the bank are each of good character and sound financial standing.

(2) The commissioner may find that the bank, a director, executive officer, or a controlling person of the bank, or a director or executive officer of a controlling person of the bank is not of good character if that person has done any of the following:

(A) Has been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty.

(B) Has consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty.

(C) Has consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty.

(D) Has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any application or report filed with the commissioner or in any proceeding before the commissioner, any material fact that was required to be stated therein.

(E) Has willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(c) Paragraph (2) of subdivision (b) shall not be deemed to be an exclusive list of the grounds upon which the commissioner may find, for purposes of making findings on an application by a foreign (other nation) bank for approval to establish an office, that the bank, a director, executive officer, or controlling person of the bank, or a director or executive officer of a controlling person of the bank is not of good character.

(Amended by Stats. 1996, Ch. 1064, Sec. 221. Effective January 1, 1997. Operative July 1, 1997.)

1705. (a) Each foreign (other nation) bank that is licensed to maintain an office shall file with the commissioner reports as and when the commissioner may, by regulation or order, require.

(b) Each report filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner so requires by regulation or order) be verified in the manner, that the commissioner may, by regulation or order, require.

(Amended by Stats. 1996, Ch. 1064, Sec. 222. Effective January 1, 1997. Operative July 1, 1997.)

1706. Each foreign (other nation) bank that is licensed to maintain an office shall make, keep, and preserve at the office or at another place that the commissioner may, by regulation or order, approve, the books, accounts, and other records relating to the business of the office, in the form, in the manner, and for the time that the commissioner may, by regulation or order, provide.

(Amended by Stats. 1996, Ch. 1064, Sec. 223. Effective January 1, 1997. Operative July 1, 1997.)

1707. (a) No foreign (other nation) bank which is licensed to maintain an agency or branch office shall concurrently maintain a federal agency or federal branch in this state.

(b) No foreign (other nation) bank which maintains a federal agency or federal branch in this state shall concurrently be licensed to maintain an agency or branch office in this state.

(Added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1708. (a) No foreign (other nation) bank shall concurrently be licensed to maintain offices of different classes.

(b) Subdivision (a) does not prohibit a foreign (other nation) bank that is licensed to maintain a representative office from being concurrently licensed to maintain an office of a different class or to prohibit a foreign (other nation) bank that is licensed to maintain an office other than a representative office from being concurrently licensed to maintain a representative office.

(Amended by Stats. 1995, Ch. 480, Sec. 58. Effective October 2, 1995.)

1710. (a) (1) No foreign (other nation) bank (other than a bank that is licensed to maintain an agency or branch office) shall be issued a license to maintain a representative office unless it shall have first filed with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the bank's attorney to receive service of any lawful

process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the representative office after the appointment has been filed, with the same force and validity as if served personally on the bank or its successor, as the case may be.

(2) Any foreign (other nation) bank (other than a bank that is licensed to maintain an agency or branch office or that maintains a federal agency or federal branch in this state) that maintains a representative office and that has not filed with the commissioner an appointment pursuant to paragraph (1) shall be deemed by the maintenance of that office to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the representative office with the same force and validity as if served personally on the bank or its successor, as the case may be.

(b) (1) No foreign (other nation) bank shall be issued a license to maintain an agency or branch office unless it shall have first filed with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the bank's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises after the appointment has been filed, with the same force and validity as if served personally on the bank or its successor, as the case may be.

(2) Any foreign (other nation) bank that maintains an agency or branch office (other than a federal agency or federal branch) and that has not filed with the commissioner an appointment pursuant to paragraph (1) shall be deemed by the maintenance of that office to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors with the same force and validity as if served personally on the bank or its successor, as the case may be.

(c) Service may be made on a foreign (other nation) bank that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at any office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at its last address on file with the commissioner at any of its offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(Amended by Stats. 1996, Ch. 1064, Sec. 224. Effective January 1, 1997. Operative July 1, 1997.)

1711. No license shall be transferable or assignable.

(Added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1712. Each foreign (other nation) bank that is licensed to maintain an office shall post its license in a conspicuous place at the office.

(Amended by Stats. 1995, Ch. 480, Sec. 61. Effective October 2, 1995.)

1713. (a) Each foreign (other nation) bank that is licensed to maintain an office shall assign to the office a popular name that consists of a specific designation by name or number and shall post the popular name and the name of the bank in a conspicuous place at the office.

(b) The popular name that a foreign (other nation) bank assigns to a representative office that it is licensed to maintain shall include the term "representative office."

(c) The popular name that a foreign (other nation) bank assigns to an agency that it is licensed to maintain shall not include the term "branch" unless the term is modified by the word "foreign" or "overseas" or by a similar word.

(Amended by Stats. 1995, Ch. 480, Sec. 62. Effective October 2, 1995.)

1714. Whenever a foreign (other nation) bank is licensed to maintain two or more agencies or branch offices, it shall designate one of such offices as its primary office.

(Added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1715. Each foreign (other nation) bank that is licensed to maintain an office shall conduct all of the business of the office in a single building or in adjoining buildings. However, for good cause and with the approval of the commissioner, the bank may conduct part of the business of the office elsewhere in the same vicinity.

(Amended by Stats. 1996, Ch. 1064, Sec. 225. Effective January 1, 1997. Operative July 1, 1997.)

1716. Any foreign (other nation) bank that, at the time it makes a loan or forbearance or executes a contract therefor, has assets equal to at least one hundred million dollars ($100,000,000), is licensed to maintain an office in California, is licensed or otherwise authorized by another state of the United States to maintain an agency or branch office in that state,

or maintains a federal agency or federal branch in any state of the United States is exempted from the restrictions of Section 1 of Article XV of the Constitution relating to rates of interest upon the loan or forbearance of any money, goods, or things in action or on accounts after demand.

This section does not exempt a foreign (other nation) bank or a subsidiary thereof from complying with all other laws and regulations governing the business in which such a bank or subsidiary is engaged.

This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the Constitution.
(Amended by Stats. 1995, Ch. 480, Sec. 64. Effective October 2, 1995.)

Article 2. Representative Offices
(Article 2 added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1725. (a) No foreign (other nation) bank shall establish or maintain an office in this state at which it engages in representational functions unless it is licensed to maintain a representative office, agency, or branch office at that place.

(b) (1) No person shall establish or maintain an office in this state as representative of a foreign (other nation) bank unless the bank is licensed to maintain the office as a representative office.

(2) For purposes of this chapter, if any person establishes or maintains an office in this state as representative of a foreign (other nation) bank, the bank shall be deemed to establish and maintain the office as a representative office.

(c) Neither subdivision (a) nor subdivision (b) shall be deemed to prohibit a foreign (other nation) bank that maintains a federal agency or federal branch in this state from establishing or maintaining one or more representative offices in this state.
(Amended by Stats. 1995, Ch. 480, Sec. 65. Effective October 2, 1995.)

1726. (a) (1) No foreign (other nation) bank shall establish or maintain a representative office unless the commissioner shall have first approved the establishment of the office and issued a license authorizing the bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank that maintains a federal agency or federal branch in this state from establishing or maintaining one or more representative offices in this state.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to establish a representative office, the commissioner shall approve the application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws, regulations, and orders.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish a representative office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.
(Amended by Stats. 1996, Ch. 1064, Sec. 226.1. Effective January 1, 1997. Operative July 1, 1997.)

1727. (a) No foreign (other nation) bank that is licensed to maintain a representative office shall relocate the office unless the commissioner shall have first approved the relocation and issued a license authorizing the bank to maintain the office at the new site.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to relocate a representative office, the commissioner shall approve the application:

(1) In case the new site of the office is in the same vicinity as the old site, that the relocation of the office will not be substantially detrimental to the public convenience and advantage; or

(2) In case the new site of the office is not in the same vicinity as the old site:

(A) That the relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area that is primarily served by the office at the old site; and

(B) That the relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to relocate a representative office has been

approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after a foreign (other nation) bank that is licensed to maintain a representative office relocates the office, the bank shall surrender to the commissioner the license that authorized it to maintain the office at the old site.
(Amended by Stats. 1996, Ch. 1064, Sec. 227. Effective January 1, 1997. Operative July 1, 1997.)

1728. A foreign (other nation) bank that is licensed to maintain a representative office may, subject to any regulations that the commissioner may prescribe, engage in representational functions at the office but shall not solicit or accept deposits or otherwise transact business at the office.
(Amended by Stats. 1996, Ch. 1064, Sec. 228. Effective January 1, 1997. Operative July 1, 1997.)

1729. (a) (1) No foreign (other nation) bank that is licensed to maintain a representative office shall close the office unless the commissioner shall have first approved the closing.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank that is licensed to maintain a representative office from closing the office in accordance with Article 4 (commencing with Section 1775).

(b) If the commissioner finds, with respect to an application by a foreign (other nation) bank for approval to close a representative office, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to close a representative office has been approved and all conditions precedent to the closing have been fulfilled, the bank may close the office and shall promptly thereafter surrender to the commissioner the license that authorized it to maintain the office.
(Amended by Stats. 1996, Ch. 1064, Sec. 229. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Agencies and Branch Offices
(Article 3 added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1750. (a) No foreign (other nation) bank shall transact business in this state except at an agency or branch office that it is licensed to maintain and at which it is permitted by this chapter to transact the business transacted.

(b) Subdivision (a) shall not be deemed to prohibit:

(1) Any foreign (other nation) bank that maintains a federal agency or federal branch in this state from transacting at the federal agency or federal branch any business that it may be authorized to transact under applicable federal laws and regulations;

(2) Any foreign (other nation) bank from carrying on the activities described in subdivision (d) of Section 191 of the Corporations Code;

(3) Any foreign (other nation) bank that does not maintain an agency or branch office from making in this state loans secured by liens on real property located in this state; or

(4) Any foreign (other nation) bank that does not maintain an agency or branch office from transacting trust business as permitted under Section 1503.

(c) For purposes of subdivision (a), no foreign (other nation) bank shall be deemed to be transacting business in this state merely because a majority-owned subsidiary transacts business in this state.
(Amended by Stats. 1995, Ch. 480, Sec. 70. Effective October 2, 1995.)

1751. No foreign (other nation) bank shall be licensed to maintain any agency or branch office unless it is qualified to transact intrastate business in this state under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.
(Repealed and added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1752. No foreign (other nation) bank shall be licensed to maintain a retail branch office unless the deposits in such office are insured by the Federal Deposit Insurance Corporation in accordance with the provisions of the Federal Deposit Insurance Act.
(Repealed and added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1753. (a) (1) No foreign (other nation) bank shall establish or maintain an agency or branch office unless the commissioner shall have first approved the establishment of that office and issued a license authorizing the bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank from establishing or maintaining a federal agency or federal branch in this state.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to establish an agency or branch office, the commissioner shall approve the application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in a safe and sound manner and in compliance with all applicable laws, regulations, and orders.

(5) That the bank's plan to establish and to maintain the office affords reasonable promise of successful operation.

(6) That the bank's establishment and maintenance of the office will promote the public convenience and advantage.

(7) In case the office is to be a branch office, that the foreign nation where the bank is domiciled permits banks organized under the laws of this state and national banks headquartered in this state to establish and maintain in those foreign nation offices substantially equivalent to agencies, offices substantially equivalent to branch offices, or wholly (except for directors' qualifying shares) owned banks organized under the laws of the foreign nation.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish an agency or branch office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.

(Amended by Stats. 2004, Ch. 183, Sec. 103. Effective January 1, 2005.)

1754. (a) No foreign (other nation) bank which is licensed to maintain an agency or branch office shall relocate such office unless the commissioner shall have first approved such relocation and issued a license authorizing such bank to maintain the office at the new site.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to relocate any agency or branch office, the commissioner shall approve such application:

(1) In case the new site of the office is in the same vicinity as the old site:

(A) That it will not be unsafe or unsound for the bank to relocate the office; and

(B) That the relocation of the office will not be substantially detrimental to the public convenience and advantage, or that the relocation is necessary in the interests of the safety and soundness of the bank; or

(2) In case the new site of the office is not in the same vicinity as the old site:

(A) That the bank's plan to relocate the office and to maintain the office at the new site affords reasonable promise of successful operation;

(B) That the relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area which is primarily served by the office at the old site, or that the relocation is necessary in the interests of the safety and soundness of the bank; and

(C) That the relocation of the office to the new site will promote the public convenience and advantage. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to relocate an agency or branch office has been approved and all conditions precedent to the issuance of a license authorizing such bank to maintain such office at the new site have been fulfilled, the commissioner shall issue such license.

(d) Promptly after a foreign (other nation) bank which is licensed to maintain an agency or branch office relocates such office, such bank shall surrender to the commissioner the license which authorized it to maintain such office at the old site.

(Amended by Stats. 1996, Ch. 1064, Sec. 231. Effective January 1, 1997. Operative July 1, 1997.)

1755. (a) A foreign (other nation) bank that is licensed to maintain an agency or branch office may transact commercial banking business at the office, subject to the following:

(1) In case the office is a nondepositary agency, the bank shall not transact the business of accepting deposits.

(2) In case the office is a depositary agency, the bank shall not transact the business of accepting any deposits other than deposits of (A) a foreign nation, (B) an agency or instrumentality of a foreign nation, or (c) a person which resides, is domiciled, and maintains its principal place of business in a foreign nation. For purposes of this paragraph, "person" means any individual, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, limited liability company, or any other organization or any branch or division thereof.

(3) In case the office is a limited branch office, the bank shall not transact the business of accepting any deposits other than

(A) deposits of the kind described in paragraph (2), or (B) deposits that a corporation organized under Section 25A of the Federal Reserve Act is permitted to accept.

(4) In case the office is a wholesale branch office, the bank shall not transact the business of accepting any deposits other than (A) deposits of the kind described in paragraph (2), (B) deposits of one hundred thousand dollars ($100,000) or more, or (c) deposits the acceptance of which the commissioner determines by regulation or order do not constitute engaging in domestic retail deposit activities requiring deposit insurance protection.

(5) In case the office is an agency, limited branch office, or wholesale branch office, the bank may, subject to any regulations that the commissioner may prescribe, maintain credit balances.

(6) In any case, the bank shall not transact any business that it is not authorized to transact or is prohibited from transacting under the law of its domicile or that commercial banks organized under the laws of this state are not authorized to transact or are prohibited from transacting.

(b) No foreign (other nation) bank that is licensed to maintain an agency or branch office shall transact any trust business at the office except as permitted under Section 1503.

(Amended by Stats. 1996, Ch. 1064, Sec. 232.1. Effective January 1, 1997. Operative July 1, 1997.)

1756. (a) In addition to other provisions of this division that are otherwise applicable to or with respect to foreign (other nation) banks licensed to maintain nondepositary agencies, the following provisions of this division shall apply to or with respect to each foreign (other nation) bank licensed to maintain a nondepositary agency with respect to its business in this state as if the bank were a commercial bank organized under the laws of this state:

(1) Article 5 (commencing with Section 270) of Chapter 2.

(2) Chapter 13 (commencing with Section 1650).

(3) Article 3 (commencing with Section 1951) of Chapter 15.

(4) Articles 3 (commencing with Section 3160), 4 (commencing with Section 3180), and 7 (commencing with Section 3240) of Chapter 17.

(5) Article 1 (commencing with Section 3350) of Chapter 18.

(6) Chapter 20 (commencing with Section 3600).

(7) Chapter 22 (commencing with Section 3800).

(b) In addition to other provisions of this division which are otherwise applicable to or with respect to foreign (other nation) banks licensed to maintain depositary agencies or branch offices, the following provisions of this division shall apply to or with respect to each foreign (other nation) bank licensed to maintain a depositary agency or branch office with respect to its business in this state as if the bank were a commercial bank organized under the laws of this state:

(1) Article 5 (commencing with Section 270) of Chapter 2.

(2) Chapter 6 (commencing with Section 750).

(3) Chapter 7 (commencing with Section 850).

(4) Chapter 8 (commencing with Section 952).

(5) Chapter 10 (commencing with Section 1200).

(6) Chapter 13 (commencing with Section 1650).

(7) Article 3 (commencing with Section 1951) of Chapter 15.

(8) Article 3 (commencing with Section 3160), Article 4 (commencing with Section 3180), and Article 7 (commencing with Section 3240) of Chapter 17.

(9) Article 1 (commencing with Section 3350) of Chapter 18.

(10) Section 3513 and Articles 2 (commencing with Section 3560), 3 (commencing with Section 3570), and 4 (commencing with Section 3580) of Chapter 19.

(11) Chapter 20 (commencing with Section 3600).

(12) Chapter 22 (commencing with Section 3800).

(c) Whenever any provision of this chapter or of any regulation or order issued under this chapter that is applicable to or with respect to foreign (other nation) banks licensed to transact business in this state is inconsistent with any provision of any other chapter of this division that is applicable to or with respect to foreign (other nation) banks licensed to transact business in this state, the former provision shall apply, and the latter provision shall not apply.

(d) (1) Whenever any provision of this division (other than the provisions of this chapter) is applicable to or with respect to foreign (other nation) banks licensed to transact business in this state, the provision shall be applied with any changes in points of detail as may be necessary or appropriate.

(2) Without limiting the provisions of paragraph (1), for purposes of any provision of this division (other than the provisions of this chapter) that is applicable to or with respect to a foreign (other nation) bank licensed to transact business in this state:

(A) "Approved by (or approval of) the board" means approved or ratified by the board of the bank, by a committee of the board authorized to exercise the powers of the board with respect to the particular matter, or by an officer of the bank who is assigned to the head office of the bank and who has authority over the bank's business in this state, including authority to approve or ratify the particular matter.

(B) "Head office" means the primary office of the bank.

(C) "Shareholders' equity" means the shareholders' equity of the bank or, if the bank has no shareholders' equity, the closest equivalent account or accounts.

(e) Whenever any provision of this division (other than the provisions of this chapter) that is applicable to or with respect to a foreign (other nation) bank licensed to transact business in this state limits the amount of any assets or liabilities of the bank (including, by way of example, the amount of borrowings of, obligations to, or investments of the bank), for purposes of calculating the amount of the assets or liabilities, only the assets or liabilities of the agencies or branch offices of the bank shall be included, and the assets and liabilities of offices of the bank outside this state shall be excluded.

(Amended by Stats. 1995, Ch. 480, Sec. 72. Effective October 2, 1995.)

1757. (a) Whenever the commissioner calls for a report under Section 1931 from commercial banks organized under the laws of this state, the commissioner shall call for a report from each foreign (other nation) bank that is licensed to transact business in this state.

(b) (1) A foreign (other nation) bank that is licensed to transact business in this state shall prominently display in the lobby of each agency and branch office, except an automated teller machine branch office (as defined in Section 550), a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, promptly after receiving a request for a financial report, mail or otherwise furnish the financial report to the requester. The first financial report shall be provided without charge.

(2) The financial report called for in this subdivision shall contain either (A) the information that the commissioner may require by regulation or (B) in the absence of a regulation, the last balance sheet and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 1931.

(Amended by Stats. 1996, Ch. 1064, Sec. 233.1. Effective January 1, 1997. Operative July 1, 1997.)

1758. Each foreign (other nation) bank which is licensed to maintain a depositary agency, limited branch office, or wholesale branch office shall, in accordance with such regulations as the commissioner may prescribe, give notice that deposits in such office are not insured by the Federal Deposit Insurance Corporation.

(Amended by Stats. 1996, Ch. 1064, Sec. 234. Effective January 1, 1997. Operative July 1, 1997.)

1759. (a) In case a foreign (other nation) bank is licensed to maintain a depositary agency or branch office and such office is not subject to the regulations of the Depository Institutions Deregulation Committee, Regulation Q of the Board of Governors of the Federal Reserve System, or Part 329 of the regulations of the Federal Deposit Insurance Corporation, such bank shall, with respect to deposits accepted at the office, comply with such regulations regarding maximum interest rates on deposits, prepayment of time deposits, and related matters as the commissioner may prescribe as being necessary and appropriate to maintain competitive equality between foreign (other nation) banks and banks organized under the laws of this state which are subject to the regulations of the Depository Institutions Deregulation Committee, Regulation Q of the Board of Governors of the Federal Reserve System, or Part 329 of the regulations of the Federal Deposit Insurance Corporation.

(b) For purposes of, and notwithstanding any contrary provisions of, Chapter 3.5 (commencing with Section 11340), Part 1 of Division 3 of Title 2 of the Government Code, whenever the commissioner adopts a regulation or order of repeal of a regulation under subdivision (a), the commissioner may, without describing specific facts showing the need for immediate action, find that adoption of such regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, and such regulation or order of repeal shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(Amended by Stats. 1996, Ch. 1064, Sec. 235. Effective January 1, 1997. Operative July 1, 1997.)

1760. (a) Each foreign (other nation) bank which is licensed to transact business in this state shall keep the assets of such business separate and apart from the assets of its business outside this state.

(b) The creditors of the business in this state of a foreign (other nation) bank which is licensed to transact business in this state shall be entitled to priority over other creditors with respect to the assets of such bank's business in this state.

(Repealed and added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1761. (a) In this section:

(1) "Adjusted liabilities," when used with respect to a foreign (other nation) bank, means the liabilities of such bank's business in this state, excluding (A) accrued expenses, (B) any liability to an office (whether in or outside of this state) or majority-owned subsidiary of the bank, and (c) such other liabilities as the commissioner may by regulation or order exclude.

(2) "Applicable minimum," when used with respect to eligible assets deposited or to be deposited with an approved depository by a foreign (other nation) bank, means such amount as the commissioner may from time to time by regulation or order determine to be necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the bank's business in this state, or for the protection of the public interest. However, in the case of a foreign (other nation) bank which is licensed to maintain a branch office, the applicable minimum shall in no event be less than 5 percent of the adjusted liabilities of such bank.

(3) "Approved depository," when used with respect to a foreign (other nation) bank, means a bank organized under the laws of this state or a national bank headquartered in this state which has been selected by such foreign (other nation) bank and approved by the commissioner for the purpose of acting as the approved depository of the foreign (other nation) bank and which has filed with the commissioner, in such form as the commissioner may by regulation or order prescribe, an agreement to comply with all applicable provisions of this section and of any regulation or order issued under this section.

(4) "Eligible assets" when used with respect to a foreign (other nation) bank, means any of the following:

(A) Cash.

(B) Any security of the type described in Section 1542.

(C) Any negotiable certificate of deposit which (i) has a maturity of not more than one year, (ii) is payable in the United States, and (iii) is issued by a bank organized under the laws of a state of the United States, by a national bank, or by a branch office of a foreign (other nation) bank which is located in the United States.

(D) Any commercial paper which is payable in the United States and which is rated P-1 or its equivalent by a nationally recognized rating service; provided, however, that any conflict in rating shall be resolved in favor of the lower rating.

(E) Any banker's acceptance which is payable in the United States and which is eligible for discount with a Federal Reserve bank.

(F) Any other asset which the commissioner by regulation or order determines to be eligible.

Notwithstanding the foregoing provisions of this paragraph, "eligible asset," when used with respect to a foreign (other nation) bank, does not include any instrument the issuer of which (i) is, or is affiliated with, such foreign (other nation) bank, (ii) is domiciled in, or controlled by a bank or other person domiciled in, the same foreign nation as the foreign (other nation) bank, or (iii) is, or is controlled by, such foreign nation. For purposes of the foregoing provision, to be "affiliated" means to control, to be controlled by, or to be under common control with; and to "control" has the meaning set forth in subdivision (b) of Section 700.

(b) For purposes of this section:

(1) The amount of adjusted liabilities of a foreign (other nation) bank's business in this state shall be computed for such period, in such manner, and on such basis as the commissioner may by regulation or order prescribe.

(2) Any eligible asset shall be valued at the lesser of market or par.

(c) (1) Before any foreign (other nation) bank is licensed to transact business in this state, such bank shall deposit, and each foreign (other nation) bank which is licensed to transact business in this state shall maintain on deposit, with an approved depository eligible assets having a value in an amount not less than the applicable minimum.

(2) Whenever a foreign (other nation) bank which is licensed to transact business in this state ceases to be so licensed, such bank shall thereafter maintain on deposit with an approved depository eligible assets having a value in an amount not less than the applicable minimum for such period of time as the commissioner may determine to be necessary for the protection of creditors of the bank's business in this state or for the protection of the public interest.

(d) (1) No foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section shall withdraw any such eligible assets except with the prior approval of the commissioner.

(2) No approved depository which holds eligible assets on deposit from a foreign (other nation) bank pursuant to this section shall release any such eligible assets except with the prior approval of the commissioner or as otherwise provided in subdivision (h).

(e) Any foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section shall, unless the commissioner shall have suspended or revoked its license to transact business in this state or taken possession of its property and business in this state, be entitled to receive any income paid on such eligible assets.

(f) (1) Whenever a foreign (other nation) bank deposits eligible assets with, or withdraws eligible assets from, an approved depository pursuant to this section, such bank shall do so in accordance with such procedures and requirements as the commissioner may by regulation or order prescribe.

(2) Whenever an approved depository receives, holds, or releases eligible assets pursuant to this section, such approved depository shall do so in accordance with such procedures and requirements as the commissioner may by regulation or order prescribe and shall file with the commissioner such reports as and when the commissioner may by regulation or order require.

(g) Whenever a foreign (other nation) bank maintains eligible assets on deposit with an approved depository pursuant to this section:

(1) The eligible assets shall be deemed to be pledged to the commissioner for the benefit of the creditors of the bank's business in this state; and, notwithstanding any provision of the Uniform Commercial Code to the contrary, the commissioner, for the benefit of such creditors, shall be deemed to have a security interest in such eligible assets.

(2) The eligible assets shall be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the approved depository against the bank.

(h) (1) In case the commissioner takes possession of the property and business of a foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section, such approved depository shall, upon order of the commissioner, release such eligible assets to the commissioner, as liquidator of the property and business of such bank.

(2) In case a foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section fails to pay any judgment creditor of its business in this state and the commissioner has not taken possession of the property and business of such bank, such approved depository shall release such eligible assets to the commissioner, and the commissioner shall make such disposition of the eligible assets, as a court of competent jurisdiction of this state or of the United States may order for the benefit of such judgment creditor. For purposes of this paragraph, "judgment creditor of its business in this state" means a person to whom the bank is required to pay money under a judgment which (A) arose out of the bank's business in this state, (B) has been entered by a court of this state or of the United States, (c) has become final, in that all possibility of direct attack on such judgment by way of appeal, motion for new trial, motion to vacate, or petition for extraordinary writ has been exhausted, and (D) has remained unpaid for a period of not less than 60 days after becoming final.

(Amended by Stats. 1996, Ch. 1064, Sec. 236. Effective January 1, 1997. Operative July 1, 1997.)

1762. (a) In this section:

(1) "Adjusted liabilities," when used with respect to a foreign (other nation) bank which is licensed to maintain a branch office in this state, means the liabilities of such bank's business in this state, excluding (A) accrued expenses, (B) any liability to an office (whether in or outside of this state) or majority-owned subsidiary of the bank, and (c) such other liabilities as the commissioner may by regulation or order exclude.

(2) "Eligible assets" means any asset which the commissioner by regulation or order determines to be eligible for purposes of this section. However, "eligible asset," when used with respect to a foreign (other nation) bank which is licensed to maintain a branch office, includes (A) any asset which such bank maintains on deposit pursuant to Section 1761 and (B) any reserves which the bank maintains with respect to its business in this state in accordance with requirements prescribed by the Board of Governors of the Federal Reserve System.

(b) For purposes of this section, the amount of eligible assets and the amount of adjusted liabilities of a foreign (other nation) bank which is licensed to maintain a branch office in this state shall each be computed for such period, in such manner, and on such basis as the commissioner may by regulation or order prescribe.

(c) A foreign (other nation) bank licensed to maintain a branch office in this state shall hold at its branch offices in this state or at such other places as the commissioner may approve, eligible assets in such amount, if any, as the commissioner may from time to time by regulation or order determine to be necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the bank's business in this state, or for the protection of the public interest. However, in no event shall such amount exceed 108 percent of the adjusted liabilities of the bank's business in this state.

(d) If the commissioner finds, with respect to a foreign (other nation) bank licensed to maintain a branch office in this state, that such action is necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of such bank's business in this state, or for the protection of the public interest, the commissioner may order the

bank to place all or part of the eligible assets which the bank is required to hold under subdivision (c) in the custody of such bank organized under the laws of this state or such national bank headquartered in this state as the commissioner may designate.
(Amended by Stats. 1996, Ch. 1064, Sec. 237. Effective January 1, 1997. Operative July 1, 1997.)

1763.(a) (1) No foreign (other nation) bank which is licensed to maintain an agency or branch office shall close such office unless the commissioner shall have first approved such closing.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank which is licensed to maintain an agency or branch office from closing such office in accordance with Article 4 (commencing with Section 1775).

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to close an agency or branch office, the commissioner shall approve such application:

(1) That it will not be unsafe or unsound for the bank to close the office; and

(2) That the closing of the office will not be substantially detrimental to the public convenience and advantage or that the closing of the office is necessary in the interests of the safety and soundness of the bank. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to close an agency or branch office has been approved and all conditions precedent to such closing have been fulfilled, such bank may close such office and shall promptly thereafter surrender to the commissioner the license which authorized it to maintain the office.
(Amended by Stats. 1996, Ch. 1064, Sec. 238. Effective January 1, 1997. Operative July 1, 1997.)

Article 4. Voluntary Surrender of License
(Article 4 added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1775.(a) Any foreign (other nation) bank that holds a license to maintain an office may voluntarily surrender the license by filing the license and a report with the commissioner. However, any foreign (other nation) bank that holds licenses to maintain two or more offices may not voluntarily surrender less than all of the licenses.

(b) (1) Except as otherwise provided in paragraph (2), a voluntary surrender of a license shall be effective on the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner or on an earlier date as the commissioner may by order specify.

(2) If a proceeding to revoke or suspend a license is pending at the time when the license and the report called for in subdivision (a) are filed with the commissioner or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner, the voluntary surrender of the license shall become effective at the time and upon the conditions that the commissioner may by order specify.
(Amended by Stats. 1996, Ch. 1064, Sec. 239. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. Enforcement
(Article 5 added by Stats. 1981, Ch. 67, Sec. 4. Effective June 16, 1981.)

1780. If the commissioner finds that any person has violated any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may order the person to pay to the commissioner a civil penalty imposed pursuant to Section 216.3.
(Amended by Stats. 2003, Ch. 445, Sec. 9. Effective January 1, 2004.)

1781.If, after notice and a hearing, the commissioner finds any of the following with respect to a foreign (other nation) bank that is licensed to maintain an office, the commissioner may issue an order suspending or revoking the license of the bank:

(a) That the bank has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law, regulation, or order;

(b) That the bank, in case it is licensed to transact business in this state, is transacting the business in an unsafe or unsound manner or, in any case, is transacting business elsewhere in an unsafe or unsound manner;

(c) That the bank is in unsafe or unsound condition;

(d) That the bank has ceased to operate its office;

(e) That the bank is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities exceed its assets;

(f) That the bank has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That the bank has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against the bank and the bank has by any affirmative act approved of or consented to the action or the relief has been granted;

(h) That a receiver, liquidator, or conservator has been appointed for the bank or that any proceeding for such an appointment or any similar proceeding has been initiated in the place where the bank is domiciled;

(i) That the existence of the bank or the authority of the bank to transact banking business under the laws of the place where the bank is domiciled has been suspended or terminated; or

(j) That any fact or condition exists that, if it had existed at the time when the bank applied for its license to transact business in this state, would have been grounds for denying the application.

(Amended by Stats. 1996, Ch. 1064, Sec. 241. Effective January 1, 1997. Operative July 1, 1997.)

1782. (a) If the commissioner finds that any of the factors set forth in Section 1781 is true with respect to any foreign (other nation) bank that is licensed to maintain an office and that it is necessary, in case the bank is licensed to transact business in this state, for the protection of the interests of creditors of the bank's business in this state or, in any case, for the protection of the public interest that the commissioner immediately suspend or revoke the license of the bank, the commissioner may issue an order suspending or revoking the license of the bank.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the foreign (other nation) bank to which the order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner (or within any longer period to which the bank consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any foreign (other nation) bank to which an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the bank to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Amended by Stats. 1996, Ch. 1064, Sec. 242. Effective January 1, 1997. Operative July 1, 1997.)

1783. Any foreign (other nation) bank whose license to maintain an office is suspended or revoked shall immediately surrender the license to the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 243. Effective January 1, 1997. Operative July 1, 1997.)

1784. (a) Any foreign (other nation) bank to which an order is issued under Section 1781 or 1782 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant the application unless he or she finds that it is in the public interest to do so and that it is reasonable to believe that the bank will, if and when it is again licensed to maintain an office, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any foreign (other nation) bank to which an order is issued under Section 1781 or 1782 to petition for judicial review of the order shall not be affected by the failure of the bank to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

(Amended by Stats. 1996, Ch. 1064, Sec. 244. Effective January 1, 1997. Operative July 1, 1997.)

1785. (a) If the commissioner finds that any of the factors set forth in Section 1781 is true with respect to any foreign (other nation) bank which is licensed to transact business in this state and that it is necessary for the protection of the interests of the creditors of such bank's business in this state or for the protection of the public interest that he or she take immediate possession of the property and business of the bank, the commissioner may by order forthwith take possession of the property and business of the bank and retain possession until the bank resumes business in this state or is finally liquidated. The bank may, with the consent of the commissioner, resume business in this state upon such conditions as the commissioner may prescribe.

(b) (1) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), such bank may, within 10 days, apply to the superior court in the county in which the primary office of the bank is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss such application or enjoin the commissioner from further proceedings and order him or her to surrender the property and business of the bank to the bank or make such further order as may be just.

(2) The judgment of the court may be appealed by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. In case the commissioner appeals the judgment of the court, such appeal shall operate as a stay of the judgment, and the commissioner shall not be required to post any bond.

(c) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of such bank pursuant to Articles 1 (commencing with Section 3100), 3 (commencing with Section 3160) and 6 (commencing with Section 3220) of Chapter 17, and the provisions of such articles (except Sections 3100, 3101, 3102, and 3126) shall apply as if the bank were a bank organized under the laws of this state.

(d) When the commissioner has completed the liquidation of the property and business of a foreign (other nation) bank, the commissioner shall transfer any remaining assets to such bank in accordance with such orders as the court may issue. However, in case the bank has an office in another state of the United States which is in liquidation and the assets of such office appear to be insufficient to pay in full the creditors of the office, the court shall order the commissioner to transfer to the liquidator of the office such amount of any such remaining assets as appears to be necessary to cover such insufficiency; if there are two or more such offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of such offices in such manner as the court finds equitable.

(Amended by Stats. 1998, Ch. 931, Sec. 143. Effective September 28, 1998.)

CHAPTER 14. TRANSMISSION OF MONEY ABROAD

(Heading of Chapter 14 amended by Stats. 1981, Ch. 67, Sec. 5.
Note: Prior to 1982, this chapter commenced with Section 1750.)

1800.(a) It is the intent of the Legislature in enacting this chapter to protect the people of this state from being victimized by unscrupulous practices by persons receiving money for transmission to foreign countries and to establish a minimum level of fiscal responsibility and corporate integrity for all entities engaging in the business of receiving money for transmission to foreign countries without regard to the method of transmission.

(b) The Legislature finds and declares that California has a large and diverse population many of whom are concerned with the financial plight of people remaining in the countries which they left. Many of these people are not familar with the varied and intricate financial systems of this state and due to language barriers and other obstacles do not have access to entities offering legitimate money transmission services. In an effort to transmit money to their friends and relatives, these persons give their money to persons under the precept that the money or its equivalent will be immediately transmitted to the designated foreign country. The money is frequently misappropriated or never transmitted. The victims of these practices are generally not aware of the law enforcement services available to help them, thus this unlawful conduct goes unreported.

(Added by Stats. 1989, Ch. 1196, Sec. 2.)

1800.3.(a) No person shall engage in the business of receiving money for the purpose of transmitting the same or its equivalent to foreign countries without first obtaining a license from the commissioner.

(b) This chapter shall not apply to any of the following:

(1) A commercial bank or industrial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank which is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 or which is authorized under federal law to maintain a federal agency or federal branch office in this state.

(2) A trust company licensed pursuant to Section 401 or a national association authorized under federal law to engage in a trust banking business.

(3) An association or federal association, as defined in Section 5102 the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor.

(4) Any federally or state chartered credit union the member accounts of which are insured or guaranteed as provided in Section 14858.

(Amended by Stats. 2000, Ch. 1015, Sec. 25. Effective September 30, 2000.)

1800.4. The receipt of money by an incorporated telegraph company, or its agents, for immediate transmission by telegraph to foreign countries shall be exempt from licensure under this chapter until July 1, 1990, provided each of the following conditions is satisfied.

(1) The company has applied before February 1, 1990, to the commissioner for licensure under this chapter.

(2) The company, and its agents, shall comply with and be subject to all applicable provisions of this chapter.

(3) The company directly, or through agents, on or before February 1, 1989, received money for immediate transmission by telegraph to foreign countries.

(Amended by Stats. 1996, Ch. 1064, Sec. 247.1. Effective January 1, 1997. Operative July 1, 1997.)

1800.5. For the purposes of this chapter:

(a) (1) "Receiving money for transmission" means receiving money for the purpose of transmitting the same or its equivalent to foreign countries.

(2) Except as otherwise provided in paragraph (3), "receiving money for transmission" does not include selling any check, draft, money order, travelers check, or other instrument (whether or not negotiable) for the transmission or payment of money.

(3) "Receiving money for transmission" includes the sale by a person, either directly or indirectly through an agent, of any check or draft which:

(A) Is drawn by the person;

(B) Is drawn on, or is payable through or at, an office of a bank located in a foreign country;

(C) Is denominated in a foreign currency; and

(D) Is not designated on its face by the term "money order" or "travelers check" or by any substantially similar term.

(b) "Transmission money" means money received in this state by a licensee for transmission to a foreign country, or any equivalent into which the money is converted, from the time the money is received for transmission to a foreign

country until the time the transmission of the money in accordance with the agreement of the licensee with the customer is completed, or, if the transmission is not completed, until such time as the money is repaid to the customer.

(c) "Agent" means any person whom a licensee has appointed as its agent with authority to receive transmission money on behalf of the licensee, provided that the licensee becomes liable for the transmission of the transmission money at the time when the transmission money is received by the person. However, "agent" does not include any officer or employee of the licensee when acting as such at an office of a licensee.

(d) "Licensee" means any corporation licensed pursuant to this chapter.

(e) For the purposes of Section 1802.2, 1803.5, and 1804 the following terms shall have the following meanings:

(1) "Control" has the meaning set forth in Section 700.

(2) "Officer" has the meaning set forth in Section 33057.

(Amended by Stats. 1989, Ch. 1196, Sec. 4.)

1800.7. (a) As used in this section, "designated person" means any agent, any applicant, the officers, directors, and controlling persons of any applicant or agent, and the directors and officers of the controlling persons of any applicant or agent.

(b) For the purposes of Sections 1802.2, 1803.5, and 1804, each of the following applies:

(1) The commissioner may, in the absence of the credible evidence to the contrary, presume that designated persons are each of good character and sound financial standing.

(2) The commissioner may find that a designated person is not of good character if that person has done any of the following:

(A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty.

(B) Consented to or suffered a judgment in any civil action based on conduct involving an act of fraud or dishonesty.

(C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty.

(D) Willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any application or report any material fact which was required to be stated therein.

(E) Willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(3) Paragraph (2) shall not be deemed to be an exclusive list of grounds upon which the commissioner may find that a designated person is not of good character.

(Amended by Stats. 1996, Ch. 1064, Sec. 248. Effective January 1, 1997. Operative July 1, 1997.)

1800.9. The commissioner may impose on any authorization, approval, license, or order issued pursuant to this chapter any conditions that he or she deems reasonable or necessary to the public interest.

(Amended by Stats. 1996, Ch. 1064, Sec. 249. Effective January 1, 1997. Operative July 1, 1997.)

1801.(a) Fees shall be paid to, and collected by, the commissioner, as follows:

(1) The fee for filing with the commissioner an application for a license is five thousand dollars ($5,000).

(2) The fee for filing with the commissioner an application for approval to acquire control of a licensee is three thousand five hundred dollars ($3,500).

(3) The fee for filing with the commissioner an application for approval to establish a branch office of a licensee is two hundred fifty dollars ($250).

(4) The fee for filing with the commissioner an application for approval to establish a branch office of an agent is fifty dollars ($50).

(5) The fee for filing with the commissioner an application for extension of an approval to establish a branch office is one hundred dollars ($100).

(6) A licensee shall pay to the commissioner annually on or before July 1, a licensee fee of two thousand five hundred dollars ($2,500).

(7) A licensee shall pay to the commissioner annually on or before July 1, one hundred twenty-five dollars ($125) for each licensee branch office.

(8) A licensee shall pay to the commissioner annually on or before July 1, twenty-five dollars ($25) for each agent headquarter office and each agent branch office.

(9) Whenever the commissioner examines a licensee or any agent of a licensee, the licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(b) (1) Each fee for filing an application with the commissioner shall be paid at the time the application is filed with the commissioner.

(2) No fee for filing an application with the commissioner shall be refundable, regardless of whether the application is approved, denied, or withdrawn.

(Amended by Stats. 1997, Ch. 375, Sec. 7. Effective January 1, 1998.)

1801.1. Each fiscal year the commissioner shall levy an assessment on a pro rata basis on those licensees which at any time during the preceding calendar year received transmission money. The total assessment levied on all of those licensees shall be in an amount which, when added to the fees that the commissioner collects during the fiscal year the assessment is levied, is sufficient to meet the expenses of the commissioner in administering this chapter and to provide a reasonable reserve for contingencies. The basis of the apportionment of the assessment among the licensees assessed shall be the proportion that the amount of transmission money received by the licensee bears to the total amount of transmission money received by all licensees as shown by the reports of licensees to the commissioner for the preceding calendar year, as required by Section 1807. The assessment rate shall be fixed from time to time by the commissioner but shall not exceed one dollar ($1) per one thousand dollars ($1,000) of transmission money received by the licensee.

The commissioner shall notify each licensee by mail of the amount levied against it. The licensee shall pay the amount levied within 20 days. If payment is not made to the commissioner within that time, the commissioner shall assess and collect, in addition to the annual assessment, a penalty of 5 percent of the assessment for each month or part thereof that the payment is delinquent. This section shall not become operative until July 1, 1990.

(Amended by Stats. 1996, Ch. 1064, Sec. 251. Effective January 1, 1997. Operative July 1, 1997.)

1802. (a) An application for a license shall be in writing, under oath, and in a form prescribed by the commissioner. It shall contain the name and address of the applicant, and of every officer and director thereof. The application shall also contain any other information the commissioner may require.

(b) No person other than a corporation may apply for or be issued a license.

(Amended by Stats. 1996, Ch. 1064, Sec. 252.1. Effective January 1, 1997. Operative July 1, 1997.)

1802.2. If the commissioner finds, with respect to an application for a license:

(a) That the applicant has adequate capital as specified in Section 1814 to engage in the business of receiving money for transmission and that the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of receiving money.

(b) That the applicant, the directors, and officers of, and any person which controls the applicant, and the directors and officers of any person which controls the applicant, are of good character and sound financial standing.

(c) That the applicant is competent to engage in the business of receiving money for transmission.

(d) That the applicant's plan for engaging in the business of receiving money for transmission affords reasonable promise of successful operation.

(e) That it is reasonable to believe that the applicant, if licensed, will engage in the business of receiving money for transmission and will comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter, the commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.

(Amended by Stats. 1996, Ch. 1064, Sec. 253. Effective January 1, 1997. Operative July 1, 1997.)

1802.6. The license is not transferable or assignable.

(Added by renumbering Section 1805 by Stats. 1989, Ch.1196, Sec. 18.)

1802.7. If the application is approved by the commissioner he or she shall, upon the payment of the license fees, issue and deliver to the applicant a license to engage in business in accordance with this chapter.

(Amended by Stats. 1996, Ch. 1064, Sec. 254. Effective January 1, 1997. Operative July 1, 1997.)

1802.8. (a) Before any applicant is issued a license the applicant shall file with the commissioner, in the form required by the commissioner, an irrevocable consent appointing the commissioner to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the person, that person's successor, executor, or administrator, which arises under this chapter or any regulation or order issued under this chapter after the consent has been filed.

(b) Service of process after consents have been filed pursuant to this section shall have the same force and validity as if personally served on the person.

(c) Service may be made by leaving a copy of the process at any office of the commissioner, but the service is not effective unless (1) the party making the service, who may be the commissioner, immediately sends notice of the service and a copy of the process by registered or certified mail to the party served at his or her last address on file with the commissioner, and (2) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(d) Any consent filed pursuant to this section shall be deemed to have appointed the commissioner and any successor from time to time in office.

(Amended by Stats. 1996, Ch. 1064, Sec. 255. Effective January 1, 1997. Operative July 1, 1997.)

1803. No licensee shall appoint or continue any person as an agent, unless the licensee and the person have made a written contract which contains each of the following provisions:

(a) That the licensee appoints the person as its agent with authority to receive transmission money on behalf of the licensee.

(b) That the person make and keep accounts, correspondence, memorandums, papers, books, and other records as the commissioner by regulation or order requires and preserve the records for the time specified by the regulation or order.

(c) That all funds, less fees due agents provided for and expressly set forth, received by the person from the receipt of transmission money on behalf of the licensee shall be trust funds owned by and belonging to the person from whom they were received until the time that directions have been given by the licensee or its agents for payment abroad of the remittance and funds provided for the payment.

(d) Any other provisions that the commissioner may find to be necessary to carry out the provisions and purposes of this chapter.

(e) This section shall not apply to any written contract between a licensee and an agent appointed by the licensee prior to February 1, 1989, unless the commissioner, in his or her sole discretion, determines that compliance with this section is necessary and appropriate. For purpose of this subdivision only, "licensee" means an incorporated telegraph company which existed on February 1, 1989, or any wholly owned incorporated subsidiary of that telegraph company.

(Amended by Stats. 1996, Ch. 1064, Sec. 256. Effective January 1, 1997. Operative July 1, 1997.)

1803.5. (a) Except as provided in subdivision (b), no person shall act as an agent of a licensee, or act in any other similar capacity, and no licensee shall appoint another person to act as an agent, or to act in any other similar capacity, for the receipt of transmission money on behalf of that licensee without first obtaining the authorization of the commissioner.

(b) (1) Any person appointed as an agent by a licensee before February 1, 1989, may continue to act as an agent for that licensee, without the original appointment having been authorized by the commissioner as provided in this section. However, the licensee shall notify the commissioner by March 31, 1990, of all agents appointed by the licensee prior to February 1, 1989. The commissioner may thereafter issue an order revoking or suspending any agent appointed prior to February 1, 1989, as provided by this section. With respect to any person appointed as an agent by a licensee on or after February 1, 1989, and before January 1, 1990, the licensee shall comply with the requirements for approval set forth in this section on or before March 31, 1990. However, the application fee otherwise required for the application shall be waived. This limited category of agents may continue to serve as an agent of the licensee for 45 days after filing the application with the commissioner but in no event beyond May 15, 1990, without approval of the application by the commissioner under subdivision (d).

(2) Any incorporated telegraph company which had more than 1,000 agents on February 1, 1989, or a wholly owned subsidiary of that telegraph company, either of which applies for licensure under this chapter, shall notify the commissioner at the time of application, or, if the application was filed prior to January 1, 1990, shall notify the commissioner not later than February 1, 1990, of any agent who has been an agent with that company continuously for at least five years prior to February 1, 1989. Any agent that has been with that telegraph company continuously for at least five years prior to February 1, 1989, may, from the time the license is issued by the commissioner, continue to act as an agent for that company without the original appointment having been authorized by the commissioner as provided in this section. The commissioner may thereafter issue an order revoking or suspending any agent appointed by that company who has been an agent with the company continuously for at least five years prior to February 1, 1989, as provided by this section.

(c) An application for the appointment of an agent shall be submitted by a licensee for each proposed agent, shall be in writing, under oath, and in a form prescribed by the commissioner. The application shall contain that information which the commissioner may require.

(d) If the application for the appointment of an agent is not approved or denied within 45 days after the application is filed with the commissioner, the application shall be deemed to be approved by the commissioner as of the first day after the 45-day period.

For purposes of this subdivision, an application for the appointment of an agent is deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all the information in the form required by the commissioner, is received by the commissioner.

The commissioner may disapprove the application for the appointment of an agent by a licensee if the commissioner finds any of the following:

(1) That the operations and financial condition of the licensee indicate that the licensee is not competent to appoint the proposed agent to receive transmission money and to supervise the proposed agent.

(2) That the proposed agent, any person who controls the proposed agent, and any director or officer of the proposed agent or of any person who controls the proposed agent, if any, are not of good character or of sound financial standing.

(3) That the proposed agent is not competent to engage in the business of receiving money for transmission.

(4) That it is reasonable to believe that the proposed agent, if it becomes an agent of a licensee, will not comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter.

(e) An agent of a licensee shall not appoint a subagent to receive transmission money.

(f) Each licensee shall be liable as a principal for the transmission of the transmission money at the time when the transmission money is received by the agent.

(g) The commissioner may issue an order revoking or suspending any authorization issued pursuant to this section or revoking authority to continue any agent appointed prior to February 1, 1989, if, after a hearing, the commissioner finds any of the following:

(1) The agent has violated this chapter or any regulation adopted by the commissioner under this chapter.

(2) Any fact or condition exists which would be grounds for denying an application for authorization under subdivision (d).

(3) The agent is conducting its business in an unsafe manner.

(h) (1) If the commissioner finds that any of the factors set forth in subdivision (g) is true with respect to any agent and that it is necessary for the protection of the public interest that the commissioner immediately suspend or revoke the authorization issued pursuant to this section, the commissioner may issue an order suspending or revoking the authorization issued pursuant to this section.

(2) Within 30 days after an order is issued pursuant to paragraph (1), any licensee to whom the order is issued or any agent or former agent with respect to whom the order was issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed with the commissioner, (or within a longer period of time agreed to by a licensee, agent, or former agent) the order shall be deemed rescinded. Within 30 days after the hearing the commissioner shall affirm, modify, or rescind the order. Otherwise the order shall be deemed rescinded. The right of any licensee to which an order has been issued under paragraph (1) or of the agent or former agent with respect to whom the order was issued to petition for judicial review of the order shall not be affected by the failure of the licensee, or the agent or former agent to apply to the commissioner for a hearing on the order pursuant to this paragraph.

(i) Section 1805 shall apply to the establishment of a branch office in this state by an agent of a licensee and Section 1805.5 shall apply to the relocation of a branch office in this state by an agent of a licensee.

(Amended by Stats. 1996, Ch. 1064, Sec. 257. Effective January 1, 1997. Operative July 1, 1997.)

1804. (a) No person shall, directly or indirectly, acquire control of a licensee unless the commissioner has first approved in writing of the acquisition of control. An application to acquire control of a licensee shall be in writing, under oath, and in a form prescribed by the commissioner. The application shall contain that information which the commissioner may require.

(b) The commissioner shall not approve the application unless the commissioner finds, all of the following:

(1) The applicant and the officers and directors of the applicant are of good character and sound financial standing.

(2) The applicant is competent to engage in the business of receiving money for transmission.

(3) It is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with all applicable provisions of this chapter and any regulation or order issued under this chapter.

(4) The applicant's plans, if any, to make any major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee.

(c) For the purposes of subdivision (b), the commissioner may find an applicant's plan to make major changes in the management of a licensee is detrimental to the licensee if the plan provides for a person who is not of good character to become a director or officer of the licensee.

The grounds specified in this subdivision shall not be deemed to be the only grounds upon which the commissioner may find, for the purposes of subdivision (b), that an applicant's plan to make a major change in the management of a licensee is detrimental to the licensee.

(d) If it appears to the commissioner that any person is violating or failing to comply with this section, the commissioner may direct the person to comply with this section by an order issued over the commissioner's official seal.

(e) Whenever it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this section or of any regulation or order of the commissioner issued pursuant to this section, the commissioner may apply to the superior court for an order enjoining the person from violating or continuing to violate this section or that regulation or order, and for other equitable relief as the nature of the case or interests of the licensee, the controlling person, the creditors or shareholders of the licensee or controlling person or the public may require.

(f) The commissioner, may, for good cause, amend, alter, suspend, or revoke any approval of a proposal to acquire control of a licensee issued pursuant to this section.

(g) There shall be exempted from the provisions of this section any transaction which the commissioner by regulation or order exempts as not being comprehended within the purposes of this section and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of a licensee or the customers of a licensee.

(Amended by Stats. 1996, Ch. 1064, Sec. 258. Effective January 1, 1997. Operative July 1, 1997.)

1805. (a) For the purposes of this section "branch office" means any office in this state, other than the headquarters office of a licensee or agent, at which the licensee receives money for transmission to a foreign country, either directly or through an agent.

(b) A licensee shall not establish a branch office without first obtaining the approval of the commissioner.

(c) An application to establish and operate a branch office shall be in writing and in a form prescribed by the commissioner. The application shall contain that information which the commissioner may require.

(d) The commissioner shall deny an application to establish and operate a branch office where the operations or financial condition of the licensee or of the agent are not satisfactory.

(e) In case an application to establish and operate a branch office is not denied or approved by the commissioner within 60 days after the application is filed with the commissioner, or, if the commissioner extends the period within which the commissioner may act, within the extended period, the application shall be deemed to be approved by the commissioner as of the first day after the 60-day period or the extended period, as the case may be.

For purposes of this subdivision, an application to establish and operate a branch office shall be deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all the information in the form required by the commissioner, is received by the commissioner.

(f) The approval of an application for authority to establish and operate a branch office shall be revoked by operation of law with respect to any branch office which the applicant does not establish and operate, as the case may be, within one year after the date of approval by the commissioner. However, for good cause on written application made before the approval is revoked, the commissioner may extend the approval for additional periods not in excess of one year.

(g) Not less than 60 days prior to discontinuing the operation of a branch office, a licensee shall provide the commissioner and the public with written notice of the discontinuance in the manner the commissioner directs. This subdivision does not apply to the discontinuance of a branch office of an agent if the discontinuance of the branch office results from termination of the agency relationship.

(Amended by Stats. 1996, Ch. 1064, Sec. 259. Effective January 1, 1997. Operative July 1, 1997.)

1805.5. A licensee shall not change the location of a branch office without notifying the commissioner and the public in the manner as the commissioner directs at least 30 days before the date of the proposed relocation. For purposes of this section, "branch office" has the meaning specified in subdivision (a) of Section 1805.

(Amended by Stats. 1996, Ch. 1064, Sec. 260.1. Effective January 1, 1997. Operative July 1, 1997.)

1807. (a) The commissioner may by order or regulation grant exemptions from this section in cases where the commissioner finds that the requirements of this section are not necessary.

(b) Each licensee shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain such audited financial statements of the licensee for or as of the end of the fiscal year prepared in accordance with generally accepted accounting principles and such other information as the commissioner may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and such other requirements as the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take such action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

(d) Each licensee shall, not more than 45 days after the end of each quarter (except the fourth quarter of its fiscal year), or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(1) Financial statements, including balance sheet, income statement, statement of changes in shareholders' equity, and statement of cashflows, for, or as of the end of, that fiscal quarter, verified by two of the licensee's principal officers. The verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) The current address of the headquarters office and each branch office of the licensee and each agent at which the licensee receives transmission money in this state.

(3) The name and business address of each person who acted as an agent of the licensee during the quarter in this state, and if the person is no longer an agent of the licensee, the date on which the relationship terminated.

(4) Other information as the commissioner may by regulation or order require.

(e) Each licensee shall file with the commissioner other reports as and when the commissioner may by regulation or order require.

(Amended by Stats. 2004, Ch. 183, Sec. 104. Effective January 1, 2005.)

1807.5. (a) Each licensee and each agent of a licensee shall make, keep, and preserve within the United States such books, accounts, and other records in such form, in such manner, and for such time as the commissioner may by regulation or order specify.

(b) All references in this chapter to financial statements, balance sheets, income statements, and statements of changes in financial position of a licensee or agent of a licensee mean financial statements, income statements, and statements of cash flows prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters which they purport to present.

(Amended by Stats. 1996, Ch. 1064, Sec. 262.1. Effective January 1, 1997. Operative July 1, 1997.)

1808. (a) The commissioner may at any time and from time to time examine the business and any office, within or outside this state, of any licensee or any agent of a licensee in order to ascertain whether that business is being conducted in a lawful manner and whether all moneys received for transmission are properly accounted for.

(b) The directors, officers, and employees of a licensee or agent of a licensee being examined by the commissioner shall exhibit to the commissioner, on request, any or all of the licensee's accounts, books, correspondence, memoranda, papers, and other records and shall otherwise facilitate the examination so far as it may be in their power to do so.

(Amended by Stats. 2003, Ch. 404, Sec. 5. Effective January 1, 2004.)

1809.(a) Each licensee shall file with the commissioner a certified copy of every receipt form used by it or by its agents for money received for transmission. No licensee or its agents shall use any receipt, a certified copy of which has not first been filed with and approved by the commissioner.

(b) If a receipt is required by this chapter to be in

English and another language, the English version of the receipt shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the licensee or its agent and the licensee or its agent shall be liable for any damages caused by these discrepancies.

(c) Any licensee violating the requirements of this section shall be subject to a fine of fifty dollars ($50) for each violation.

(d) If any licensee or its agent uses a receipt form, a certified copy of which has not first been filed with and approved by the commissioner, the licensee shall be liable for the acts of its agents whether or not the licensee authorized the agent to use that form.

(Amended by Stats. 1996, Ch. 1064, Sec. 264. Effective January 1, 1997. Operative July 1, 1997.)

1810. (a) Every licensee or its agent shall forward all moneys received for transmission to a foreign country or give instructions committing equivalent funds to the person designated by the customer within 10 days after receiving that money, unless otherwise ordered by his or her customer.

(b) Whenever a licensee, either directly or indirectly through an agent, receives money for transmission by means of selling a check or draft of the type described in subdivision (b) of Section 1800.5, the purchaser of the instrument shall be deemed to have ordered compliance with subdivision (a), as follows:

(1) In case the instrument is payable at a definite time, not later than that definite time.

(2) In case the instrument is payable on demand, on or before the next business day.

(Amended by Stats. 1988, Ch. 428, Sec. 1.)

1810.5. (a) Every licensee or its agent shall refund to the customer within 10 days of receipt of the customer's written request for a refund any and all moneys received for transmission to a foreign country unless any of the following occurs:

(1) The funds have been forwarded within 10 days of the date of receipt.

(2) Instructions have been given committing an equivalent amount of money to the person designated by the customer within 10 days of the date of the receipt of the funds from the customer.

(3) The customer instructs the licensee to transmit the moneys at a time beyond 10 days. If the customer gives instructions as to when the moneys shall be forwarded or transmitted and the moneys have not yet been forwarded or transmitted, the licensee or its agent shall refund the customer's money within 10 days of receipt of the customer's written request for a refund.

(b) A receipt shall be provided by a licensee or its agent to a customer which shall be made available to the customer in English and in the language principally used by that licensee or that agent to advertise, solicit, or negotiate, either orally or in writing, at that office if other than English. The receipt shall either include or have attached a conspicuous statement in English and in the language principally used by the licensee or that agent to advertise, solicit, or negotiate, either orally or in writing at that office if other than English in a size equal to at least 10-point bold type, as follows:

RIGHT TO REFUND

"You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if _____ (name of licensee or its agent) does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.

If your instructions as to when the moneys shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted you have a right to a refund of your money.

If you want a refund, you must mail or deliver your written request to _____ (name of licensee or its agent) at _____ (mailing address of licensee or its agent). If you do not receive your refund, you may be entitled to your money back plus a penalty of up to $1,000 and attorney's fees pursuant to Section 1810.5 of the California Financial Code."

(c) A cause of action under this section may be brought in small claims court if it does not exceed the jurisdiction of that court, or in any other appropriate court. The customer shall be entitled to recover each of the following:

(1) Any and all moneys received for transmission to a foreign county, plus any fees and charges paid by the customer.

(2) A penalty in an amount not to exceed one thousand dollars ($1,000).

The court shall award the prevailing party costs and attorney's fees.

(Added by Stats. 1989, Ch. 1196, Sec. 24.)

1811. (a) As security for the timely and proper delivery of transmission money received by it, each licensee subject to the order of the commissioner, shall deposit and thereafter maintain on deposit with the Treasurer cash in an amount not less than, or securities having a market value not less than, such amount as the commissioner may find and specify as necessary for the protection of transmission money received by such licensee. These securities are subject to the approval of the commissioner and shall consist of interest-bearing bonds, notes, or other obligations of the United States or any agency or instrumentality thereof, or of the State of California, or of any city, county, or city and county, political subdivision or district of the State of California, or which are guaranteed by the United States or the State of California.

(b) So long as a licensee which maintains securities on deposit with the Treasurer pursuant to this section is solvent, that licensee shall be entitled to receive any interest paid on such securities.
(Amended by Stats. 1996, Ch. 1064, Sec. 265. Effective January 1, 1997. Operative July 1, 1997.)

1812. In lieu of the deposit of cash or securities pursuant to Section 1811, a licensee may deliver to the commissioner the bond of a surety company, in form and written by a company satisfactory to the commissioner, in an amount not less than the amount of the deposit of cash or securities required of the licensee, conditioned upon the timely and proper delivery of all transmission money received by such licensee or its agents for such purpose. The commissioner shall deposit such bond with the Treasurer.
(Amended by Stats. 1996, Ch. 1064, Sec. 266. Effective January 1, 1997. Operative July 1, 1997.)

1813. The money and securities deposited with the State Treasurer pursuant to Section 1811 and the proceeds of any bond held by the State Treasurer pursuant to Section 1812 shall constitute a trust fund for the benefit of such persons as shall deliver to any such licensee or its agent money for transmission. Suit to recover on any such bond may be brought by any party aggrieved in a court of competent jurisdiction of any county in which such licensee has an agent. The service of summons on any agent of such licensee shall constitute service upon such licensee.
(Added by renumbering Section 1809 by Stats. 1963, Ch.2052.)

1814. (a) Each licensee shall at all times maintain tangible shareholders' equity determined to be adequate by the commissioner of at least five hundred thousand dollars ($500,000). However, with respect to any licensee licensed as of January 1, 2002, the commissioner may, for good cause and to avoid undue hardship, extend the time within which the licensee is required to satisfy this subdivision.

(b) "Tangible shareholders' equity" means shareholders' equity minus intangible assets as determined in accordance with generally accepted accounting principles.
(Amended by Stats. 2003, Ch. 456, Sec. 1. Effective January 1, 2004.)

1815. (a) The receipt presented to each customer for each transaction pursuant to subdivision (b) of Section 1810.5 shall clearly state the rate of exchange for the particular transaction, the amount of commission or fees, and the net exchange after all fees and commissions have been deducted. The receipt shall also state the total amount of currency presented by the customer and the total amount to be delivered to the beneficiary designated by the customer. These disclosures shall be in English and in the same language as that principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, at that office if other than English.

(b) All window and exterior signs concerning the rates of exchange shall clearly state in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, at that office if other than English, the rate of exchange for exchanging the currency of the United States for foreign currency. All interior signs and all advertising, if rates are quoted, shall clearly state the rates of exchange for exchanging the currency of the United States for foreign currency and shall state all commissions and fees charged on all transactions.

(c) At each office of each licensee and each agent, there shall be disclosed in those offices in this state the information specified in subdivision (b) in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, with respect to receiving money or its equivalent for transmission to a foreign country at that office.

(d) If the customer does not specify at the time the currency is presented to the licensee or its agent the country to which the currency is to be transmitted, the rate of exchange for the transaction is not required to be set forth on the receipt.
(Added by Stats. 1989, Ch. 1196, Sec. 26.)

1816. All funds, less fees, received by a licensee or its agents for transmission to a foreign country shall constitute trust funds owned by and belonging to the person from whom they were received until such time as directions have been given by the licensee or its agents for payment abroad of the remittance and funds provided for such payment.
(Added by Stats. 1963, Ch. 2052.)

1817. If it appears to the commissioner that a licensee is violating or failing to comply with any law of this state, the commissioner may direct such licensee to comply with the law by an order issued over his or her official seal, or if it appears to the commissioner that any licensee is conducting its business in an unsafe or injurious manner the commissioner may in like manner direct it to discontinue the unsafe or injurious practices. The order shall require the licensee to show cause before the commissioner at a time and place to be fixed by him or her why the order should not be observed.
(Amended by Stats. 1996, Ch. 1064, Sec. 268. Effective January 1, 1997. Operative July 1, 1997.)

1818. If upon any hearing held pursuant to Section 1817 the commissioner finds that the licensee is violating or failing to comply with any law of this state or is conducting its business in an unsafe or injurious manner he or she may make a final order directing it to comply with the law or to discontinue the unsafe or injurious practices. Unless within 10 days after the issuance of such final order its enforcement is restrained in a proceeding brought by the licensee, it shall forthwith comply therewith.
(Amended by Stats. 1996, Ch. 1064, Sec. 269. Effective January 1, 1997. Operative July 1, 1997.)

1819. The commissioner may revoke or suspend any license issued pursuant to this article, if, after a hearing, he or she finds any of the following:

(a) The licensee has violated any provision of this chapter or any rule or regulation adopted by the commissioner.

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, would be grounds for denying an application for a license under Section 1802.2.

(c) The licensee is conducting its business in an unsafe manner.

(d) The licensee has failed to obey a final order issued by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 270. Effective January 1, 1997. Operative July 1, 1997.)

1820. Every order, decision, or other official act of the commissioner is subject to review in accordance with law.
(Amended by Stats. 1996, Ch. 1064, Sec. 271. Effective January 1, 1997. Operative July 1, 1997.)

1821. Whenever it appears to the commissioner that:

(a) Any licensee has violated any law of this state;

(b) Any licensee is conducting its business in an unsafe or unauthorized manner;

(c) Any licensee refuses to submit its books, papers, and affairs to the inspection of the commissioner;

(d) Any licensee or any officer of a licensee, if a corporation, refuses to be examined upon oath touching the concerns of such licensee;

(e) Any licensee has suspended payment of its obligations;

(f) Any licensee is in such condition that it is unsound, unsafe, or inexpedient for it to transact business; or

(g) Any licensee neglects or refuses to observe any order of the commissioner made pursuant to Section 1818 unless the enforcement of such order is restrained in a proceeding brought by the licensee; the commissioner may forthwith take possession of the property and business of such licensee and retain possession until such licensee resumes business or its affairs be finally liquidated as herein provided. Such licensee, with the consent of the commissioner, may resume business upon such conditions as the commissioner may prescribe.
(Amended by Stats. 1996, Ch. 1064, Sec. 272. Effective January 1, 1997. Operative July 1, 1997.)

1822. Whenever the commissioner has taken possession of the property and business of any licensee, such licensee, within 10 days after such taking, if it deems itself aggrieved thereby, may apply to the superior court in the county in which the head office of such licensee is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing and a determination of the facts upon the merits may dismiss such application or enjoin the commissioner from further proceedings and direct him or her to surrender the property and business to such licensee.
(Amended by Stats. 1996, Ch. 1064, Sec. 273. Effective January 1, 1997. Operative July 1, 1997.)

1823. Every person who violates or fails to comply with this chapter, or who, without complying with this chapter, represents that he or she is authorized to receive, or who solicits or receives, money or the equivalent for transmission to a foreign country, shall upon conviction be fined not more than fifty thousand dollars ($50,000) or shall be imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both the fine and imprisonment.
(Amended by Stats. 1989, Ch. 1196, Sec. 28.)

1824. An appeal may be taken from the judgment of the court by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.
(Amended by Stats. 1998, Ch. 931, Sec. 144. Effective September 28, 1998.)

1825. When the commissioner takes possession of the property or business of any licensee for the purpose of liquidation or conservation, the commissioner shall liquidate or conserve the property or business pursuant to Chapter 17 of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 275. Effective January 1, 1997. Operative July 1, 1997.)

1826. Any person who violates this chapter shall be liable to the people of the State of California in an action brought by the commissioner for a civil penalty not to exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day or part thereof during which the violation continues.
(Amended by Stats. 1996, Ch. 1064, Sec. 276. Effective January 1, 1997. Operative July 1, 1997.)

1827. (a) No agent of a licensee who has actual notice that the commissioner has suspended or revoked the license of a licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, shall receive any transmission money on behalf of the licensee.

(b) If any agent of a licensee, after first having actual notice that the commissioner has suspended or revoked the license of a licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, receives any transmission money on behalf of the licensee, the agent shall be jointly and severally liable with the licensee for the timely and proper delivery of transmission money received by the agent of the licensee.

(Amended by Stats. 1996, Ch. 1064, Sec. 277. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 14A. TRAVELERS CHECKS

(Chapter 14A added by Stats. 1978, Ch. 1347.)

Article 1. General Provisions

(Article 1 added by Stats. 1978, Ch. 1347.)

1851. This chapter is known and may be cited as the Travelers Checks Act.
(Added by Stats. 1978, Ch. 1347.)

1852. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) "Agent" means any person authorized by a licensee to sell traveler's checks in this state on behalf of such licensee.

(b) "Business day" means any day other than Saturday, Sunday or any other day which is specified or provided for as a holiday in the Government Code.

(c) "Eligible security" has the meaning set forth in subdivision (a) of Section 1876.1.

(d) (1) "Foreign currency" means any currency other than United States currency.

(2) "Foreign currency," when used with respect to any traveler's check, means a traveler's check which is denominated in a foreign currency.

(e) "Licensee" means a person duly licensed by the commissioner pursuant to this chapter to issue traveler's checks.

(f) "Outstanding traveler's checks" means travelers checks sold in the United States and reported to licensee.

(g) (1) "Payment instrument" means:

(A) Any instrument (whether or not negotiable) for the transmission or payment of money which is designated on its face by the term "money order" or by any substantially similar term; or

(B) Any check, draft, or other instrument (whether or not negotiable) for the transmission or payment of money, if sold to a natural person and payable on demand.

(2) Notwithstanding the provisions of subparagraph (B) of paragraph (1) of this subdivision, "payment instrument" does not include:

(A) Any traveler's check;

(B) Any credit card voucher;

(C) Any letter of credit; or

(D) Any instrument which is redeemable by the issuer in goods or services.

(h) "Person" means any individual, partnership, unincorporated association, limited liability company, or corporation.

(i) "Travelers check" means an instrument for the payment of money which:

(1) Is designated on its face by the term "travelers check" or by any substantially similar term or is commonly known and marketed as a traveler's check by a corporation licensed as an issuer of traveler's checks in this state on or prior to January 1, 1978, and not also by the term "money order" or by any substantially similar term;

(2) (A) If issued in United States currency, is in the sum of ten dollars ($10) or a whole multiple thereof, if less than one hundred dollars ($100), or in the sum of one hundred dollars ($100) or a whole multiple thereof;

(B) If issued in any foreign currency, is in an even denomination of such currency;

(3) Contains a provision for a specimen signature of the purchaser to be completed at the time of purchase, and

(4) Contains a provision for a countersignature of the purchaser to be completed at the time of negotiation.

(j) "United States currency", when used with respect to any traveler's check, means a traveler's check which is denominated in United States currency.
(Amended by Stats. 1996, Ch. 1064, Sec. 278. Effective January 1, 1997. Operative July 1, 1997.)

1852.1. (a) Each fee for filing an application with the commissioner shall be paid at the time when such application is filed with the commissioner.

(b) No fee for filing an application with the commissioner shall be refundable, regardless of whether such application is approved, denied, withdrawn, or abandoned.
(Amended by Stats. 1996, Ch. 1064, Sec. 279. Effective January 1, 1997. Operative July 1, 1997.)

1852.2. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application for a license shall be two thousand dollars ($2,000).

(b) The fee for issuing a license shall be twenty-five dollars ($25).

(c) Whenever the commissioner examines any licensee or any California agent of a licensee, that licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per hour for each

examiner engaged in the examination plus, in case it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.
(Amended by Stats. 1997, Ch. 375, Sec. 8. Effective January 1, 1998.)

1852.3. The commissioner shall annually assess and collect from licensees an assessment in accordance with Section 33302.
(Amended by Stats. 1996, Ch. 1064, Sec. 280. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Prohibitions
(Article 2 added by Stats. 1978, Ch. 1347.)

1853. No person shall engage in the business of issuing travelers checks without having first obtained a license hereunder.
(Added by Stats. 1978, Ch. 1347.)

1854. (a) No license to issue travelers checks shall be required of any bank that is organized under the laws of this state, any national bank that maintains its main office or a branch office in this state, any insured foreign (other state) state bank that maintains a branch office in this state, or any foreign (other nation) bank that is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 or that is authorized under federal law to maintain a federal agency (as defined in Section 1700) or federal branch (as defined in Section 1700) in this state.

(b) No license to issue travelers checks shall be required for the issuance of any foreign currency travelers check by a group of banks each of which is organized under the laws of a nation other than the United States and one or more of which are licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 or are authorized under federal law to maintain a federal agency or federal branch in this state, provided that each bank that is a member of the group is jointly and severally liable to pay the foreign currency travelers check.
(Amended by Stats. 1995, Ch. 480, Sec. 79. Effective October 2, 1995.)

1854.1. There is exempted from the provisions of Section

1853 the sale by a person licensed under Chapter 14 (commencing with Section 1800) or by any agent of such person, of any foreign currency travelers check that is issued by a bank which is organized under the laws of a nation other than the United States and which is neither licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 nor authorized under federal law to maintain a federal agency or federal branch in this state, provided:

(a) That such person, at the time when it sells the foreign currency travelers check, either directly or indirectly through any of its agents, provides to the purchaser a written guaranty that, if such bank fails to pay the foreign currency travelers check on account of insolvency, such person will pay the foreign currency travelers check;

and

(b) That the aggregate face amount of foreign currency travelers checks issued by such bank which are sold in this state in any calendar year by such person, directly or indirectly through its agents, shall not exceed the equivalent of one hundred thousand dollars ($100,000).
(Amended by Stats. 1981, Ch. 67, Sec. 17. Effective June 16, 1981.)

Article 3. Application for License
(Article 3 added by Stats. 1978, Ch. 1347.)

1855. An application for a license shall be in writing, under oath, and in a form prescribed by the commissioner. It shall contain the name and address of the applicant, the location of applicant's principal place of business and, if the applicant is a corporation, the name and address of directors and principal officers thereof.
(Amended by Stats. 1996, Ch. 1064, Sec. 282. Effective January 1, 1997. Operative July 1, 1997.)

1856. Each application for a license shall be accompanied by such information and documents as the commissioner may by regulation or order reasonably require, including but not limited to:

(a) The most recent audited and unconsolidated statement of income and statement of condition of applicant as prepared by an independent certified public accountant in conformity with generally accepted accounting principles applied on a consistent basis.

(b) Description of applicant's business and mode of operation.

(c) Enumeration of names of parent and active subsidiary organizations of applicant, if any.

(d) Copies of the applicant's filings for the preceding year with the Securities and Exchange Commission, and copies of the most recent filings for the preceding year with the California Corporations Commissioner, or other California state agency.

(e) Detailed statement of eligible securities of applicant, including identification by name and present value, which applicant intends to use in the conduct of its business of issuing traveler's checks.

(f) Amount of issuer's liability for traveler's checks outstanding in California, and in the United States, as of the last business day of the preceding calendar quarter.

(g) Name and principal office of each agent, selling or to be selling traveler's checks in California.

(h) Name of other states, in which applicant has been granted a license or authorization to sell or is selling traveler's checks.

(Amended by Stats. 1996, Ch. 1064, Sec. 283. Effective January 1, 1997. Operative July 1, 1997.)

Article 4. Granting and Renewal of Licenses
(Article 4 added by Stats. 1978, Ch. 1347.)

1857. The commissioner shall approve an application for a license within 90 days from the date of filing unless after a duly noticed hearing, the commissioner makes any of the following findings, each of which shall constitute sufficient grounds for the denial of such application:

(a) The granting of the license will be against public interest.

(b) The applicant does not intend actively and in good faith to carry on as a business the transactions which would be permitted by the issuance of the license applied for.

(c) The applicant is not of good business reputation.

(d) The applicant is lacking in integrity.

(e) The applicant has been refused a professional, occupational or vocational license or had such a license suspended or revoked, by any licensing authority for reasons that should preclude the granting of the license applied for.

(f) The applicant or any person acting on behalf of the applicant has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has willfully omitted to state in any such application or report any material fact which is required to be stated therein.

(g) The applicant has previously engaged in a fraudulent practice or act or has conducted any business in an unlawful or dishonest manner.

(h) The applicant has shown incompetence or untrustworthiness in the conduct of any business, or has by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with the applicant to the danger of loss.

(i) The applicant has knowingly failed to perform a duty expressly enjoined upon such applicant by a provision of this chapter or the regulations promulgated by the commissioner or has knowingly committed an act expressly forbidden by such a provision or such rules.

(j) The applicant has been convicted of:

(1) A felony; or

(2) Any crime involving moral turpitude.

(k) The applicant has knowingly aided or abetted any person in any act or omission which would constitute grounds for the suspension, revocation or refusal of a license issued under this chapter to the person aided or abetted.

(l) The applicant has knowingly permitted any person in its employ to violate any provision of this chapter.

(m) The applicant does not have an amount of shareholders' equity determined to be adequate by the commissioner but in no case shall that amount, as a condition of granting the license, be required to exceed five million dollars ($5,000,000). The amount shall be computed in accordance with generally accepted accounting principles applied on a consistent basis.

(Amended by Stats. 1996, Ch. 1064, Sec. 284. Effective January 1, 1997. Operative July 1, 1997.)

1857.5. (a) In this section:

(1) "Control" has the meaning set forth in Section 700.

(2) "Officer" has the meaning set forth in Section 33057.

(b) For purposes of Section 1857, the commissioner may find that an applicant is lacking in integrity if the applicant, any person who controls the applicant, or any director or officer of the applicant or of any person who controls the applicant has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(c) Subdivision (b) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 1803, that an applicant is lacking in integrity.
(Amended by Stats. 1996, Ch. 1064, Sec. 285. Effective January 1, 1997. Operative July 1, 1997.)

1858. Prior to the issuance of a license pursuant to this chapter, and as a further condition to the issuance and continuing validity of such license, each applicant shall enter into a contract with the State of California, by and through the commissioner, in form and substance satisfactory to the commissioner, which contract shall provide that applicant shall comply with the laws of the State of California, all regulations and orders issued by the commissioner and all of the provisions, obligations and requirements of this chapter, including, but not limited to, the provisions of Article 6 (commencing with Section 1877) hereof relating to examinations.
(Amended by Stats. 1996, Ch. 1064, Sec. 286. Effective January 1, 1997. Operative July 1, 1997.)

1859. (a) Prior to the issuance of a license pursuant to this chapter, and as a further condition to the issuance of such license, each applicant shall file with the commissioner, in such form as the commissioner may by regulation or order require, an irrevocable consent appointing the commissioner and any successor from time to time in office to receive service of any lawful process in any noncriminal judicial or administrative proceeding against such person, his or her successor, executor, or administrator, which arises under this chapter or any regulation or order issued under this chapter after such consent has been filed.

(b) Service of process pursuant to this section shall have the same force and validity as if served personally upon the person.

(c) Service may be made by leaving a copy of the process at any office of the commissioner, but such service is not effective unless (1) the party making such service, who may be the commissioner, forthwith sends notice of such service and a copy of such process by registered or certified mail to the party served at his or her last address on file with the commissioner, and (2) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.
(Amended by Stats. 1996, Ch. 1064, Sec. 287. Effective January 1, 1997. Operative July 1, 1997.)

1860. If the application is approved by the commissioner, and the applicant has complied with Sections 1858 and 1859, the commissioner shall, upon the payment of the license fees, issue and deliver to the applicant a license to engage in business in accordance with this chapter.
(Amended by Stats. 1996, Ch. 1064, Sec. 288. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. Obligations of Licensees
(Article 5 added by Stats. 1978, Ch. 1347.)

1862. The license is not transferable or assignable.
(Amended by Stats. 1986, Ch. 663, Sec. 4.)

1863. Each licensee shall file with the commissioner quarterly a report as of the end of the preceding calendar quarter which shall include:

(a) An unaudited unconsolidated statement of income and statement of condition of licensee completed in accordance with generally accepted accounting principles applied on a consistent basis;

(b) A schedule of eligible securities owned by the licensee pursuant to Section 1876.8.

(c) The names and addresses of agents appointed or terminated during such quarter.
(Amended by Stats. 1996, Ch. 1064, Sec. 289. Effective January 1, 1997. Operative July 1, 1997.)

1863.1. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of cash flows, for or as of the end of that fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

(b) A report, certificate, or opinion of the independent certified public accountant or independent public accountant, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Any other information as the commissioner may by regulation or order require.
(Amended by Stats. 1996, Ch. 1064, Sec. 290.1. Effective January 1, 1997. Operative July 1, 1997.)

1864. The commissioner may at any time require any licensee to make and file with the commissioner a special report furnishing such relevant information as the commissioner may reasonably specify to inform the commissioner of the actual financial condition of such licensee.
(Amended by Stats. 1996, Ch. 1064, Sec. 291. Effective January 1, 1997. Operative July 1, 1997.)

1865. No licensee shall issue any form of traveler's check for sale in this state unless a certified copy of the traveler's check has first been filed with the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 292. Effective January 1, 1997. Operative July 1, 1997.)

1866. Every travelers check issued by a licensee, for sale in this state, shall bear the name of the licensee clearly imprinted thereon.
(Added by Stats. 1978, Ch. 1347.)

1867. Each licensee shall be liable in accordance with the California Commercial Code for the payment of all travelers checks duly issued by it and lawfully sold in this state.
(Added by Stats. 1978, Ch. 1347.)

1868. Each licensee shall at all times maintain shareholder equity determined to be adequate by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 293.1. Effective January 1, 1997. Operative July 1, 1997.)

1869. No person shall become or continue to be an agent in California of a licensee, nor shall any licensee appoint or continue any person as its agent in California unless such person and such licensee shall have first made a written agreement setting forth the terms of the agency and including provisions:

(a) That the licensee appoints the person as its agent with authority to sell in California on behalf of the licensee traveler's checks issued by the licensee;

(b) That all funds, less fees due agents provided for and expressly set forth, received by the person from the sale of traveler's checks issued by the licensee shall be trust funds owned by and belonging to the licensee;

(c) That the person make and keep such accounts, correspondence, memorandums, papers, books and other records as the commissioner by regulation or order requires and preserve such records for the time specified by such regulation or order.

(d) That the person will comply with all applicable conditions of this chapter and regulations and orders issued under this chapter.
(Amended by Stats. 1996, Ch. 1064, Sec. 294. Effective January 1, 1997. Operative July 1, 1997.)

1870. No agent of a licensee shall, nor shall any licensee cause or permit any of its agents to, sell any travelers check issued by such licensee without concurrently receiving cash or its equivalent, check, draft, credit card, travelers check or payment instrument, or a combination of same believed to be valid in an amount not less than the face amount of such travelers check.
(Added by Stats. 1978, Ch. 1347.)

1871. Each agent of a licensee which sells any traveler's check issued by such licensee shall, and each licensee shall require each of its agents which sells any traveler's check issued by such licensee to, report such sale within seven days after the sale and remit the face amount of such traveler's check to such licensee within three business days (or such shorter period as such agent and such licensee may specify in the agreement called for in Section 1869 or in any amendment of such contract) after such sale. This section shall not apply to an agent which is an insured institution pursuant to the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811 et seq.) or the Federal Credit Union Act (12 U.S.C. 1781 et seq.).

For the purpose of this section, remittance shall include either direct payment of such funds to licensee or its representative, or the deposit of such funds in a bank or savings association in an account in the name of such licensee specifically established for the purpose of receiving such funds. Remittance by such agency to such licensee or its representatives or deposit by such agency in such account in a bank or savings association of funds in advance of the sale of such traveler's checks but in an amount not less than the amount that such agent would normally receive from such sales of payment instruments, shall be deemed compliance with provisions of this section.
(Amended by Stats. 1996, Ch. 1064, Sec. 295. Effective January 1, 1997. Operative July 1, 1997.)

1872. No agent of a licensee shall, nor shall any licensee cause or permit any of its agents to, commingle any funds, less fees due agents, received from the sale by such agent of travelers checks issued by such licensee with any other property owned or controlled by such agent or use such funds for any purpose other than to remit such funds to such licensee; provided, however, that any agent of a licensee may, unless such agent and such licensee provide to the contrary in the agreement called for in Section 1869 or in any amendment of such agreement, commingle such funds with other

cash, cash equivalents and travelers checks owned or controlled by it and use such funds in the ordinary course of its business for the purpose of making change and cashing travelers checks, checks, or drafts believed by it to be valid.
(Added by Stats. 1978, Ch. 1347.)

1873. If any agent of a licensee shall commingle any funds, less fees due agents, received from the sale of travelers checks issued by such licensee with any other property owned or controlled by such agent, all such property shall be impressed with a trust in favor of such licensee in an amount equal to the aggregate amount of such funds so commingled.
(Added by Stats. 1978, Ch. 1347.)

1874. All funds, less fees due agents pursuant to the agreement required by Section 1869, received by agents from the sale of travelers checks shall constitute trust funds owned by and belonging to the licensee.
(Added by Stats. 1978, Ch. 1347.)

1875. No funds, less fees due agents, received by any agent of a licensee from the sale of travelers checks issued by such licensee, while held by such agent, nor any property impressed with a trust pursuant to Section 1874 shall be subject to enforcement of a money judgment or sequestration by order of any court, except by such licensee.
(Amended by Stats. 1982, Ch. 497, Sec. 88. Operative July 1, 1983, by Sec. 185 of Ch. 497.)

1876. Nothing in this chapter shall be construed to prevent any licensee from taking any legal action necessary to enforce any claim which such licensee may have.
(Added by Stats. 1978, Ch. 1347.)

Article 5.1. Eligible Securities
(Article 5.1 added by Stats. 1978, Ch. 1347.)

1876.1. In this article:

(a) "Eligible security" means any United States currency eligible security or foreign currency eligible security.

(b) "Eligible securities rating service" means any securities rating service which the commissioner has by regulation or order declared to be an eligible securities rating service pursuant to Section 1876.5.

(c) "Eligible rating," when used with respect to any security or class of securities and any eligible securities rating service, means any rating assigned to the security, or class of securities, by the eligible securities rating service which the commissioner has by regulation or order declared to be an eligible rating pursuant to Section 1876.6.

(d) "Foreign currency eligible security" means any of the following which are, or are denominated in, a foreign currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 1876.3.

(1) Any of the following which are of comparable quality to the United States currency eligible securities specified in paragraphs

(1) to (7), inclusive, of subdivision (g):

(A) Cash.

(B) Any deposit in an office of a bank located in a foreign country.

(C) Any bond, note, or other obligation.

(2) Any other security or class of securities which the commissioner has by regulation or order declared to be eligible securities pursuant to Section 1876.4.

(e) "Insured bank" means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation. However, "insured bank" does not include any office of a foreign (other nation) bank other than an office which is insured by the Federal Deposit Insurance Corporation.

(f) "Insured savings and loan association" means any savings and loan association the accounts of which are insured by the Federal Deposit Insurance Corporation.

(g) "United States currency eligible security" means any of the following which are, or are denominated in, United States currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 1876.3.

(1) Cash.

(2) Any deposit in an insured bank or an insured savings association.

(3) Any bond, note, or other obligation which is issued or guaranteed by the United States or by any agency of the United States.

(4) Any bond, note, or other obligation which is issued or guaranteed by any state of the United States, or by any governmental agency of or within any state of the United States, and which is assigned an eligible rating by an eligible securities rating service.

(5) Any bankers acceptance which is eligible for discount by a federal reserve bank.

(6) Any commercial paper which is assigned an eligible rating by an eligible securities rating service.

(7) Any bond, note, or other obligation or preferred stock which is assigned an eligible rating by an eligible securities rating service.

(8) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), that holds itself out to investors as a money market fund, and that operates in accordance with all provisions of the Investment Company Act of 1940 and of the regulations of the Securities and Exchange Commission applicable to money market funds, including Section 270.2a-7 of the regulations of the Securities and Exchange Commission (17 C.F.R. Sec. 270.2a-7).

For purposes of this paragraph and paragraph (9), "investment company," "management company," and "open-end" have the meanings set forth in Sections 3, 4, and 5, respectively, of the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-3, 80a-4, and 80a-5, respectively).

(9) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute United States currency eligible securities under the other provisions of this subdivision.

(10) Any account due to any licensee from any agent of the licensee on account of the sale by the agent of outstanding travelers checks issued by the licensee, if the account is current and not past due or otherwise doubtful of collection.

(11) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities pursuant to Section 1876.4.

(h) "Value" means:

(1) When used with respect to an eligible security owned by a licensee which consists of an account due to the licensee from an agent of the licensee on account of the sale by the agent of outstanding travelers checks issued by the licensee, net carrying value as determined in conformity with generally accepted accounting principles. However, in computing the value of the account due to the licensee, any amount due on account of the sale of a travelers check shall be excluded if the time elapsed between the sale and the date of computation exceeds the average time that elapses between the time of sale and the time of payment of travelers checks issued by the licensee.

(2) When used with respect to any other eligible security owned by a licensee:

(A) In case the practice and policy of the licensee is to hold eligible securities to maturity, net carrying value as determined in conformity with generally accepted accounting principles.

(B) In any other case, market value.

(Amended by Stats. 1996, Ch. 1064, Sec. 296.1. Effective January 1, 1997. Operative July 1, 1997.)

1876.2. (a) For purposes of this article, a licensee shall be deemed to own an eligible security only if:

(1) The licensee owns the eligible security solely and exclusively in its own right, both of record and beneficially;

(2) The eligible security is not subject to any pledge, lien, or security interest; and

(3) The licensee can freely negotiate, assign, or otherwise transfer the eligible security.

(b) Notwithstanding the provisions of subdivision (a), no licensee shall be deemed not to own an eligible security solely on account of any of the following facts, provided that, but for such fact, such licensee would be deemed to own such eligible security under the provisions of subdivision (a):

(1) The fact that the eligible security is owned of record by a documented nominee of the licensee or by a securities depository which is licensed under, or exempt from licensing under, Division 14 (commencing with Section 30000).

(2) The fact that the licensee has pledged the eligible security with the United States or any state of the United States to secure payment by the licensee of travelers checks issued by the licensee.

(Added by Stats. 1978, Ch. 1347.)

1876.3. If the commissioner finds that any eligible security or class of eligible securities is not of sufficient liquidity or quality to be eligible securities, the commissioner may by regulation or order declare such security or class of securities to be ineligible.

(Amended by Stats. 1996, Ch. 1064, Sec. 297. Effective January 1, 1997. Operative July 1, 1997.)

1876.4. If the commissioner finds that any security or class of securities which is not an eligible security is of sufficient liquidity and quality to be an eligible security, the commissioner may by regulation or order declare such security or class of securities to be eligible securities.

(Amended by Stats. 1996, Ch. 1064, Sec. 298. Effective January 1, 1997. Operative July 1, 1997.)

1876.5. If the commissioner finds that a securities rating service:

(a) Has been continuously engaged in the business of rating securities for a period of not less than three years;

(b) Is competent to rate securities and is nationally recognized for rating securities in a competent manner; and

(c) Publishes its ratings of securities on a nationwide basis:

The commissioner may by regulation or order declare such securities rating service to be an eligible securities rating service.

(Amended by Stats. 1996, Ch. 1064, Sec. 299. Effective January 1, 1997. Operative July 1, 1997.)

1876.6. If the commissioner finds that a rating assigned to a class of securities by an eligible securities rating service indicates that such class of securities is of sufficient quality to be eligible securities, the commissioner may by regulation or order declare such rating to be an eligible rating.

(Amended by Stats. 1996, Ch. 1064, Sec. 300. Effective January 1, 1997. Operative July 1, 1997.)

1876.8. (a) Each licensee shall at all times own United

States currency eligible securities having an aggregate value not less than the aggregate face amount of all outstanding United States currency travelers checks issued by it.

(b) Each licensee shall at all times own eligible securities having an aggregate value not less than the aggregate face amount of all outstanding foreign currency travelers checks issued by it.

(Added by Stats. 1978, Ch. 1347.)

1876.9. (a) In computing for purposes of Section 1876.8 the aggregate value of eligible securities owned by a licensee, all of the following shall be excluded:

(1) The value of any eligible security if and to the extent that the value of such eligible security, when combined with the aggregate value of all other eligible securities owned by such licensee which are issued or guaranteed by the same person or by any affiliate of the same person by whom such eligible security is issued or guaranteed, exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee.

(2) The aggregate value of all eligible securities of the type described in paragraph (10) of subdivision (g) of Section 1876.1 if and to the extent that that aggregate value exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee or any higher percentage, up to a maximum of 20 percent, that the superintendent may approve for the licensee.

(b) Subdivision (a) shall not be deemed to require the exclusion of the value of any of the following eligible securities, and each of the following eligible securities shall be exempted from the limitations of subdivision (a):

(1) The following United States currency eligible securities:

(A) Cash.

(B) Any deposit in an insured bank or an insured savings association.

(C) Any bond, note, or other obligation for the payment of which the full faith and credit of the United States are pledged.

(2) Any eligible security which the commissioner, in view of the financial condition of the obligor or issuer and such other factors as may in the opinion of the commissioner be relevant, finds to be of such quality that exclusion of the value of such eligible security pursuant to subdivision (a) is not necessary for the purposes of this division and which the commissioner by regulation or order exempts from the limitations of subdivision (a).

(Amended by Stats. 1996, Ch. 1064, Sec. 302.1. Effective January 1, 1997. Operative July 1, 1997.)

1876.10. In computing for purposes of subdivision (b) of Section 1876.8 the aggregate value of foreign currency eligible securities owned by a licensee, there shall be excluded the value of any foreign currency eligible security if and to the extent that the value of such foreign currency eligible security, when combined with the value of all other foreign currency eligible securities owned by such licensee which are, or are denominated in, the same foreign currency as such foreign currency eligible security, exceed the aggregate face amount of all outstanding foreign currency travelers checks issued by the licensee which are denominated in such foreign currency.

(Added by Stats. 1978, Ch. 1347.)

1876.11. In the case of a licensee which is also licensed under Division 16 (commencing with Section 33000), the amount of aggregate value of eligible securities which such licensee is required to own under Section 1876.8 is in addition to the amount of aggregate value of eligible securities which the licensee is required to own under Section 33567. Whenever the amount of aggregate value of eligible securities owned by such a licensee is less than the sum of

(a) the aggregate value required under Section 1876.8 and (b) the aggregate value required under Section 33567, such licensee shall be deemed to be in violation of Section 1876.8 and of Section 33567.

(Added by Stats. 1978, Ch. 1347.)

1876.12. (a) (1) Upon application, the commissioner may exempt from this article a licensee, or an applicant for licensure under this chapter.

(2) An application for an exemption shall be in writing and in a form prescribed by the commissioner and shall contain whatever information may be necessary to process the application.

(3) The commissioner shall approve an application for exemption if he or she finds that the financial condition, operations, and management of the licensee are satisfactory; otherwise the commissioner shall deny the application.

(b) The commissioner may suspend or revoke any exemption granted pursuant to this section if he or she finds that the financial condition, operations, or management of the licensee is not satisfactory.

(Amended by Stats. 1996, Ch. 1064, Sec. 303. Effective January 1, 1997. Operative July 1, 1997.)

Article 6. Examinations
(Article 6 added by Stats. 1978, Ch. 1347.)

1877. (a) The commissioner in his or her discretion may at any time make such examinations within or outside of this state of any licensee under this chapter as he or she deems reasonably necessary to determine whether any person has violated any provision of this chapter or any regulation or order hereunder, or to aid in the enforcement of this chapter.

(b) The officers and employees of a licensee under this chapter being examined by the commissioner shall exhibit to the commissioner, or any officer designated by him or her, on request, any or all of its accounts, books, correspondence, papers, memorandums, agreements or other documents or records relevant or material to the examination and shall otherwise facilitate such examination so far as it may be in their power to do so.

(c) For the purposes of any examination or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, and may by issuance of a subpoena, compel the appearance of any person, and require the production of any books, papers, correspondence, memorandums, agreements or other documents or records relevant or material to the examination or proceeding.

(d) Where the principal place of business of any licensee under this chapter is located in another state, the commissioner may, in his or her discretion, in lieu of any examination provided for herein, accept a certified copy of the report of examination completed by the licensing or other authority having regulatory jurisdiction over the issuance and sale of traveler's checks of another state.

(Amended by Stats. 1996, Ch. 1064, Sec. 304. Effective January 1, 1997. Operative July 1, 1997.)

Article 7. Enforcement
(Article 7 added by Stats. 1978, Ch. 1347.)

1880. In this article, unless the context otherwise requires:

(a) "Act" includes omission.

(b) "Insolvent", when used with respect to any person, means a person who has ceased to pay his debts in the ordinary course of business, who cannot pay his debts as they become due, or whose liabilities exceed his assets.

(c) "Office with a licensee" means the position of director, officer, employee, or agent of such licensee.

(d) "Subject person", when used with respect to a licensee, means:

(1) Any director, officer, employee, or agent of such licensee; or

(2) Any other person who participates in the conduct of the business of such licensee.

(Added by Stats. 1978, Ch. 1347.)

1880.5. (a) No order issued by the commissioner under Section 1883, 1885, or 1886 shall become effective earlier than the 10th business day after the issuance of such order.

(b) No order issued by the commissioner under subdivision

(a) of Section 1884 or subdivision (a) or (b) of Section 1887 shall become effective earlier than the fifth business day after the issuance of such order.

(Amended by Stats. 1996, Ch. 1064, Sec. 305. Effective January 1, 1997. Operative July 1, 1997.)

1881. (a) Whenever it appears to the commissioner that any person has violated, or that there is reasonable cause to believe that any person is about to violate, any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may bring an action in the name of the people of this state in the superior court to enjoin such violation or to enforce compliance with this chapter or with any regulation or order issued under this chapter. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandate shall be granted, and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(b) Any receiver or conservator appointed by the court pursuant to subdivision (a) may, with the approval of the court, exercise all of the powers of the defendant's directors, officers, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be

maintained by any party against the commissioner or such receiver or conservator by reason of the exercise of such powers or the performance of such duties pursuant to the order, or with the approval of, the court.

(c) The commissioner may include in any action authorized under subdivision (a) a claim for ancillary relief, including a claim for restitution or damages on behalf of the persons injured by the act constituting the subject matter of such action, and the court shall have jurisdiction to award such additional relief.

(Amended by Stats. 1996, Ch. 1064, Sec. 306. Effective January 1, 1997. Operative July 1, 1997.)

1882. (a) If the commissioner finds that any person has violated, or that there is reasonable cause to believe that any person is about to violate, Section 1853, the commissioner may order such person to cease and desist from such violation unless and until such person is issued a license.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such person consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any person to whom an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner for hearing on the order pursuant to paragraph (1) of this subdivision.

(Amended by Stats. 1996, Ch. 1064, Sec. 307. Effective January 1, 1997. Operative July 1, 1997.)

1883. If, after notice and a hearing, the commissioner finds:

(a) That any licensee or any California agent of a licensee has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that any licensee or any California agent of a licensee is about to engage or participate, in any unsafe or unsound act with respect to the business of such licensee; or

(b) That any licensee or any California agent of a licensee has violated, is violating, or that there is reasonable cause to believe that any licensee or any California agent of a licensee is about to violate, any provision of this chapter or of any regulation or order issued under this chapter or any provision of any other applicable law:

The commissioner may order such licensee or such California agent to cease and desist from such action or violation. The order may require the licensee or such California agent to take affirmative action to correct any condition resulting from the action or violation.

(Amended by Stats. 1996, Ch. 1064, Sec. 308. Effective January 1, 1997. Operative July 1, 1997.)

1884. (a) If the commissioner finds that any of the factors set forth in Section 1883 is true with respect to any licensee or any California agent of a licensee and that such action or violation is likely:

(1) To cause the insolvency of the licensee;

(2) To cause substantial dissipation of the assets or earnings of the licensee;

(3) To seriously weaken the condition of the licensee; or

(4) To otherwise seriously prejudice the interests of purchasers or holders of traveler's checks issued by the licensee:

The commissioner may order such licensee or such California agent to cease and desist from such action or violation. Such order may require the licensee or the California agent to take affirmative action to correct any condition resulting from the action or violation.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee or California agent of a licensee to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee or California agent consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee or California agent of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such licensee or California agent of a licensee to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

(Amended by Stats. 1996, Ch. 1064, Sec. 309. Effective January 1, 1997. Operative July 1, 1997.)

1885. If, after notice and a hearing, the commissioner finds:

(a) (1) That any subject person of a licensee has engaged or participated in any unsafe or unsound act with respect to the business of such licensee;

(2) That any subject person of a licensee has violated any provision of this chapter or of any regulation or order issued under this chapter or any provision of any other applicable law relating to the business of such licensee; or

(3) That any subject person of a licensee has engaged or participated in any act which constitutes a breach of his fiduciary duty as a subject person; and

(b) (1) That such act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee;

(2) That such action, violation, or breach of fiduciary duty has seriously prejudiced, or is likely to seriously prejudice, the interests of purchasers or holders of traveler's checks issued by the licensee; or

(3) That the subject person has received financial gain by reason of such act, violation, or breach of fiduciary duty; and

(c) That such act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee:

The commissioner may order the licensee to suspend or remove the subject person from his or her office, if any, with the licensee and to preclude such person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 310. Effective January 1, 1997. Operative July 1, 1997.)

1886. If, after notice and a hearing, the commissioner finds that any subject person of a licensee has, by engaging or participating in any act with respect to any financial or other business institution which resulted in financial loss or other damage, demonstrated:

(a) (1) Dishonesty;

(2) Gross negligence with respect to the operations of such institution; or

(3) Willful disregard for the safety and soundness of such institution; and

(b) Unfitness to continue as a subject person of such licensee or participate in the conduct of the business of such licensee:

The commissioner may order the licensee to remove the subject person from his or her office, if any, with the licensee and to preclude him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 311. Effective January 1, 1997. Operative July 1, 1997.)

1887. (a) If the commissioner finds:

(1) That any subject person of a licensee has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That such subject person's continuing to serve as a subject person of the licensee may pose a threat to the interests of purchasers or holders of traveler's checks issued by the licensee or may threaten to impair public confidence in the licensee:

The commissioner may order such licensee to suspend such subject person from his or her office, if any, with the licensee and to preclude such person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner. In case the criminal proceedings are terminated other than by a judgment of conviction, such order shall be deemed rescinded.

(b) If the commissioner finds:

(1) That any subject person or former subject person of a licensee with respect to whom an order was issued pursuant to subdivision (a) or any other subject person of a licensee has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That such person's continuing to serve or resumption of service as a subject person of the licensee may pose a threat to the interests of purchasers or holders of traveler's checks issued by the licensee or may threaten to impair confidence in the licensee:

The commissioner may order such licensee to suspend or remove such subject person or former subject person from his or her office, if any, with the licensee and to preclude him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(c) (1) Within 30 days after an order is issued pursuant to subdivision (a) or (b), any licensee to which such order is issued or any subject person or former subject person of a licensee with respect to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee, subject person, or former subject person consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee to which an order is issued under subdivision (a) or (b) or of any subject person or former subject person of a licensee with respect to whom such an order is issued to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

(d) The fact that any subject person of a licensee charged with a crime involving dishonesty or breach of trust is not finally convicted of such crime shall not preclude the commissioner from issuing an order regarding such licensee or such subject person pursuant to any other section of this chapter.

(Amended by Stats. 1996, Ch. 1064, Sec. 312. Effective January 1, 1997. Operative July 1, 1997.)

1888. (a) Any licensee to which an order is issued under Section 1885, 1886, or 1887 or any subject person or former subject person of a licensee with respect to whom such an order is issued may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such subject person or former subject person will, if and when he or she becomes a subject person of a licensee, comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter.

(b) The right of any licensee to which an order is issued under Section 1885, 1886, or 1887 or any subject person or former subject person of a licensee with respect to whom such an order is issued to petition for judicial review of such order shall not be affected by the failure of such licensee, subject person, or former subject person to apply to the commissioner pursuant to subdivision

(a) to modify or rescind the order.

(Amended by Stats. 1996, Ch. 1064, Sec. 313. Effective January 1, 1997. Operative July 1, 1997.)

1889. If, after notice and a hearing, the commissioner finds:

(a) That any licensee has violated any provision of this chapter or of any regulation or order issued under this chapter or any provision of any other applicable law;

(b) That any licensee is conducting its business in an unsafe or unsound manner;

(c) That any licensee is in such condition that it is unsafe or unsound for it to transact the business of selling in this state payment instruments issued by it;

(d) That any licensee has ceased to transact the business of selling in this state payment instruments issued by it;

(e) That any licensee is insolvent;

(f) That any licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That any licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against any licensee and such licensee has by any affirmative act approved of or consented to such action or such relief has been granted; or

(h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying such application:

The commissioner may issue an order suspending or revoking the license of such licensee.

(Amended by Stats. 1996, Ch. 1064, Sec. 314. Effective January 1, 1997. Operative July 1, 1997.)

1890. (a) If the commissioner finds that any of the factors set forth in Section 1889 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of traveler's checks issued by such licensee or for the protection of the public interest that he or she immediately suspend or revoke the license of such licensee, the commissioner may issue an order suspending or revoking the license of such licensee.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee to which an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such licensee to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

(Amended by Stats. 1996, Ch. 1064, Sec. 315. Effective January 1, 1997. Operative July 1, 1997.)

1891. Any person whose license is suspended or revoked shall immediately deliver such license to the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 316. Effective January 1, 1997. Operative July 1, 1997.)

1892. (a) Any person to whom an order is issued under Section 1889 or 1890 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when it becomes a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any person to whom an order is issued under Section 1889 or 1890 to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

(Amended by Stats. 1996, Ch. 1064, Sec. 317. Effective January 1, 1997. Operative July 1, 1997.)

1893. (a) If the commissioner finds that any of the factors set forth in Section 1889 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of traveler's checks issued by the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may by order forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as the commissioner may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may, within 10 days, apply to the superior court in any county of this state in which an office of the licensee is located (or, in case the licensee has no office in this state, in the County of Sacramento, in the City and County of San Francisco, or in the County of Los Angeles) to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just. The judgment of the superior court may be appealed by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.

(c) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100) of Chapter 17, and the provisions of that article (except Sections 3100, 3101, and 3102) apply as if the licensee were a bank.

(Amended by Stats. 1998, Ch. 931, Sec. 145. Effective September 28, 1998.)

1894. (a) No California agent of a licensee who has actual notice that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, shall sell any traveler's check issued by the licensee.

(b) If any California agent of a licensee, after first having actual notice that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, sells any traveler's check issued by the licensee, such agent shall be jointly and severally liable with the licensee for the payment of such traveler's check.

(Amended by Stats. 1996, Ch. 1064, Sec. 319. Effective January 1, 1997. Operative July 1, 1997.)

1894.5. In case any person engages in the business of selling in this state travelers checks that are issued by a second person which is neither (i) a licensee for which the first person is an agent nor (ii) a person which, by virtue of Section 1854, is not required to obtain a license to issue travelers checks and for which the first person is an agent, the first person shall, unless such sale is exempted by virtue of Section 1854.1 from the provisions of Section 1853, be jointly and severally liable as a comaker with the second person for the payment of each such travelers check.

(Added by Stats. 1978, Ch. 1347.)

1895. Nothing in this chapter limits the power of the state to punish any person for any act which constitutes a crime under any statute.

(Added by Stats. 1978, Ch. 1347.)

1896. Any person who willfully violates Section 1853 shall upon conviction be fined not more than ten thousand dollars ($10,000) or be imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment.

(Added by Stats. 1978, Ch. 1347.)

1897. Any person who violates any provision of this chapter shall be liable to the people of the State of California in an action brought by the commissioner in an amount not to exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, an amount not to exceed one thousand dollars ($1,000) for each day for which such violation continues.

(Amended by Stats. 1996, Ch. 1064, Sec. 320. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 15. EXAMINATIONS AND REPORTS

(Chapter 15 enacted by Stats. 1951, Ch. 364.)

Article 1. Examinations

(Article 1 enacted by Stats. 1951, Ch. 364.)

1900. (a) (1) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the commissioner.

(2) No provision of this subdivision shall be deemed to require that the commissioner cause an examination to be made onsite at the offices of a bank.

(3) The commissioner shall cause every California state bank, every California state trust company, and the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two calendar years.

(b) The commissioner may at any time examine any of the following:

(1) Any office of a bank organized under the laws of this state.

(2) Any office of a foreign (other state) bank that maintains an office in this state.

(3) Any office of a foreign (other nation) bank that maintains an office in this state.

(c) The officers and employees of every California state bank, California state trust company, and foreign bank being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise facilitate the examination so far as it may be in their power.

(Amended by Stats. 2003, Ch. 404, Sec. 6. Effective January 1, 2004.)

1901. (a) Whenever, in the judgment of the commissioner, it is necessary or advisable to make an extra examination of or to devote any extraordinary attention to any bank, any foreign bank, or any office of a foreign bank, he or she has the authority to do so and to charge and collect from the bank or foreign bank, in the case of an extra examination, an amount not exceeding seventy-five dollars ($75) per hour for each examiner engaged in the examination and, in the case of extraordinary attention, an amount not exceeding the department's expenses in providing the extraordinary attention, including, but not limited to, compensation of employees.

(b) Whenever in the judgment of the commissioner it is necessary or expedient for any examiner engaged in any examination to travel outside this state, the commissioner may charge for the travel expenses of the examiner.

(Amended by Stats. 1997, Ch. 375, Sec. 9. Effective January 1, 1998.)

1902. (a) The commissioner may by order or regulation grant exemptions from this section in cases where the commissioner finds that the requirements of this section are not necessary.

(b) Each California state bank shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain those audited financial statements of the bank for or as of the end of the fiscal year prepared in accordance with generally accepted accounting principles and any other information that the commissioner may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and any other requirements that the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the bank to take such action as the commissioner may find necessary to enable the independent certified public accountant or independent public accountant to remove the qualification.

(Amended by Stats. 1996, Ch. 1064, Sec. 323.1. Effective January 1, 1997. Operative July 1, 1997.)

1906. The commissioner, whenever in his or her opinion the condition of the bank, trust company, or foreign banking corporation is such as to require such audit, may require any bank, trust company, or foreign banking corporation to employ a certified public accountant to make a special audit of the affairs of such bank or trust company at its expense.

(Amended by Stats. 1996, Ch. 1064, Sec. 327. Effective January 1, 1997. Operative July 1, 1997.)

1907. The commissioner, for good cause, at any time and from time to time may employ appraisers to appraise the value of any investment, asset, or property held or upon which a lien is held as security for a loan. The bank, trust company, or foreign banking corporation shall pay to the commissioner on demand the cost of such appraisal.
(Amended by Stats. 1996, Ch. 1064, Sec. 328. Effective January 1, 1997. Operative July 1, 1997.)

1908. The commissioner, a deputy commissioner, and every examiner assigned to an examination may administer an oath to any person whose testimony is required for the purposes of any examination authorized by this division and may by issuance of subpoena compel the appearance of any person and the production of any evidence for the purposes of the examination.
(Amended by Stats. 2004, Ch. 183, Sec. 105. Effective January 1, 2005.)

1909. (a) In this section, "governmental agency" includes, without limitation, any agency of this state, of any other state of the United States, of the United States, or of any foreign nation.

(b) The commissioner may furnish information to a governmental agency that regulates financial institutions.

(c) The commissioner may furnish to a governmental agency that administers a loan guarantee or similar program, information relating to a person who participates in the program.

(d) The commissioner may furnish to a governmental agency that regulates business activities, other than the type described in subdivision (b), information relating to:

(1) A suspected violation of a law administered by the agency.

(2) A person involved in an application to the agency for a license, approval, or other authorization.

(e) The commissioner may furnish to a governmental agency that is a law enforcement agency information relating to a suspected crime.

(f) The commissioner may furnish information to any person who provides share insurance or guaranty of the shares of a credit union in accordance with Section 14858, 16004, or 16503 of the Financial Code.

(g) This section does not prescribe the only circumstances under which the commissioner may furnish information.
(Amended by Stats. 2002, Ch. 734, Sec. 2. Effective September 20, 2002.)

1910. If a deputy commissioner or any examiner has knowledge of the insolvency or unsafe condition of any bank, trust company, or foreign banking corporation and fails or neglects to forthwith report such fact to the commissioner in writing over his or her signature, he or she is guilty of a felony.
(Amended by Stats. 1996, Ch. 1064, Sec. 331. Effective January 1, 1997. Operative July 1, 1997.)

1911. A national banking association doing business in this state and receiving deposits of any bank organized under the laws of this state, at the request of the commissioner, shall submit to an examination by him or her, at the expense of such association, should he or she deem it necessary or desirable that such examination be made. If any such association refuses to permit such an examination to be made, the commissioner shall notify every bank depositing its funds with such association to withdraw its deposits therefrom and the banks so notified shall comply with his or her order.
(Amended by Stats. 1996, Ch. 1064, Sec. 332. Effective January 1, 1997. Operative July 1, 1997.)

1912. If it appears to the commissioner that a bank, trust company, or foreign banking corporation is violating or failing to comply with its articles or with any applicable law, the commissioner may direct the bank, trust company, or foreign banking corporation to comply with its articles or with the law by an order issued over his or her official seal, or if it appears to the commissioner that any bank, trust company, or foreign banking corporation is conducting its business in an unsafe or injurious manner the commissioner may in like manner direct it to discontinue the unsafe or injurious practices. The order shall require the bank, trust company, or foreign banking corporation to show cause before the commissioner at a time and place to be fixed by him or her why the order should not be observed.
(Amended by Stats. 1996, Ch. 1064, Sec. 333. Effective January 1, 1997. Operative July 1, 1997.)

1913. If upon any hearing held pursuant to Section 1912 it appears to the commissioner that the bank, trust company, or foreign banking corporation is violating or failing to comply with its articles or with any applicable law or is conducting its business in an unsafe or injurious manner the commissioner may make a final order directing it to comply with its articles or with the law or to discontinue the unsafe or injurious practices. Unless within 10 days after the issuance of the final order its enforcement is restrained in a proceeding brought by the bank, trust company, or foreign banking corporation, it shall forthwith comply with the order.
(Amended by Stats. 1996, Ch. 1064, Sec. 334. Effective January 1, 1997. Operative July 1, 1997.)

1913.5. (a) For the purposes of this section, the following definitions are applicable:

(1) Account holder" includes, in the case of a deposit account, the depositor; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position that is similar to the position that a trustor or beneficiary occupies with respect to a trust account.

(2) "Bank" means the following:

(A) Any commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(B) Any foreign (other state) state bank that maintains a branch office in this state, with respect to the branch office and any other office in this state.

(C) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility (as defined in Section 3800) in this state, with respect to that office.

(D) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state, with respect to that office.

(E) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(F) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19, with respect to that office.

(3) "Order" means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including, without limitation, any condition thereof. "Order" does not include any certificate of authority or license issued by the commissioner but does include any condition of a license and any written agreement made by any person with the commissioner under this division.

(4) "Subject person of a bank" means any director, officer, or employee of the bank, or any person who participates in the conduct of the business of the bank. However, "subject person of a bank" does not include a controlling person of the bank that is registered as a bank holding company with the Board of Governors of the Federal Reserve System pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. Sections 1841, et seq.). "Subject person of a bank" does not include an individual who is a director, officer, or employee of a controlling person of the bank unless the individual is a director, officer, or employee of the bank or participates in the conduct of the business of the bank. For purposes of this paragraph, "controlling person" has the meaning set forth in Section 700.

(5) "Violation" includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation.

(b) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the bank; or

(B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the bank; or

(C) That the subject person has committed or engaged in any act that constitutes a breach of his or her fiduciary duty as a subject person; and

(2) (A) That the bank has suffered or will probably suffer substantial financial loss or other damage by reason of the violation, act, or breach of fiduciary duty; or

(B That the interests of the bank's accountholders have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or

(C) That the subject person has received financial gain by reason of the violation, act, or breach of fiduciary duty; and

(3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one that demonstrates a willful or continuing disregard for the safety or soundness of the bank.

(c) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) That the subject person's conduct or practice with respect to another bank or business institution has resulted in substantial financial loss or other damage; and

(2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other bank or business institution; and

(3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the bank.

(d) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) That it is necessary for the protection of the bank or the interests of the bank's accountholders that the commissioner issue the order immediately; and

(2) (A) That any of the factors set forth in paragraph (1) of subdivision (b), any of the factors set forth in paragraph (2) of subdivision (b), and any of the factors set forth in paragraph (3) of subdivision (b) are true with respect to the subject person; or

(B That any of the factors set forth in paragraph (1) of subdivision (c), any of the factors set forth in paragraph (2) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.

(e) (1) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and

(B) That the person's continuing to serve as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank. In case the criminal proceedings are terminated other than by a judgment of conviction, the order shall be deemed rescinded.

(2) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank, or a former subject person of a bank, from his or her office, if any, with the bank and prohibiting the person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(A) That the person has been finally convicted of a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and

(B) That the person's continuing to serve or resumption of service as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank.

(3) The fact that any subject person of a bank charged with a crime involving dishonesty or breach of trust is not finally convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this division.

(f) (1) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period to which the person consents, the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any person to whom an order is issued under subdivision (d) or (e) to petition for judicial review of the order shall not be affected by the failure of that person to apply to the commissioner for a hearing on the order pursuant to this subdivision.

(g) (1) Any person to whom an order is issued under subdivision (b), (c), (d), or (e) may apply to the commissioner to modify or rescind that order. The commissioner shall not grant that application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of a bank, comply with all applicable provisions of this division and of any regulation or order issued thereunder.

(2) The right of any person to whom an order is issued under subdivision (b), (c), (d), or (e) to petition for judicial review of that order shall not be affected by the failure of the person to apply to the commissioner pursuant to paragraph (1) to modify or rescind the order.

(h) (1) A notice issued under this section shall state the facts constituting the grounds for removal, suspension, or prohibition.

(2) A hearing held before the commissioner pursuant to this section shall be private unless the commissioner, in his or her discretion, after fully considering the view of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.

(i) (1) It is unlawful for any subject person of a bank or former subject person of a bank to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the commissioner, so long as the order is effective:

(A) To serve or act as a director, officer, employee, or agent of any bank.

(B) To vote any shares or other securities of a bank having voting rights, for the election of any person as a director of the bank.

(C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any bank having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any bank.

(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both that fine and imprisonment.

(3) If, after notice and a hearing, the commissioner finds that any person has violated paragraph (1), the commissioner may order that person to pay to the commissioner a civil penalty in an amount as the commissioner may specify, provided that the amount of the civil penalty shall not exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day for which the violation continues.

In determining the amount of a civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and other factors that in the opinion of the commissioner may be relevant.

(Amended by Stats. 2000, Ch. 1015, Sec. 26. Effective September 30, 2000.)

1914. Whenever he or she deems it expedient, the commissioner may call a meeting of the stockholders of any bank or trust company. Notice of the time and place of the meeting shall be given to each stockholder by a notice mailed to the stockholder by registered mail at the stockholder's last known address at least 15 days before the date of the meeting. Any expenses of such meeting shall be borne by the bank or trust company.

(Amended by Stats. 1996, Ch. 1064, Sec. 336. Effective January 1, 1997. Operative July 1, 1997.)

1915. During any emergency period declared by the President of the United States, each bank shall conform to any order of the commissioner directed to it, relating to and conforming with regulations, limitations, or restrictions which are applicable thereto prescribed by the Secretary of the Treasury, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System regulating or governing the operations of banks which are members of the Federal Reserve System.

(Amended by Stats. 1996, Ch. 1064, Sec. 337. Effective January 1, 1997. Operative July 1, 1997.)

1916. During any emergency period declared by the Governor no bank shall transact any banking business except to such extent and subject to such regulations, limitations, or restrictions as may be prescribed by the commissioner, which, as to member banks, shall be as consistent as the exigencies of the situation permit with the provisions of the Federal Reserve Act and regulations issued thereunder or, as to insured banks, shall be as consistent as the exigencies of the situation permit with the rules and regulations governing banks whose deposits are insured by the Federal Deposit Insurance Corporation.

(Amended by Stats. 1996, Ch. 1064, Sec. 338. Effective January 1, 1997. Operative July 1, 1997.)

1917. (a) The commissioner may, in his or her discretion, bring an action in the name of the people of this state in a superior court to enjoin a violation of, to enforce compliance with, or to collect a penalty or other liability imposed under, this division or any regulation or order issued under this division. The amount of any penalty or liability collected shall be deposited into the State Banking Account in the Financial Institutions Fund. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or other appropriate relief may be granted.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, partners, trustees, or of persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or any other designated fiduciary officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(c) If the commissioner determines it is in the public interest, the commissioner may include in an action authorized by subdivision (a), a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice that is the subject matter of the action. The court has jurisdiction to award additional relief.

(d) The provision of subdivision (a) that authorizes the appointment of a monitor, receiver, conservator, or other designated fiduciary or officer of the court, and subdivisions (b) and (c) do not apply to any of the following:

(1) A state bank that is authorized by the commissioner to transact commercial banking or trust business.

(2) A national bank.

(3) A foreign (other state) bank that maintains a branch office in this state in accordance with federal law, the law of this state, and the law of the bank's domicile.

(4) A foreign (other nation) bank that is licensed by the commissioner to maintain a branch office or agency, as defined in Section 1700, in this state.

(5) A foreign (other nation) bank that maintains a federal branch or agency, as defined in Section 1700, in this state.

(e) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect any right that any other person may have to bring the same or similar actions, or to seek the same or similar relief.

(Added by Stats. 1997, Ch. 375, Sec. 10. Effective January 1, 1998.)

Article 2. Reports
(Article 2 enacted by Stats. 1951, Ch. 364.)

1930. Every bank and every trust company shall make and file with the commissioner whenever required by him or her a report in such form as he or she may prescribe, verified by two of its principal officers, showing its financial condition and such other information as the commissioner may require at the close of business on any past day designated by him or her. The verification shall state that each of the officers making it has a personal knowledge of the matters in the report and that each of them believes that each statement in the report is true.

(Amended by Stats. 1996, Ch. 1064, Sec. 339. Effective January 1, 1997. Operative July 1, 1997.)

1931. The commissioner shall call for the report specified in Section 1930 from all California state banks and trust companies at least three times each year, and for at least three times each year shall designate as the day as of which the reports shall be made the day designated by the Comptroller of the Currency for reports from national banking associations.

(Amended by Stats. 1996, Ch. 1064, Sec. 340. Effective January 1, 1997. Operative July 1, 1997.)

1934. The commissioner may at any time require any bank or trust company to make and file with him or her a special report furnishing such information as he or she may specify when necessary to inform him or her fully of the actual financial condition and affairs of the bank or trust company.

(Amended by Stats. 1996, Ch. 1064, Sec. 341. Effective January 1, 1997. Operative July 1, 1997.)

1935. (a) A California state bank shall prominently display in the lobby of its main office and each branch office, except an automated teller machine branch office, as defined in Section 550, a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, promptly after receiving a request for a financial report, mail or otherwise furnish the financial report to the requester. The first financial report shall be provided without charge.

(b) The financial report called for in this section shall contain either (1) the information that the commissioner may require by regulation or (2) in the absence of a regulation, the last balance sheet and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 1931.

(Amended by Stats. 1996, Ch. 1064, Sec. 343.1. Effective January 1, 1997. Operative July 1, 1997.)

1936. Every California state bank shall keep its corporate records, financial records, and books of account in words and figures of the English language and in form satisfactory to the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 344. Effective January 1, 1997. Operative July 1, 1997.)

1937. Any person intentionally making a false statement in any report required to be rendered under this article is guilty of perjury.

(Enacted by Stats. 1951, Ch. 364.)

1938. (a) Each report required under this article, Chapter 13.5 (commencing with Section 1700), or Chapter 22 (commencing with Section 3800) shall be filed with the commissioner at the time that the commissioner may by regulation or order require. If any bank, trust company, or foreign bank fails to make any report required by this article,

Chapter 13.5 (commencing with Section 1700), or Chapter 22 (commencing with Section 3800) at the time specified by the commissioner or fails to include therein any matter required by this article, Chapter 13.5 (commencing with Section 1700), or Chapter 22 (commencing with Section 3800) or by the commissioner, it shall be liable to the people of this state in the sum of not more than one hundred dollars ($100) for each day that the report is delayed or withheld by the failure or neglect of the bank, trust company, or foreign bank.

(b) The provisions of Section 216.3 shall not apply to this section.

(Amended by Stats. 2003, Ch. 445, Sec. 10. Effective January 1, 2004.)

1939. (a) Every bank shall file with the commissioner one copy of all material filed by such bank with the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation pursuant to Section 78(l) of Title 15, United States Code, and Section 1817(j) of Title 12, United States Code, and regulations issued thereunder.

(b) Every bank which is required to file information with the appropriate federal banking agency pursuant to Section 907 of the International Lending Supervision Act (12 U.S.C. Sec. 3907), shall file with the commissioner one copy of all material filed with the federal banking agency pursuant to the act.

(c) Each copy required to be filed pursuant to subdivisions

(a) and (b) shall be filed with the commissioner on or before the date upon which the original is filed with the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation, and shall be available for inspection by the public except to the extent the information contained therein is accorded confidential treatment under federal law or regulations issued thereunder by the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation. All such material shall be open for inspection by the Attorney General.

(Amended by Stats. 1996, Ch. 1064, Sec. 346. Effective January 1, 1997. Operative July 1, 1997.)

1945. Every bank shall notify the commissioner of any change in the managing officer of the bank.

(Amended by Stats. 1996, Ch. 1064, Sec. 347. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Accounting
(Article 3 enacted by Stats. 1951, Ch. 364.)

1951. Any debt due a bank on which interest is past due and unpaid for the period of one year shall be charged off, unless it is well secured or is in process of collection.

(Amended by Stats. 1974, Ch. 715.)

1952. The commissioner at any time may require a bank to write down any asset held by it to a valuation which will represent its then fair market value.

(Amended by Stats. 1996, Ch. 1064, Sec. 348. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 17. LIQUIDATION, CONSERVATORSHIP, REORGANIZATION, AND DISSOLUTION

(Chapter 17 enacted by Stats. 1951, Ch. 364.)

Article 1. Liquidation by the Commissioner

(Heading of Article 1 amended by Stats. 2003, Ch. 62, Sec. 93. Effective January 1, 2004.)

3100. The commissioner may, whenever it appears to him or her that any of the conditions described in subdivisions (a) to (h), inclusive, exist with respect to a bank, forthwith take possession of the property and business of the bank and retain possession until the bank resumes business or its affairs are finally liquidated as herein provided. The bank, with the consent of the commissioner, may resume business subject to any conditions that may be prescribed by the commissioner. The term "bank" wherever used in this chapter includes trust companies.

(a) The tangible shareholders' equity of the bank is less than:

(1) In case the bank is a commercial bank or industrial bank, the greater of three percent of the bank's total assets or one million dollars ($1,000,000); or

(2) In case the bank is a trust company other than a commercial bank authorized to engage in trust business, one million dollars ($1,000,000).

(b) The bank has violated its articles or any law of this state.

(c) The bank is conducting its business in an unsafe or unauthorized manner.

(d) The bank refuses to submit its books, papers, and affairs to the inspection of any examiner.

(e) Any officer of the bank refuses to be examined upon oath touching the concerns of the bank.

(f) The bank has failed to pay any of its obligations as they came due or that is reasonably expected to be unable to pay its obligations as they come due.

(g) The bank is in a condition that it is unsound, unsafe, or inexpedient for it to transact business.

(h) The bank neglects or refuses to observe any order of the commissioner made pursuant to Section 1913 unless the enforcement of the order is restrained in a proceeding brought by the bank.

(Amended by Stats. 2000, Ch. 1015, Sec. 27. Effective September 30, 2000.)

3101. Whenever the commissioner has taken possession of the property and business of any bank, such bank, within 10 days after such taking, if it deems itself aggrieved thereby, may apply to the superior court in the county in which the head office of such bank is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing and a determination of the facts upon the merits may dismiss such application or enjoin the commissioner from further proceedings and direct him or her to surrender the property and business to such bank.

(Amended by Stats. 1996, Ch. 1064, Sec. 350. Effective January 1, 1997. Operative July 1, 1997.)

3102. An appeal may be taken from the judgment of the court by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.

(Amended by Stats. 1998, Ch. 931, Sec. 146. Effective September 28, 1998.)

3103. Upon taking possession of the property and business of any bank, the commissioner shall forthwith give notice of such fact to all persons holding or having in their possession any assets of such bank. No person knowing of such taking or who has been notified thereof shall have a lien or charge upon any assets of the bank for any payment, advance, or clearance thereafter made or for any liability thereafter incurred.

The giving of notice in accordance with this section shall not be deemed to be a prerequisite to the taking of possession of the property and business of the bank.

(Amended by Stats. 1996, Ch. 1064, Sec. 352. Effective January 1, 1997. Operative July 1, 1997.)

3104. Upon taking possession of the property and business of any bank, the commissioner has authority and it is his or her duty to collect all moneys due to such bank and to do such other acts as are necessary or expedient to collect, conserve, or protect its assets, property, and business and he or she shall proceed to conserve or liquidate the affairs thereof as herein provided.

(Amended by Stats. 1996, Ch. 1064, Sec. 353. Effective January 1, 1997. Operative July 1, 1997.)

3105. No attachment shall be issued against the property of any bank or trust company.

(Amended by Stats. 1982, Ch. 497, Sec. 89. Operative July 1, 1983, by Sec. 185 of Ch. 497.)

3106. The commissioner, from time to time, under his or her official seal, may appoint one or more special deputy commissioners as his or her agent or agents with the powers specified in the certificate of appointment to assist him or her in the duty of conservation or of liquidation and distribution. The certificate of appointment shall be filed in the office of the commissioner and a certified copy in the office of the clerk of the county in which the head office of the bank is located. The commissioner may employ such counsel and procure such expert assistance and advice as may be necessary in the liquidation and distribution of the assets of the bank and for that purpose may retain such of the officers or employees of the bank as he or she may deem necessary.
(Amended by Stats. 1996, Ch. 1064, Sec. 354. Effective January 1, 1997. Operative July 1, 1997.)

3107. The compensation of special deputies, counsel, and other employees and assistants appointed to assist in the liquidation of any bank and the distribution of its assets and all expenses of supervision and liquidation shall be fixed by the commissioner and shall be paid out of the funds of such bank in the hands of the commissioner. Such expenses of liquidation must be reported to the court upon each application for payment of a dividend.
(Amended by Stats. 1996, Ch. 1064, Sec. 355. Effective January 1, 1997. Operative July 1, 1997.)

3108. Upon the commissioner taking possession of the business and property of any bank the superior court of the State of California for the county in which the head office of such bank is located shall have exclusive original jurisdiction of all proceedings relating thereto and of any action or other proceedings brought under the provisions of this chapter. All papers relating to such proceeding, including copies of the certificate of appointment of any special deputy and the inventories required to be filed, shall be filed and be made a part of the record of such proceeding without the payment of any additional fees therefor. No damages may be awarded in such proceeding but, if sought, may only be recovered in a separate action.
(Amended by Stats. 1996, Ch. 1064, Sec. 356. Effective January 1, 1997. Operative July 1, 1997.)

3109. The commissioner may sell, compromise, or compound any bad or doubtful debt owing the bank, which is for a principal sum not exceeding five hundred dollars ($500), upon such terms as the commissioner may deem proper, and, if the principal sum thereof exceeds five hundred dollars ($500), the commissioner may compromise, compound, or sell the same upon such terms as the court may approve. If it appears improbable that a recovery on any debt can be had and that the costs of an action to collect would be lost and the principal sum thereof does not exceed five hundred dollars ($500), the commissioner may determine that no suit thereon shall be brought, and if the principal sum thereof exceeds five hundred dollars ($500), the commissioner may determine that no suit thereon be brought after obtaining approval of the court.
(Amended by Stats. 1996, Ch. 1064, Sec. 357. Effective January 1, 1997. Operative July 1, 1997.)

3110. The commissioner may sell any real or personal property of the bank for cash or on credit and on such other terms and conditions as the commissioner may deem proper, subject to the approval of the court.
(Amended by Stats. 1996, Ch. 1064, Sec. 358. Effective January 1, 1997. Operative July 1, 1997.)

3110.1. (a) The commissioner may, with the approval of the court and of the commissioner, sell any part or the whole of the business of the bank to any other bank. Such purchase and sale shall be approved by the purchasing bank, as follows:

(1) In case the purchasing bank is a bank organized under the laws of this state, by two-thirds of all of its directors.

(2) In case the bank is any bank other than a bank organized under the laws of this state, in accordance with the laws of the jurisdiction under the laws of which the bank is organized.

(b) (1) Subject to any applicable federal statutes and regulations, any bank organized under the laws of this state may, with the approval of two-thirds of all of its directors and of the commissioner, purchase from the receiver of a national banking association the whole or any part of the business of such national banking association.

(2) Subject to any applicable federal statutes and regulations and any applicable laws of the jurisdiction under the laws of which such foreign banking corporation is organized, any foreign banking corporation which is licensed by the commissioner under Article 1 (commencing with Section 1750) of Chapter 14 to transact banking business in this state and which is authorized under Sections 1756 and 1756.1 to accept deposits in this state, may, with the approval of the commissioner, purchase from the receiver of a national banking association the whole or any part of the business of such national banking association.

(c) The provisions of Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall not apply to any purchase and sale of the type described in subdivision (a) or (b).

(d) When a purchase and sale of the type described in subdivision (a) or (b) becomes effective or, in case the receiver of a national banking association sells the whole or any part of the business of such national banking association to

another national banking association, when such purchase and sale becomes effective, the purchasing bank shall, ipso facto and by operation of law and without further transfer, substitution, act, or deed, to the extent provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale and except as withheld or limited by such agreement or by such order:

(1) Succeed to the rights, obligations, properties, assets, investments, deposits, demands, and agreements of the bank whose business is sold, subject to the right of every depositor of such bank whose deposit is sold to withdraw his or her deposit in full on demand after such sale, irrespective of the terms under which the deposit was made;

(2) Succeed to the rights, obligations, properties, assets, investments, deposits, demands, and agreements of the bank whose business is sold under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and other fiduciary or representative capacities, to the same extent as though the purchasing bank had originally assumed, acquired, or owned the same, subject to the rights of trustors and beneficiaries under the trusts so sold to nominate another or succeeding trustee of the trust so sold after the sale; and

(3) Succeed to and be entitled to take and execute the appointment to executorships, trusteeships, guardianships, conservatorships, and other fiduciary and representative capacities to which the bank whose business is sold is or may be named in wills, whenever probated, or to which it is or may be named or appointed by any other instrument.

(e) For purposes of subdivision (d), any purchase and sale of the type referred to in subdivision (d) shall be deemed to be effective at such time as is provided in the agreement of such purchase and sale or in the order of the court approving the purchase and sale.

(Amended by Stats. 1996, Ch. 1064, Sec. 359. Effective January 1, 1997. Operative July 1, 1997.)

3111. Within six months after taking possession of the property and business of any bank the commissioner may terminate or adopt any executory contract to which the bank may be a party including leases of real or personal property. Claims for damages resulting from the termination of any such contract or lease may be filed and allowed, but no claim of a landlord for damages resulting from the rejection of an unexpired lease of real property or under any covenant of such lease shall be allowed in an amount exceeding the rent reserved by the lease, without acceleration, for the year succeeding the date of the surrender of the premises plus the amount of any unpaid accrued rent without acceleration. Any such claim must be filed within 30 days of the date of such termination or within the time that claims must be filed under Section 3118, whichever is longer.

(Amended by Stats. 1996, Ch. 1064, Sec. 360. Effective January 1, 1997. Operative July 1, 1997.)

3112. The commissioner in his or her own name or in the name of the bank may execute, acknowledge, and deliver any and all conveyances and other instruments necessary or appropriate to effectuate the sale of any real or personal property or to effectuate any other transaction in connection with the liquidation of the bank or the distribution of its assets. Any conveyance or other instrument executed by the commissioner pursuant to this authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the bank by authority of its board of directors. Whenever the commissioner sells any real property of the bank a certified copy of the order of the court approving the same shall be recorded in the county in which any part of such real property is located.

(Amended by Stats. 1996, Ch. 1064, Sec. 361. Effective January 1, 1997. Operative July 1, 1997.)

3113. The commissioner in the name of the delinquent bank or in his or her own name may prosecute and defend any and all actions and other legal proceedings appropriate or necessary to the liquidation of such bank.

(Amended by Stats. 1996, Ch. 1064, Sec. 362. Effective January 1, 1997. Operative July 1, 1997.)

3114. The commissioner from time to time shall deposit all moneys coming into his or her hands in the course of the liquidation of the bank in one or more state banks and in the event of the suspension or insolvency of the depositary they shall be preferred before all other deposits.

(Amended by Stats. 1996, Ch. 1064, Sec. 363. Effective January 1, 1997. Operative July 1, 1997.)

3115. The commissioner shall make an inventory of the assets of the bank in duplicate and file one in the office of the commissioner and one with the clerk of the county in which the head office of the bank is located to be filed with the papers in the liquidation proceedings. Such inventory shall be open for inspection at all reasonable times.

(Amended by Stats. 1996, Ch. 1064, Sec. 364. Effective January 1, 1997. Operative July 1, 1997.)

3116. When the time fixed for the presentation of claims has expired the commissioner shall make in duplicate a full and complete list of all claims presented, including and specifying such claims as have been rejected by the commissioner, and a list of all claims of depositors as shown by the books or records of said bank for which claims have not yet been presented, and shall file one copy of said list in the commissioner's office and one with the clerk of the county in which the head office of the bank is located to be filed with the papers in the liquidation proceedings. Before each application to the court for leave to declare a dividend the commissioner shall file a supplemental list of claims presented

since the last preceding list was filed, including and specifying such claims as have been rejected by him or her. Such list of claims and of claims of depositors as shown by the books or records of the bank shall be open for inspection at all reasonable times.
(Amended by Stats. 1996, Ch. 1064, Sec. 365. Effective January 1, 1997. Operative July 1, 1997.)

3117. The commissioner shall cause notice to be given by advertisement in such newspapers of general circulation as he or she may select weekly for three consecutive months, calling on all persons who have claims against the bank to present the same to the commissioner and make legal proof thereof at a place to be specified therein and within four months of the date of the first publication of such notice, which date shall be specified in the notice. Such notice shall also state that all claims other than those of depositors appearing upon the books or records of the bank shall be forever barred if not filed within said four months' period and that all claims of depositors appearing upon the books or records of the bank will be forever barred, except as herein provided, if not filed prior to the filing of a petition for a final dividend. The commissioner shall also mail a similar notice to all persons, including depositors, whose names appear as creditors upon the books of the bank and whose addresses appear upon the books or records of the bank and shall enclose therewith a printed form of notice of claim.
(Amended by Stats. 1996, Ch. 1064, Sec. 366. Effective January 1, 1997. Operative July 1, 1997.)

3118. All claims of every kind against the bank or against any property owned or held by such bank shall be presented to the commissioner in writing verified by the claimant or someone in his or her behalf within four months of the date of the first publication of the notice to creditors. Any claim, other than the claim of a depositor whose claim appears upon the books or records of the bank, not so presented within said four months' period shall be forever barred and any claim of a depositor whose claim appears upon the books or records of the bank which is not so presented prior to the date of the filing of the petition of the commissioner with the court for approval of the payment of the final dividend shall be forever barred except as to any moneys remaining after all debts for which claims were duly filed have been paid in full with interest. If the commissioner doubts the validity of any claim he or she may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of the mailing or personal service of such notice shall be prima facie evidence of the receipt thereof and shall be filed with the commissioner. Any action upon a claim so rejected must be brought within three months after the date of mailing or personal service of the notice of rejection.
(Amended by Stats. 1996, Ch. 1064, Sec. 367. Effective January 1, 1997. Operative July 1, 1997.)

3119. At any time and from time to time after the expiration of the time fixed for the presentation of claims, the commissioner, after obtaining approval of the court, may declare and pay one or more dividends upon all approved claims out of the funds remaining in his or her hands after the payment of expenses and after setting aside an amount sufficient to pay to all depositors, who have not yet filed claims but whose claims appear upon the books or records of the bank, their pro rata share of the funds then available for the payment of a dividend. At any time after the expiration of one year from the date of the first publication of notice to creditors and after obtaining the approval of the court the commissioner may declare and pay a final dividend.
(Amended by Stats. 1996, Ch. 1064, Sec. 368. Effective January 1, 1997. Operative July 1, 1997.)

3119.5. (a) Expenses and claims of unsecured creditors have priority in the following order:

(1) Expenses of liquidation and approved claims for fees and assessments due the department.

(2) Approved claims given priority under other provisions of state or federal law, including, but not limited to, Sections 3114 and 3240.

(3) Approved claims for "deposits," as that term is defined in 12 U.S.C. Section 1813(l), but including obligations of the type described in 12 U.S.C. Section 1813(l)(5)(A) and (B).

(4) Approved claims for other general liabilities.

(5) Approved claims for obligations subordinated to deposits and other general liabilities.

(b) Interest shall be given the same priority as the claim on which it is based, but no interest shall be paid on any claim until the principal of all claims within the same class has been paid or adequately provided for in full.

(c) Any funds remaining shall be paid to the shareholders.
(Added by Stats. 1986, Ch. 210, Sec. 1. Effective June 27, 1986.)

3120. Objections to any claim not rejected by the commissioner may be made by any person interested by filing a copy of such objections with the commissioner, who shall present the same to the court at the time of the next application for approval of the declaration of a dividend. The court shall thereupon dispose of said objections or may order a reference for that purpose, and should the objections to any claim be sustained by the court or by the referee, such claim shall not be allowed by the commissioner until the claimant has established the claim by judgment.
(Amended by Stats. 1996, Ch. 1064, Sec. 369. Effective January 1, 1997. Operative July 1, 1997.)

3121. Dividends remaining unpaid and any sums available for payment of deposits for which no claim was filed, which remain in the hands of the commissioner six months after the order for the payment of a final dividend, shall be deposited in the State Treasury. Such deposits shall be deemed to have been received under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and shall be subject to claim or other disposition as provided in said Chapter 7 (commencing with Section 1500) of Title 10. The commissioner may pay over the moneys so held by him or her to the persons respectively entitled thereto at any time prior to such deposit, upon being furnished satisfactory evidence of their right to the same.
(Amended by Stats. 1996, Ch. 1064, Sec. 370. Effective January 1, 1997. Operative July 1, 1997.)

3121.5. Whenever, under the provisions of this chapter, the commissioner is required to transmit unclaimed money or other unclaimed property to any state officer for deposit in the State Treasury, the commissioner, upon request of the Controller, shall transmit to the Controller all signature cards and such other identifying information as may be available from the records of the bank, covering such money or other property. Upon receipt by the Controller of such signature cards or other identifying information, the bank and the commissioner shall be relieved of all responsibility therefor. Such signature cards and other identifying information may be destroyed or otherwise disposed of by the Controller whenever, in his or her discretion, their further retention by him or her is no longer required in the interest of the depositors or this state.
(Amended by Stats. 1996, Ch. 1064, Sec. 371. Effective January 1, 1997. Operative July 1, 1997.)

3122. All approved claims of depositors and other creditors shall bear interest at the rate provided by law on judgments from the date that the commissioner takes possession of the property and business of the bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 372. Effective January 1, 1997. Operative July 1, 1997.)

3123. Should the bank have in its possession for safekeeping or storage any jewelry, plate, money, specie, bullion, stocks, bonds, securities, valuable papers, or other valuable personal property or should it have rented any vaults, safes, or safe-deposit boxes, the commissioner shall cause to be mailed by registered mail, postage prepaid, to any known person claiming to be or appearing on the books of the bank to be the owner of such property or to the person in whose name the safe, vault, or box stands a notice notifying such person to remove all such personal property within a specified fixed period of not less than 60 days.
(Amended by Stats. 1996, Ch. 1064, Sec. 373. Effective January 1, 1997. Operative July 1, 1997.)

3124. On the last day fixed in said notice for the removal of such property or on the date when such property is removed or the box surrendered any contract between the person owning such property or holding said box and the bank shall cease and the amount of the unearned prepaid rent or charges, if any, shall become a debt of the bank to said person.
(Enacted by Stats. 1951, Ch. 364.)

3125. If any property be not removed within the time fixed by notice mailed by the commissioner, the commissioner may make such disposition of the property as the court on application thereto shall direct. The commissioner may cause any safe, vault, or box to be opened in his or her presence or in the presence of one of the special deputy commissioners and of a notary public not an officer or employee of the bank or of the commissioner. The contents thereof, if any, shall be sealed up by such notary public in a package upon which such notary public shall distinctly mark the name and address of the person in whose name such safe or box stands upon the books of the bank and shall attach thereto a list and a description of the property therein. The package so sealed and addressed, together with the list and description may be kept by the commissioner in one or more of the safes or boxes of the bank or elsewhere until delivered to the person whose name it bears or until otherwise disposed of as directed by the court.
(Amended by Stats. 1996, Ch. 1064, Sec. 374. Effective January 1, 1997. Operative July 1, 1997.)

3126. (a) When the commissioner has completed the liquidation of the bank, he or she shall petition the court for an order declaring the bank duly wound up and dissolved.

(b) After such notice as the court may direct and a hearing, the court may make an order declaring the bank duly wound up and dissolved. Such order shall declare:

(1) That the bank has been duly wound up;

(2) That any tax or penalty due under the Bank and

Corporation Tax Law has been paid or secured and that the bank's other known debts and liabilities have been paid or adequately provided for, or that such taxes, penalties, debts, and liabilities have been paid so far as the bank's assets permitted, as the case may be. If there are known debts or liabilities for the payment of which adequate provision has been made, the order shall describe such provision, setting forth such information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability;

(3) That all known assets of the bank have been distributed to its shareholders or wholly applied on account of the bank's debts and liabilities; and

(4) That the bank is dissolved.

(c) The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

(d) Upon the making of the order declaring the bank dissolved, the corporate existence of the bank shall cease, except for the purposes of any necessary further winding up.

(e) Upon the making of the order declaring the bank dissolved, the commissioner shall forthwith file with the Secretary of State a copy of such order, certified by the clerk of the court. Notwithstanding the provisions of Section 23334 of the Revenue and Taxation Code, there need not be filed with the Secretary of State any certificate of satisfaction of the Franchise Tax Board that all taxes due from the bank have been paid or secured.

(Amended by Stats. 1996, Ch. 1064, Sec. 375. Effective January 1, 1997. Operative July 1, 1997.)

3131. Whenever pursuant to the provisions of this chapter the approval of the court is required of any step in the liquidation proceedings such approval shall be given after a hearing had upon such notice as the court may direct. At any such hearing the court may by order approve the actions of the commissioner for which he or she has petitioned the court's approval or it may, by appropriate order, otherwise direct the commissioner in the matter in connection with which the petition was filed.

(Amended by Stats. 1996, Ch. 1064, Sec. 376. Effective January 1, 1997. Operative July 1, 1997.)

3132. Whenever in the opinion of the commissioner the liquidation or reorganization of any bank taken in charge by him or her would be facilitated thereby, or the public interests and the interests of depositors or stockholders would be served thereby, the commissioner shall have power to borrow money in behalf of such bank from any federal agency authorized to lend money to receivers, trustees, liquidating agents, or other agents or supervisory authorities in charge of banks which are closed or in process of liquidation, and with approval of the court, the commissioner may secure such borrowings by the pledge of the assets of any such bank in such manner and amount as may to the commissioner seem necessary, proper, or expedient.

(Amended by Stats. 1996, Ch. 1064, Sec. 377. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Voluntary Liquidation
(Article 2 enacted by Stats. 1951, Ch. 364.)

3150. Any bank which voluntarily has ceased to do a banking business shall immediately notify the commissioner thereof and shall then proceed to liquidate its affairs. Any deposit or other sum which has not been paid to the person entitled thereto within six months after the bank ceased to conduct a banking business shall be paid into the State Treasury. Such deposits shall be deemed to have been received under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and shall be subject to claim or other disposition as provided in said Chapter 7 (commencing with Section 1500) of Title 10. If the commissioner has reason to conclude that the liquidation of such bank is not being safely or expeditiously conducted, he or she may take possession of the business and property of such bank in the same manner and with the same effect and subject to the same rights accorded the bank as if he or she had taken possession pursuant to the provisions of Article 1 of this chapter, and he or she may proceed to liquidate its affairs in the same manner as provided in said Article

1. When such bank has been completely liquidated, its corporate existence shall be dissolved in the manner provided by law.

(Amended by Stats. 1996, Ch. 1064, Sec. 378. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Disposal of Unclaimed Trust Property
(Article 3 enacted by Stats. 1951, Ch. 364.)

3160. Whenever any bank or trust company is being liquidated or whenever the trust business of any bank or trust company has been discontinued and the bank or trust company has in its possession money or other property held by it in trust or for safekeeping and the beneficiaries or persons entitled thereto are unknown or cannot be found, the commissioner or the bank or trust company, upon obtaining approval of the superior court of the county in which the liquidation proceedings are pending or in which the head office of such trust company or bank is situated, may:

(a) In the case of money, deliver the same to the Treasurer;

(b) In the case of other property, deliver the same to the Controller for deposit in the State Treasury.

(Amended by Stats. 1996, Ch. 1064, Sec. 379. Effective January 1, 1997. Operative July 1, 1997.)

3161. Upon the delivery of any money to the State Treasurer or upon the delivery of any property to the State Controller a certified copy of the order of the court approving such delivery shall be given to the State Controller, and upon the delivery of any money to the State Treasurer a notice giving the amount so delivered shall be filed with the State Controller. Upon the receipt of any money or other properties, the State Treasurer or the State Controller, as the case may be, shall issue a receipt for the same, and said receipt shall be deemed a voucher in favor of the bank or trust company the same as though executed by the beneficiary or other person entitled thereto.
(Enacted by Stats. 1951, Ch. 364.)

3162. All money or other property delivered to the State Treasurer or State Controller pursuant to this article, except Section 3163, shall be deemed to be so delivered for deposit in the State Treasury under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and shall be subject to claim or other disposition as provided in said Chapter 7 (commencing with Section 1500) of Title 10.
(Amended by Stats. 1963, Ch. 1762.)

Article 4. Conservatorship
(Article 4 enacted by Stats. 1951, Ch. 364.)

3180. Whenever the commissioner deems it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors, he or she may appoint a conservator of such bank and require of the conservator such bond as the commissioner deems proper. The conservator, under the direction of the commissioner, shall take possession of the books, records, and assets of every description of such bank and take such action as the conservator may deem necessary to conserve the assets of such bank pending further disposition of its business.
(Amended by Stats. 1996, Ch. 1064, Sec. 380. Effective January 1, 1997. Operative July 1, 1997.)

3181. A conservator so appointed has all of the powers and rights with relation to the business and the property of the bank for which he or she is appointed conservator as are possessed by the commissioner under Article 1 of this chapter with relation to a bank of which he or she has taken possession and the conservator is subject to the same obligations as are imposed upon the commissioner under that article. Upon the appointment of a conservator the bank shall have the same rights as are granted by Sections 3101 and 3102 hereof to a bank whose business and assets have been taken possession of by the commissioner. During the time that the conservator remains in possession of such bank the rights of the bank and of all persons with respect thereto, subject to the other provisions of this article, are the same as if the commissioner had taken possession of the property and business of such bank for the purposes of liquidation. All expenses of any such conservatorship shall be paid out of the assets of the bank and shall be a lien thereon which shall be prior to any other lien. The conservator shall receive a salary in an amount no greater than that which would be paid by the commissioner to a special deputy in charge of the liquidation of a bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 381. Effective January 1, 1997. Operative July 1, 1997.)

3182. The commissioner shall cause to be made and completed at the earliest possible date such an examination of the affairs of a bank for which the commissioner has appointed a conservator as shall be necessary to inform the commissioner as to its financial condition.
(Amended by Stats. 1996, Ch. 1064, Sec. 382. Effective January 1, 1997. Operative July 1, 1997.)

3183. While any bank is in the hands of a conservator the commissioner may require the conservator to set aside and make available for withdrawal by depositors and for payment to other creditors on a ratable basis such amounts as in the opinion of the commissioner may safely be used for that purpose.
(Amended by Stats. 1996, Ch. 1064, Sec. 383. Effective January 1, 1997. Operative July 1, 1997.)

3184. The commissioner in his or her discretion may permit the conservator to receive deposits but any deposits received while the bank is in the hands of a conservator shall be held as trust funds and shall not be subject to any limitation as to payment or withdrawal. Such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time such conservator was appointed or for the payment of any later indebtedness incurred for the purpose of liquidating any indebtedness of such bank existing at the time such conservator was appointed. Such deposits shall be kept on hand in cash, invested in direct obligations of the United States, or deposited with the Federal Reserve Bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 384. Effective January 1, 1997. Operative July 1, 1997.)

3185. If the commissioner becomes satisfied that it may safely be done and that it would be in the public interest he or she may terminate the conservatorship and permit the bank for whom a conservator was appointed to resume the

transaction of its business under the direction of its board, subject to such terms, conditions, restrictions, and limitations as he or she may prescribe.
(Amended by Stats. 1996, Ch. 1064, Sec. 385. Effective January 1, 1997. Operative July 1, 1997.)

3186. In any case in which a bank for which a conservator has been appointed has been permitted to accept deposits since the appointment of a conservator, the conservator, before the date upon which the bank may be permitted to resume business under direction of its board, shall cause to be published in a newspaper selected by him or her as most likely to give proper notice, a notice giving the date on which the affairs of the bank will be returned to its board and stating that the provisions of Section 3184 will not be effective after 30 days from such date. The form of such notice and the newspaper in which the same is to be published shall be first approved by the commissioner. On the date of the publication of such notice the conservator shall mail to every person who made any deposit in such bank after the date of the appointment of the conservator a copy of such notice addressed to such person at the address appearing upon the books of the bank and shall mail a similar notice to every person making a deposit in the bank after the date of the publication of such notice and prior to the time when the affairs of the bank are returned to its board.
(Amended by Stats. 1996, Ch. 1064, Sec. 386. Effective January 1, 1997. Operative July 1, 1997.)

3187. The commissioner is authorized to assess and collect from all banks as may become subject to the provisions of this article their ratable share of the costs incurred in the administration thereof.
(Amended by Stats. 1996, Ch. 1064, Sec. 387. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. Reorganization
(Article 5 enacted by Stats. 1951, Ch. 364.)

3200. Any bank, including a bank of which the commissioner has taken possession pursuant to Article 1 hereof or a bank for which a conservator has been appointed pursuant to Article 4 hereof may be reorganized under a plan which requires the consent:

(a) Of depositors and other creditors of such bank representing at least 75 percent in amount of its total deposits and other liabilities as shown by the books of the bank, excluding deposits and other liabilities which are to be satisfied in full under the provisions of the plan; or

(b) Of stockholders owning at least two-thirds of the outstanding capital stock as shown by the books of the bank; or

(c) Of depositors and other creditors of such bank representing at least 75 percent in amount of its total deposits and other liabilities as shown by the books of the bank, excluding deposits and other liabilities which are to be satisfied in full under the provisions of the plan, and of stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 388. Effective January 1, 1997. Operative July 1, 1997.)

3201. All depositors, creditors, stockholders, and other interested persons shall be given notice of any proposed plan of reorganization in such manner and at such times as the commissioner directs.
(Amended by Stats. 1996, Ch. 1064, Sec. 389. Effective January 1, 1997. Operative July 1, 1997.)

3202. No plan of reorganization shall become effective until the commissioner finds that the plan is fair and equitable to all depositors, creditors, and stockholders and is in the public interest and until the commissioner approves the same in writing, subject to such conditions, restrictions, and limitations as he or she may prescribe.
(Amended by Stats. 1996, Ch. 1064, Sec. 390. Effective January 1, 1997. Operative July 1, 1997.)

3203. No creditor having security for the payment of his claim shall be affected in his right to enforce such security by the provisions of any plan for the reorganization of any such bank. Any plan of reorganization involving the reduction of claims of creditors, as to secured creditors, shall apply to the amounts of their claims against any such bank after the security has been realized upon.
(Enacted by Stats. 1951, Ch. 364.)

3204. When any plan of reorganization becomes effective all books, records, and assets of such bank shall be disposed of in accordance with the provisions of the plan and the affairs of the bank shall be conducted by its board in the manner provided by the plan and under the conditions, restrictions, and limitations which may have been prescribed by the commissioner. When any plan of reorganization adopted and approved as herein provided becomes effective all depositors and other creditors and stockholders of the bank, whether or not they have consented to the plan of reorganization, shall be fully and in all respects subject to and bound by its provisions and claims of all depositors and other creditors shall be treated as if they had consented to the plan of reorganization.
(Amended by Stats. 1996, Ch. 1064, Sec. 391. Effective January 1, 1997. Operative July 1, 1997.)

Article 6. Liquidation of Insured Banks
(Article 6 enacted by Stats. 1951, Ch. 364.)

3220. The Federal Deposit Insurance Corporation, in this article called the corporation, may be and act as the receiver without bond of any bank the deposits of which are to any extent insured by the corporation and which bank has been closed for the purpose of liquidation without adequate provision being made for the payment of its depositors.
(Enacted by Stats. 1951, Ch. 364.)

3221. The commissioner, when he or she has taken possession of the property and assets of a closed insured bank for the purpose of liquidation and if he or she deems it advisable, may tender to the corporation the appointment as receiver of such bank.
(Amended by Stats. 1996, Ch. 1064, Sec. 392. Effective January 1, 1997. Operative July 1, 1997.)

3222. If the corporation accepts the appointment as such receiver, the rights of depositors and other creditors of the insured bank shall be determined in accordance with the applicable provisions of the laws of this State.
(Enacted by Stats. 1951, Ch. 364.)

3223. The corporation as such receiver shall possess with respect to such closed insured bank all the powers, rights, and privileges given the commissioner under Article 1 of this chapter with respect to the liquidation of a bank the property and assets of which he or she has taken possession, except insofar as the same may be in conflict with the provisions of the Federal Deposit Insurance Act, as amended.
(Amended by Stats. 1996, Ch. 1064, Sec. 393. Effective January 1, 1997. Operative July 1, 1997.)

3224. If the corporation pays or makes available for payment the insured deposit liabilities of a closed insured bank, the corporation, whether or not it has become receiver, shall be subrogated by operation of law to all rights against such closed insured bank of the owners of such deposits in the same manner and to the same extent as subrogation of the corporation is provided for in the Federal Deposit Insurance Act; as amended, in the case of a closed national bank.
(Amended by Stats. 1969, Ch. 493.)

3225. When acting as the receiver of a closed insured bank, the corporation with the consent of the commissioner and the approval of the court may sell to the corporation any part or all of the assets of the bank or borrow from the corporation and furnish any part or all of the assets of the bank as security for the loan.
(Amended by Stats. 1996, Ch. 1064, Sec. 394. Effective January 1, 1997. Operative July 1, 1997.)

Article 7. Priorities
(Article 7 enacted by Stats. 1951, Ch. 364.)

3240. The holder or transferor of a negotiable instrument transferred to a bank for collection has a preferred claim in the amount of the liability of such bank on such instrument if the instrument was forwarded to the bank by any person or by any other bank for collection and remittance, if payment therefor has not been made and if the same has been collected either in whole or in part by such bank, unless the holder or transferor is a voluntary depositor in the bank and the proceeds of the collection, at his request, have been credited by the bank to his account.
(Enacted by Stats. 1951, Ch. 364.)

CHAPTER 18. PROHIBITED PRACTICES AND PENALTIES

(Heading of Chapter 18 added by Stats. 1953, Ch. 478.)

Article 1. Miscellaneous Offenses

(Article 1 enacted by Stats. 1951, Ch. 364.)

3350. Any director, officer, or employee of a bank or of a foreign banking corporation who asks for or receives, or consents or agrees to receive any commission, emolument, or gratuity or any money, property, or thing of value for his own personal benefit or of personal advantage for procuring or endeavoring to procure for any person any loan from such bank, or the purchase or discount of any note, draft, check, bill of exchange, or other obligation by such bank, or for permitting any person to overdraw any account with such bank, is guilty of a felony.

(Enacted by Stats. 1951, Ch. 364.)

3352. Any director, officer, agent, or employee of any bank who knowingly receives or possesses himself of any of its property otherwise than in payment of a just demand, and with intent to defraud, omits to make or cause to be made a full and true entry thereof in its books and accounts or concurs in omitting to make any material entry thereof is guilty of a felony.

(Enacted by Stats. 1951, Ch. 364.)

3353. Any director, officer, agent, or employee of a bank who knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books wilfully refuses or neglects to make any proper entry in such books as required by law, or to exhibit or allow the same to be inspected or extracts to be taken therefrom by the commissioner or his or her deputies or examiners, is guilty of a felony.

(Amended by Stats. 1996, Ch. 1064, Sec. 395. Effective January 1, 1997. Operative July 1, 1997.)

3354. (a) In this section, "subject person," when used with respect to a bank, means any director or officer of the bank, any controlling person of the bank, or any director or officer of a controlling person of the bank. For purposes of this subdivision, "controlling person" has the meaning set forth in subdivision (c) of Section 700.

(b) No bank shall purchase any real or personal property or any interest in real or personal property, including, but not limited to, a leasehold, or any contract arising from the sale of real or personal property or any note or bond in which any subject person of such bank is personally or financially interested, directly or indirectly, for such person's own account, for such person, or as the partner or agent of others, without first obtaining the written consent of the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 396. Effective January 1, 1997. Operative July 1, 1997.)

3355. (a) In this section, "subject person" has the meaning set forth in subdivision (a) of Section 3354.

(b) No subject person of a bank shall purchase, directly or indirectly, or be interested in the purchase of, any of the bank's assets for an amount less than the then current market value thereof. Every person violating this section shall be liable to the people of this state, for each offense, for twice the market value of the assets so purchased.

(Amended by Stats. 1984, Ch. 957, Sec. 6.)

3356. (a) In this section, "subject person" has the meaning set forth in subdivision (a) of Section 3354.

(b) No subject person of a bank shall purchase, directly or indirectly, or be interested in the purchase of any of the bank's obligations or assets for an amount less than the book value thereof, unless all the directors of such bank previously approve such purchase by resolution, and a copy of such resolution is transmitted to the commissioner immediately after adoption. Every person violating this section shall be liable to the people of the state, for each offense, for twice the face value of the assets so purchased.

(Amended by Stats. 1996, Ch. 1064, Sec. 397. Effective January 1, 1997. Operative July 1, 1997.)

3358. No bank shall publish a statement of its resources or liabilities in connection with those of any other bank, unless such statement shall show the resources and liabilities of each bank separately.

(Amended by Stats. 1978, Ch. 965.)

3359. (a) For purposes of this section, the following terms have the following meanings:

(1) "Carrying a security" means maintaining, reducing, or retiring indebtedness originally incurred to acquire a security.

(2) "Controlling person" has the same meaning specified in Section 700.

(3) "Security" has the following meanings:

(A) When used with respect to a bank, "security" has the same meaning set forth in subdivision (c) of Section 690.

(B) When used with respect to any other person, "security" has the same meaning set forth in Section 25019 of the Corporations Code.

(b) No bank shall acquire, hold, extend credit on the security of, or extend credit for the purpose of acquiring or carrying, any security of the bank or of any controlling person of the bank.

(c) (1) Any bank which acquires or holds securities in violation of this section shall be liable to the people of this state for twice the market, book, or face value of the securities, whichever is greatest.

(2) Any bank which extends credit in violation of this section shall be liable to the people of this state for twice the amount of the credit so extended.

(d) This section does not apply to any of the following transactions:

(1) Any acquisition or extension of credit by a bank which is necessary to reduce or prevent loss to the bank on debts previously contracted in good faith.

(2) Any redemption by a bank of any of its redeemable shares in accordance with applicable provisions of this division and of Division 1 (commencing with Section 100) of Title 1 of the Corporations Code.

(3) Any acquisition by a bank of any of its shares, other than an acquisition of the type described in paragraph (1) or (2), if the acquisition is approved in advance by the commissioner.

(e) The provisions of Section 216.3 shall not apply to this section.

(Amended by Stats. 2003, Ch. 445, Sec. 11. Effective January 1, 2004.)

3360. The term "bank" wherever used in this article includes trust companies.

(Amended by Stats. 1981, Ch. 67, Sec. 21. Effective June 16, 1981.)

3361. Any officer, director, trustee, employee, or agent of any bank in this state, who abstracts or willfully misapplies any of the money, funds, or property of the bank, or willfully misapplies its credit, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the bank. Nothing in this section shall be deemed or construed to repeal, amend or impair any existing provision of law prescribing a punishment for such an offense.

(Amended by Stats. 1990, Ch. 947, Sec. 1.)

3362. Every director of a bank in this State who:

(a) In case of the fraudulent insolvency of such bank, shall have participated in such fraud; or

(b) Wilfully does any act as such director which is expressly forbidden by law or wilfully omits to perform any duty imposed upon him as such director by law, is guilty of a misdemeanor.

The insolvency of a bank is deemed fraudulent for the purposes of this section, unless its affairs appear upon investigation to have been administered clearly, legally, and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

(Enacted by Stats. 1951, Ch. 364.)

3363. An officer or agent of any bank in this State, who makes or delivers any guaranty or endorsement on behalf of such bank, whereby it may become liable upon any of its discounted notes, bills or obligations, in a sum beyond the amount of loans and discounts which such bank may legally make, is guilty of a misdemeanor.

(Enacted by Stats. 1951, Ch. 364.)

3364. A director of a bank, organized under the laws of this State, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended to make a loan or discount to any director of such corporation, or upon paper upon which any such director is liable or responsible to an amount exceeding the amount allowed by the statutes is guilty of a misdemeanor.

(Enacted by Stats. 1951, Ch. 364.)

3365. Any director, trustee, officer or employee of any bank organized under the laws of this state, who makes or maintains, or attempts to make or maintain, a deposit of such bank's funds with any other corporation on condition, or with the understanding, express or implied, that the corporation receiving such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer or employee of the corporation so making or maintaining or attempting to make or maintain such deposit is guilty of a felony.

(Amended by Stats. 1965, Ch. 1168.)

3366. Any officer or employee of any bank organized under the laws of this state, who intentionally conceals from the directors of the bank any discounts or loans made by it between the regular meetings of its board, or the purchase of any

securities or the sale of its securities during that period, or knowingly fails to report to the board when required to do so by law, all discounts or loans made by it and all securities purchased or sold by it between the regular meetings of its board, is guilty of a misdemeanor.
(Amended by Stats. 1978, Ch. 965.)

3367. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits, knowing that the bank, or association, or banker is insolvent, is guilty of a misdemeanor.
(Enacted by Stats. 1951, Ch. 364.)

3368. Any officer, director, trustee, employee, or agent of any bank, who wilfully makes a false or untrue entry in any book or record or in any report, tag, or statement of the business, affairs, or condition or in connection with any transaction of such bank, with intent to deceive any officer, director or trustee thereof, or any agent or examiner, private, or official, employed or lawfully appointed to examine into its condition or into any of its affairs or transactions, or any public officer, office, or board to which such bank is required by law to report, or which has authority by law to examine into its affairs or transactions, or into any of its affairs or transactions, or who, with like intent, wilfully omits to make a new entry of any matter particularly pertaining to the business, property, condition, affairs, transactions, assets, or accounts of such bank in any book, record, report, statement, or tag of such bank, or who with like intent alters, abstracts, conceals, or destroys any book, record, report, statement, or tag of such bank made, written, or kept, or required to be made, written, or kept by him or under his direction, is guilty of a felony.
(Enacted by Stats. 1951, Ch. 364.)

3369. (a) Any person who willfully and knowingly makes, circulates, or transmits to another or others, any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank doing business in this State, or who knowingly counsels, aids, procures, or induces another to start, transmit, or circulate any such statement or rumor, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year, or both.

(b) The provisions of Section 216.3 shall not apply to this section.
(Amended by Stats. 2003, Ch. 445, Sec. 12. Effective January 1, 2004.) Article 2. Loans to Insiders (Heading of Article 2 amended by Stats. 1995, Ch. 754, Sec. 7. Effective January 1, 1996.)

Article 2. Loans to Insiders
(Heading of Article 2 amended by Stats. 1995, Ch. 754, Sec. 7. Effective January 1, 1996.)

3370. It is the intent of the Legislature that the provisions of this article, insofar as they are contained in Regulation O (12 C.F.R. Part 215) of the Federal Reserve Board, conform, and be interpreted by anyone construing the provisions of this article to so conform, to Regulation O, to any rule or interpretation promulgated thereunder by the Board of Governors of the Federal Reserve System, and to any interpretation issued by an official or employee of the Federal Reserve System duly authorized to issue the interpretation.
(Amended by Stats. 1985, Ch. 956, Sec. 3. Effective September 26, 1985.)

3371. As used in this article:

(a) "Bank" means:

(1) Any commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(2) Any foreign (other nation) bank that is licensed by the commissioner under Article 3 (commencing with Section 1750) of Chapter 13.5 of this division to maintain a depositary agency or branch office (as defined in Section 1700) in this state, with respect to any office of that type.

(3) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(4) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 of this division to maintain an office in this state and to transact at the office business under that article, with respect to any office of that type.

(5) When used to designate a person that extends credit, any subsidiary of a bank, as defined in paragraph (1), (2), (3), or (4).

(b) "Company" has the meaning set forth in subdivision (b) of Section 215.2 of Regulation O.

(c) "Executive officer" has the meaning set forth in paragraph (1) of subdivision (e) of Section 215.2 of Regulation O.

Also, "executive officer," when used with respect to any bank of the type described in paragraph (2) or (4) of subdivision (a), includes the manager of each office of the type referred to in paragraph (2) or

(4) of subdivision (a) that the bank maintains in this state.

(d) "Extension of credit" has the meaning set forth in Section 215.3 of Regulation O. However, for purposes of this subdivision, the term "member bank," as used in Section 215.3, means a bank.

(e) "Regulation O" means Regulation O (Part 215 (commencing with Section 215.1) of Title 12 of the Code of Federal Regulations) of the Board of Governors of the Federal Reserve System, as amended from time to time.

(f) "Subsidiary" has the meaning set forth in Section 1841(d) of Title 12 of the United States Code. However, for purposes of this subdivision, the term "bank holding company," as used in Section 1841(d) of Title 12 of the United States Code, means a bank holding company, as defined in Section 1841(a) of Title 12 of the United States Code, or a bank, and the term "board," as used in Section 1841(d) of Title 12 of the United States Code, means the commissioner.
(Amended by Stats. 2000, Ch. 1015, Sec. 28. Effective September 30, 2000.)

3372. Sections 215.2, 215.3, 215.4, 215.5, 215.8, and

215.9 of Regulation O in all of their particulars, including footnotes, are hereby referred to, incorporated by reference into this article, and adopted, subject to the following:

(a) The term "this Subpart," as used in the referenced sections of Regulation O, means this article.

(b) Subdivision (j) of Section 215.2 of Regulation O is not applicable. Instead, the term "member bank," as used in the referenced sections of Regulation O, means a bank.

(c) The term "executive officer," as used in the referenced sections of Regulation O, includes, in the case of a bank of the type described in paragraph (2) or (4) of subdivision (a) of Section 3371, the manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) of Section 3371 that the bank maintains in this state.

(d) The definition of "lending limit" in subdivision (i) of Section 215.2 of Regulation O is not applicable; instead, the term "lending limit" as used in the referenced sections of Regulation O means an amount equal to the limit on obligations of a single obligor set forth in Section 1221, and any reference in the referenced sections of Regulation O to the lending limit specified in subdivision (i) of Section 215.2 is considered to be a reference to the limit specified in Section 1221.

(e) (1) Any company which is majority owned by one or more executive officers or directors of a bank, individually or collectively, is deemed to be a related interest of each of those executive officers or directors for purposes of the referenced sections of Regulation O.

(2) In case an individual who is an executive officer of a bank is a director or executive officer of a company, the company is deemed to be a related interest of the individual for purposes of the referenced sections of Regulation O except subdivision (c) of Section

215.4. However, this paragraph shall not apply to an extension of credit by a bank to any of the following companies: (A) a bank holding company of which the bank is a subsidiary; (B) any subsidiary of the bank holding company; or (c) any nonprofit company engaged in religious, charitable, educational, scientific, literary, social, or recreational purposes, provided that the individual whose position as a director or executive officer of the company is at issue does not receive compensation in excess of one thousand dollars ($1,000) per year for serving as a director or executive officer of the company.

(3) In case a bank in making an extension of credit becomes subject to the requirements set forth in subdivision (b)(1)(i) of Section 215.4 of Regulation O because of paragraph (1) or (2), the bank shall be deemed to fulfill the requirement if the extension of credit is promptly reported to the board of the bank.
(Amended by Stats. 1995, Ch. 754, Sec. 9. Effective January 1, 1996.)

3372.5. No bank shall extend credit in an aggregate amount greater than the amount permitted in paragraph (4) of subdivision (c) of Section 215.5 of Regulation O to any company that is majority owned by one or more executive officers of the bank, individually or collectively. For purposes of paragraph (4) of subdivision (c) of Section 215.5 of Regulation O, the total amount of credit extended by the bank to the company is considered to be extended to each of those executive officers.
(Amended by Stats. 1995, Ch. 754, Sec. 10. Effective January 1, 1996.)

3373. (a) Notwithstanding any other provisions of this article, whenever Section 215.2, 215.3, 215.4, 215.5, 215.7, or 215.8 is changed by the Board of Governors of the Federal Reserve System, the commissioner may by regulation adopt that same change. Any regulation adopted under this section shall expire at 12 p.m. on December 31 of the year following the calendar year in which it becomes effective.

(b) (1) Section 11343.4 and Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do not apply to any regulation adopted under subdivision (a).

(2) The commissioner shall file any regulation adopted pursuant to subdivision (a), together with a citation to subdivision

(a) as authority for the adoption and a citation to the provisions of federal law made applicable by the regulation, with the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(3) A regulation adopted under subdivision (a) shall become effective on the date it is filed with the Secretary of State unless the commissioner prescribed a later date in the regulation or in a written instrument filed with the regulation.

(c) A regulation adopted pursuant to subdivision (a) does not expire as provided by subdivision (a) and is not subject to subdivision (b) if the commissioner complies with all of the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code in adopting the regulation, including those listed in paragraph (1) of subdivision (b).

(Amended by Stats. 2000, Ch. 1060, Sec. 1. Effective January 1, 2001.)

3374. In making any extension of credit which is subject to this article, a bank shall comply with all other applicable provisions of this division relating to extensions of credit by banks.

(Amended by Stats. 1985, Ch. 956, Sec. 7. Effective September 26, 1985.)

3375. No provision of this article or of Article 2 (commencing with Section 1220) of Chapter 10 shall apply to an advance of money made by a bank pursuant to Section 317 of the Corporations Code.

(Amended by Stats. 1985, Ch. 956, Sec. 8. Effective September 26, 1985.)

3375.5. A bank may make a loan, otherwise complying with the provisions of this division, for the benefit of a trust, notwithstanding that the bank or any one or more executive officers or directors of the bank are trustees of the trust.

(Amended by Stats. 2003, Ch. 404, Sec. 7. Effective January 1, 2004.)

3376. Any bank that makes an extension of credit in violation of this article is subject to a civil penalty pursuant to Section 216.3. Any person, other than the bank making the extension of credit, who knowingly makes or procures an extension of credit in violation of this article is guilty of a felony.

(Amended by Stats. 2003, Ch. 445, Sec. 13. Effective January 1, 2004.)

Article 3. Banking Business by Unauthorized Persons

(Article 3 enacted by Stats. 1951, Ch. 364.)

3390. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall solicit or receive deposits, issue certificates of deposit with or without provision for interest, make payments on check, or transact business in the way or manner of a commercial bank, industrial bank, or trust company.

(Amended by Stats. 2000, Ch. 1015, Sec. 29. Effective September 30, 2000.)

3391. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall advertise that it is accepting deposits, and issuing notes or certificates therefor, or make use of any office sign, at the place where its business is transacted, having thereon any artificial or corporate name, or other words indicating that the place or office is the place or office of a bank or trust company, that deposits are received there or payments made on check, or any other form of banking business is transacted, nor shall any person make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed paper, whatever, having thereon any artificial or corporate name or other words indicating that the business is the business of a bank or trust company, or transact business in a way or manner as to lead the public to believe that its business is that of a bank or trust company, except to the extent expressly authorized by this division.

(Amended by Stats. 2000, Ch. 1015, Sec. 30. Effective September 30, 2000.)

3392. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall transact business under any name or title which contains the word “bank” or “banker” or “banking” or “industrial bank” or “industrial loan company” or “investment and loan” or “savings bank” or “thrift and loan” or “trust” or “trustee” or “trust company” and which indicates that the business is the business of a bank or trust company. Any building and loan association or savings association having in its corporate name words not clearly indicating the nature of its business shall state, on all signs, letterheads, and advertising matter, “This is a building and loan association” or “This is a savings association” or words to that effect.

(Amended by Stats. 2000, Ch. 1015, Sec. 31. Effective September 30, 2000.)

3392.5. No provision of Section 3390, 3391, or 3392 prohibits any of the following from transacting any business or performing any activity if it is authorized by applicable law to transact the business or perform the activity and is not prohibited by any applicable law (other than Sections 3390, 3391, and 3392) from transacting the business or performing the activity:

(a) Any California state commercial bank, industrial bank, or trust company.

(b) Any national bank.

(c) Any insured foreign (other state) state bank.

(d) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility (as defined in Section 3800) in this state.

(e) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state.

(f) Any foreign (other nation) bank that maintains a federal agency (as defined in subdivision (g) of Section 1700) or federal branch (as defined in subdivision (h) of Section 1700) in this state.

(g) Any California state corporation that is incorporated for the purpose of engaging in, and that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(h) Any corporation incorporated under Section 25A of the Federal Reserve Act (12 U.S.C. Sec. 612 et seq.).

(i) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19.

(j) Any industrial bank that is organized under the laws of another state of the United States and is insured by the Federal Deposit Insurance Corporation.

(Amended by Stats. 2000, Ch. 1015, Sec. 32. Effective September 30, 2000.)

3393. Any building and loan association may issue shares and investment certificates and do such other business as may be authorized by the laws of the State relating to building and loan associations, but no building and loan association shall advertise or hold itself out to the public as a savings bank.

(Enacted by Stats. 1951, Ch. 364.)

3395. Any person or any bank violating any provision of the foregoing sections of this article shall be liable to the people of the state in the amount of one hundred dollars ($100) a day or part thereof during which that violation continues.

(Amended by Stats. 1997, Ch. 375, Sec. 13. Effective January 1, 1998.)

3396. No person shall represent by advertisement, circular, or otherwise, or in any manner mislead anyone to believe, that any securities are legal investments for savings banks in this state or conform to the requirements of law relating to such investments, unless such securities are in fact at such time legal investments for such banks or do in fact so conform to such requirements or, unless such person, in making such representation, has acted in good faith and in reliance upon a certificate issued by the commissioner pursuant to Section 1371 issued within one year, upon published reports of the public or private corporations issuing such securities, upon information furnished by a public official in his or her official capacity or upon information furnished by any established statistical agency approved for this purpose by the commissioner. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

(Amended by Stats. 1996, Ch. 1064, Sec. 407. Effective January 1, 1997. Operative July 1, 1997.)

3397. It shall be unlawful for any person who solicits funds for deposit in any bank in this state to knowingly enter into any agreement with the bank or a borrower whereby a depositor directly or indirectly receives monetary compensation or interest payments which exceed the legal maximum payable as interest for the deposit.

(Added by Stats. 1965, Ch. 1168.)

CHAPTER 19. INTERNATIONAL AND FOREIGN BANKING AND FINANCING

(Heading of Chapter 19 amended by Stats. 1963, Ch. 2036.)

Article 1. International and Foreign Banking and Financing Corporations

(Heading of Article 1 added by Stats. 1963, Ch. 2036.)

3500. As used in this article, unless the context otherwise requires, "corporation" means a corporation organized under the laws of this state for the purpose of transacting business pursuant to this article.
(Amended by Stats. 1978, Ch. 965.)

3500.5. The provisions of Chapter 1 (commencing with Section 99) applicable to, or with respect to, banks shall apply to, or with respect to, as the case may be, corporations.
(Added by Stats. 1978, Ch. 965.)

3501. When authorized by the previous written consent of the commissioner as provided by Chapter 3 (commencing with Section 350) one or more persons may organize a corporation.
(Amended by Stats. 1996, Ch. 1064, Sec. 408. Effective January 1, 1997. Operative July 1, 1997.)

3502. The articles of a corporation shall provide that the purpose of the corporation is to engage in the business of international and foreign banking and other international and foreign financial operations, the business of banking and other financial operations in any dependency or insular possession of the United States, and any other lawful activities which are not, by applicable laws or regulations, prohibited to a corporation transacting business under this article.
(Repealed and added by Stats. 1978, Ch. 965.)

3503. The articles of incorporation shall be submitted to the commissioner for his or her approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the corporation shall file with the commissioner a copy thereof, certified by the Secretary of State, and, after the organization meeting of the directors, a copy of its bylaws certified by its secretary.
(Amended by Stats. 1996, Ch. 1064, Sec. 409. Effective January 1, 1997. Operative July 1, 1997.)

3504. Each corporation shall have power, under such rules and regulations as the commissioner may prescribe:

(a) To purchase, sell, discount, and negotiate, with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, securities, including the obligations of the United States or of any state thereof but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions as the commissioner may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the commissioner may prescribe; to receive deposits outside of the United States and to receive only such deposits in this state or in any other state of the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States.

(b) Generally, to exercise such powers as are incidental to the powers conferred by this article or as may be usual, in the determination of the commissioner, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the power specifically granted herein. Nothing contained in this article shall be construed to prohibit the commissioner, under his or her power to prescribe rules and regulations, from limiting the aggregate amount of liabilities of any or all classes incurred by the corporation and outstanding at any one time.

(c) To establish and maintain for the transaction of its business branches or agencies in foreign countries, their dependencies or colonies, and in any state of the United States, and in the dependencies or insular possessions of the United States, at such places as may be approved by the commissioner and under such rules and regulations as he or she may prescribe, including any state of the United States, or countries or dependencies not specified in the original organization certificate.

(d) With the consent of the commissioner to purchase and hold stock or other certificates of ownership in any other corporation organized under the laws of this state for the purpose of transacting business pursuant to this article, or under the laws of the United States, or under the laws of any foreign country or a colony of dependency thereof, or under the laws of any state, dependency or insular possession of the United States but not engaged in the general

business of buying or selling goods, wares, merchandise, or commodities in the United States, and not transacting any business in the United States except such as in the judgment of the commissioner may be incidental to its international or foreign business.
(Amended by Stats. 1996, Ch. 1064, Sec. 410. Effective January 1, 1997. Operative July 1, 1997.)

3505. Except with the approval of the commissioner, no corporation shall invest in any one corporation an amount in excess of 10 per centum of its own shareholders' equity, except in a corporation engaged in the business of banking, when 15 per centum of its shareholders' equity may be so invested.
(Amended by Stats. 1996, Ch. 1064, Sec. 411. Effective January 1, 1997. Operative July 1, 1997.)

3506. No corporation shall purchase, own, or hold stock or certificates of ownership in any other corporation organized under this article or under the laws of any state which is in substantial competition therewith, or which holds stock or certificates of ownership in corporations which are in substantial competition with the purchasing corporation.
(Amended by Stats. 1963, Ch. 2036.)

3507. Nothing contained in this article shall prevent corporations from purchasing and holding stock in any corporation where such purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired in corporations shall within six months from such purchase be sold or disposed of at public or private sale unless the time to so dispose of same is extended by the commissioner as provided by Section 762.
(Amended by Stats. 1996, Ch. 1064, Sec. 412. Effective January 1, 1997. Operative July 1, 1997.)

3508. No corporation shall carry on any part of its business in the United States except such as, in the judgment of the commissioner, shall be incidental to its international or foreign business. Except such as is incidental and preliminary to its organization no corporation shall exercise any of the powers conferred by this article until it has been duly authorized by the commissioner to commence business under the provisions of this article.
(Amended by Stats. 1996, Ch. 1064, Sec. 413. Effective January 1, 1997. Operative July 1, 1997.)

3509. No corporation shall engage in commerce or trade in commodities except as specifically provided in this article, nor shall it either directly or indirectly control or fix or attempt to control or fix the price of any such commodities. The license of any corporation violating this section shall be subject to forfeiture as provided in this article.
(Amended by Stats. 1963, Ch. 2036.)

3510. It shall be unlawful for any director, officer, agent, or employee of any corporation to use or to conspire to use the credit, the funds, or the power of the corporation to fix or control the price of any commodities, and any such person violating this section shall be liable to a fine of not less than two thousand dollars ($2,000) and not exceeding ten thousand dollars ($10,000) or imprisonment not less than one year and not exceeding five years, or both, in the discretion of the court.
(Amended by Stats. 1983, Ch. 1092, Sec. 91. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

3511. No corporation shall be organized without adequate shareholders' equity.
(Amended by Stats. 1978, Ch. 965.)

3512. The provisions of Chapter 5 (commencing with Section 600) (except the provisions of Section 621) applicable to, or with respect to, banks shall apply to, or with respect to, as the case may be, corporations.
(Repealed and added by Stats. 1978, Ch. 965.)

3513. Any bank may invest in the shares of any corporation organized under the provisions of this article, but the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter shall not exceed 10 percent of the subscribing bank's shareholders' equity.
(Amended by Stats. 1996, Ch. 887, Sec. 9. Effective September 25, 1996.)

3514. (a) In this section, "foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. "Foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating.

(b) Except as otherwise provided in subdivision (c), a majority of the shares of the capital stock of any corporation shall at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a state of the United States, or by firms or companies, the controlling interest in which is owned by citizens of the United States.

(c) Notwithstanding the provisions of subdivision (b), one or more foreign banks, institutions organized under the laws of foreign countries which own or control foreign banks, or banks organized under the laws of the United States, the states of the United States, or the District of Columbia, the controlling interests in which are owned by any such foreign banks or institutions, may, with the approval of the commissioner and upon such terms and conditions and subject to such rules and regulations as the commissioner may prescribe, own and hold 50 percent or more of the shares of the capital stock of any corporation.
(Amended by Stats. 1996, Ch. 1064, Sec. 414. Effective January 1, 1997. Operative July 1, 1997.)

3515. Whenever it shall appear to the commissioner that any corporation has violated the provisions of its articles of incorporation or any law of this state, or is conducting its business in an unsafe or unauthorized manner, or if the contributed capital of any such corporation is impaired, or if the corporation shall refuse to submit its books, papers and concerns to the inspection of any examiner of the department or if any officer thereof shall refuse to be examined upon oath touching the concerns of the corporation or if the corporation shall suspend payment of its obligations, or if from any examination or report provided for by this article the commissioner shall have reason to conclude that the corporation is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any corporation shall neglect or refuse to observe any order of the commissioner specified in Section 662, 1912, or 1913, the commissioner may forthwith take possession of the property and business of such corporation and retain such possession until such corporation shall resume business, or its affairs be finally liquidated as provided by this code for the liquidation of banks.
(Amended by Stats. 1996, Ch. 1064, Sec. 415. Effective January 1, 1997. Operative July 1, 1997.)

3516. No corporation shall deposit any of its funds with any other moneyed corporation unless such other corporation has been nominated and designated as such depositary as provided by Section 763. This limitation shall not apply to the deposit of funds by such corporation with another moneyed corporation, which owns all or a majority of the capital stock of such corporation.
(Amended by Stats. 1980, Ch. 1298, Sec. 7. Effective September 30, 1980.)

3517. No corporation shall be the holder of any shares of its own capital stock unless such stock shall have been taken to prevent loss upon a debt previously contracted in good faith, and stock so acquired shall, within six months from the time of its acquisition, be sold or disposed of at public or private sale.
(Enacted by Stats. 1951, Ch. 364.)

3518. No corporation shall, either directly or indirectly, make any discount to any person for the purpose of enabling him to pay for or hold shares of its stock either subscribed for or purchased by him. Any corporation making any such discount shall forfeit to the people of the State twice the amount of such discount.
(Enacted by Stats. 1951, Ch. 364.)

3519. No corporation shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other person, or under any title or designation that is not truly descriptive thereof.
(Enacted by Stats. 1951, Ch. 364.)

3520. Every corporation shall conform its methods of keeping its books and records to such orders in respect thereto as have been made and promulgated by the commissioner. Any corporation that refuses or neglects to obey such order shall be subject to a penalty of one hundred dollars ($100) for each day it so refuses or neglects.
(Amended by Stats. 1996, Ch. 1064, Sec. 416. Effective January 1, 1997. Operative July 1, 1997.)

3521. Each official communication directed by the commissioner to a corporation or to any officer thereof, relating to an examination or investigation conducted by the department or containing suggestions or recommendations as to the conduct of the business of such corporation, shall be submitted, by the officer receiving it, to the board at the next meeting of such board, and duly noted in the minutes of the meetings of such board.
(Amended by Stats. 1996, Ch. 1064, Sec. 417. Effective January 1, 1997. Operative July 1, 1997.)

3522. On or before the first day of February in each year, each corporation and every foreign corporation licensed by the commissioner to transact the business of such a corporation in this state, shall make a written report to the commissioner which shall contain a statement of its condition on the morning of the first day of January in that year and shall be in the form and contain the matters prescribed by the commissioner. The commissioner may, however, in his or her discretion, accept from a corporation, which has branches in a foreign country or countries, a report containing a statement of its condition as of a date not later than the first day of January and not earlier than the first day of November in the preceding year. Every report shall be verified by the oaths of the two principal officers in charge of the affairs of the corporation or foreign corporation at the time of the verification, which shall state that the report is true and correct in all

respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the corporation or foreign corporation has been transacted at the location required by this article and not elsewhere.
(Amended by Stats. 1996, Ch. 1064, Sec. 418. Effective January 1, 1997. Operative July 1, 1997.)

3523. Every corporation and foreign corporation shall also make such other special reports to the commissioner as he or she may from time to time require, which shall be in such form and filed at such date as may be prescribed by the commissioner and shall, if required by the commissioner, be verified in such manner as he or she may prescribe.
(Amended by Stats. 1996, Ch. 1064, Sec. 419. Effective January 1, 1997. Operative July 1, 1997.)

3524. If any corporation or foreign corporation shall fail to make any report required by this article on or before the day designated for the making thereof, or shall fail to include therein any matter required by the commissioner, it shall forfeit to the people of the state the sum of one hundred dollars ($100) for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 420. Effective January 1, 1997. Operative July 1, 1997.)

3525. Every corporation shall hold a meeting of its stockholders annually upon a date fixed in its bylaws at its main office, or if its main office is to be located outside of this State, at its branch or other office in this State.
(Amended by Stats. 1963, Ch. 2036.)

3526. Every corporation shall keep at its main office, or if its main office is to be located outside of this state, at its branch or other office in this state, books containing the names of all stockholders thereof, and the names and addresses of the members of its board of directors, together with copies of all reports made by it to the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 421. Effective January 1, 1997. Operative July 1, 1997.)

3527. Every corporation shall make reports to the commissioner at such times and in such form as the commissioner may require and is subject to examination by examiners appointed by the commissioner, to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two calendar years. The cost of such examinations shall be fixed by the commissioner and be paid by the corporation examined.
(Amended by Stats. 1996, Ch. 1064, Sec. 422. Effective January 1, 1997. Operative July 1, 1997.)

3529. No officer, director, clerk or other employee of any corporation, and no person in any way interested or concerned in the management of its affairs, shall as individuals discount, or directly or indirectly, make any loan upon any note or other evidence of debt, which he shall know to have been offered for discount to such corporation, and to have been refused. Every person violating the provisions of this section, shall, for each offense, forfeit to the people of the State twice the amount of the loan which he shall have made.
(Enacted by Stats. 1951, Ch. 364.)

3531. Every officer, director, clerk, employee, or agent of any corporation who embezzles, abstracts, or willfully misapplies any of the moneys, funds, credits, securities, evidence of indebtedness or assets of any character of such corporation, or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, debenture, draft, bill of exchange, mortgage, judgment, or decree, or who makes any false entry in any book, report, or statement of such corporation with intent, in either case, to injure or defraud such corporation or any other company, body politic or corporate, or any individual person, or to deceive any officer of such corporation, the commissioner, or any agent or examiner appointed to examine the affairs of any such corporation; and every receiver of any corporation and every clerk or employee of such receiver who shall embezzle, abstract, or willfully misapply or wrongfully convert to his or her own use any moneys, funds, credits, or assets of any character which may come into his or her possession or under his or her control in the execution of his or her trust or the performance of the duties of his or her employment; and every such receiver or clerk or employee of such receiver who shall, with intent to injure or defraud any person, body politic or corporate, or to deceive or mislead the commissioner or any agent or examiner appointed to examine the affairs of such receiver, shall make any false entry in any book, report, or record of any matter connected with the duties of such receiver; and every person who with like intent aids or abets any officer, director, clerk, employee, or agent of any corporation, or receiver or clerk or employee of such receiver as aforesaid in any violation of this article shall upon conviction thereof be imprisoned for two, three, or four years, and may also be fined not more than five thousand dollars ($5,000), in the discretion of the court.
(Amended by Stats. 1996, Ch. 1064, Sec. 423. Effective January 1, 1997. Operative July 1, 1997.)

3532. Whoever being connected in any capacity with any corporation represents in any way that the State of California is liable for the payment of any bond or other obligation, or the interest thereon, issued or incurred by any corporation, or that the State of California incurs any liability in respect of any act or omission of the corporation, shall be punished by a fine of not more than ten thousand dollars ($10,000) and by imprisonment in the state prison.
(Amended by Stats. 1976, Ch. 1139.)

3533. No person shall act in this State as the representative of any foreign corporation in transacting the business described in this article as the business of a corporation unless such corporation shall have complied with the provisions of this article relating to such corporations.
(Amended by Stats. 1963, Ch. 2036.)

3534. Every foreign corporation before being licensed by the commissioner to transact in this state the business of a corporation, or any part thereof, shall subscribe and acknowledge and submit to the commissioner at his or her office, an application certificate in duplicate, which shall specifically state:

(a) The name of such foreign corporation.

(b) The place where its business is to be transacted in this state.

(c) The amount of its capital stock actually paid in cash and the amount subscribed for and unpaid.

(d) A complete and detailed statement of its financial condition as of a date within 60 days prior to the date of such application certificate.
(Amended by Stats. 1996, Ch. 1064, Sec. 424. Effective January 1, 1997. Operative July 1, 1997.)

3535. At the time the application certificate is first submitted to the commissioner, such corporation shall also submit a duly authenticated copy of its charter, or articles, and its bylaws.
(Amended by Stats. 1996, Ch. 1064, Sec. 425. Effective January 1, 1997. Operative July 1, 1997.)

3536. No foreign corporation shall transact in this state the business defined in this article or any part thereof, unless such corporation shall have:

(a) Been authorized by its charter to carry on such business and shall have complied with the laws of the state or country under which it is incorporated.

(b) Made the deposit with the State Treasurer required by this article.

(c) Designated the commissioner, by an instrument in writing duly executed, its true and lawful attorney upon whom all process in any action or proceeding by any resident of this state against it may be served with the same effect as if it were a domestic corporation and had been lawfully served with process within this state.

(d) Received a license duly issued to it by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 426. Effective January 1, 1997. Operative July 1, 1997.)

3537. When the commissioner shall have issued a license to any foreign corporation, it may engage in the business of a corporation of the kind authorized by this article at the location specified in the license.
(Amended by Stats. 1996, Ch. 1064, Sec. 427. Effective January 1, 1997. Operative July 1, 1997.)

3538. Every foreign corporation, before receiving a license to transact business in this state, shall deposit with the State Treasurer of the State of California upon authorization of the commissioner, in trust as security for the depositors with and creditors of such corporation in this state, lawful money of the United States or securities of the kind and character described in Article 3 (commencing at Section 1540) of Chapter 12 of this division, of the value of one hundred thousand dollars ($100,000). Such foreign corporation so long as it shall continue solvent and comply with the laws of this state, may be permitted by the commissioner to collect the interest on the securities so deposited and from time to time to exchange such securities for others, and examine and compare such securities, as provided by said article.
(Amended by Stats. 1996, Ch. 1064, Sec. 428. Effective January 1, 1997. Operative July 1, 1997.)

3539. The foreign corporation shall pay a license fee of five hundred dollars ($500).
(Amended by Stats. 1981, Ch. 444, Sec. 25.)

3540. Every foreign corporation, duly licensed by the commissioner to transact in this state the business defined and authorized in this article, or any part thereof, shall within 30 days after the date of such license, submit to the commissioner a statement verified by two of its principal officers, which shall contain the full name and business address of every individual, partnership or unincorporated association, who is acting or whom it proposes to have act as its agent or representative in this state. Whenever any such corporation shall engage any person to act for it in this state and the name and address of such person is not contained in such verified statement submitted to the commissioner, such foreign corporation shall forthwith submit to the commissioner an amended statement verified in the same manner as the original. A violation of this provision shall subject such foreign corporation to a forfeiture of one thousand dollars ($1,000) for each offense.
(Amended by Stats. 1996, Ch. 1064, Sec. 429. Effective January 1, 1997. Operative July 1, 1997.)

3541. Whenever the commissioner shall have revoked the license of any such foreign corporation and shall have taken the action to make such revocation effective, all the rights and privileges of the foreign corporation to transact business in this state shall forthwith cease and determine.
(Amended by Stats. 1996, Ch. 1064, Sec. 430. Effective January 1, 1997. Operative July 1, 1997.)

3542. Nothing in this division restricts the right of a state international or foreign banking or financing corporation to convert into an international or foreign banking or financing corporation organized under the laws of the United States upon compliance with such laws.
(Added by Stats. 1963, Ch. 2036.)

3543. An international or foreign banking or financing corporation organized under the laws of the United States may convert into a state international or foreign banking or financing corporation with the approval of the commissioner which he or she shall not grant unless he or she is satisfied that such international or foreign banking or financing corporation organized under the laws of the United States meets all of the requirements set forth in this article for the establishment of a state international or foreign banking or financing corporation.
(Amended by Stats. 1996, Ch. 1064, Sec. 431. Effective January 1, 1997. Operative July 1, 1997.)

3544. Nothing in this division restricts the right of any one or more state international or foreign banking or financing corporations to merge into or consolidate with one or more international or foreign banking or financing corporations organized under the laws of the United States.
(Added by Stats. 1963, Ch. 2036.)

3545. Nothing in this division restricts one or more international or foreign banking or financing corporations organized under the laws of the United States from merging into one or more state, international or foreign banking or financing corporations. For the purpose of effecting any such merger any such international or foreign banking or financing corporation shall be deemed a "foreign corporation" as that term is used in Section 1108 of the Corporations Code and the laws of Congress shall be deemed the "laws of the state" in which such international or foreign banking or financing corporation is formed.
(Amended by Stats. 1978, Ch. 965.)

3546. Whenever a state international or foreign banking or financing corporation survives the merger of one or more international or foreign banking or financing corporations and the agreement for merger has been filed with the Secretary of State with the approval of the commissioner endorsed thereon, a copy thereof, certified by the Secretary of State, shall immediately be filed with the commissioner and upon, but not until, such filing the merger shall be and become effective for all purposes.
(Amended by Stats. 1996, Ch. 1064, Sec. 432. Effective January 1, 1997. Operative July 1, 1997.)

3547. Whenever one or more state international or foreign banking or financing corporations and one or more international or foreign banking or financing corporations organized under the laws of the United States have been merged or consolidated, the surviving or resulting international or foreign banking or financing corporation succeeds without other transfer to all the rights and property of each constituent international or foreign banking or financing corporation and is subject to all the debts and liabilities of each such constituent corporation in the same manner as if the surviving or resulting international or foreign banking or financing corporation had incurred them.

All rights of creditors of each constituent international or foreign banking or financing corporation are preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the time of the consolidation or merger.

Any action or proceeding pending by or against any one of the constituent international or foreign banking or financing corporations may be prosecuted through judgment, which binds the resulting or surviving international or foreign banking or financing corporation; or such consolidated or surviving corporation may be proceeded against or substituted in the place of any such constituent corporation.
(Amended by Stats. 1978, Ch. 965.)

3548. Whenever an international or foreign banking or financing corporation organized under the laws of the United States converts into a state international or foreign banking or financing corporation, or whenever such state corporation converts into such corporation organized under the laws of the United States, or if any such state corporation merges or consolidates with any such corporation organized under the laws of the United States, the surviving or resulting corporation shall be deemed to be the same corporate entity as the converting or constituent corporation and any reference to the converting corporation or to any constituent corporation, whether executed or taking effect before or after the conversion, merger or consolidation, shall be deemed a reference to the surviving or resulting corporation.
(Amended by Stats. 1978, Ch. 965.)

Article 2. Bank Investments in International or Foreign Banking or Financing Corporations Organized Under the Laws of the United States
(Article 2 added by Stats. 1963, Ch. 2036.)

3560. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, invest in the stock of one or more corporations organized under the laws of the United States for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in dependencies or insular possessions of the United States and to act when required by the Secretary of the Treasury of the United States as fiscal agents of the United States; provided, however, that the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter shall not exceed 10 per centum of the subscribing bank's shareholders' equity.
(Amended by Stats. 1996, Ch. 1064, Sec. 433.1. Effective January 1, 1997. Operative July 1, 1997.)

3561. Every bank investing in the capital stock of any corporation described in Section 3560 shall be required to furnish information concerning the condition of such corporation to the commissioner upon demand, and the commissioner may order special examinations of said corporation at such time or times as he or she may deem appropriate. The cost of such special examinations shall be paid by said corporation.
(Amended by Stats. 1996, Ch. 1064, Sec. 434. Effective January 1, 1997. Operative July 1, 1997.)

3562. Before any bank shall be permitted to purchase stock in any corporation described in Section 3560 the said corporation shall enter into an agreement or undertaking with the commissioner to restrict its operations or conduct of its business in such manner or under such limitations and restrictions as the said commissioner may prescribe for the place or places wherein such business is to be conducted. If at any time the commissioner shall ascertain that the regulations prescribed by him or her are not being complied with, said commissioner is hereby authorized and shall have power to institute an investigation of the matter and to send for persons and papers, subpoena witnesses and administer oaths in order to satisfy himself or herself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or any bank which may be a stockholder therein, to comply with the regulations laid down by the said commissioner, said bank may be required to dispose of its stockholding in the said corporation upon reasonable notice.
(Amended by Stats. 1996, Ch. 1064, Sec. 435. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Bank Investments in International or Foreign Banking or Financing Corporations Organized Under the Laws of Any State of the United States
(Article 3 added by Stats. 1967, Ch. 1238.)

3570. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, invest in the stock of one or more corporations organized under the laws of any state of the United States (other than a corporation organized under the laws of this state for the purposes of transacting business under the provisions of Article 1 (commencing with Section 3500) of this chapter) and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in dependencies or insular possessions of the United States; provided, however, that the stock at the time of the acquisition would constitute a permissible investment for a national bank; and provided, further, that the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter shall not exceed 10 percent of the subscribing bank's shareholders' equity. Nothing in this section shall be construed in any way to limit the powers conferred by Section 3513.
(Amended by Stats. 1996, Ch. 1064, Sec. 436.1. Effective January 1, 1997. Operative July 1, 1997.)

Article 4. Bank Investments in Foreign Banks
(Article 4 added by Stats. 1967, Ch. 976.)

3580. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, acquire and hold, directly or indirectly, the stock or other evidences of ownership in one or more banks organized under the laws of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the commissioner, shall be incidental to the international or foreign business of the bank. An application for consent shall be in such form and contain such information as the commissioner may require, and be accompanied by a fee of five hundred dollars ($500). The aggregate amount invested by any bank in the stock or other evidences of ownership shall not in any way be subject to, or included in, the limitations prescribed in Sections 3513, 3560, and 3570, but the aggregate amount invested directly or indirectly (other than through a corporation organized under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 3500) or operating under Article 2 (commencing with Section 3560) or Article 3 (commencing with Section 3570) in the stock or other evidences of ownership of all foreign banks, taken together with investments by the subscribing bank in the shares of corporations organized under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 3500) or operating under Article 2 (commencing with Section 3560) or Article 3 (commencing with Section 3570), shall not at any one time exceed 25 percent of the subscribing bank's shareholders' equity.
(Amended by Stats. 1996, Ch. 1064, Sec. 437.1. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 20. BANK EXTRAORDINARY SITUATION CLOSING

(Chapter 20 added by Stats. 1971, Ch. 932.)

3600. This chapter is known and may be cited as the "Bank Extraordinary Situation Closing Act."
(Added by Stats. 1971, Ch. 932.)

3601. "Extraordinary Situation" means any condition or occurrence, other than as set forth in Section 3100, which may interfere or is inconsistent with the conduct of normal business operations at one or more offices of a bank or which poses a threat to the safety or security of persons or property, or both.
(Added by Stats. 1971, Ch. 932.)

3602. Whenever the commissioner determines that an extraordinary situation exists anywhere in this state the commissioner may, by proclamation, authorize banks located in the affected area or areas to close any or all of their offices. The office or offices so closed shall remain closed until the commissioner proclaims that the extraordinary situation has ended or until such earlier time as the officers of the bank determine that one or more closed offices should reopen and in either event for such further time thereafter as may reasonably be required to reopen.
(Amended by Stats. 1996, Ch. 1064, Sec. 438. Effective January 1, 1997. Operative July 1, 1997.)

3603. (a) Whenever the officers of a bank are of the opinion that an extraordinary situation exists which affects or may affect one or more of a bank's offices, they shall have the authority in the reasonable and proper exercise of their discretion to determine not to open such offices on any business or banking day, or, if such offices have opened to close one or more of them during the continuation of such extraordinary situation even if the commissioner has not issued and does not issue a proclamation of extraordinary situation. The office or offices so closed shall remain closed until such time as the officers determine with respect to each such office that the extraordinary situation has ended and for such further time thereafter as may reasonably be required to be reopened; however, in no case shall such office or offices remain closed for more than 48 consecutive hours excluding other legal holidays without requesting the approval of the commissioner nor, in case such request is denied by the commissioner, for more than 24 consecutive hours excluding other legal holidays after such denial.

(b) The officers of a bank may close one or more of the bank's offices on any day or days designated for mourning, rejoicing, or other special observance by proclamation of the Governor or the President of the United States.
(Amended by Stats. 1996, Ch. 1064, Sec. 439. Effective January 1, 1997. Operative July 1, 1997.)

3604. A bank closing an office or offices pursuant to the authority granted under subdivision (a) of Section 3603 shall give prompt notice of its action to the commissioner, by any means available.
(Amended by Stats. 1996, Ch. 1064, Sec. 440. Effective January 1, 1997. Operative July 1, 1997.)

3605. Any day on which a bank or any one or more of its offices is closed pursuant to the authorization granted by this chapter shall be, with respect to such bank or any of its offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by this chapter.
(Added by Stats. 1971, Ch. 932.)

3606. Provisions of this chapter shall be construed and applied as being in addition to, and not a substitution for, or limitation of, any other law of this state or the United States authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of extraordinary situations or conditions beyond the bank's control or otherwise.
(Added by Stats. 1971, Ch. 932.)

CHAPTER 21. BANK HOLDING COMPANIES

(Chapter 21 added by Stats. 1976, Ch. 933.)

3700. "Bank holding company" means:

(a) Any person or company which:

(1) Directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding stock of any domestic bank, or 10 percent or more of the outstanding stock of any domestic bank together with 10 percent or more of the shares or proxy of shares of any national bank located in California.

(2) Controls in any manner whether by the holding of proxy, or otherwise, the election of a majority of the directors of any domestic bank, or of both any domestic bank and any national bank located in California.

(3) The commissioner determines, after reasonable notice and opportunity for hearing, directly or indirectly exercises, or has power to exercise, a controlling influence over the management and policies of any domestic bank, or of both any domestic bank and any national bank located in California.

(b) Any company which controls in any manner any company which is or becomes a bank holding company by virtue of this chapter.

(c) Bank holding company does not include a trust company controlled by or under common control with a title insurance company.

(Amended by Stats. 1996, Ch. 1064, Sec. 441.1. Effective January 1, 1997. Operative July 1, 1997.)

3701. "Company" means any domestic or foreign corporation, voting trust, business trust, limited partnership, partnership fund, joint stock company, association, syndicate, organized group of persons, or similar organization or group, whether incorporated or not.

(Added by Stats. 1976, Ch. 933.)

3702. "Subsidiaries", with respect to a specified bank holding company, means:

(1) Any company 10 percent or more of whose voting securities are directly or indirectly owned or controlled by such bank holding company;

(2) Any company a majority of whose directors are controlled in any manner by such holding company;

(3) Any company 10 percent or more of whose voting securities are held by trustees or nontrustees for the benefit of the stockholders, shareholders, or members of such holding company; or

(4) Any company 10 percent or more of the legal or beneficial ownership of which is directly or indirectly owned or controlled by such holding company.

(Added by Stats. 1976, Ch. 933.)

3703. The commissioner may from time to time require, under oath or otherwise, reports from any bank holding company and its subsidiaries in such form and as to such matters as the commissioner may deem necessary and appropriate, and which are relevant to the jurisdiction and responsibilities of the commissioner under this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 442. Effective January 1, 1997. Operative July 1, 1997.)

3704. Each bank holding company and its subsidiaries shall be subject to examination by the commissioner. The commissioner may use, for this purpose, his or her own examiners or independent public accountants who are disinterested persons. In lieu of making an examination, the commissioner may accept the examination of any holding company made by any federal agency, any other agency of this state, or any agency of any other state of the United States and may examine any such holding company in conjunction with these agencies. If the commissioner examines a bank holding company or any of its subsidiaries, other than a domestic bank, using the commissioner's own examiners, the bank holding company shall pay, within 10 days after receipt of a statement from the commissioner, a fee of two hundred dollars ($200) per day for each examiner engaged in the examination plus, in the event it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner. If the commissioner examines a bank holding company or any of its subsidiaries, other than a domestic bank, using independent public accountants, the bank holding company shall pay, within 10 days after receipt of a statement from the commissioner, the fee of the independent public accountants.

(Amended by Stats. 1996, Ch. 1064, Sec. 443. Effective January 1, 1997. Operative July 1, 1997.)

3705. With respect to a trust company controlled by or under common control with a title insurance company, the commissioner in cooperation with the Insurance Commissioner shall adopt reasonable rules and regulations for the conduct of the inspection and examination authorized by Sections 3702 and 3704. Any such examination or inspection shall be conducted pursuant to the provisions of Article 4.7 (commencing with Section 1215) of Chapter 2, Part 2, of Division 1 of the Insurance Code.

(Amended by Stats. 1996, Ch. 1064, Sec. 444.1. Effective January 1, 1997. Operative July 1, 1997.)

3706. Nothing in this chapter shall be construed to authorize the commissioner to require reports from a national bank or to examine a national bank contrary to federal law.
(Amended by Stats. 1996, Ch. 1064, Sec. 445. Effective January 1, 1997. Operative July 1, 1997.)

3707. Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made or arranged by, or forbearances of or arranged by, a bank holding company or a subsidiary of a bank holding company which is not a bank. As used in this section, the terms "bank holding company" and "subsidiary" mean a bank holding company or subsidiary as defined in Chapter 17 (commencing with Section 1841) of Title 12 of the United States Code.

This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the Constitution. This section does not exempt a bank holding company or a subsidiary of a bank holding company from complying with all other applicable provisions of law regulating the business of these companies.

This section does not exempt a bank holding company or a subsidiary thereof from complying with all other laws or regulations governing the business in which the bank holding company or subsidiary is engaged.
(Amended by Stats. 1983, Ch. 658, Sec. 3.)

CHAPTER 21.5. INTERSTATE ACQUISITIONS

(Chapter 21.5 repealed and added by Stats. 1995, Ch. 480, Sec. 94.5.
Effective October 2, 1995.)

3750. This chapter does not apply to any of the following transactions:

(a) An acquisition of control of a California state bank that requires the approval of the commissioner under Article 7 (commencing with Section 700) of Chapter 5.

(b) A sale or merger that requires the approval of the commissioner under Division 1.5 (commencing with Section 4800).

(Amended by Stats. 1996, Ch. 1064, Sec. 446. Effective January 1, 1997. Operative July 1, 1997.)

3751. Each application filed with the commissioner for an approval under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner requires by regulation or order, be verified in the manner that the commissioner may by regulation or order require.

(Amended by Stats. 1996, Ch. 1064, Sec. 447. Effective January 1, 1997. Operative July 1, 1997.)

3752. The fee for filing with the commissioner an application for an approval under this chapter is two thousand five hundred dollars ($2,500).

(Amended by Stats. 1996, Ch. 1064, Sec. 448. Effective January 1, 1997. Operative July 1, 1997.)

3753. (a) The definitions that are set forth in or are applicable to Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(d)) apply to this section.

(b) The commissioner may approve an acquisition by a bank holding company that is subject to Section 3(d)(2)(B) and (D)(ii) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(d)(2)(B) and (D)(ii)) if the commissioner finds that the acquisition is consistent with the public convenience and advantage in this state.

(Amended by Stats. 1996, Ch. 1064, Sec. 449. Effective January 1, 1997. Operative July 1, 1997.)

3754. (a) The definitions that are set forth in or are applicable to Section 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u) apply to this section.

(b) This section does not apply if each bank involved in an interstate merger transaction (including each insured depository institution that is an affiliate of the surviving, resulting, or purchasing bank) that is organized under the laws of this state or that maintains a branch office in this state, is an industrial loan company (as defined in Section 4805.10).

(c) The commissioner may approve an interstate merger transaction that is subject to Section 44(b)(2)(B) and (D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(b)(2)(B) and (D)(ii)) if the commissioner finds that the transaction is consistent with the public convenience and advantage in this state.

(Amended by Stats. 1996, Ch. 1064, Sec. 450.1. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 22. FOREIGN (OTHER STATE) BANKS

(Chapter 22 added by Stats. 1995, Ch. 480, Sec. 95.
Effective October 2, 1995.)

Article 1. General Provisions

(Article 1 added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3800. In this chapter, unless the context otherwise requires:

(a) "Branch business unit" has the meaning set forth in subdivision (a) of Section 4840.

(b) "Core banking business" means the business of receiving deposits, paying checks, making loans, and other activities that the commissioner may specify by order or regulation. "Core banking business," when used to describe the trust business, includes receiving fiduciary assets and administering fiduciary accounts.

(c) "Facility," when used with respect to a foreign (other state) bank, means an office in this state at which the bank engages in noncore banking business but at which it does not engage in core banking business.

(d) "Noncore banking business" means all activities permissible for commercial banks, industrial banks, or trust companies, except core banking business, and except those activities prohibited by law or determined by the commissioner by regulation or order not to be noncore banking business.

(e) "Whole business unit" has the meaning set forth in subdivision (g) of Section 4840.

(Amended by Stats. 2000, Ch. 1015, Sec. 33. Effective September 30, 2000.)

3801. Each application filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner requires by regulation or order) be verified in the manner that the commissioner may by regulation or order require.

(Amended by Stats. 1996, Ch. 1064, Sec. 452. Effective January 1, 1997. Operative July 1, 1997.)

3802. (a) Each foreign (other state) bank that maintains a facility or a California branch office shall file with the commissioner such reports as and when the commissioner may by regulation or order require.

(b) Each report filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner requires by regulation or order) be verified in the manner that the commissioner may by regulation or order require.

(Amended by Stats. 1996, Ch. 1064, Sec. 453. Effective January 1, 1997. Operative July 1, 1997.)

3803. Each foreign (other state) bank that maintains a facility (other than a foreign (other state) national bank that maintains a California branch office) and each foreign (other state) state bank that maintains a California branch office shall make, keep, and preserve at the facility or branch office or at another place that the commissioner may by regulation or order approve, the books, accounts, and other records relating to the business of the office, in the form, in the manner, and for the time that the commissioner may by regulation or order provide.

(Amended by Stats. 1996, Ch. 1064, Sec. 454. Effective January 1, 1997. Operative July 1, 1997.)

3804. Fees shall be paid to and collected by the commissioner as follows:

(a) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank for approval to establish a facility is two hundred fifty dollars ($250).

(b) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank that is licensed pursuant to Article 4 (commencing with Section 3860) to maintain a facility for approval to relocate or to close the facility is one hundred dollars ($100).

(c) The fee for issuing a license pursuant to Article 4 (commencing with Section 3860) is twenty-five dollars ($25).

(d) Each foreign (other state) state bank that on June 1 of any year maintains one or more California branch offices shall pay, on or before the following July 1, a fee of one thousand dollars ($1,000) per California branch office. However, the minimum fee paid by a foreign (other state) state bank under this subdivision shall be not less than three thousand dollars ($3,000) and the maximum fee shall be not more than fifty thousand dollars ($50,000).

(e) Each foreign (other state) bank that on June 1 of any year maintains a facility but no California branch office shall pay, on or before the following July 1, a fee of two hundred fifty dollars ($250) for each facility.

(f) If the commissioner makes an examination in connection with a pending application, as described in subdivision (a) or (b), the applicant shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(g) If the commissioner makes an examination of a foreign (other state) state bank that maintains a California branch office, the bank shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(h) If the commissioner makes an examination of a facility of an uninsured foreign (other state) bank licensed under Article 4 (commencing with Section 3860), the bank shall pay a fee for the examination of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(i) If the commissioner makes an examination of a facility of an insured foreign (other state) bank that does not maintain a California branch office, the bank shall pay a fee for the examination
of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(Amended by Stats. 2004, Ch. 183, Sec. 106. Effective January 1, 2005.)

3805. (a) Any foreign (other state) state bank is exempted from the restrictions of Section 1 of Article XV of the California Constitution relating to rates of interest upon the loan or forbearance of any money, goods, or things in action or on accounts after demand.

(b) This section does not exempt a foreign (other state) state bank or any subsidiary from complying with all other laws and regulations governing the business in which the bank or subsidiary is engaged.

(c) This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3806. (a) In this section, "subject bank" means a bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(b) Nothing in this chapter, except subdivision (c), applies to a subject bank that, as a foreign (other nation) bank, maintains an office in this state licensed under Chapter 13.5 (commencing with Section 1700) or a federal agency (as defined in Section 1700) or federal branch (as defined in Section 1700) in this state.

(c) No subject bank may at the same time maintain (1) as a foreign (other state) state bank, an office in this state and (2) as a foreign (other nation) bank, an office in this state licensed under Chapter 13.5 (commencing with Section 1700) or a federal agency (as defined in Section 1700) or federal branch (as defined in Section 1700) in this state.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

Article 2. California Branch Offices

(Article 2 added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3820. No foreign (other state) state bank may transact core banking business in this state except at a branch office established in accordance with federal law and the law of the domicile of the bank.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3821. Section 3820 does not prohibit:

(a) Any foreign (other state) state bank that does not maintain a California branch office from carrying on the activities described in subdivision (d) of Section 191 of the Corporations Code.

(b) Any foreign (other state) state bank that does not maintain a California branch office from making, in this state, loans secured by liens on real property located in this state.

(c) Any foreign (other state) state bank from having a California state bank as its agent pursuant to Chapter 6.5 (commencing with Section 800).

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3822. No foreign (other state) bank may establish or maintain a California branch office unless it is qualified to transact intrastate business in this state under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3823. No foreign (other state) bank may establish or maintain a California branch office unless the bank is insured.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3824. (a) (1) No foreign (other state) bank may merge as the surviving corporation with a California bank, except that an insured foreign (other state) bank may do so in accordance with federal law, the law of the domicile of the foreign (other state) bank, this chapter, and Division 1.5 (commencing with Section 4800).

(2) No foreign (other state) bank may purchase the whole business unit of a California bank, except that an insured foreign (other state) bank may do so in accordance with federal law, the law of the domicile of the foreign (other state) bank, this chapter, and Division 1.5 (commencing with Section 4800).

(3) No foreign (other state) bank that does not already maintain a California branch office may establish or maintain a California branch office except in the manner described in paragraph (1) or (2) and in accordance with federal law, the law of the domicile of the foreign (other state) bank, and this chapter.

(b) This section constitutes:

(1) An election to permit early interstate merger transactions pursuant to Section 44(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(3)).

(2) An express prohibition against interstate branching through the acquisition of a branch business unit located in this state of a California bank (without acquisition of the whole business unit of the California bank) pursuant to Section 44(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(4)).

(3) An express prohibition against interstate branching through de novo establishment of California branch offices pursuant to Section 5155 of the Revised Statutes (12 U.S.C. Sec. 36) or Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828(d)).

(Amended by Stats. 2000, Ch. 1015, Sec. 34. Effective September 30, 2000.)

3825. (a) No foreign (other state) bank that does not already maintain a California branch office may:

(1) Merge as the surviving bank with a California bank pursuant to paragraph (1) of subdivision (a) of Section 3824, unless the California bank has been in existence for at least five years.

(2) Purchase the whole business unit of a California bank pursuant to paragraph (2) of subdivision (a) of Section 3824 unless the California bank has been in existence for at least five years.

(b) For purposes of this section, a California bank that is established solely for the purpose of, and does not open for business prior to, acquiring the whole business unit of a second California bank through a merger or purchase is deemed to have been in existence for the same period of time as the second California bank.

(Amended by Stats. 2000, Ch. 1015, Sec. 35. Effective September 30, 2000.)

3826. The minimum age requirement set forth in Section 3825 does not apply in any case in which the factor set forth in subdivision (a) and any of the factors set forth in subdivision (b) apply.

(a) The foreign (other state) bank, by itself or in concurrent transactions with other depository corporations (as defined in Section 4805.06), acquires the whole business unit of the California bank or, if the California bank has been closed or placed in conservatorship, all or substantially all of the insured deposits of the California bank.

(b) (1) If the California bank is a national bank, one of the following:

(A) The bank is in default or in danger of default, as defined in Section 3(x) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(x)).

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(2) If the California bank is a state bank, one of the following:

(A) The commissioner has taken possession of the property and business of the bank pursuant to Section 3100.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 3100 exists and that imposing the minimum age requirement of Section 3825 is not in the public interest.

(Amended by Stats. 2000, Ch. 1015, Sec. 36. Effective September 30, 2000.)

3827. (a) In case a foreign (other state) state bank that maintains a California branch office is a commercial bank, in addition to other provisions of this division that are otherwise applicable to the bank, the following provisions of this division apply to the bank with respect to its business in this state as if the bank were a California state commercial bank:

(1) Sections 764, 765, 775, 777.5, and 779.

(2) Chapter 7 (commencing with Section 850).

(3) Chapter 8 (commencing with Section 952).

(4) Sections 1227.2, 1227.3, 1338, 1380, 1381, and 1382.

(5) Chapter 13 (commencing with Section 1650).

(6) Article 1 (commencing with Section 3350) of Chapter 18.

(7) Chapter 20 (commencing with Section 3600).

(b) In case a foreign (other state) state bank that maintains a California branch office is an industrial bank, in addition to other provisions of this division that are otherwise applicable to the bank, the provisions cited in paragraphs (1) to (7), inclusive, of subdivision (a) and the provisions of Chapter 11 (commencing with Section 1400) apply to the industrial bank with respect to its business in this state as if the bank were a California state industrial bank.

(c) In case a foreign (other state) state bank that maintains a California branch office is authorized pursuant to the law of its domicile to transact trust business, in addition to other provisions of this division that are otherwise applicable to the bank, the following provisions of Chapter 12 (commencing with Section 1500) apply to the bank with respect to its business in this state as if the bank were a California state bank authorized to transact trust business:

(1) Article 3 (commencing with Section 1540). For purposes of Article 3 (commencing with Section 1540), the bank's principal place of business is deemed to be situated in the city in which its California branch office is located or, if it maintains California branch offices in two or more cities, in the city with the largest population.

(2) Article 4 (commencing with Section 1560), except Section 1560.

(3) Article 5 (commencing with Section 1580), except Sections 1583, 1584, 1585, 1588, and 1590.

(d) Subject to the provisions of subdivision (d), in case a foreign (other state) state bank that maintains a California branch office is authorized pursuant to the law of its domicile to transact trust business, the bank may engage in and conduct trust business in this state and may be appointed by any court to act in any fiduciary capacity in which a California state trust company is authorized to act.

(e) No foreign (other state) state bank that maintains a California branch office may transact at the branch office any business that it is not authorized to transact or is prohibited from transacting under the law of its domicile or that banks organized under the laws of this state are not authorized to transact or are prohibited from transacting.

(f) Whenever any provision of this chapter or of any regulation or order issued under this chapter that is applicable to or with respect to a foreign (other state) state bank that maintains a California branch office is inconsistent with any provision of any other chapter of this division, the former provision applies, and the latter provision does not apply.

(Amended by Stats. 2000, Ch. 1015, Sec. 37. Effective September 30, 2000.)

Article 3. Facilities of Insured Foreign (Other State) Banks

(Article 3 added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3840. No provision of this article applies to an insured foreign (other state) bank that maintains a California branch office.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3841. (a) No insured foreign (other state) bank may establish or maintain an office in this state at which it engages in noncore banking business unless the bank complies with this article and applicable provisions of Article 1 (commencing with Section 3800).

(b) (1) No person may establish or maintain an office in this state as representative of an insured foreign (other state) bank unless the bank complies with this article and applicable provisions of Article 1 (commencing with Section 3800).

(2) For purposes of this article, if any person establishes or maintains an office in this state as representative of an insured foreign (other state) bank, the insured foreign (other state) bank is deemed to establish and maintain the office as a facility.

(Amended by Stats. 1996, Ch. 887, Sec. 16. Effective September 25, 1996.)

3842. Not less than 30 days before an insured foreign (other state) bank establishes a facility, it shall file with the commissioner a report and the appointment called for in Section 3843.

(Amended by Stats. 1996, Ch. 1064, Sec. 457. Effective January 1, 1997. Operative July 1, 1997.)

3843. (a) Not less than 30 days before establishing a facility, an insured foreign (other state) bank shall file with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the bank's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility after the appointment has been filed, with the same force and validity as if served personally on the bank or its successors, as the case may be.

(b) Any insured foreign (other state) bank that maintains a facility and that has not filed with the commissioner an appointment pursuant to subdivision (a) is deemed by the maintenance of the facility to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding

against the bank or any of its successors that arises out of the activities in this state of the facility, with the same force and validity as if served personally on the bank or its successor, as the case may be.

(c) Service may be made on an uninsured foreign (other state) bank that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at any office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at the last address on file with the commissioner for any of the bank's offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making the service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(Amended by Stats. 1996, Ch. 1064, Sec. 458. Effective January 1, 1997. Operative July 1, 1997.)

3844. Not less than 30 days before an insured foreign (other state) bank relocates a facility, it shall file a report with the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 459. Effective January 1, 1997. Operative July 1, 1997.)

3845. Not less than 30 days before an insured foreign (other state) bank closes a facility, it shall file a report with the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 460. Effective January 1, 1997. Operative July 1, 1997.)

Article 4. Facilities of Uninsured Foreign (Other State) Banks

(Article 4 added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3860. In this article, unless the context otherwise requires:

(a) "Controlling person," when used with respect to an uninsured foreign (other state) bank, means any person who directly or indirectly controls the bank. For purposes of this subdivision, "control" has the meaning set forth in subdivision (b) of Section 700, and "person" has the meaning set forth in subdivision (d) of Section 700.

(b) "Executive officer," when used with respect to an uninsured foreign (other state) bank or a controlling person of an uninsured foreign (other state) bank, means the chief executive officer, the chief operating officer, the chief financial officer, and any other person who participates or has authority to participate in major policymaking functions of the bank or controlling person.

(c) (1) "License" means a license issued under this article, authorizing an uninsured foreign (other state) bank to maintain a facility.

(2) "Licensed" means to be issued or to hold a license.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.) 3861. (a) In this section, "act" includes (without limitation) omission.

(b) For purposes of making findings on an application by an uninsured foreign (other state) bank for approval to establish a facility:

(1) The commissioner may, in the absence of credible evidence to the contrary, presume that the directors, executive officers, and any controlling person of the bank, the directors and executive officers of any controlling person of the bank, and the members of the proposed management of the facility are each of good character and sound financial standing.

(2) The commissioner may find that the bank, a director, executive officer, or controlling person of the bank, a director or executive officer of a controlling person of the bank, or any member of the proposed management of the facility is not of good character if the person has done any of the following:

(A) Has been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty.

(B) Has consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty.

(C) Has consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty.

(D) Has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any such application or report any material fact that was required to be stated in the application or report.

(E) Has willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(c) Paragraph (2) of subdivision (b) is not an exclusive list of the grounds upon which the commissioner may find, for purposes of making findings on an application by an uninsured foreign (other state) bank for approval to establish a facility, that the bank, a director, executive officer, or controlling person of the bank, a director or executive officer of a controlling person of the bank, or any member of the proposed management of the facility is not of good character.
(Amended by Stats. 1996, Ch. 1064, Sec. 461. Effective January 1, 1997. Operative July 1, 1997.)

3862. (a) No uninsured foreign (other state) bank may establish or maintain an office in this state at which it engages in noncore banking business unless the uninsured foreign (other state) bank is licensed to maintain the office as a facility.

(b) (1) No person may establish or maintain an office in this state as representative of an uninsured foreign (other state) bank unless the uninsured foreign (other state) bank is licensed to maintain the office as a facility.

(2) For purposes of this article, if any person establishes or maintains an office in this state as representative of an uninsured foreign (other state) bank, the uninsured foreign (other state) bank is deemed to establish and maintain the office as a facility.
(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3863. (a) No uninsured foreign (other state) bank may establish or maintain a facility unless the commissioner has first approved the establishment of the office and issued a license authorizing the bank to maintain the office.

(b) If the commissioner finds all the following with respect to an application by an uninsured foreign (other state) bank for approval to establish a facility, the commissioner shall approve the application:

(1) The bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) The financial history and condition of the bank are satisfactory.

(3) The management of the bank and the proposed management of the office are adequate.

(4) It is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws, regulations, and orders.

(5) The bank's establishment and maintenance of the office will promote the public convenience and advantage.

(6) The activities in which the bank proposes to engage at the office are noncore banking business and do not constitute core banking business.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by an uninsured foreign (other state) bank for approval to establish a facility has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.
(Amended by Stats. 1996, Ch. 1064, Sec. 462. Effective January 1, 1997. Operative July 1, 1997.)

3864. (a) No uninsured foreign (other state) bank that is licensed to maintain a facility may relocate the office unless the commissioner has first approved the relocation and issued a license authorizing the bank to maintain the office at the new site.

(b) If the commissioner finds the following with respect to an application by an uninsured foreign (other state) bank for approval to relocate a facility, the commissioner shall approve the application:

(1) In case the new site of the office is in the same vicinity as the old site, that the relocation of the office will not be substantially detrimental to the public convenience.

(2) In case the new site of the office is not in the same vicinity as the old site, both of the following:

(A) The relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area that is primarily served by the office at the old site.

(B) The relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by an uninsured foreign (other state) bank for approval to relocate a facility has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after an uninsured foreign (other state) bank that is licensed to maintain a facility relocates the office, the bank shall surrender to the commissioner the license that authorized it to maintain the office at the old site.
(Amended by Stats. 1996, Ch. 1064, Sec. 463. Effective January 1, 1997. Operative July 1, 1997.)

3865. An uninsured foreign (other state) bank that is licensed to maintain a facility may, subject to any regulations that the commissioner may prescribe, engage in any noncore banking business at the office but may not solicit deposits, receive deposits, pay checks, make loans, or otherwise conduct core banking business at the office.
(Amended by Stats. 1996, Ch. 1064, Sec. 464. Effective January 1, 1997. Operative July 1, 1997.)

3866. (a) (1) No uninsured foreign (other state) bank that is licensed to maintain a facility may close the office unless the commissioner has first approved the closing.

(2) Paragraph (1) does not prohibit an uninsured foreign (other state) bank that is licensed to maintain a facility from closing the office in accordance with Section 3867.

(b) If the commissioner finds, with respect to an application by an uninsured foreign (other state) bank for approval to close a facility, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by an uninsured foreign (other state) bank for approval to close a facility has been approved and all conditions precedent to the closing have been fulfilled, the bank may close the office and shall promptly thereafter surrender to the commissioner the license that authorized it to maintain the office.

(Amended by Stats. 1996, Ch. 1064, Sec. 465. Effective January 1, 1997. Operative July 1, 1997.)

3867. (a) Any uninsured foreign (other state) bank that holds a license to maintain a facility may voluntarily surrender the license by filing the license and a report with the commissioner. However, any uninsured foreign (other state) bank that holds licenses to maintain two or more facilities may not voluntarily surrender fewer than all of the licenses.

(b) (1) Except as provided in paragraph (2), a voluntary surrender of a license is effective on the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner, or on any earlier date that the commissioner may by order specify.

(2) If a proceeding to revoke or suspend a license is pending when the license and the report called for in subdivision (a) are filed with the commissioner, or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner, the voluntary surrender of the license is effective at the time and upon the conditions that the commissioner may by order specify.

(Amended by Stats. 1996, Ch. 1064, Sec. 466. Effective January 1, 1997. Operative July 1, 1997.)

3868. (a) (1) No uninsured foreign (other state) bank may be issued a license to maintain a facility unless it has first filed with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office as the bank's attorney to receive service of process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility after the appointment has been filed, with the same force and validity as if served personally on the bank or its successors, as the case may be.

(2) Any uninsured foreign (other state) bank that maintains a facility and that has not filed with the commissioner an appointment pursuant to paragraph (1) is deemed by the maintenance of the facility to have appointed the commissioner and the commissioner's successor from time to time in office as its attorney to receive service of any lawful process in a noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility with the same force and validity as if served personally on the bank or its successors, as the case may be.

(b) Service may be made on an uninsured foreign (other state) bank that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at an office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at the last address on file with the commissioner for any of its offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making the service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(Amended by Stats. 1996, Ch. 1064, Sec. 467. Effective January 1, 1997. Operative July 1, 1997.)

3869. Each uninsured foreign (other state) bank that is licensed to maintain a facility shall assign to the office a popular name that includes the term "facility" and that consists of a specific designation by name or number. The bank shall post the popular name and the name of the bank in a conspicuous place at the office.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3870. Each uninsured foreign (other state) bank that is licensed to maintain a facility shall post its license in a conspicuous place at the office.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

3871. No license is transferable or assignable.

(Added by Stats. 1995, Ch. 480, Sec. 95. Effective October 2, 1995.)

CHAPTER 23. APPROVAL OF NAMES OF NONBANK CORPORATIONS

(Chapter 23 added by Stats. 1978, Ch. 965.)

3900. In this chapter:

(a) "Nonbank corporation" means any corporation incorporated or proposed to be incorporated under the laws of this state, other than (1) any bank or (2) any corporation incorporated or proposed to be incorporated under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 3500) of Chapter 19.

(b) "Subject name", means a name of a nonbank corporation which, as set forth, or as proposed to be set forth, in the articles of such nonbank corporation, includes "bank", "trust", "trustee", or related words.

(Added by Stats. 1978, Ch. 965.)

3901. An application for a certificate of approval of the subject name of a nonbank corporation shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

(Amended by Stats. 1996, Ch. 1064, Sec. 468. Effective January 1, 1997. Operative July 1, 1997.)

3902. The fee for filing with the commissioner an application for a certificate of approval of the subject name of a nonbank corporation shall be twenty-five dollars ($25).

(Amended by Stats. 1996, Ch. 1064, Sec. 469. Effective January 1, 1997. Operative July 1, 1997.)

3903. If the commissioner finds, with respect to an application for a certificate of approval of the subject name of a nonbank corporation, that the subject name does not indicate that the nonbank corporation is engaged in the banking, industrial banking, or trust business, the commissioner shall issue a certificate of approval of the subject name. If the commissioner finds otherwise, the commissioner shall deny the application.

(Amended by Stats. 2000, Ch. 1015, Sec. 38. Effective September 30, 2000.)

3904. Promptly after the articles of a nonbank corporation, with the certificate of approval of the subject name of such nonbank corporation attached thereto, are filed with the Secretary of State, such nonbank corporation shall file with the commissioner a copy of such articles certified by the Secretary of State.

(Amended by Stats. 1996, Ch. 1064, Sec. 471. Effective January 1, 1997. Operative July 1, 1997.)

DIVISION 1.1. THE SETTING OF FEES IN CONSUMER CREDIT AGREEMENTS AND RELATED CONSUMER PROTECTIONS

(Division 1.1 added by Stats. 1994, Ch. 1079, Sec. 1. Effective January 1, 1995.)

4000.(a) For purposes of this division, the following terms have the following meanings:

(1) "Charge cardholder" and "charge card issuer" have the meaning defined in Section 1748.21 of the Civil Code and "charge card" means those cards defined in subdivision (a) of Section 1748.21 of the Civil Code and upon which the full balance is due and payable in each billing cycle.

(2) "Consumer" means a natural person.

(3) "Consumer credit agreement" means any written instrument providing for an extension of unsecured open-end credit for personal, family, or household purposes, that governs the relationship between a supervised financial organization and one or more consumers.

(4) "Charge card agreement" means the written instrument that creates and governs the relationship between a charge card issuer and one or more consumers.

(5) "Minimum payment" means that amount of money recited on a billing statement for an open-end credit account that must be received by the supervised financial institution by a specified due date.

(6) "Open-end credit" has the meaning set forth in Section 226.2(a)(20) of Regulation Z.

(7) "Regulation Z" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System under the federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.), and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, as amended, to issue interpretations or approvals.

(8) "Security interest" has the meaning set forth in Section 226.2(a)(25) of Regulation Z.

(9) "Supervised financial organization" means a state or federally regulated bank, savings association, savings bank, or credit union, or a subsidiary of any of the above.

(10) "Unsecured" means that the supervised financial organization is not granted a security interest in personal or real property under the consumer credit agreement.

(b) Notwithstanding any other provisions of law, the definitions contained in this section shall control transactions governed by this division.

(Added by Stats. 1994, Ch. 1079, Sec. 1. Effective January 1, 1995.)

4001.(a) A supervised financial organization or charge card issuer may not charge more than any of the following amounts:

(1) If set forth in the consumer credit or charge card agreement, one of the following fees:

(A) Seven dollars ($7) with respect to any monthly billing cycle as a late payment charge on the minimum payment due that is not paid within five days after the date the payment is due.

(B) Ten dollars ($10) with respect to any monthly billing cycle as a late payment charge on the minimum payment due that is not paid within 10 days after the date the payment is due.

(C) Fifteen dollars ($15) with respect to any monthly billing cycle as a late payment charge on the minimum payment due that is not paid within 15 days after the date the payment is due.

(2) In lieu of the fee permitted by paragraph (1), if the consumer has already incurred two late payment fees during the preceding 12-month period, the fee charged may be no more than ten dollars ($10) with respect to any monthly billing cycle as a late payment charge on the minimum payment due that is not paid within five days after the date the payment is due.

(3) Ten dollars ($10) with respect to any charge that causes the outstanding balance to exceed the credit limit by five hundred dollars ($500) or 120 percent, whichever is less. No overlimit fee may be charged unless the charge causes the outstanding balance to exceed the credit limit by five hundred dollars ($500) or 120 percent, whichever is less. Not more than one overlimit charge may be assessed with respect to any monthly billing cycle.

(b) In addition to imposing a fee for any late payment or overlimit as authorized by subdivision (a), a supervised financial organization may assess a finance charge at the rates set forth in the consumer credit agreement on the outstanding balance, which may include any late payment or overlimit fee charged on a prior billing statement.

(c) Whenever a consumer fails to make a minimum payment on or before the due date specified in the billing statement, plus the applicable late payment grace period, a late payment fee may be assessed by the supervised financial organization or charge card issuer. A supervised financial organization or charge card issuer may impose no more

than one late payment fee with respect to any monthly billing cycle. All payments by the consumer shall be applied by a supervised financial organization to satisfaction of scheduled payments in the order that they become due. A charge card issuer shall apply all payments made by the consumer to satisfaction of unpaid amounts in the order that they become due.

(d) A supervised financial organization shall provide a minimum number of days between the monthly billing statement date and the date upon which the minimum payment is due, exclusive of the applicable late payment grace period provided for in paragraph (1) of subdivision (a), and a charge card issuer shall provide a minimum number of days between the monthly billing statement date and the date upon which the applicable late payment grace period provided for in paragraph (1) of subdivision (a) begins to run, of at least:

(1) Twenty-three days, on an average basis over a calendar year or other consecutive 12-month period, for any organization or issuer charging the fee authorized by subparagraph (A) of paragraph

(1) of subdivision (a).

(2) Twenty days, on an average basis over a calendar year or other consecutive 12-month period, for any organization or issuer charging the fee authorized by subparagraph (B) or (C) of paragraph

(1) of subdivision (a).

(e) (1) The applicable late payment grace period and fee shall be disclosed in the consumer credit agreement. The late payment grace period shall be disclosed in the consumer credit or charge card agreement but need not be disclosed in any monthly or other billing statement. The amount and conditions for imposition of any fee for overlimit activity shall also be disclosed in the consumer credit or charge card agreement.

(2) If a consumer credit or charge card agreement contains a provision for a late payment fee or overlimit fee, each monthly or other billing statement shall disclose the amount of the late payment and overlimit fee and the date the minimum payment is due.

(Added by Stats. 1994, Ch. 1079, Sec. 1. Effective January 1, 1995.)

4002. (a) (1) Upon the request of a person who has obtained a police report pursuant to Section 530.6 of the Penal Code, a supervised financial organization shall provide to the person, or to a law enforcement officer specified by the person, copies of all application forms or application information containing the person's name, address, or other identifying information pertaining to the application filed with the supervised financial organization by an unauthorized person in violation of Section 530.5 of the Penal Code.

(2) Before providing the person with copies pursuant to paragraph (1), the supervised financial organization shall inform the requesting person of the categories of identifying information that the unauthorized person used to complete the application, and shall require the requesting person to provide identifying information in those categories and a copy of the police report.

(3) The supervised financial organization shall provide copies of all forms and information required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

(b) (1) Before a supervised financial organization provides copies to a law enforcement officer pursuant to paragraph (1) of subdivision (a), the supervised financial organization may require the requesting person to provide them with a signed and dated statement by which the person does all of the following:

(A) Authorizes disclosure for a stated period.

(B) Specifies the name of the agency or department to which the disclosure is authorized.

(C) Identifies the type of records that the person authorizes to be disclosed.

(2) The supervised financial organization shall include in the statement to be signed by the requesting person a notice that the person has the right at any time to revoke the authorization.

(c) As used in this section, "law enforcement officer" means a peace officer as defined by Section 830.1 of the Penal Code.

(Added by Stats. 2001, Ch. 493, Sec. 2. Effective January 1, 2002.)

DIVISION 1.2. CALIFORNIA FINANCIAL INFORMATION PRIVACY ACT

(Division 1.2 added by Stats. 2003, Ch. 241, Sec. 1.
Effective January 1, 2004.
Division operative July 1, 2004, by Section 4060.)

4050. This division shall be known and may be cited as the California Financial Information Privacy Act.
(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4051. (a) The Legislature intends for financial institutions to provide their consumers notice and meaningful choice about how consumers' nonpublic personal information is shared or sold by their financial institutions.

(b) It is the intent of the Legislature in enacting the California Financial Information Privacy Act to afford persons greater privacy protections than those provided in Public Law 106-102, the federal Gramm-Leach-Bliley Act, and that this division be interpreted to be consistent with that purpose.
(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4051.5. (a) The Legislature finds and declares all of the following:

(1) The California Constitution protects the privacy of California citizens from unwarranted intrusions into their private and personal lives.

(2) Federal banking legislation, known as the Gramm-Leach-Bliley Act, which breaks down restrictions on affiliation among different types of financial institutions, increases the likelihood that the personal financial information of California residents will be widely shared among, between, and within companies.

(3) The policies intended to protect financial privacy imposed by the Gramm-Leach-Bliley Act are inadequate to meet the privacy concerns of California residents.

(4) Because of the limitations of these federal policies, the Gramm-Leach-Bliley Act explicitly permits states to enact privacy protections that are stronger than those provided in federal law.

(b) It is the intent of the Legislature in enacting this division:

(1) To ensure that Californians have the ability to control the disclosure of what the Gramm-Leach-Bliley Act calls nonpublic personal information.

(2) To achieve that control for California consumers by requiring that financial institutions that want to share information with third parties and unrelated companies seek and acquire the affirmative consent of California consumers prior to sharing the information.

(3) To further achieve that control for California consumers by providing consumers with the ability to prevent the sharing of financial information among affiliated companies through a simple opt-out mechanism via a clear and understandable notice provided to the consumer.

(4) To provide, to the maximum extent possible, consistent with the purposes cited above, a level playing field among types and sizes of businesses consistent with the objective of providing consumers control over their nonpublic personal information, including providing that those financial institutions with limited affiliate relationships may enter into agreements with other financial institutions as provided in this division, and providing that the different business models of differing financial institutions are treated in ways that provide consistent consumer control over information-sharing practices.

(5) To adopt to the maximum extent feasible, consistent with the purposes cited above, definitions consistent with federal law, so that in particular there is no change in the ability of businesses to carry out normal processes of commerce for transactions voluntarily entered into by consumers.
(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4052. For the purposes of this division:

(a) "Nonpublic personal information" means personally identifiable financial information (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the financial institution. Nonpublic personal information does not include publicly available information that the financial institution has a reasonable basis to believe is lawfully made available to the general public from (1) federal, state, or local government records, (2) widely distributed media, or (3) disclosures to the general public that are required to be made by federal, state, or local law. Nonpublic personal information shall include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is

derived using any nonpublic personal information other than publicly available information, but shall not include any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any nonpublic personal information.

(b) "Personally identifiable financial information" means information (1) that a consumer provides to a financial institution to obtain a product or service from the financial institution, (2) about a consumer resulting from any transaction involving a product or service between the financial institution and a consumer, or (3) that the financial institution otherwise obtains about a consumer in connection with providing a product or service to that consumer. Any personally identifiable information is financial if it was obtained by a financial institution in connection with providing a financial product or service to a consumer. Personally identifiable financial information includes all of the following:

(1) Information a consumer provides to a financial institution on an application to obtain a loan, credit card, or other financial product or service.

(2) Account balance information, payment history, overdraft history, and credit or debit card purchase information.

(3) The fact that an individual is or has been a consumer of a financial institution or has obtained a financial product or service from a financial institution.

(4) Any information about a financial institution's consumer if it is disclosed in a manner that indicates that the individual is or has been the financial institution's consumer.

(5) Any information that a consumer provides to a financial institution or that a financial institution or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.

(6) Any personally identifiable financial information collected through an Internet cookie or an information collecting device from a Web server.

(7) Information from a consumer report.

(c) "Financial institution" means any institution the business of which is engaging in financial activities as described in Section 1843(k) of Title 12 of the United States Code and doing business in this state. An institution that is not significantly engaged in financial activities is not a financial institution. The term "financial institution" does not include any institution that is primarily engaged in providing hardware, software, or interactive services, provided that it does not act as a debt collector, as defined in 15 U.S.C. Sec. 1692a, or engage in activities for which the institution is required to acquire a charter, license, or registration from a state or federal governmental banking, insurance, or securities agency. The term "financial institution" does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. Sec. 2001 et seq.), provided that the entity does not sell or transfer nonpublic personal information to an affiliate or a nonaffiliated third party. The term "financial institution" does not include institutions chartered by Congress specifically to engage in a proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transactions related to a transaction of the consumer, as long as those institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party. The term "financial institution" does not include any provider of professional services, or any wholly owned affiliate thereof, that is prohibited by rules of professional ethics and applicable law from voluntarily disclosing confidential client information without the consent of the client. The term "financial institution" does not include any person licensed as a dealer under Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code that enters into contracts for the installment sale or lease of motor vehicles pursuant to the requirements of Chapter 2B (commencing with Section 2981) or 2D (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of the Civil Code and assigns substantially all of those contracts to financial institutions within 30 days.

(d) "Affiliate" means any entity that controls, is controlled by, or is under common control with, another entity, but does not include a joint employee of the entity and the affiliate. A franchisor, including any affiliate thereof, shall be deemed an affiliate of the franchisee for purposes of this division.

(e) "Nonaffiliated third party" means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of that institution and a third party.

(f) "Consumer" means an individual resident of this state, or that individual's legal representative, who obtains or has obtained from a financial institution a financial product or service to be used primarily for personal, family, or household purposes. For purposes of this division, an individual resident of this state is someone whose last known mailing address, other than an Armed Forces Post Office or Fleet Post Office address, as shown in the records of the financial institution, is located in this state. For purposes of this division, an individual is not a consumer of a financial institution

solely because he or she is (1) a participant or beneficiary of an employee benefit plan that a financial institution administers or sponsors, or for which the financial institution acts as a trustee, insurer, or fiduciary, (2) covered under a group or blanket insurance policy or group annuity contract issued by the financial institution, (3) a beneficiary in a workers' compensation plan, (4) a beneficiary of a trust for which the financial institution is a trustee, or (5) a person who has designated the financial institution as trustee for a trust, provided that the financial institution provides all required notices and rights required by this division to the plan sponsor, group or blanket insurance policyholder, or group annuity contractholder.

(g) "Control" means (1) ownership or power to vote 25 percent or more of the outstanding shares of any class of voting security of a company, acting through one or more persons, (2) control in any manner over the election of a majority of the directors, or of individuals exercising similar functions, or (3) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. However, for purposes of the application of the definition of control as it relates to credit unions, a credit union has a controlling influence over the management or policies of a credit union service organization (CUSO), as that term is defined by state or federal law or regulation, if the CUSO is at least 67 percent owned by credit unions. For purposes of the application of the definition of control to a financial institution subject to regulation by the United States Securities and Exchange Commission, a person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company is presumed to control the company, and a person who does not own more than 25 percent of the voting securities of a company is presumed not to control the company, and a presumption regarding control may be rebutted by evidence, but in the case of an investment company, the presumption shall continue until the United States Securities and Exchange Commission makes a decision to the contrary according to the procedures described in Section 2(a)(9) of the federal Investment Company Act of 1940.

(h) "Necessary to effect, administer, or enforce" means the following:

(1) The disclosure is required, or is a usual, appropriate, or acceptable method to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes the following:

(A) Providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product.

(B) The accrual or recognition of incentives, discounts, or bonuses associated with the transaction or communications to eligible existing consumers of the financial institution regarding the availability of those incentives, discounts, and bonuses that are provided by the financial institution or another party.

(C) In the case of a financial institution that has issued a credit account bearing the name of a company primarily engaged in retail sales or a name proprietary to a company primarily engaged in retail sales, the financial institution providing the retailer with nonpublic personal information as follows:

(i) Providing the retailer, or licensees or contractors of the retailer that provide products or services in the name of the retailer and under a contract with the retailer, with the names and addresses of the consumers in whose name the account is held and a record of the purchases made using the credit account from a business establishment, including a Web site or catalog, bearing the brand name of the retailer.

(ii) Where the credit account can only be used for transactions with the retailer or affiliates of that retailer that are also primarily engaged in retail sales, providing the retailer, or licensees or contractors of the retailer that provide products or services in the name of the retailer and under a contract with the retailer, with nonpublic personal information concerning the credit account, in connection with the offering or provision of the products or services of the retailer and those licensees or contractors.

(2) The disclosure is required or is one of the lawful or appropriate methods to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction or providing the product or service.

(3) The disclosure is required, or is a usual, appropriate, or acceptable method for insurance underwriting or the placement of insurance products by licensed agents and brokers with authorized insurance companies at the consumer's request, for reinsurance, stop loss insurance, or excess loss insurance purposes, or for any of the following purposes as they relate to a consumer's insurance:

(A) Account administration.

(B) Reporting, investigating, or preventing fraud or material misrepresentation.

(C) Processing premium payments.

(D) Processing insurance claims.

(E) Administering insurance benefits, including utilization review activities.

(F) Participating in research projects.

(G) As otherwise required or specifically permitted by federal or state law.

(4) The disclosure is required, or is a usual, appropriate, or acceptable method, in connection with the following:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means.

(B) The transfer of receivables, accounts, or interests therein.

(C) The audit of debit, credit, or other payment information.

(5) The disclosure is required in a transaction covered by the federal Real Estate Settlement Procedures Act (12 U.S.C. Sec. 2601 et seq.) in order to offer settlement services prior to the close of escrow (as those services are defined in 12 U.S.C. Sec. 2602), provided that (A) the nonpublic personal information is disclosed for the sole purpose of offering those settlement services and (B) the nonpublic personal information disclosed is limited to that necessary to enable the financial institution to offer those settlement services in that transaction.

(i) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity under subsection (k) of Section 1843 of Title 12 of the United States Code (the United States Bank Holding Company Act of 1956). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(j) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

(k) "Widely distributed media" means media available to the general public and includes a telephone book, a television or radio program, a newspaper, or a Web site that is available to the general public on an unrestricted basis.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4052.5. Except as provided in Sections 4053, 4054.6, and 4056, a financial institution shall not sell, share, transfer, or otherwise disclose nonpublic personal information to or with any nonaffiliated third parties without the explicit prior consent of the consumer to whom the nonpublic personal information relates.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4053. (a) (1) A financial institution shall not disclose to, or share a consumer's nonpublic personal information with, any nonaffiliated third party as prohibited by Section 4052.5, unless the financial institution has obtained a consent acknowledgment from the consumer that complies with paragraph (2) that authorizes the financial institution to disclose or share the nonpublic personal information. Nothing in this section shall prohibit or otherwise apply to the disclosure of nonpublic personal information as allowed in Section 4056. A financial institution shall not discriminate against or deny an otherwise qualified consumer a financial product or a financial service because the consumer has not provided consent pursuant to this subdivision and Section 4052.5 to authorize the financial institution to disclose or share nonpublic personal information pertaining to him or her with any nonaffiliated third party. Nothing in this section shall prohibit a financial institution from denying a consumer a financial product or service if the financial institution could not provide the product or service to a consumer without the consent to disclose the consumer's nonpublic personal information required by this subdivision and Section 4052.5, and the consumer has failed to provide consent. A financial institution shall not be liable for failing to offer products and services to a consumer solely because that consumer has failed to provide consent pursuant to this subdivision and Section 4052.5 and the financial institution could not offer the product or service without the consent to disclose the consumer's nonpublic personal information required by this subdivision and Section 4052.5, and the consumer has failed to provide consent. Nothing in this section is intended to prohibit a financial institution from offering incentives or discounts to elicit a specific response to the notice.

(2) A financial institution shall utilize a form, statement, or writing to obtain consent to disclose nonpublic personal information to nonaffiliated third parties as required by Section 4052.5 and this subdivision. The form, statement, or writing shallmeet all of the following criteria:

(A) The form, statement, or writing is a separate document, not attached to any other document.

(B) The form, statement, or writing is dated and signed by the consumer.

Important Privacy Choices for Consumers

You have the right to control whether we share some of your personal information. Please read the following information carefully before you make your choices below.

Your Rights

You have the following rights to restrict the sharing of personal and financial information with our affiliates (companies we own or control) and outside companies that we do business with. Nothing in this form prohibits the sharing of information necessary for us to follow the law, as permitted by law, or to give you the best service on your accounts with us. This includes sending you information about some other products or services.

Your Choices

Restrict Information Sharing With Companies We Own or Control (Affiliates): *Unless you say "No," we may share personal and financial information about you with our affiliated companies.*

(_) NO, please do not share personal and financial information with your affiliated companies.

Restrict Information Sharing With Other Companies We Do Business With To Provide Financial Products And Services: *Unless you say "No," we may share personal and financial information about you with outside companies we contract with to provide financial products and services to you.*

(_) NO, please do not share personal and financial information with outside companies you contract with to provide financial products and services.

Time Sensitive Reply

You may make your privacy choice(s) at any time. Your choice(s) marked here will remain unless you state otherwise. However, if we do not hear from you we may share some of your information with affiliated companies and other companies with whom we have contracts to provide products and services.

Name: _____

Account or Policy Number(s): _____ *[to be filled in by consumer]*

Signature: _____

To exercise your choices do [one of] the following:
(1) Fill out, sign and send back this form to us using the envelope provided (you may want to makea copy for your records); [#1 is mandatory]
[(2) Call this toll-free number (800) xxx-xxxx or (xxx) xxx-xxxx; [optional]
[(3) Reply electronically by contacting us through the following Internet option: xxxxx.com] [optional]

(C) The form, statement, or writing clearly and conspicuously discloses that by signing, the consumer is consenting to the disclosure to nonaffiliated third parties of nonpublic personal information pertaining to the consumer.

(D) The form, statement, or writing clearly and conspicuously discloses (i) that the consent will remain in effect until revoked or modified by the consumer; (ii) that the consumer may revoke the consent at any time; and (iii) the procedure for the consumer to revoke consent.

(E) The form, statement, or writing clearly and conspicuously informs the consumer that (i) the financial institution will maintain the document or a true and correct copy; (ii) the consumer is entitled to a copy of the document upon request; and (iii) the consumer may want to make a copy of the document for the consumer's records.

(b) (1) A financial institution shall not disclose to, or share a consumer's nonpublic personal information with, an affiliate unless the financial institution has clearly and conspicuously notified the consumer annually in writing pursuant to subdivision (d) that the nonpublic personal information may be disclosed to an affiliate of the financial institution and the consumer has not directed that the nonpublic personal information not be disclosed. A financial institution does not disclose information to, or share information with, its affiliate merely because information is maintained in common information systems or databases, and employees of the financial institution and its affiliate have access to those common information systems or databases, or a consumer accesses a Web site jointly operated or maintained under a common name by or on behalf of the financial institution and its affiliate, provided that where a consumer has exercised his or her right to prohibit disclosure pursuant to this division, nonpublic personal information is not further disclosed or used by an affiliate except as permitted by this division.

(2) Subdivision (a) shall not prohibit the release of nonpublic personal information by a financial institution with whom the consumer has a relationship to a nonaffiliated financial institution for purposes of jointly offering a financial product or financial service pursuant to a written agreement with the financial institution that receives the nonpublic personal information provided that all of the following requirements are met:

(A) The financial product or service offered is a product or service of, and is provided by, at least one of the financial institutions that is a party to the written agreement.

(B) The financial product or service is jointly offered, endorsed, or sponsored, and clearly and conspicuously identifies for the consumer the financial institutions that disclose and receive the disclosed nonpublic personal information.

(C) The written agreement provides that the financial institution that receives that nonpublic personal information is required to maintain the confidentiality of the information and is prohibited from disclosing or using the information other than to carry out the joint offering or servicing of a financial product or financial service that is the subject of the written agreement.

(D) The financial institution that releases the nonpublic personal information has complied with subdivision (d) and the consumer has not directed that the nonpublic personal information not be disclosed.

(E) Notwithstanding this section, until January 1, 2005, a financial institution may disclose nonpublic personal information to a nonaffiliated financial institution pursuant to a preexisting contract with the nonaffiliated financial institution, for purposes of offering a financial product or financial service, if that contract was entered into on or before January 1, 2004. Beginning on January 1, 2005, no nonpublic personal information may be disclosed pursuant to that contract unless all the requirements of this subdivision are met.

(3) Nothing in this subdivision shall prohibit a financial institution from disclosing or sharing nonpublic personal information as otherwise specifically permitted by this division.

(4) A financial institution shall not discriminate against or deny an otherwise qualified consumer a financial product or a financial service because the consumer has directed pursuant to this subdivision that nonpublic personal information pertaining to him or her not be disclosed. A financial institution shall not be required to offer or provide products or services offered through affiliated entities or jointly with nonaffiliated financial institutions pursuant to paragraph (2) where the consumer has directed that nonpublic personal information not be disclosed pursuant to this subdivision and the financial institution could not offer or provide the products or services to the consumer without disclosure of the consumer's nonpublic personal information that the consumer has directed not be disclosed pursuant to this subdivision. A financial institution shall not be liable for failing to offer or provide products or services offered through affiliated entities or jointly with nonaffiliated financial institutions pursuant to paragraph (2) solely because the consumer has directed that nonpublic personal information not be disclosed pursuant to this subdivision and the financial institution could not offer or provide the products or services to the consumer without disclosure of the consumer's nonpublic personal information that the consumer has directed not be disclosed to affiliates pursuant to this subdivision. Nothing in this section is intended to prohibit a financial institution from offering incentives or discounts to elicit a specific response to the notice set forth in this division. Nothing in this section shall prohibit the disclosure of nonpublic personal information allowed by Section 4056.

(5) The financial institution may, at its option, choose instead to comply with the requirements of subdivision (a).

(c) Nothing in this division shall restrict or prohibit the sharing of nonpublic personal information between a financial institution and its wholly owned financial institution subsidiaries; among financial institutions that are each wholly owned by the same financial institution; among financial institutions that are wholly owned by the same holding company; or among the insurance and management entities of a single insurance holding company system consisting of one or more reciprocal insurance exchanges which has a single corporation or its wholly owned subsidiaries providing management services to the reciprocal insurance exchanges, provided that in each case all of the following requirements are met:

(1) The financial institution disclosing the nonpublic personal information and the financial institution receiving it are regulated by the same functional regulator; provided, however, that for purposes of this subdivision, financial institutions regulated by the Office of the Comptroller of the Currency, Office of Thrift Supervision, National Credit Union Administration, or a state regulator of depository institutions shall be deemed to be regulated by the same functional regulator; financial institutions regulated by the Securities and Exchange Commission, the United States Department of Labor, or a state securities regulator shall be deemed to be regulated by the same functional regulator; and insurers admitted in this state to transact insurance and licensed to write insurance policies shall be deemed to be in compliance with this paragraph.

(2) The financial institution disclosing the nonpublic personal information and the financial institution receiving it are both principally engaged in the same line of business. For purposes of this subdivision, "same line of business" shall be one and only one of the following:

(A) Insurance.

(B) Banking.

(C) Securities.

(3) The financial institution disclosing the nonpublic personal information and the financial institution receiving it share a common brand, excluding a brand consisting solely of a graphic element or symbol, within their trademark, service mark, or trade name, which is used to identify the source of the products and services provided.

A wholly owned subsidiary shall include a subsidiary wholly owned directly or wholly owned indirectly in a chain of wholly owned subsidiaries.

Nothing in this subdivision shall permit the disclosure by a financial institution of medical record information, as defined in subdivision (q) of Section 791.02 of the Insurance Code, except in compliance with the requirements of this division, including the requirements set forth in subdivisions (a) and (b).

(d) (1) A financial institution shall be conclusively presumed to have satisfied the notice requirements of subdivision (b) if it uses the form set forth in this subdivision. The form set forth in this subdivision or a form that complies with subparagraphs (A) to (L), inclusive, of this paragraph shall be sent by the financial institution to the consumer so that the consumer may make a decision and provide direction to the financial institution regarding the sharing of his or her nonpublic personal information. If a financial institution does not use the form set forth in this subdivision, the financial institution shall use a form that meets all of the following requirements:

(A) The form uses the same title ("IMPORTANT PRIVACY CHOICES FOR CONSUMERS") and the headers, if applicable, as follows: "Restrict Information Sharing With Companies We Own Or Control (Affiliates)" and "Restrict Information Sharing With Other Companies We Do Business With To Provide Financial Products And Services."

(B) The titles and headers in the form are clearly and conspicuously displayed, and no text in the form is smaller than 10-point type.

(C) The form is a separate document, except as provided by subparagraph (D) of paragraph (2), and Sections 4054 and 4058.7.

(D) The choice or choices pursuant to subdivision (b) and Section 4054.6, if applicable, provided in the form are stated separately and may be selected by checking a box.

(E) The form is designed to call attention to the nature and significance of the information in the document.

(F) The form presents information in clear and concise sentences, paragraphs, and sections.

(G) The form uses short explanatory sentences (an average of 15-20 words) or bullet lists whenever possible.

(H) The form avoids multiple negatives, legal terminology, and highly technical terminology whenever possible.

(I) The form avoids explanations that are imprecise and readily subject to different interpretations.

(J) The form achieves a minimum Flesch reading ease score of 50, as defined in Section 2689.4(a)(7) of Title 10 of the California Code of Regulations, in effect on March 24, 2003, except that the information in the form included to comply with subparagraph (A) shall not be included in the calculation of the Flesch reading ease score, and the information used

to describe the choice or choices pursuant to subparagraph (D) shall score no lower than the information describing the comparable choice or choices set forth in the form in this subdivision.

(K) The form provides wide margins, ample line spacing and uses boldface or italics for key words.

(L) The form is not more than one page.

(2) (A) None of the instructional items appearing in brackets in the form set forth in this subdivision shall appear in the form provided to the consumer, as those items are for explanation purposes only. If a financial institution does not disclose or share nonpublic personal information as described in a header of the form, the financial institution may omit the applicable header or headers, and the accompanying information and box, in the form it provides pursuant to this subdivision. The form with those omissions shall be conclusively presumed to satisfy the notice requirements of this subdivision.

(B) If a financial institution uses a form other than that set forth in this subdivision, the financial institution may submit that form to its functional regulator for approval, and for forms filed with the Office of Privacy Protection prior to July 1, 2007, that approval shall constitute a rebuttable presumption that the form complies with this section.

(C) A financial institution shall not be in violation of this subdivision solely because it includes in the form one or more brief examples or explanations of the purpose or purposes, or context, within which information will be shared, as long as those examples meet the clarity and readability standards set forth in paragraph (1).

(D) The outside of the envelope in which the form is sent to the consumer shall clearly state in 16-point boldface type "IMPORTANT PRIVACY CHOICES," except that a financial institution sending the form to a consumer in the same envelope as a bill, account statement, or application requested by the consumer does not have to include the wording "IMPORTANT PRIVACY CHOICES" on that envelope. The form shall be sent in any of the following ways:

(i) With a bill, other statement of account, or application requested by the consumer, in which case the information required by Title V of the Gramm-Leach-Bliley Act may also be included in the same envelope.

(ii) As a separate notice or with the information required by Title V of the Gramm-Leach-Bliley Act, and including only information related to privacy.

(iii) With any other mailing, in which case it shall be the first page of the mailing.

(E) If a financial institution uses a form other than that set forth in this subdivision, that form shall be filed with the Office of Privacy Protection within 30 days after it is first used.

(3) The consumer shall be provided a reasonable opportunity prior to disclosure of nonpublic personal information to direct that nonpublic personal information not be disclosed. A consumer may direct at any time that his or her nonpublic personal information not be disclosed. A financial institution shall comply with a consumer's directions concerning the sharing of his or her nonpublic personal information within 45 days of receipt by the financial institution. When a consumer directs that nonpublic personal information not be disclosed, that direction is in effect until otherwise stated by the consumer. A financial institution that has not provided a consumer with annual notice pursuant to subdivision (b) shall provide the consumer with a form that meets the requirements of this subdivision, and shall allow 45 days to lapse from the date of providing the form in person or the postmark or other postal verification of mailing before disclosing nonpublic personal information pertaining to the consumer.

Nothing in this subdivision shall prohibit the disclosure of nonpublic personal information as allowed by subdivision (c) or Section 4056.

(4) A financial institution may elect to comply with the requirements of subdivision (a) with respect to disclosure of nonpublic personal information to an affiliate or with respect to nonpublic personal information disclosed pursuant to paragraph (2) of subdivision (b), or subdivision (c) of Section 4054.6.

(5) If a financial institution does not have a continuing relationship with a consumer other than the initial transaction in which the product or service is provided, no annual disclosure requirement exists pursuant to this section as long as the financial institution provides the consumer with the form required by this section at the time of the initial transaction. As used in this section, "annually" means at least once in any period of 12 consecutive months during which that relationship exists. The financial institution may define the 12-consecutive-month period, but shall apply it to the consumer on a consistent basis. If, for example, a financial institution defines the 12-consecutive-month period as a calendar year and provides the annual notice to the consumer once in each calendar year, it complies with the requirement to send the notice annually.

(6) A financial institution with assets in excess of twenty-five million dollars ($25,000,000) shall include a self-addressed first class business reply return envelope with the notice. A financial institution with assets of up to and including twenty-five million dollars ($25,000,000) shall include a self-addressed return envelope with the notice. In lieu of the first class business reply return envelope required by this paragraph, a financial institution may offer a self-

addressed return envelope with the notice and at least two alternative cost-free means for consumers to communicate their privacy choices, such as calling a toll-free number, sending a facsimile to a toll-free telephone number, or using electronic means. A financial institution shall clearly and conspicuously disclose in the form required by this subdivision the information necessary to direct the consumer on how to communicate his or her choices, including the toll-free or facsimile number or Web site address that may be used, if those means of communication are offered by the financial institution.

(7) A financial institution may provide a joint notice from it and one or more of its affiliates or other financial institutions, as identified in the notice, so long as the notice is accurate with respect to the financial institution and the affiliates and other financial institutions.

(e) Nothing in this division shall prohibit a financial institution from marketing its own products and services or the products and services of affiliates or nonaffiliated third parties to customers of the financial institution as long as (1) nonpublic personal information is not disclosed in connection with the delivery of the applicable marketing materials to those customers except as permitted by Section 4056 and (2) in cases in which the applicable nonaffiliated third party may extrapolate nonpublic personal information about the consumer responding to those marketing materials, the applicable nonaffiliated third party has signed a contract with the financial institution under the terms of which (A) the nonaffiliated third party is prohibited from using that information for any purpose other than the purpose for which it was provided, as set forth in the contract, and (B) the financial institution has the right by audit, inspections, or other means to verify the nonaffiliated third party's compliance with that contract.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060. Note: Complete text of this section is set forth in the publication of Ch. 241.) 4053.5. Except as otherwise provided in this division, an entity that receives nonpublic personal information from a financial institution under this division shall not disclose this information to any other entity, unless the disclosure would be lawful if made directly to the other entity by the financial institution. An entity that receives nonpublic personal information pursuant to any exception set forth in Section 4056 shall not use or disclose the information except in the ordinary course of business to carry out the activity covered by the exception under which the information was received.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4054. (a) Nothing in this division shall require a financial institution to provide a written notice to a consumer pursuant to Section 4053 if the financial institution does not disclose nonpublic personal information to any nonaffiliated third party or to any affiliate, except as allowed in this division.

(b) A notice provided to a member of a household pursuant to Section 4053 shall be considered notice to all members of that household unless that household contains another individual who also has a separate account with the financial institution.

(c) (1) The requirement to send a written notice to a consumer may be fulfilled by electronic means if the following requirements are met:

(A) The notice, and the manner in which it is sent, meets all of the requirements for notices that are required by law to be in writing, as set forth in Section 101 of the federal Electronic Signatures in Global and National Commerce Act.

(B) All other requirements applicable to the notice, as set forth in this division, are met, including, but not limited to, requirements concerning content, timing, form, and delivery. An electronic notice sent pursuant to this section is not required to include a return envelope.

(C) The notice is delivered to the consumer in a form the consumer may keep.

(2) A notice that is made available to a consumer, and is not delivered to the consumer, does not satisfy the requirements of paragraph (1).

(3) Any electronic consumer reply to an electronic notice sent pursuant to this division is effective. A person that electronically sends a notice required by this division to a consumer may not by contract, or otherwise, eliminate the effectiveness of the consumer's electronic reply.

(4) This division modifies the provisions of Section 101 of the federal Electronic Signatures in Global and National Commerce Act. However, it does not modify, limit, or supersede the provisions of subsection (c), (d), (e), (f), or (h) of Section 101 of the federal Electronic Signatures in Global and National Commerce Act, nor does it authorize electronic delivery of any notice of the type described in subsection (b) of Section 103 of that federal act.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4054.6. (a) When a financial institution and an organization or business entity that is not a financial institution ("affinity partner") have an agreement to issue a credit card in the name of the affinity partner ("affinity card"), the financial institution shall be permitted to disclose to the affinity partner in whose name the card is issued only the

following information pertaining to the financial institution's customers who are in receipt of the affinity card: (1) name, address, telephone number, and electronic mail address and (2) record of purchases made using the affinity card in a business establishment, including a Web site, bearing the brand name of the affinity partner.

(b) When a financial institution and an affinity partner have an agreement to issue a financial product or service, other than a credit card, on behalf of the affinity partner ("affinity financial product or service"), the financial institution shall be permitted to disclose to the affinity partner only the following information pertaining to the financial institution's customers who obtained the affinity financial product or service: name, address, telephone number, and electronic mail address.

(c) The disclosures specified in subdivisions (a) and (b) shall be permitted only if the following requirements are met:

(1) The financial institution has provided the consumer a notice meeting the requirements of subdivision (d) of Section 4053, and the consumer has not directed that nonpublic personal information not be disclosed. A response to a notice meeting the requirements of subdivision (d) directing the financial institution to not disclose nonpublic personal information to a nonaffiliated financial institution shall be deemed a direction to the financial institution to not disclose nonpublic personal information to an affinity partner, unless the form containing the notice provides the consumer with a separate choice for disclosure to affinity partners.

(2) The financial institution has a contractual agreement with the affinity partner that requires the affinity partner to maintain the confidentiality of the nonpublic personal information and prohibits affinity partners from using the information for any purposes other than verifying membership, verifying the consumer's contact information, or offering the affinity partner's own products or services to the consumer.

(3) The customer list is not disclosed in any way that reveals or permits extrapolation of any additional nonpublic personal information about any customer on the list.

(4) If the affinity partner sends any message to any electronic mail addresses obtained pursuant to this section, the message shall include at least both of the following:

(A) The identity of the sender of the message.

(B) A cost-free means for the recipient to notify the sender not to electronically mail any further message to the recipient.

(d) Nothing in this section shall prohibit the disclosure of nonpublic personal information pursuant to Section 4056.

(e) This section does not apply to credit cards issued in the name of an entity primarily engaged in retail sales or a name proprietary to a company primarily engaged in retail sales.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4056. (a) This division shall not apply to information that is not personally identifiable to a particular person.

(b) Notwithstanding Sections 4052.5, 4053, 4054, and 4054.6, a financial institution may release nonpublic personal information under the following circumstances:

(1) The nonpublic personal information is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with servicing or processing a financial product or service requested or authorized by the consumer, or in connection with maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of that entity, or in connection with a proposed or actual securitization or secondary market sale, including sales of servicing rights, or similar transactions related to a transaction of the consumer.

(2) The nonpublic personal information is released with the consent of or at the direction of the consumer.

(3) The nonpublic personal information is:

(A) Released to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein.

(B) Released to protect against or prevent actual or potential fraud, identity theft, unauthorized transactions, claims, or other liability.

(C) Released for required institutional risk control, or for resolving customer disputes or inquiries.

(D) Released to persons holding a legal or beneficial interest relating to the consumer, including for purposes of debt collection.

(E) Released to persons acting in a fiduciary or representative capacity on behalf of the consumer.

(4) The nonpublic personal information is released to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors.

(5) The nonpublic personal information is released to the extent specifically required or specifically permitted under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.),

to law enforcement agencies, including a federal functional regulator, the Secretary of the Treasury with respect to subchapter II of Chapter 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12 U.S.C. Secs. 1951-1959), the California Department of Insurance or other state insurance regulators, or the Federal Trade Commission, and self-regulatory organizations, or for an investigation on a matter related to public safety.

(6) The nonpublic personal information is released in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of the business or unit.

(7) The nonpublic personal information is released to comply with federal, state, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, administrative, or regulatory investigation or subpoena or summons by federal, state, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

(8) When a financial institution is reporting a known or suspected instance of elder or dependent adult financial abuse or is cooperating with a local adult protective services agency investigation of known or suspected elder or dependent adult financial abuse pursuant to Article 3 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code.

(9) The nonpublic personal information is released to an affiliate or a nonaffiliated third party in order for the affiliate or nonaffiliated third party to perform business or professional services, such as printing, mailing services, data processing or analysis, or customer surveys, on behalf of the financial institution, provided that all of the following requirements are met:

(A) The services to be performed by the affiliate or nonaffiliated third party could lawfully be performed by the financial institution.

(B) There is a written contract between the affiliate or nonaffiliated third party and the financial institution that prohibits the affiliate or nonaffiliated third party, as the case may be, from disclosing or using the nonpublic personal information other than to carry out the purpose for which the financial institution disclosed the information, as set forth in the written contract.

(C) The nonpublic personal information provided to the affiliate or nonaffiliated third party is limited to that which is necessary for the affiliate or nonaffiliated third party to perform the services contracted for on behalf of the financial institution.

(D) The financial institution does not receive any payment from or through the affiliate or nonaffiliated third party in connection with, or as a result of, the release of the nonpublic personal information.

(10) The nonpublic personal information is released to identify or locate missing and abducted children, witnesses, criminals and fugitives, parties to lawsuits, parents delinquent in child support payments, organ and bone marrow donors, pension fund beneficiaries, and missing heirs.

(11) The nonpublic personal information is released to a real estate appraiser licensed or certified by the state for submission to central data repositories such as the California Market Data Cooperative, and the nonpublic personal information is compiled strictly to complete other real estate appraisals and is not used for any other purpose.

(12) The nonpublic personal information is released as required by Title III of the federal United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act; P.L. 107-56).

(13) The nonpublic personal information is released either to a consumer reporting agency pursuant to the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.) or from a consumer report reported by a consumer reporting agency.

(14) The nonpublic personal information is released in connection with a written agreement between a consumer and a broker-dealer registered under the Securities Exchange Act of 1934 or an investment adviser registered under the Investment Advisers Act of 1940 to provide investment management services, portfolio advisory services, or financial planning, and the nonpublic personal information is released for the sole purpose of providing the products and services covered by that agreement.

(c) Nothing in this division is intended to change existing law relating to access by law enforcement agencies to information held by financial institutions.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4056.5. (a) The provisions of this division do not apply to any person or entity that meets the requirements of paragraph (1) or (2) below. However, when nonpublic personal information is being or will be shared by a person or entity meeting the requirements of paragraph (1) or (2) with an affiliate or nonaffiliated third party, this division shall apply.

(1) The person or entity is licensed in one or both of the following categories and is acting within the scope of the respective license or certificate:

(A) As an insurance producer, licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Division 1 of the Insurance Code, as a registered investment adviser pursuant to Chapter 3 (commencing with Section 25230) of Part 3 of Division 1 of Title 4 of the Corporations Code, or as an investment adviser pursuant to Section 202(a)(11) of the federal Investment Advisers Act of 1940.

(B) Is licensed to sell securities by the National Association of Securities Dealers (NASD).

(2) The person or entity meets the requirements in paragraph (1) and has a written contractual agreement with another person or entity described in paragraph (1) and the contract clearly and explicitly includes the following:

(A) The rights and obligations between the licensees arising out of the business relationship relating to insurance or securities transactions.

(B) An explicit limitation on the use of nonpublic personal information about a consumer to transactions authorized by the contract and permitted pursuant to this division.

(C) A requirement that transactions specified in the contract fall within the scope of activities permitted by the licenses of the parties.

(b) The restrictions on disclosure and use of nonpublic personal information, and the requirement for notification and disclosure provided in this division, shall not limit the ability of insurance producers and brokers to respond to written or electronic, including telephone, requests from consumers seeking price quotes on insurance products and services or to obtain competitive quotes to renew an existing insurance contract, provided that any nonpublic personal information disclosed pursuant to this subdivision shall not be used or disclosed except in the ordinary course of business in order to obtain those quotes.

(c) (1) The disclosure or sharing of nonpublic personal information from an insurer, as defined in Section 23 of the Insurance Code, or its affiliates to an exclusive agent, defined for purposes of this division as a licensed agent or broker pursuant to Chapter 5 (commencing with Section 1621) of Part 2 of Division 1 of the Insurance Code whose contractual or employment relationship requires that the agent offer only the insurer's policies for sale or financial products or services that meet the requirements of paragraph (2) of subdivision (b) of Section 4053 and are authorized by the insurer, or whose contractual or employment relationship with an insurer gives the insurer the right of first refusal for all policies of insurance by the agent, and who may not share nonpublic personal information with any insurer other than the insurer with whom the agent has a contractual or employment relationship as described above, is not a violation of this division, provided that the agent may not disclose nonpublic personal information to any party except as permitted by this division. An insurer or its affiliates do not disclose or share nonpublic personal information with exclusive agents merely because information is maintained in common information systems or databases, and exclusive agents of the insurer or its affiliates have access to those common information systems or databases, provided that where a consumer has exercised his or her rights to prohibit disclosure pursuant to this division, nonpublic personal information is not further disclosed or used by an exclusive agent except as permitted by this division.

(2) Nothing in this subdivision is intended to affect the sharing of information allowed in subdivision (a) or subdivision (b).

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4057. (a) An entity that negligently discloses or shares nonpublic personal information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per violation. However, if the disclosure or sharing results in the release of nonpublic personal information of more than one individual, the total civil penalty awarded pursuant to this subdivision shall not exceed five hundred thousand dollars ($500,000).

(b) An entity that knowingly and willfully obtains, discloses, shares, or uses nonpublic personal information in violation of this division shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per individual violation, irrespective of the amount of damages suffered by the consumer as a result of that violation.

(c) In determining the penalty to be assessed pursuant to a violation of this division, the court shall take into account the following factors:

(1) The total assets and net worth of the violating entity.

(2) The nature and seriousness of the violation.

(3) The persistence of the violation, including any attempts to correct the situation leading to the violation.

(4) The length of time over which the violation occurred.

(5) The number of times the entity has violated this division.

(6) The harm caused to consumers by the violation.

(7) The level of proceeds derived from the violation.

(8) The impact of possible penalties on the overall fiscal solvency of the violating entity.

(d) In the event a violation of this division results in the identity theft of a consumer, as defined by Section 530.5 of the Penal Code, the civil penalties set forth in this section shall be doubled.

(e) The civil penalties provided for in this section shall be exclusively assessed and recovered in a civil action brought in the name of the people of the State of California in any court of competent jurisdiction by any of the following:

(1) The Attorney General.

(2) The functional regulator with jurisdiction over regulation of the financial institution as follows:

(A) In the case of banks, savings associations, credit unions, commercial lending companies, and bank holding companies, by the Department of Financial Institutions or the appropriate federal authority; (B) in the case of any person engaged in the business of insurance, by the Department of Insurance; (C) in the case of any investment broker or dealer, investment company, investment advisor, residential mortgage lender or finance lender, by the Department of Corporations; and (D) in the case of a financial institution not subject to the jurisdiction of any functional regulator listed under subparagraphs (A) to (C), inclusive, above, by the Attorney General.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January1, 2004. Operative July 1, 2004, by Section 4060.)

4058. Nothing in this division shall be construed as altering or annulling the authority of any department or agency of the state to regulate any financial institution subject to its jurisdiction.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4058.5. This division shall preempt and be exclusive of all local agency ordinances and regulations relating to the use and sharing of nonpublic personal information by financial institutions. This section shall apply both prospectively and retroactively.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4058.7. Nothing in this division shall prevent an insurer, as defined in Section 23 of the Insurance Code, from combining the form required by subdivision (d) of Section 4053 with the form required pursuant to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code and state regulations implementing the provisions of that article, provided that the combined form meets the requirements contained in paragraph (1) of subdivision (d) of Section 4053.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4059. The provisions of this division shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this division shall not be affected thereby.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Operative July 1, 2004, by Section 4060.)

4060. This division shall become operative on July 1, 2004.

(Added by Stats. 2003, Ch. 241, Sec. 1. Effective January 1, 2004. Note: This section delays the operation of all other provisions added by Ch. 241 in Division 1.2, commencing with Section 4050.)

DIVISION 1.5. DEPOSITORY CORPORATIONS—SALE, MERGER, AND CONVERSION

(Division 1.5 added by Stats. 1982, Ch. 1411, Sec. 3.)

CHAPTER 1. GENERAL PROVISIONS

(Chapter 1 added by Stats. 1982, Ch. 1411, Sec. 3.)

Article 1. Short Title, Construction, and Severability

(Article 1 added by Stats. 1982, Ch. 1411, Sec. 3.)

4800. This division shall be known and may be cited as the "Depository Corporation Sale, Merger, and Conversion Law."

(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4801. In this division, unless otherwise expressly provided:

(a) A reference to a statute or to a regulation includes the statute or regulation, as amended, whether before or after the effective date of this division, as well as any new statute or regulation substituted for the statute or regulation after the effective date of this division.

(b) A reference to a governmental agency or to a public officer includes any governmental agency or public officer which succeeds after the effective date of this division to substantially the same functions as those performed by the governmental agency or public officer on the effective date of this division.

(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4802. If any provision of this division or the application thereof to any person or circumstances is held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other provisions or applications of this division which can be given effect without the invalid, illegal, or unenforceable provision or application, and, to this end, the provisions of this division are declared to be severable.

(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4803. If and to the extent that any provision of this division is preempted by federal law, the provision does not apply and shall not be enforced.

(Added by Stats. 1995, Ch. 480, Sec. 95.1. Effective October 2, 1995.)

Article 2. Definitions

(Article 2 repealed and added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.01. Subject to additional definitions contained in this division that are applicable to specific provisions of this division and unless the context otherwise requires:

(a) The definitions in this article apply throughout this division.

(b) The definitions in Chapter 1 (commencing with Section 99) of Division 1 and in Section 1700 apply throughout this division. For this purpose, "this division," as used in Sections 123 and 124, means:

(1) In the case of a California state bank, Division 1 (commencing with Section 99) and this division.

(2) In the case of a California state savings association, this division and Division 2 (commencing with Section 5000).

(Amended by Stats. 2000, Ch. 1015, Sec. 39. Effective September 30, 2000.)

4805.02. (a) In this division, "bank" means a commercial bank or trust company (other than an industrial loan company authorized to engage in trust business). "Bank" does not include an industrial loan company.

(b) Notwithstanding subdivision (a), "foreign (other nation) bank" has the meaning set forth in Section 139.4(b)(1).

(Added by Stats. 2000, Ch. 1015, Sec. 40. Effective September 30, 2000.)

4805.03. "California" means:

(a) When used with respect to a savings association, in the case of a state savings association, a savings association that is organized under the laws of this state and, in the case of a federal savings association, a savings association that maintains its head office in this state.

(b) When used with respect to an industrial loan company, an industrial loan company that is organized under the laws of this state.

(c) When used with respect to an office of a savings association or of an industrial loan company, an office located in this state.

(d) When used with respect to any corporation other than a depository corporation, a corporation organized under the laws of this state.
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.04. "California federally licensed foreign (other nation) bank," when used with respect to a sale or merger, means a foreign (other nation) bank that is authorized under federal law to maintain a federal agency or federal branch in this state immediately before the effective time of the sale or merger in case it is the selling or disappearing corporation or at the effective time of the sale or merger in case it is the purchasing or surviving corporation.
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.05. "California state-licensed foreign (other nation) bank," when used with respect to a sale or merger, means a foreign (other nation) bank that is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 to maintain an agency or branch office in this state immediately before the effective time of the sale or merger in case it is the selling or disappearing corporation or at the effective time of the sale or merger in case it is the purchasing or surviving corporation.
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.055. "Commissioner" means the Commissioner of Financial Institutions.
(Added by Stats. 1996, Ch. 1064, Sec. 472.5. Effective January 1, 1997. Operative July 1, 1997.)

4805.06. "Depository corporation" means a state or federal depository corporation.
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.07. "Federal depository corporation" means a national banking association or a federal savings association.
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.08. "Federal savings association" means a savings association or savings bank organized pursuant to Section 5 of the Home Owners' Loan Act (12 U.S.C. Sec. 1464).
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.09. "Foreign" or "foreign (other state)" means:

(a) When used with respect to a savings association, in the case of a state savings association, a savings association that is organized under the laws of any state of the United States other than this state and, in the case of a federal savings association, a savings association that maintains its head office in any state of the United States other than this state.

(b) When used with respect to an industrial loan company, an industrial loan company that is organized under the laws of any state of the United States other than this state.

(c) When used with respect to an office of a savings association or of an industrial loan company, an office located in any state of the United States other than this state.

(d) When used with respect to any corporation other than a depository corporation, a corporation organized under the laws of any state of the United States other than this state.
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.10. In this division, "industrial loan company" means an industrial bank as defined in Section 105.5.
(Added by Stats. 2000, Ch. 1015, Sec. 41. Effective September 30, 2000.)

4805.11. "Insured," when used with respect to a depository corporation, means a depository corporation the deposits of which are insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.12. "Law of the domicile" means:

(a) When used with respect to a federal depository corporation, the law of the United States.

(b) When used with respect to a state depository corporation, the law of the state of the United States under which the depository corporation is organized.

(c) When used with respect to a foreign (other nation) bank, the law of the foreign nation under which the bank is organized.
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.13. "Merger," when used with respect to a merger in a case where the surviving corporation is a federal depository corporation and federal law authorizes a consolidation, includes a consolidation in which the resulting corporation is a federal depository corporation. The provisions of this division that apply to mergers apply with appropriate changes in points of detail to consolidations of that type.
(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.15. "Share" means:

(a) When used with respect to a California state savings association that is authorized to issue guarantee stock, a share of guarantee stock.

(b) When used with respect to a federal savings association that is authorized to issue capital stock, a share of capital stock.

(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.16. "Shareholder" means:

(a) When used with respect to a California state savings association that is authorized to issue guarantee stock, a holder of record of a share of guarantee stock.

(b) When used with respect to a federal savings association that is authorized to issue capital stock, a holder of record of a share of capital stock.

(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.17. "State depository corporation" means a state bank, a state savings association, or an industrial loan company.

(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

4805.18. "Uninsured," when used with respect to a deposit, means a deposit or any part of a deposit that is not insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(Added by Stats. 1995, Ch. 480, Sec. 97. Effective October 2, 1995.)

Article 3. Other General Provisions

(Article 3 added by Stats. 1982, Ch. 1411, Sec. 3.)

4820. For purposes of this division, a national banking association or federal savings association is deemed to be a corporation.

(Amended by Stats. 1995, Ch. 480, Sec. 98. Effective October 2, 1995.)

4820.5. For purposes of this division, depository corporations are divided into the following classes:

(a) Banks.

(b) Savings associations.

(c) Industrial loan companies.

(Added by Stats. 1995, Ch. 480, Sec. 99. Effective October 2, 1995.)

4821. The provisions of the General Corporation Law (Division 1 (commencing with Section 100) of Title 1 of the Corporations Code) shall apply to any transaction which is subject to this division. However, whenever any provision of this division or of any regulation or order issued under this division is inconsistent with any provision of the General Corporation Law, the provision of this division or of the regulation or order shall apply and the provision of the General Corporation Law shall not apply.

(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4821.5. Any certificate of authority, license, or other authorization issued under subdivision (b) of Section 4858, subdivision (b) of Section 4877.13, subdivision (b) of Section 4888, subdivision (b) of Section 4928, or Section 4948 or 4949 is deemed to have been issued under the provisions of Division 1 (commencing with Section 99) or Division 2 (commencing with Section 5000) that would otherwise apply to the issuance of the certificate of authority, license, or other authorization.

(Amended by Stats. 2000, Ch. 1015, Sec. 42. Effective September 30, 2000.)

4822. (a) References in this division to the voting of the shares of a California state depository corporation shall be construed in accordance with Section 111 of the Corporations Code.

(b) If the articles of a California state depository corporation provide for more or less than one vote for any share on any matter that is subject to this division, the references in Sections 123 and 124 (which are made applicable to this division by Section 4805) to a majority or other proportion of shares mean, as to the matter, a majority or other proportion of the votes entitled to be cast.

(c) Whenever shares of a California state depository corporation are disqualified under any applicable law from voting on any matter that is subject to this division, the shares shall not be considered outstanding for the determination of a quorum at any meeting to act upon, or the required vote to approve action upon, the matter.

(Amended by Stats. 1995, Ch. 480, Sec. 101. Effective October 2, 1995.)

4823. References in this division to shareholders' equity mean shareholders' equity determined in accordance with generally accepted accounting principles, subject (a) in the case of California state banks or California industrial loan companies, to the provisions of Section 118, and (b) in the case of California state savings associations, to the provisions of Division 2 (commencing with Section 5000).
(Amended by Stats. 2000, Ch. 1015, Sec. 43. Effective September 30, 2000.)

4824. In determining for purposes of this division whether the shareholders' equity of a California state depository corporation will be adequate:

(a) In case the corporation is, or is to convert into, a California state bank, the commissioner shall consider the factors specified in Section 660.

(b) In case the corporation is, or is to convert into, a California state savings association or a California industrial loan company, the commissioner shall consider factors equivalent to those specified in Section 660.
(Amended by Stats. 1996, Ch. 1064, Sec. 473. Effective January 1, 1997. Operative July 1, 1997.)

4825. Notwithstanding any other provision of law:

(a) No California state bank shall merge or convert into a depository corporation that is a mutual organization.

(b) No depository corporation that is a mutual organization shall merge or convert into a California state bank.

(c) No California state depository corporation of any class shall merge or convert into a depository corporation of another class that is a mutual organization.

(d) No depository corporation of any class that is a mutual organization shall merge or convert into a California state depository corporation of another class.
(Repealed and added by Stats. 1995, Ch. 480, Sec. 105.Effective October 2, 1995.)

4826. Notwithstanding any other provision of law, no savings association or industrial loan company may convert into a bank if the ownership of the savings association or industrial loan company is such that the establishment or acquisition of control of a new state bank or national banking association by the same ownership would not be permitted by Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842 (d)).
(Amended by Stats. 1995, Ch. 480, Sec. 106. Effective October 2, 1995.)

4826.5. Notwithstanding any other provision of this division:

(a) The provisions of Chapter 22 (commencing with Section 3800) of Division 1 apply to any transaction which is subject to this division. Whenever any provision of Chapter 22 (commencing with Section 3800) of Division 1 or of any regulation or order issued under Chapter 22 (commencing with Section 3800) of Division 1 is inconsistent with any provision of this division or of any regulation or order issued under this division, the provision of Chapter 22 (commencing with Section 3800) of Division 1 or of the regulation or order issued under Chapter 22 (commencing with Section 3800) of Division 1 applies, and the provision or this division or of the regulation or order issued under this division does not apply.

(b) Nothing in this division authorizes any sale or merger in a case where the purchasing or surviving depository corporation is a foreign depository corporation if the sale or merger is prohibited by Chapter 22 (commencing with Section 3800) of Division 1.

(c) Nothing in this division constitutes an election by this state under federal law to prohibit or permit interstate sales or mergers between banks or industrial loan companies.
(Amended by Stats. 2000, Ch. 1015, Sec. 44. Effective September 30, 2000.)

4827. Except as expressly provided otherwise in this division: (a) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state savings association, in which the purchasing or surviving depository corporation is a California state bank, a California industrial loan company, or a California state-licensed foreign (other nation) bank, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2 (commencing with Section 5000).

(2) No conversion in which the converting depository corporation is a California state savings association in which the resulting depository corporation is a California state bank or a California industrial loan company, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2 (commencing with Section 5000).

(b) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state bank, a California state-licensed foreign (other nation) bank, or a California industrial loan company, in which the purchasing or surviving depository corporation is a California state savings association, and which may

be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1.

(2) No conversion in which the converting depository corporation is a California state bank or a California industrial loan company, in which the resulting depository corporation is a California state savings association, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1.

(Amended by Stats. 2001, Ch. 159, Sec. 92. Effective January 1, 2002.)

4827.3. Except as otherwise provided in paragraph (2) of subdivision (a) of Section 4827.7 in the case of a California state-licensed foreign (other nation) bank or in federal law in the case of a federally licensed foreign (other nation) bank, nothing in this division except subdivision (c) of Section 4879.02 authorizes any sale or merger in a case where the purchasing or surviving corporation is a foreign (other nation) bank unless the foreign (other nation) bank is at the effective time of the sale or merger licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 or authorized under federal law to transact in this state the business to be acquired in the sale or merger.

(Amended by Stats. 1996, Ch. 887, Sec. 18. Effective September 25, 1996.)

4827.7. (a) (1) Except as otherwise provided in paragraph (2):

(A) No California state depository corporation may, as the selling or disappearing depository corporation, make a sale or merger pursuant to this division in which it would transfer to a California state-licensed or federally licensed foreign (other nation) bank any deposit or fiduciary account that the foreign bank is not authorized to accept.

(B) No California state-licensed foreign (other nation) bank may, as the purchasing or surviving depository corporation, make a sale or merger pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

(2) Notwithstanding paragraph (1) and Section 1755, a California state depository corporation may, as the selling or disappearing depository corporation, make a sale or merger pursuant to this division in which it transfers to a California state-licensed or federally licensed foreign (other nation) bank deposits or fiduciary accounts that the foreign bank is not authorized to accept, and a California state-licensed foreign (other nation) bank may, as the purchasing or surviving depository corporation, make a sale or merger pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale or merger, the foreign bank, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposits and fiduciary accounts to a depository corporation that is authorized to accept them.

(b) (1) Except as otherwise provided in paragraph (2):

(A) No California state bank or industrial loan company may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would transfer to a savings association any deposit or fiduciary account that the savings association is not authorized to accept.

(B) No California state savings association may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

(2) Notwithstanding paragraph (1) and Division 2 (commencing with Section 5000), a California state bank or industrial loan company may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it transfers to a savings association deposits or fiduciary accounts that the savings association is not authorized to accept, and a California state savings association may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale, merger, or conversion, the savings association, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposits and fiduciary accounts to a depository corporation that is authorized to accept them.

(c) (1) Except as otherwise provided in paragraph (2):

(A) No California state bank or savings association may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would transfer to an industrial loan company any deposit or fiduciary account that the industrial loan company is not authorized to accept.

(B) No California industrial loan company may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

(2) Notwithstanding paragraph (1) and Division 1 (commencing with Section 99), a California state bank or savings and loan association may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it transfers to an industrial loan company deposits or fiduciary accounts that the industrial loan company is not authorized to accept, and a California industrial loan company may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale, merger, or conversion, the industrial loan company, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposit accounts and fiduciary accounts to a depository corporation that is authorized to accept them.

(Amended by Stats. 2000, Ch. 1015, Sec. 46. Effective September 30, 2000.)

4828. Subject to the provisions of Sections 4827.3 and 4827.7 but notwithstanding any other provision of law:

(a) (1) If, as a result of any sale, merger, or conversion effected pursuant to the provisions of this division, a California state bank acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling, disappearing, or converting depository corporation but which is prohibited to California state banks, the commissioner may permit the California state bank a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California state bank a reasonable period of time in excess of 12 months if the commissioner finds that the bank cannot reasonably accomplish the divestment or conformity within the 12-month period.

(2) If, as a result of any sale or merger effected pursuant to the provisions of this division, a California state-licensed foreign (other nation) bank acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling or disappearing depository corporation but which is prohibited to California state-licensed foreign (other nation) banks, the commissioner may permit the California state-licensed foreign (other nation) bank a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California state-licensed foreign (other nation) bank a reasonable period of time in excess of 12 months if the commissioner finds that the bank cannot reasonably accomplish the divestment or conformity within the 12-month period.

(b) If, as a result of a sale, merger, or conversion effected pursuant to the provisions of this division, a California state savings association acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling, disappearing, or converting depository corporation but which is prohibited to California state savings associations, the commissioner may permit the California state savings association a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California state savings association a reasonable period of time in excess of 12 months if the commissioner finds that the savings association cannot reasonably accomplish the divestment or conformity within the 12-month period.

(c) If, as a result of a sale, merger, or conversion effected pursuant to the provisions of this division, a California industrial loan company acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling, disappearing, or converting depository corporation but which is prohibited to California industrial loan companies, the commissioner may permit the California industrial loan company a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California industrial loan company a reasonable period of time in excess of 12 months if the commissioner finds that the industrial loan company cannot reasonably accomplish the divestment or conformity within the 12-month period.

(Amended by Stats. 1996, Ch. 1064, Sec. 475.1. Effective January 1, 1997. Operative July 1, 1997.)

4828.3. A California state bank or an industrial loan company may, with the approval of the commissioner and its board and, if the transaction constitutes a reorganization as defined in Section 181 of the Corporations Code, subject to the provisions of Chapter 12 (commencing with Section 1200) of Division 1 of Title 1 of the Corporations Code, acquire in a single transaction all (except directors' qualifying shares, if any) of the outstanding shares of another depository corporation in accordance with a plan that provides either of the following:

(a) That the other depository corporation shall (1) immediately sell its whole business unit (as defined in Section 4840) to the California state bank or industrial loan company and (2) shall thereafter wind up and dissolve or, if the other

depository corporation is a California state bank or an industrial loan company and if the commissioner so approves, change into a nonbank corporation by amending its articles and changing its name.

(b) That the other depository corporation shall immediately merge into the California state bank or industrial loan company.

(Amended by Stats. 1998, Ch. 827, Sec. 1. Effective January 1, 1999.)

4828.7. (a) The definitions in Section 4840 apply to this section.

(b) In case a California state-licensed foreign (other nation) bank sells all or substantially all of its business in this state to another California state-licensed or federally licensed foreign (other nation) bank as part of the sale of a larger partial business unit or the whole business unit of the seller:

(1) No provision of Chapter 3 (commencing with Section 4840) applies except as follows:

(A) If the sale is of a partial business unit of the seller, Section 4879.14 applies with respect to the part of the seller's business in this state that is sold as if the sale were a sale of the type defined in Section 4879.01.

(B) If the sale is of the whole business unit of the seller, Section 4859 applies with respect to the seller's business in this state as if the sale were a sale of the type defined in Section 4845.

(2) Promptly after the sale becomes effective, the seller shall:

(A) Surrender to the commissioner for cancellation the licenses issued to it by the commissioner for its business in this state.

(B) File with the commissioner any report regarding the sale that the commissioner may require.

(c) In case a California state-licensed foreign (other nation) bank merges into another California state-licensed or federally licensed foreign (other nation) bank:

(1) No provision of Chapter 4 (commencing with Section 4880) applies except that the merger has the same effect with respect to the disappearing bank's business in this state as provided in Section 1107 of the Corporations Code and Section 4889 in the case of a merger of the type defined in Section 4880.

(2) Promptly after the merger becomes effective, the surviving bank shall:

(A) Surrender to the commissioner for cancellation the licenses issued to the disappearing bank by the commissioner for its business in this state.

(B) File with the commissioner any report regarding the merger that the commissioner may require.

(Amended by Stats. 1996, Ch. 1064, Sec. 477.1. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 2. ADMINISTRATION

(Chapter 2 added by Stats. 1982, Ch. 1411, Sec. 3.
Note: Prior to 1995, this chapter commenced with Section 4835.)

4830. Every final order, decision, license, or other official act of the commissioner under this division is subject to judicial review in accordance with law.
(Amended by Stats. 1996, Ch. 1064, Sec. 478. Effective January 1, 1997. Operative July 1, 1997.)

4831. (a) The commissioner may from time to time issue regulations and orders as may in his or her opinion be necessary to carry out the provisions and purposes of this division.

(b) Regulations and orders issued under this division may, among other things, define any term used in this division as well as any term not used in this division.

(c) For purposes of regulations and orders issued under this division, the commissioner may classify persons, transactions, and other matters within his or her jurisdiction and may prescribe different regulations or orders for different classes.

(d) The commissioner may waive any provision of any regulation or order which he or she has issued under this division in any case where in his or her opinion the provision is not necessary in the public interest.
(Amended by Stats. 1996, Ch. 1064, Sec. 479. Effective January 1, 1997. Operative July 1, 1997.)

4832. Whenever the commissioner issues an order or license under this division, he or she may impose conditions as may in his or her opinion be necessary to carry out the provisions and purposes of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 480. Effective January 1, 1997. Operative July 1, 1997.)

4833. In any proceeding under this division:

(a) The burden of proving that an application should be approved is upon the applicant.

(b) The burden of proving an exemption or an exception is upon the person claiming the exemption or the exception.
(Added by Stats. 1995, Ch. 480, Sec. 117. Effective October 2, 1995.)

4834. The commissioner may honor applications from interested persons for interpretive opinions regarding any provision of this division or of any regulation or order issued under this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 481. Effective January 1, 1997. Operative July 1, 1997.)

4835. Each application and report filed with the commissioner under this division or under any regulation or order issued under this division shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner requires, be verified in the manner that the commissioner may require.
(Amended by Stats. 1996, Ch. 1064, Sec. 482. Effective January 1, 1997. Operative July 1, 1997.)

4836. No person shall make any untrue statement of any material fact in any application or report filed with the commissioner under this division or under any regulation or order issued under this division, or willfully omit to state in any application or report filed with the commissioner under this division or under any regulation or order issued under this division any material fact which is required to be stated therein.
(Amended by Stats. 1996, Ch. 1064, Sec. 483. Effective January 1, 1997. Operative July 1, 1997.)

4837. In determining whether to approve any application filed under this division or under any regulation or order issued under this division, the commissioner may consider proposals made by the applicant; and, if in the opinion of the commissioner it is probable that the applicant will be able to implement any such proposal, the commissioner may make findings on the basis of the proposal. However, whenever the commissioner approves an application on the basis, in whole or in part, of a proposal made by the applicant, the commissioner shall impose upon the approval appropriate conditions requiring that the applicant implement the proposal within the period of time that the commissioner may specify.
(Amended by Stats. 1996, Ch. 1064, Sec. 484. Effective January 1, 1997. Operative July 1, 1997.)

4838. If the commissioner finds, with respect to any application filed under this division or under any regulation or order issued under this division, that not all the information which was required to be provided in or in connection with the application has been provided or that implementation of any proposal contained in the application would violate any applicable law, the commissioner may deny the application.
(Amended by Stats. 1996, Ch. 1064, Sec. 485. Effective January 1, 1997. Operative July 1, 1997.)

4839. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing an application for approval of a sale under this division shall be two thousand five hundred dollars ($2,500).

(b) The fee for filing an application for approval of a merger under this division shall be two thousand five hundred dollars ($2,500).

(c) (1) The fee for filing an application for approval of a conversion under this division shall be five thousand dollars ($5,000).

(2) The fee for issuing a certificate of authority or license under subdivision (a) of Section 4928 or subdivision (a) of Section 4948 shall be two thousand five hundred dollars ($2,500).

(d) The fee for issuing a certificate of authority or license under any other provision of this division shall be twenty-five dollars ($25).

(e) The fee for issuing a certificate under Section 4862, 4879.17, 4891, 4930, or 4952 shall be twenty-five dollars ($25).

(f) In case the commissioner makes an examination in connection with a pending application, as described in paragraph (1), (2), (3), (4), (5), or (6) the applicant shall pay a fee for the examination in the sum of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(1) Examination of the selling depository corporation in connection with a pending application for approval of a sale of a whole business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3.

(2) Examination of the partial business unit (as defined in Section 4840) to be sold and any related affairs of the selling depository corporation in connection with a pending application for approval of a sale of a partial business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3.

(3) Examination of the purchasing depository corporation in connection with a pending application for approval of a sale of a whole business unit (as defined in Section 4880) under Article 3.5 (commencing with Section 4876.01) of Chapter 3 or of a partial business unit (as defined in Section 4880) under Article 4.5 (commencing with Section 4878.01) of Chapter 3.

(4) Examination of the surviving depository corporation in connection with a pending application for approval of a merger under Article 4 (commencing with Section 4908.01) of Chapter 4.

(5) Examination of the disappearing depository corporation in connection with a pending application for approval of a merger under Article 1 (commencing with Section 4880) or Article 2 (commencing with Section 4895.01) of Chapter 4.

(6) Examination of the converting depository corporation in connection with a pending application for approval of a conversion under Article 1 (commencing with Section 4920) or Article 2 (commencing with Section 4940) of Chapter 5.

(Amended by Stats. 2003, Ch. 404, Sec. 8. Effective January 1, 2004.)

CHAPTER 3. SALE

(Chapter 3 added by Stats. 1982, Ch. 1411, Sec. 3.)

Article 1. General Provisions

(Article 1 added by Stats. 1982, Ch. 1411, Sec. 3.)

4840. In this chapter, unless the context otherwise requires:

(a) "Branch business unit" means all or substantially all of the business of a branch office of a depository corporation.

(b) "Business unit" means a branch business unit, a partial business unit, or a whole business unit.

(c) "Independent trust company" means a trust company that is neither a commercial bank nor a title insurance company.

(d) "Fiduciary asset," when used with respect to a depository corporation that transacts trust business, means any asset that the depository corporation holds in its capacity as fiduciary.

(e) "Partial business unit" means all or substantially all of any of the following:

(1) The business of any office, other than the head office, of a depository corporation.

(2) In the case of a depository corporation that transacts trust business:

(A) The trust business of the depository corporation, unless the depository corporation transacts only trust business.

(B) The trust business of any office of the depository corporation.

(C) The business, other than trust business, of the depository corporation.

(D) The business, other than trust business, of any office of the depository corporation.

In addition, "partial business unit" means any deposit, any fiduciary account, or any portion of the business of a depository corporation that includes a deposit or fiduciary account and that is less than substantially all of the business of the depository corporation.

(f) "Partial trust business unit" means:

(1) In the case of a California state depository corporation that is an independent trust company:

(A) All or substantially all of the business of any office, other than the head office, of the depository corporation.

(B) Any partial business unit consisting of one or more fiduciary accounts and no deposits.

(2) In the case of a California state depository corporation that is a commercial bank or savings association:

(A) All or substantially all of the trust business of the depository corporation.

(B) All or substantially all of the trust business of any office, other than the head office, of the depository corporation.

(C) Any partial business unit consisting of one or more fiduciary accounts and no deposits.

(g) "Purchaser" means a depository corporation that purchases a business unit from another depository corporation pursuant to the provisions of this chapter.

(h) "Seller" means a depository corporation that sells a business unit to another depository corporation pursuant to the provisions of this chapter.

(i) "Whole business unit" means all or substantially all of the business of a depository corporation.

(Amended by Stats. 1996, Ch. 887, Sec. 25. Effective September 25, 1996.)

4841. The provisions of Section 1001 of the Corporations Code shall not apply to any transaction which is subject to this chapter.

(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4842. If a trust is transferred under this chapter, the transfer shall be good cause for removal of the trustee under the Trust Law (Division 9 (commencing with Section 15000) of the Probate Code).

(Repealed and added by Stats. 1995, Ch. 480, Sec. 126. Effective October 2, 1995.)

4843. In case a national banking association or federal savings association that is authorized to transact trust business in this state sells a partial business unit located in this state of the type described in paragraph (1) or subparagraph (A) or (B) of paragraph (2) of subdivision (e) of Section 4840 to a national banking association or federal savings association pursuant to federal law, the sale shall:

(a) Have the same effect as provided in subdivision (e) of Section 4879.14 in the case of a sale of the type defined in Section 4879.01.

(b) Be subject to the provisions of Section 4842.

(Amended by Stats. 2003, Ch. 404, Sec. 9. Effective January 1, 2004.)

Article 2. Sale of Whole Business Unit to California State Depository Corporation or California State-Licensed Foreign (Other Nation) Bank
(Heading of Article 2 amended by Stats. 1995, Ch. 480, Sec. 128. Effective October 2, 1995.)

4845. In this article, unless the context otherwise requires, "sale" means any of the sales described in Section 4846.
(Amended by Stats. 1996, Ch. 1064, Sec. 487. Effective January 1, 1997. Operative July 1, 1997.)

4846. With the approval of the commissioner:

(a) A bank may sell its whole business unit to a California state bank or a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the seller is a national banking association or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the seller or purchaser is a foreign bank, the law of the foreign bank's domicile.

(b) An industrial loan company may sell its whole business unit to a California industrial loan company pursuant to (1) this article and (2) in case the seller is a foreign (other state) industrial loan company, the law of the foreign industrial loan company's domicile.

(c) A depository corporation of any class may sell its whole business unit to a California state depository corporation of another class or a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the seller is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, (3) in case the seller is a foreign depository corporation, the law of the foreign depository corporation's domicile, and (4) in case the purchaser is a California state-licensed foreign (other nation) bank, the law of the foreign bank's domicile.
(Amended by Stats. 1996, Ch. 1064, Sec. 488. Effective January 1, 1997. Operative July 1, 1997.)

4847. A seller and purchaser shall make an agreement of sale, providing:

(a) That the seller shall sell to the purchaser, and the purchaser shall purchase from the seller, the seller's whole business unit.

(b) That the purchaser will assume and be subject to all the debts and liabilities of the seller in the same manner as if the purchaser had itself incurred them.

(c) Other provisions as may be appropriate.
(Amended by Stats. 1995, Ch. 480, Sec. 132. Effective October 2, 1995.)

4848. The agreement of sale shall be approved by the seller and purchaser, as follows:

(a) In the case of a California state depository corporation:

(1) If the sale constitutes a reorganization, as defined in Section 181 of the Corporations Code, the agreement of sale shall be approved as required by Chapter 12 (commencing with Section 1200) of Division 1 of Title 1 of the Corporations Code.

(2) If the sale does not constitute a reorganization, as defined in Section 181 of the Corporations Code, and if the California state depository corporation is the seller, the agreement of sale shall be approved by the board of the seller, and the principal terms of the agreement of sale shall be approved by the outstanding shares of the seller.

(3) If the sale does not constitute a reorganization, as defined in Section 181 of the Corporations Code, and if the California state depository corporation is the purchaser:

(A) If, as of the time when the agreement of sale is made, the deposits, if any, of the business unit are less than 10 percent of the total deposits of the purchaser and the fiduciary assets, if any, of the business unit are less than 10 percent of the total fiduciary assets of the purchaser, the agreement of sale shall be approved by the board of the purchaser.

(B) Otherwise, the agreement of sale shall be approved by the board of the purchaser, and the principal terms of the agreement of sale shall be approved by the outstanding shares of the purchaser.

(4) For purposes of paragraph (3):

(A) The amount of deposits shall be determined as of the end of the calendar quarter immediately preceding the making of the agreement of sale.

(B) The value of fiduciary assets shall be the net carrying value, as determined in conformity with generally accepted accounting principles, as of the end of the calendar quarter immediately preceding the making of the agreement of sale.

(b) In the case of a depository corporation other than a

California state depository corporation, the agreement of sale shall be approved as required by the law of the depository corporation's domicile.
(Amended by Stats. 1995, Ch. 480, Sec. 133. Effective October 2, 1995.)

4849. (a) Any amendment to an agreement of sale shall be approved by the seller and purchaser, as follows:

(1) In the case of a California state depository corporation, by the board of the corporation, and, if the principal

terms of the agreement of sale were required to be approved by the outstanding shares of the corporation under Section 4848 and if the amendment changes any of the principal terms of the agreement of sale, by the outstanding shares of the corporation.

(2) In the case of a depository corporation other than a California state depository corporation, as required by the law of the depository corporation's domicile.

(b) If an agreement of sale is amended and if the amendment is approved as required by subdivision (a), the agreement of sale, as thus amended, constitutes the agreement of sale.

(Amended by Stats. 1996, Ch. 887, Sec. 27. Effective September 25, 1996.)

4850. In the case of a seller or purchaser which is a California state depository corporation, any approval of the outstanding shares of the corporation required by Section 4848 or 4849 may be given before or after the approval of the board of the corporation.

(Amended by Stats. 1995, Ch. 480, Sec. 135. Effective October 2, 1995.)

4851. In obtaining any approval of outstanding shares required for an agreement of sale, in case the purchaser is a California state depository corporation, the purchaser, and, in case the seller is a California state depository corporation or in case the purchaser is a California state depository corporation that is to issue securities in consideration of the sale, the seller, shall each provide to its shareholders information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank, the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.

(Amended by Stats. 1996, Ch. 1064, Sec. 489. Effective January 1, 1997. Operative July 1, 1997.)

4852. A purchaser or seller that is a California state depository corporation, with the approval of its board and without further approval of the outstanding shares, may, and any other purchaser or seller, with approval as may be required under the law of its domicile, may, abandon the sale at any time before the sale becomes effective, subject to the contractual rights, if any, of other parties, including the seller or purchaser, as the case may be.

(Amended by Stats. 1995, Ch. 480, Sec. 137. Effective October 2, 1995.)

4853. In case a purchaser is a California state depository corporation, the provisions of Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code do not apply to the shareholders of the purchaser in a sale.

(Amended by Stats. 1995, Ch. 480, Sec. 138. Effective October 2, 1995.)

4854. A purchaser shall file the following with the commissioner:

(a) A copy of the agreement of sale.

(b) An officers' certificate of the purchaser, certifying that the agreement of sale has been approved by the purchaser as required by Sections 4848 and 4849.

(c) An officers' certificate of the seller, certifying that the agreement of sale has been approved by the seller as required by Sections 4848 and 4849.

(d) An application for approval of the sale.

(Amended by Stats. 1996, Ch. 1064, Sec. 490. Effective January 1, 1997. Operative July 1, 1997.)

4855. If the commissioner finds all of the following with respect to an application for approval of a sale, the commissioner shall approve the application:

(a) That the sale will not result in a monopoly and will not be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking, savings association, or industrial loan business in any part of this state.

(b) That the sale will not have the effect in any section of this state of substantially lessening competition, tending to create a monopoly, or otherwise being in restraint of trade, or that the anticompetitive effect is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served.

(c) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(d) That the directors and executive officers of the purchaser will be satisfactory.

(e) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will be operated in a safe and sound manner and in compliance with all applicable laws.

(f) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

(g) In the case of a sale where the seller is a California savings association, that the sale will not have a seriously adverse effect on the total availability of financing for housing in the market area of the seller in this state or that any effect of that type is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served. Nothing in this subdivision authorizes the commissioner to require the purchaser to make financing for housing available.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the sale.

(Amended by Stats. 1996, Ch. 1064, Sec. 491. Effective January 1, 1997. Operative July 1, 1997.)

4857. After an application for approval of a sale has been approved and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy of the agreement of sale, and at that time the sale shall become effective for all purposes.

(Amended by Stats. 1996, Ch. 1064, Sec. 493.1. Effective January 1, 1997. Operative July 1, 1997.)

4858. When a sale becomes effective:

(a) Unless the purchaser provided otherwise in the application for approval of the sale or unless the commissioner provided otherwise in the approval of the application:

(1) The purchaser may establish and maintain a branch office at the head office of the seller and establish and maintain equivalent offices at the branch offices, places of business, extensions of offices, and other facilities, if any, of the seller.

(2) If the seller was authorized to transact and was transacting trust business, the purchaser, if it is a California state bank or savings association, may transact trust business.

(b) The commissioner shall issue to the purchaser certificates of authority, licenses, and other authorizations as may be necessary to carry out the provisions of subdivision (a).

(Amended by Stats. 1996, Ch. 1064, Sec. 494. Effective January 1, 1997. Operative July 1, 1997.)

4859. When a sale becomes effective:

(a) The purchaser shall succeed, without other transfer, to all the rights and property of the seller except any rights and property of the seller which are specifically not sold to the purchasing corporation under the agreement of sale.

(b) The purchaser shall assume and be subject to all the debts and liabilities of the seller in the same manner as if the purchaser had itself incurred them.

(c) All rights of creditors of the seller and all liens upon the property of the seller shall be preserved unimpaired, provided that such liens upon the property of the seller shall be limited to the property affected thereby immediately prior to the time when the sale becomes effective.

(d) Any action or proceeding pending by or against the seller may be prosecuted to judgment, which shall bind the purchaser, or the purchaser may be proceeded against or substituted in place of the seller.

(e) Any reference to the seller in any writing, whether executed or taking effect before or after the sale, shall be deemed a reference to the purchaser, if not inconsistent with the other provisions of the writing.

(f) In case the seller was transacting trust business, the purchaser shall succeed, without further transfer, to the rights, obligations, properties, assets, investments, deposits, demands, agreements, and trusts of the seller under all trusts, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities to the same extent as if the purchaser had originally assumed the fiduciary or representative capacities, and the purchaser shall be entitled to take and execute the appointment to all executorships, trusteeships, guardianships, and other fiduciary or representative capacities to which the seller is or may be named in wills, whenever probated, or to which the seller is or may be named or appointed by any other instrument.

(Amended by Stats. 1995, Ch. 480, Sec. 142. Effective October 2, 1995.)

4860. No action on account of any debt or liability assumed by a purchaser in a sale may be commenced against the seller more than one year after the time when the sale becomes effective.

(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4861. Promptly after a sale becomes effective:

(a) The seller shall:

(1) Surrender to the commissioner for cancellation the certificates of authority or licenses issued to it by the commissioner.

(2) File with the commissioner any report regarding the sale that the commissioner may require.

(b) In case the seller is a California state depository corporation, the seller shall wind up and dissolve. However, if the seller is a California state bank, the seller may, in the alternative and with the approval of the commissioner, change into a nonbank corporation by amending its articles and changing its name.

(Amended by Stats. 1996, Ch. 1064, Sec. 495. Effective January 1, 1997. Operative July 1, 1997.)

4862. (a) After a sale becomes effective, the commissioner shall issue, upon application, a certificate under his or her official seal, stating that the seller sold its whole business unit to the purchaser and specifying the time at which the sale became effective.

(b) Any certificate pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.

(Amended by Stats. 1996, Ch. 1064, Sec. 496. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Sale of Whole Business Unit to Federal Depository Corporation, California Federally Licensed Foreign (Other Nation) Bank, or Insured Foreign (Other State) State Depository Corporation (Heading of Article 3 amended by Stats. 1996, Ch. 887, Sec. 29. Effective September 25, 1996.)

4870. In this article, unless the context otherwise requires, "sale" means any of the sales described in Section 4871.

(Amended by Stats. 1995, Ch. 480, Sec. 146. Effective October 2, 1995.)

4871. (a) A California state bank may sell its whole business unit to a national banking association, a California federally licensed foreign (other nation) bank, or an insured foreign (other state) state bank pursuant to (1) this article, (2) in case the purchaser is a national banking association or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the purchaser is a California federally licensed foreign (other nation) bank or an insured foreign (other state) state bank, the law of the foreign bank's domicile.

(b) A California industrial loan company may sell its whole business unit to an insured foreign (other state) industrial loan company pursuant to (1) this article and (2) the law of the foreign industrial loan company's domicile.

(c) A California state depository corporation of any class may sell its whole business unit to a federal depository corporation of another class, a California federally licensed foreign (other nation) bank, or an insured foreign (other state) state depository corporation of another class pursuant to (1) this article, (2) in case the purchaser is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the purchaser is a California federally licensed foreign (other nation) bank or an insured foreign (other state) state depository corporation, the law of the domicile of the foreign bank or foreign depository corporation.

(Repealed and added by Stats. 1995, Ch. 480, Sec. 148. Effective October 2, 1995.)

4871.5. (a) No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts a sale in a case where the seller is a California state bank or a California industrial loan company.

(b) No provision of Division 2 (commencing with Section 5000) prohibits or restricts a sale in a case where the seller is a California state savings and loan association.

(Amended by Stats. 2000, Ch. 1015, Sec. 47. Effective September 30, 2000.)

4872. A sale is subject to the provisions of Sections 4847 to 4850, inclusive, and 4852 as if the sale were a sale of the type defined in Section 4845.

(Amended by Stats. 1996, Ch. 887, Sec. 31. Effective September 25, 1996.)

4873. A sale shall have the same effect as provided in Sections 4859 and 4860 in the case of a sale of the type defined in Section 4845.

(Amended by Stats. 1995, Ch. 480, Sec. 151. Effective October 2, 1995.)

4874. Promptly after a sale becomes effective:

(a) The seller shall:

(1) Surrender to the commissioner for cancellation the certificates of authority or licenses issued to it by the commissioner.

(2) File with the commissioner any report of the sale that the commissioner may require.

(b) The seller shall wind up and dissolve. However, if the seller is a California state bank, the seller may, in the alternative and with the approval of the commissioner, change into a nonbank corporation by amending its articles and changing its name.

(Amended by Stats. 1996, Ch. 1064, Sec. 497. Effective January 1, 1997. Operative July 1, 1997.)

4875. (a) After a sale becomes effective, the seller or purchaser may issue an officer's certificate stating that the seller sold its whole business unit to the purchaser and specifying the time at which the sale became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.
(Amended by Stats. 1995, Ch. 480, Sec. 153. Effective October 2, 1995.)

Article 3.5. Sale of Whole Business Unit of California State Independent Trust Company to Uninsured Foreign (Other State) State Depository Corporation

(Article 3.5 added by Stats. 1996, Ch. 887, Sec. 32. Effective September 25, 1996.)

4876.01. In this article, unless the context otherwise requires, "sale" means any sale described in Section 4876.02.
(Added by Stats. 1996, Ch. 887, Sec. 32. Effective September 25, 1996.)

4876.02. With the approval of the commissioner, a
California state independent trust company may sell its whole business unit to an uninsured foreign (other state) state depository corporation pursuant to this article and the law of the purchaser's domicile.
(Amended by Stats. 1996, Ch. 1064, Sec. 497.2. Effective January 1, 1997. Operative July 1, 1997.)

4876.03. A sale is subject to the provisions of Sections
4847 to 4852 as if the sale were a sale of the type defined in Section 4845.
(Added by Stats. 1996, Ch. 887, Sec. 32. Effective September 25, 1996.)

4876.04. A seller shall file the following with the commissioner:

(a) A copy of the agreement of sale.

(b) An officers' certificate of the purchaser, certifying that the agreement of sale has been approved by the purchaser as required by Sections 4848 and 4849.

(c) An officers' certificate of the seller, certifying that the agreement of sale has been approved by the seller as required by Sections 4848 and 4849.

(d) An application for approval of the sale.
(Amended by Stats. 1996, Ch. 1064, Sec. 497.3. Effective January 1, 1997. Operative July 1, 1997.)

4876.05. If the commissioner finds all of the following with respect to an application for approval of a sale, the commissioner shall approve the application:

(a) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(b) That the directors and executive officers of the purchaser will be satisfactory.

(c) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will operate in a safe and sound manner and in compliance with all applicable laws.

(d) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's-length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the sale.
(Amended by Stats. 1996, Ch. 1064, Sec. 497.4. Effective January 1, 1997. Operative July 1, 1997.)

4876.06. After an application for approval of a sale has been approved and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy of the agreement of sale. The sale shall become effective for all purposes at that time except that, if the law of the purchaser's domicile provides for the sale to become effective at a later time, it shall become effective at the later time.
(Amended by Stats. 1996, Ch. 1064, Sec. 497.5. Effective January 1, 1997. Operative July 1, 1997.)

4876.07. A sale shall have the same effect as provided in Sections 4859 and 4860 in the case of a sale of the type defined in Section 4845.
(Added by Stats. 1996, Ch. 887, Sec. 32. Effective September 25, 1996.)

4876.08. Promptly after a sale becomes effective:

(a) The seller shall:

(1) Surrender to the commissioner for cancellation the certificates of authority issued to it by the commissioner.

(2) File with the commissioner any report of the sale that the commissioner may require.

(b) The seller shall wind up and dissolve. However, the seller may, in the alternative and with the approval of the commissioner, change into a nonbank corporation by amending its articles and changing its name.
(Amended by Stats. 1996, Ch. 1064, Sec. 497.6. Effective January 1, 1997. Operative July 1, 1997.)

4876.09. (a) After a sale becomes effective, the seller or purchaser may issue an officers' certificate stating that the seller sold its whole business unit to the purchaser and specifying the time at which the sale became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.

(Added by Stats. 1996, Ch. 887, Sec. 32. Effective September 25, 1996.)

Article 4. Certain Sales of Partial Business Units

(Article 4 added by Stats. 1995, Ch. 480, Sec. 154. Effective October 2, 1995.)

4877.01. In this article, unless the context otherwise requires, "sale" means any of the sales described in Section 4877.02.

(Amended by Stats. 1996, Ch. 1064, Sec. 498. Effective January 1, 1997. Operative July 1, 1997.)

4877.02. A California state bank or a California industrial loan company may sell a California branch business unit to an insured foreign (other state) bank or an insured foreign (other state) industrial loan company pursuant to (1) this article and (2) the law of the domicile of the insured foreign (other state) bank or the insured foreign (other state) industrial loan company.

(Added by Stats. 1995, Ch. 480, Sec. 154. Effective October 2, 1995.)

4877.03. No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts a sale in a case where the seller is a California state bank or a California industrial loan company.

(Amended by Stats. 2000, Ch. 1015, Sec. 48. Effective September 30, 2000.)

4877.04. A sale is subject to the provisions of Sections 4879.03 to 4879.06, inclusive, and Section 4879.08 as if the sale were a sale of the type defined in Section 4879.01.

(Amended by Stats. 1996, Ch. 887, Sec. 34. Effective September 25, 1996.)

4877.05. A sale shall have the same effect as provided in Sections 4879.14 and 4879.15 in the case of a sale of the type defined in Section 4879.01.

(Added by Stats. 1995, Ch. 480, Sec. 154. Effective October 2, 1995.)

4877.06. Promptly after a sale becomes effective, the seller shall:

(a) Surrender to the commissioner for cancellation the certificate of authority or license issued to it by the commissioner that relates to the California branch business unit sold.

(b) File with the commissioner any report of the sale that the commissioner may require.

(Amended by Stats. 1996, Ch. 1064, Sec. 499. Effective January 1, 1997. Operative July 1, 1997.)

4877.07. (a) After a sale becomes effective, the seller or purchaser may issue an officer's certificate stating that the seller sold a California branch business unit to the purchaser, describing the business unit, and specifying the time at which the sale became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.

(Added by Stats. 1995, Ch. 480, Sec. 154. Effective October 2, 1995.)

Article 4.5. Sale of Partial Trust Business Unit by California State Bank or Savings Association to Uninsured Foreign (Other State) State Depository Corporation

(Article 4.5 added by Stats. 1996, Ch. 887, Sec. 35. Effective September 25, 1996.)

4878.01. In this article, unless the context otherwise requires, "sale" means any sale described in Section 4878.02.

(Amended by Stats. 1996, Ch. 1064, Sec. 499.2. Effective January 1, 1997. Operative July 1, 1997.)

4878.02. With the approval of the commissioner, a California state bank or savings association may sell a partial trust business unit to an uninsured foreign (other state) state depository corporation pursuant to (a) this article and (b) the law of the purchaser's domicile.

(Amended by Stats. 1996, Ch. 1064, Sec. 499.3. Effective January 1, 1997. Operative July 1, 1997.)

4878.03. A sale is subject to the provisions of Sections 4879.03. to 4879.09, inclusive, as if the sale were a sale of the type defined in Section 4879.01.
(Added by Stats. 1996, Ch. 887, Sec. 35. Effective September 25, 1996.)

4878.04. If the commissioner finds all of the following with respect to an application for approval of a sale, the commissioner shall approve the application:

(a) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(b) That the directors and executive officers of the purchaser will be satisfactory.

(c) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will operate in a safe and sound manner and in compliance with all applicable laws.

(d) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's-length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

(e) That the sale will not have a seriously adverse effect on the safety or soundness of the seller.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the sale.
(Amended by Stats. 1996, Ch. 1064, Sec. 499.4. Effective January 1, 1997. Operative July 1, 1997.)

4878.05. After an application for approval of a sale has been approved by the commissioner and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy of the agreement of sale. The sale shall become effective for all purposes at that time, except that, if the law of the purchaser's domicile provides for the sale to become effective at a later time, it shall become effective at the later time.
(Amended by Stats. 1996, Ch. 1064, Sec. 499.5. Effective January 1, 1997. Operative July 1, 1997.)

4878.06. A sale shall have the same effect as provided in Sections 4879.14 and 4879.15 in the case of a sale of the type defined in Section 4879.01.
(Added by Stats. 1996, Ch. 887, Sec. 35. Effective September 25, 1996.)

4878.07. (a) In case a seller is a California state commercial bank and sells all of its trust business in a sale:

(1) As of the time when the sale becomes effective, the commissioner shall issue to the seller certificates of authority authorizing it to transact commercial banking business in replacement of the certificates of authority that the seller is required to surrender pursuant to paragraph (2).

(2) Promptly after the sale becomes effective, the seller shall surrender to the commissioner for cancellation its certificates of authority authorizing it to transact commercial banking business and trust business and shall file with the commissioner any report of the sale that the commissioner may require.

(b) In any other case, promptly after the sale becomes effective, the seller shall:

(1) Surrender to the commissioner for cancellation the certificate of authority or license for any office closed as a result of the sale.

(2) File with the commissioner any report of the sale that the commissioner may require.
(Amended by Stats. 1996, Ch. 1064, Sec. 499.6. Effective January 1, 1997. Operative July 1, 1997.)

4878.08. (a) After a sale becomes effective, the seller or purchaser may issue an officers' certificate stating that the seller sold a partial trust business unit to the purchaser, describing the business unit, and specifying the time at which the sale became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.
(Added by Stats. 1996, Ch. 887, Sec. 35. Effective September 25, 1996.)

Article 5. Other Sales of Partial Business Units
(Article 5 added by Stats. 1995, Ch. 480, Sec. 155. Effective October 2, 1995.)

4879.01. In this article, unless the context otherwise requires, "sale" means any of the sales described in Section 4879.02.
(Amended by Stats. 1996, Ch. 1064, Sec. 500. Effective January 1, 1997. Operative July 1, 1997.)

4879.02. With the approval of the commissioner:

(a) A bank may sell a partial business unit to a California state bank pursuant to (1) this article, (2) in case the seller is a national banking association or a California federally licensed foreign (other nation) bank, federal law, (3) in case the seller is a foreign bank, the law of the foreign bank's domicile, and (4) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located.

(b) A California state bank may sell a partial business unit to another California state bank, a national banking association, or an insured foreign (other state) state bank, pursuant to (1) this article, (2) in case the purchaser is a national banking association, federal law, (3) in case the purchaser is an insured foreign (other state) state bank, the law of the foreign bank's domicile, and (4) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located. However, this subdivision does not apply to any sale of the type defined in Section 4877.01.

(c) A California state bank may sell a partial business unit located outside this state to a foreign (other nation) bank pursuant to (1) this article, (2) the law of the foreign bank's domicile, and (3) the law of the place where the partial business unit is located.

(d) An industrial loan company may sell a partial business unit to a California industrial loan company pursuant to (1) this article, (2) in case the seller is a foreign (other state) industrial loan company, the law of the foreign industrial loan company's domicile, and (3) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located.

(e) A California industrial loan company may sell a partial business unit to an insured industrial loan company pursuant to (1) this article, (2) in case the purchaser is an insured foreign (other state) industrial loan company, the law of the foreign industrial loan company's domicile, and (3) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located. However, this subdivision does not apply to any sale of the type defined in Section 4877.01.

(f) A depository corporation of any class may sell a partial business unit to a California state depository corporation of another class pursuant to (1) this article, (2) in case the seller is a federal depository corporation, federal law, (3) in case the seller is a foreign (other state) state depository corporation or foreign (other nation) depository corporation, the law of the foreign depository corporation's domicile, and (4) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located.

(g) A California state depository corporation of any class may sell a partial business unit to a federal depository corporation of another class or an insured foreign (other state) state depository corporation of another class pursuant to (1) this article, (2) in case the purchaser is a federal depository corporation, federal law, (3) in case the purchaser is an insured foreign (other state) state depository corporation, the law of the foreign depository corporation's domicile, and (4) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located. However, this subdivision does not apply to any sale of the type defined in Section 4877.01.

(h) A depository corporation may sell a partial business unit located in this state to a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the seller is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, (3) in case the seller is a foreign depository corporation, the law of the foreign depository corporation's domicile, and (4) the law of the purchaser's domicile.

(i) A California state-licensed foreign (other nation) bank may sell a partial business unit located in this state to a California state depository corporation, a federal depository corporation, an insured foreign (other state) state depository corporation, another California state-licensed foreign (other nation) bank, or a California federally licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the purchaser is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, (3) in case the purchaser is a foreign depository corporation, the law of the foreign depository corporation's domicile, and (4) the law of the seller's domicile.

(j) A California state depository corporation may sell a partial business unit located in this state to a California federally licensed foreign (other nation) bank pursuant to (1) this article, (2) federal law, and (3) the law of the purchaser's domicile.

(k) A California federally licensed foreign (other nation) bank may sell a partial business unit located in this state to a California state depository corporation pursuant to (1) this article,

(2) federal law, and (3) the law of the seller's domicile.

(Amended by Stats. 1996, Ch. 1064, Sec. 501. Effective January 1, 1997. Operative July 1, 1997.)

4879.03. A seller and purchaser shall make an agreement of sale, providing:

(a) That the seller shall sell to the purchaser, and the purchaser shall purchase from the seller, a partial business unit, describing it.

(b) Other provisions as may be appropriate.

(Added by Stats. 1995, Ch. 480, Sec. 155. Effective October 2, 1995.)

4879.04. The agreement of sale shall be approved by the seller and purchaser, as follows:

(a) In the case of a California state depository corporation:

(1) If, as of the time when the agreement of sale is made, the deposits, if any, of the partial business unit are less than 10 percent of the total deposits of the state depository corporation and the fiduciary assets, if any, of the partial business unit are less than 10 percent of the total fiduciary assets of the state depository corporation, the agreement of sale shall be approved by the board of the state depository corporation.

(2) Otherwise, the agreement of sale shall be approved by the board of the state depository corporation, and the principal terms of the agreement of sale shall be approved by the outstanding shares of the state depository corporation.

(3) For purposes of paragraphs (1) and (2):

(A) The amount of deposits shall be determined as of the end of the calendar quarter immediately preceding the making of the agreement of sale.

(B) The value of fiduciary assets shall be the net carrying value, as determined in conformity with generally accepted accounting principles, as of the end of the calendar quarter immediately preceding the making of the agreement of sale.

(b) In the case of a depository corporation other than a

California state depository corporation, the agreement of sale shall be approved as required by the law of the depository corporation's domicile.

(Added by Stats. 1995, Ch. 480, Sec. 155. Effective October 2, 1995.)

4879.05. (a) Any amendment to an agreement of sale shall be approved by the seller and purchaser, as follows:

(1) In the case of a California state depository corporation, by the board of the corporation, and, if the principal terms of the agreement of sale were required to be approved by the outstanding shares of the corporation under Section 4879.04 and if the amendment changes any of the principal terms of the agreement of sale, by the outstanding shares of the corporation.

(2) In the case of a depository corporation other than a California state depository corporation, as required by the law of the depository corporation's domicile.

(b) If an agreement of sale is amended and if the amendment is approved as required by subdivision (a), the agreement of sale, as thus amended, constitutes the agreement of sale.

(Added by Stats. 1995, Ch. 480, Sec. 155. Effective October 2, 1995.)

4879.06. In the case of a seller or purchaser that is a California state depository corporation, any approval of the outstanding shares of the corporation required by Section 4879.04 or 4879.05 may be given before or after the approval of the board of the depository corporation.

(Added by Stats. 1995, Ch. 480, Sec. 155. Effective October 2, 1995.)

4879.07. In obtaining any approval of outstanding shares required for an agreement of sale, a purchaser or seller that is a California state depository corporation and, in any case where the purchaser is a California state depository corporation that is to issue securities in consideration of the sale, the seller shall each provide to its shareholders information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank, the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.

(Amended by Stats. 1996, Ch. 1064, Sec. 502. Effective January 1, 1997. Operative July 1, 1997.)

4879.08. A purchaser or seller that is a California state depository corporation, with the approval or its board and without further approval of the outstanding shares, may, and any other purchaser or seller, with approval as may be required under the law of its domicile, may, in its discretion, abandon the sale at any time before the sale becomes effective, subject to the contractual rights, if any, of other parties, including the seller or purchaser, as the case may be.

(Added by Stats. 1995, Ch. 480, Sec. 155. Effective October 2, 1995.)

4879.09. A purchaser or seller that is a California state depository corporation or California state-licensed foreign (other nation) bank, shall file the following with the commissioner:

(a) A copy of the agreement of sale.

(b) An officers' certificate of the purchaser, certifying that the agreement of sale has been approved by the purchaser as required by Sections 4879.04 and 4879.05.

(c) An officers' certificate of the seller, certifying that the agreement of sale has been approved by the seller as required by Sections 4879.04 and 4879.05.

(d) An application for approval of the sale.

(Amended by Stats. 1996, Ch. 1064, Sec. 503. Effective January 1, 1997. Operative July 1, 1997.)

4879.10. (a) In case the purchaser is either, and the seller is not either, a California state depository corporation or California state-licensed foreign (other nation) bank, if the commissioner finds all of the following with respect to an application for approval of a sale, he or she shall approve the application:

(1) That the sale will not result in a monopoly and will not be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking, savings association, or industrial loan business in any part of this state.

(2) That the sale will not have the effect in any section of this state of substantially lessening competition, tending to create a monopoly, or otherwise being in restraint of trade, or that the anticompetitive effect is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served.

(3) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(4) That the directors and executive officers of the purchaser will be satisfactory.

(5) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will be operated in a safe and sound manner and in compliance with all applicable laws.

(6) That the sale will be fair, just, and equitable. For purposes of this paragraph, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

(7) In the case of a sale where the seller is a California savings association, that the sale will not have a seriously adverse effect on the total availability of financing for housing in any market area of the seller in this state or that any effect of that type is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served. Nothing in this subdivision authorizes the commissioner to require the purchaser to make financing for housing available.

If the commissioner finds otherwise, he or she shall deny the application for approval of the sale.

(b) In case the seller is either, and the purchaser is not either, a California state depository corporation or a California state-licensed foreign (other nation) bank, if the commissioner finds all of the following with respect to an application for approval of a sale, he or she shall approve the application:

(1) That the sale will not have a seriously adverse effect on the safety or soundness of the seller.

(2) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

If the commissioner finds otherwise, he or she shall deny the application for approval of the sale.

(c) In case the seller and the purchaser are each either a California state depository corporation or a California state depository corporation or a California state-licensed foreign (other nation) bank, if the commissioner finds all of the factors set forth in subdivisions (a) and (b) with respect to an application for approval of a sale, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(Amended by Stats. 1996, Ch. 1064, Sec. 504.1. Effective January 1, 1997. Operative July 1, 1997.)

4879.11. After an application for approval of a sale has been approved by the commissioner and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy of the agreement of sale, and at that time the sale shall become effective for all purposes.

(Added by renumbering Section 4879.12 by Stats. 2003, Ch. 404, Sec. 10. Effective January 1, 2004.)

4879.12. When a sale becomes effective, in case the purchaser is a California state depository corporation or California state-licensed foreign (other nation) bank:

(a) Unless the purchaser provided otherwise in the application for approval of the sale or unless the commissioner provided otherwise in the approval of the application:

(1) The purchaser may establish equivalent offices at any branch offices, places of business, extensions of offices, and other facilities of the seller transferred in the sale.

(2) If the seller was authorized to transact trust business and if the partial business unit sold includes any trust business, the purchaser, if it is a California state bank or savings association, may transact trust business.

(b) The commissioner shall issue to the purchaser certificates of authority, licenses, and other authorizations as may be necessary to carry out the provisions of subdivision (a).

(Added by renumbering Section 4879.13 by Stats. 2003, Ch. 404, Sec. 11. Effective January 1, 2004.)

4879.13. In case a seller is a California state commercial bank and sells all of its trust business in a sale:

(a) As of the time when the sale becomes effective, the commissioner shall issue to the seller certificates of authority authorizing it to transact commercial banking business in replacement of the certificates of authority that the seller is required to surrender pursuant to subdivision (b).

(b) Promptly after the sale becomes effective, the seller shall surrender to the commissioner for cancellation its certificates of authority authorizing it to transact commercial banking business and trust business.

(Added by renumbering Section 4879.135 by Stats. 2003, Ch. 404, Sec. 12. Effective January 1, 2004.)

4879.14. When a sale becomes effective:

(a) The purchaser shall succeed, without other transfer, to all rights and property of the seller which are sold to the purchaser under the agreement of sale.

(b) The purchaser shall assume in the same manner as if the purchaser had itself incurred such debts and liabilities, and shall be subject to, all debts and liabilities of the seller transferred to the purchaser under the agreement of sale.

(c) All rights of creditors of the seller and all liens upon the property of the seller shall be preserved unimpaired.

(d) Any action or proceeding pending by or against the seller which was sold or transferred to the purchaser under the agreement of sale may be prosecuted to judgment, which shall bind the purchaser, or the purchaser may be proceeded against or substituted in place of the seller.

(e) (1) In case the partial business unit sold includes trust business, the purchaser shall succeed, without further transfer, to the rights, obligations, properties, assets, investments, deposits, demands, agreements, and trusts of the seller under all trusts, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities sold to the purchaser under the agreement of sale, to the same extent as if the purchaser had originally assumed the fiduciary or representative capacities.

(2) In case the partial business unit sold constitutes all or substantially all the trust business of the seller, the purchaser shall, in addition, be entitled to take and execute the appointment to all executorships, trusteeships, guardianships, and other fiduciary or representative capacities to which the seller is or may be named in wills, whenever probated, or to which the seller is or may be named or appointed by any other instrument.

(Added by Stats. 1995, Ch. 480, Sec. 155. Effective October 2, 1995.)

4879.15. No action on account of any debt or liability assumed by a purchaser in a sale may be commenced against the seller more than one year after the time when the sale becomes effective.

(Added by Stats. 1995, Ch. 480, Sec. 155. Effective October 2, 1995.)

4879.16. Promptly after a sale becomes effective, the seller shall:

(a) Surrender to its regulator for cancellation the certificates of authority or licenses issued to it by the regulator that relate to the partial business unit sold.

(b) File with its regulator any report regarding the sale that the regulator may require.

(Added by Stats. 1995, Ch. 480, Sec. 155. Effective October 2, 1995.)

4879.17. (a) After a sale becomes effective, the commissioner shall issue, upon application, a certificate under his or her official seal, stating that the seller sold a partial business unit to the purchaser, describing the business unit, and specifying the time at which the sale became effective.

(b) Any certificate pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.

(Amended by Stats. 1996, Ch. 1064, Sec. 508. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 4. MERGER

(Chapter 4 added by Stats. 1982, Ch. 1411, Sec. 3.)

Article 1. Merger Into California State Depository Corporation

(Heading of Article 1 amended by Stats. 1995, Ch. 480, Sec. 156. Effective October 2, 1995.)

4880. In this article, unless the context otherwise requires:

(a) "Agreement of merger" includes a certificate of ownership executed pursuant to Section 1110 of the Corporations Code.

(b) "Merger" means any of the mergers described in Section 4881.

(Amended by Stats. 1996, Ch. 1064, Sec. 509.1. Effective January 1, 1997. Operative July 1, 1997.)

4881. (a) With the approval of the commissioner, a bank may merge into a California state bank pursuant to (1) this article, (2) in case the disappearing bank is a national banking association or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the disappearing bank is a foreign bank, the law of the foreign bank's domicile.

(b) With the approval of the commissioner, an industrial loan company may merge into a California industrial loan company pursuant to (1) this article and (2) in case the disappearing industrial loan company is a foreign (other state) industrial loan company, the law of the foreign industrial loan company's domicile.

(c) With the approval of the commissioner, a depository corporation of any class may merge into a California state depository corporation of another class pursuant to (1) this article, (2) in case the disappearing depository corporation is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the disappearing depository corporation is a foreign depository corporation, the law of the disappearing depository corporation's domicile.

(Amended by Stats. 1996, Ch. 1064, Sec. 510. Effective January 1, 1997. Operative July 1, 1997.)

4882. In obtaining any approval of outstanding shares required for a merger, the surviving depository corporation and, in case the surviving depository corporation is to issue securities in consideration of the merger, the disappearing depository corporation shall each provide to its shareholders such information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank, the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.

(Amended by Stats. 1996, Ch. 1064, Sec. 511. Effective January 1, 1997. Operative July 1, 1997.)

4883. The provisions of Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall not apply to the shareholders of the surviving depository corporation in a merger.

(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4884. A surviving depository corporation shall file with the commissioner an application for approval of the merger.

(Amended by Stats. 1996, Ch. 1064, Sec. 512. Effective January 1, 1997. Operative July 1, 1997.)

4885. If the commissioner finds all of the following with respect to an application for approval of a merger, the commissioner shall approve the application:

(a) That the merger will not result in a monopoly and will not be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking, savings association, or industrial loan business in any part of this state.

(b) That the merger will not have the effect in any section of this state of substantially lessening competition, tending to create a monopoly, or otherwise being in restraint of trade, or that the anticompetitive effect is clearly outweighed in the public interest by the probable effect of the merger in meeting the convenience and needs of the community to be served.

(c) That the shareholders' equity of the surviving depository corporation will be adequate and that the financial condition of the surviving depository corporation will be satisfactory.

(d) That the directors and executive officers of the surviving depository corporation will be satisfactory.

(e) That the surviving depository corporation will afford reasonable promise of successful operation and that it is reasonable to believe that the surviving depository corporation will be operated in a safe and sound manner and in compliance with all applicable laws.

(f) That the merger will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the merger that has been determined by agreement between the disappearing depository corporation and the surviving depository corporation in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the disappearing depository corporation and the surviving depository corporation.

(g) In the case of a merger where the disappearing depository corporation is a California savings association, that the merger will not have a seriously adverse effect on the total availability of financing for housing in any market area of the disappearing savings association in this state or that any effect of that type is clearly outweighed in the public interest by the probable effect of the merger in meeting the convenience and needs of the community to be served. Nothing in this subdivision authorizes the commissioner to require the surviving depository corporation to make financing for housing available.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the merger.

(Amended by Stats. 1996, Ch. 1064, Sec. 513. Effective January 1, 1997. Operative July 1, 1997.)

4887. (a) After an application for approval of a merger has been approved and all conditions precedent to the merger have been fulfilled, the commissioner shall approve the agreement of merger and endorse the approval on the agreement of merger.

(b) After the agreement of merger has been filed with the Secretary of State, the surviving depository corporation shall file with the commissioner a copy of the agreement of merger certified by the Secretary of State, and at that time the merger shall become effective for all purposes.

(Amended by Stats. 1996, Ch. 1064, Sec. 515. Effective January 1, 1997. Operative July 1, 1997.)

4888. When a merger becomes effective:

(a) Unless the surviving depository corporation provided otherwise in the application for approval of the merger or unless the commissioner provided otherwise in the approval of the application:

(1) The surviving depository corporation may establish and maintain a branch office at the head office of the disappearing depository corporation and may establish and maintain equivalent offices at the branch offices, places of business, extensions of offices, and other facilities, if any, of the disappearing corporation.

(2) If the disappearing depository corporation was authorized to transact and was transacting trust business, the surviving depository corporation, if it is a California state bank or savings association, may transact trust business.

(b) The commissioner shall issue to the surviving depository corporation certificates of authority, licenses, and other authorizations as may be necessary to carry out the provisions of subdivision (a).

(Amended by Stats. 1996, Ch. 1064, Sec. 516. Effective January 1, 1997. Operative July 1, 1997.)

4889. (a) When a merger becomes effective:

(1) Any reference to the disappearing depository corporation in any writing, whether executed or taking effect before or after the merger, shall be deemed a reference to the surviving corporation, if not inconsistent with the other provisions of the writing.

(2) In case the disappearing depository corporation was transacting trust business, the surviving depository corporation shall succeed, without further transfer, to the rights, obligations, properties, assets, investments, deposits, demands, agreements, and trusts of the disappearing depository corporation under all trusts, executorships, administrations, guardianships, agencies, and all their fiduciary or representative capacities to the same extent as if the surviving depository corporation had originally assumed such fiduciary or representative capacities, and the surviving depository corporation shall be entitled to take and execute the appointment to all executorships, trusteeships, guardianships, and other fiduciary or representative capacities to which the disappearing depository corporation is or may be named in wills, whenever probated, or to which the disappearing depository corporation is or may be named or appointed by any other instrument.

(b) Subdivision (a) shall be construed as clarifying and amplifying, not as limiting or restricting, the provisions of Section 1107 of the Corporations Code.

(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4890. Promptly after a merger becomes effective:

(a) The surviving depository corporation shall:

(1) Surrender to the regulator of the disappearing depository corporation for cancellation the certificates of authority or licenses issued to the disappearing depository corporation by the regulator; and

(2) File with the regulator of the disappearing depository corporation such report regarding the merger as the regulator may require.

(b) The commissioner shall file a report regarding the merger with the Secretary of State.

(Amended by Stats. 1996, Ch. 1064, Sec. 517. Effective January 1, 1997. Operative July 1, 1997.)

4891. (a) After a merger becomes effective, the commissioner shall, upon application, issue a certificate under his or her official seal, stating that the disappearing depository corporation merged into the surviving depository corporation and specifying the time at which the merger became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the merger and of the regularity of the proceedings taken for the merger and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

(Amended by Stats. 1996, Ch. 1064, Sec. 518. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Merger Into California State-Licensed Foreign (Other Nation) Bank

(Article 2 added by Stats. 1995, Ch. 480, Sec. 164. Effective October 2, 1995.)

4895.01. In this article, unless the context otherwise requires, "merger" means any of the mergers described in Section 4895.02.

(Added by Stats. 1995, Ch. 480, Sec. 164. Effective October 2, 1995.)

4895.02. With the approval of the commissioner:

(a) A California depository corporation may merge into a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the disappearing depository corporation is a federal depository corporation, federal law, and (3) the law of the foreign bank's domicile.

(b) A foreign (other state) depository corporation that has a branch office in this state may merge into a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the disappearing depository corporation is a federal depository corporation, federal law, and (3) the laws of the domiciles of the disappearing depository corporation and of the foreign bank.

(Amended by Stats. 1996, Ch. 1064, Sec. 519. Effective January 1, 1997. Operative July 1, 1997.)

4895.03. In case the disappearing depository corporation is a California state depository corporation, a merger is subject to the provisions of Section 1108 of the Corporations Code.

(Added by Stats. 1995, Ch. 480, Sec. 164. Effective October 2, 1995.)

4895.04. (a) In case the disappearing depository corporation is a California state depository corporation, a merger has the same effect as provided in Section 1107 of the Corporations Code and Section 4889 in the case of a merger of the type defined in Section 4880.

(b) In case the disappearing depository corporation is not a California state depository corporation, a merger has the same effect with respect to the disappearing corporation's business in this state as provided in Section 1107 of the Corporations Code and Section 4889 in the case of a merger of the type defined in Section 4880.

(Added by Stats. 1995, Ch. 480, Sec. 164. Effective October 2, 1995.)

4895.05. (a) A merger shall not become effective unless it has been approved by the commissioner.

(b) After an application for approval of a merger has been approved and all conditions precedent to the merger have been fulfilled, the commissioner shall approve the merger.

(Amended by Stats. 1996, Ch. 1064, Sec. 520.1. Effective January 1, 1997. Operative July 1, 1997.)

4895.06. A merger is subject to the provisions of Sections 4884 to 4885, inclusive, and 4888 to 4891, inclusive, as if the merger were a merger of the type defined in Section 4880.

(Amended by Stats. 1996, Ch. 887, Sec. 43. Effective September 25, 1996.)

Article 3. Merger Into Federal Depository Corporation, California Federally Licensed Foreign (Other Nation) Bank, or Insured Foreign (Other State) State Depository Corporation

(Heading of Article 3 renumbered from Article 5 by Stats. 1995, Ch. 480, Sec. 16. Effective October 2, 1995.)

4900. In this article, unless the context otherwise requires, "merger" means any of the mergers described in Section 4901.

(Amended by Stats. 1995, Ch. 480, Sec. 166. Effective October 2, 1995.)

4901. (a) A California state bank may merge into a national banking association, a California federally licensed foreign (other nation) bank, or an insured foreign (other state) state bank pursuant to (1) this article, (2) in case the surviving bank is a national banking association or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the surviving bank is a California federally licensed foreign (other nation) bank or an insured foreign (other state) state bank, the law of the foreign bank's domicile.

(b) A California industrial loan company may merge into an insured foreign (other state) industrial loan company pursuant to (1) this article and (2) the law of the foreign industrial loan company's domicile.

(c) A California state depository corporation of any class may merge into a federal depository corporation of another class, a California federally licensed foreign (other nation) bank, or an insured foreign (other state) state depository corporation of another class pursuant to (1) this article, (2) in case the surviving depository corporation is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the surviving depository corporation is a California federally licensed foreign (other nation) bank or an insured foreign (other state) state depository corporation, the law of the domicile of the foreign bank or foreign depository corporation.
(Repealed and added by Stats. 1995, Ch. 480, Sec. 168. Effective October 2, 1995.)

4901.5. (a) No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts the merger of a California state bank or California industrial loan company.

(b) No provision of Division 2 (commencing with Section 5000) prohibits or restricts the merger of a California state savings and loan association.
(Amended by Stats. 2000, Ch. 1015, Sec. 49. Effective September 30, 2000.)

4902. A merger is subject to the provisions of Section 1108 of the Corporations Code.
(Amended by Stats. 1995, Ch. 480, Sec. 170. Effective October 2, 1995.)

4903. A merger shall have the same effect as provided in Section 1107 of the Corporations Code and as provided in Section 4889 in the case of a merger of the type defined in Section 4880.
(Amended by Stats. 1995, Ch. 480, Sec. 172. Effective October 2, 1995.)

4904. Promptly after a merger becomes effective, the surviving depository corporation shall:

(1) Surrender to the commissioner for cancellation the certificates of authority or licenses issued by the commissioner to the disappearing depository corporation; and

(2) File with the commissioner such report of the merger as the commissioner may require.
(Amended by Stats. 1996, Ch. 1064, Sec. 521. Effective January 1, 1997. Operative July 1, 1997.)

4905. (a) After a merger becomes effective, the surviving depository corporation may issue an officer's certificate, stating that the disappearing depository corporation merged into the surviving depository corporation and specifying the time at which the merger became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the merger and of the regularity of the proceedings taken for the merger and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.
(Amended by Stats. 1995, Ch. 480, Sec. 173. Effective October 2, 1995.)

Article 4. Merger of California State Independent Trust Company into Uninsured Foreign (Other State) Depository Corporation
(Article 4 added by Stats. 1996, Ch. 887, Sec. 46. Effective September 25, 1996.)

4908.01. In this article, unless the context otherwise requires, "merger" means any of the mergers described in Section 4908.02.
(Added by Stats. 1996, Ch. 887, Sec. 46. Effective September 25, 1996.)

4908.02. With the approval of the commissioner, a California state independent trust company may merge into an uninsured foreign (other state) state depository corporation pursuant to this article and the law of the surviving depository corporation's domicile.
(Amended by Stats. 1996, Ch. 1064, Sec. 521.2. Effective January 1, 1997. Operative July 1, 1997.)

4908.03. A merger is subject to the provisions of Section 1108 of the Corporations Code.
(Added by Stats. 1996, Ch. 887, Sec. 46. Effective September 25, 1996.)

4908.04. A disappearing or surviving depository corporation shall file an application for approval of a merger with the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 521.3. Effective January 1, 1997. Operative July 1, 1997.)

4908.05. A merger shall not become effective unless it has been approved by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 521.4. Effective January 1, 1997. Operative July 1, 1997.)

4908.06. If the commissioner finds all of the following with respect to an application for approval of a merger, the commissioner shall approve the application:

(a) That the shareholders' equity of the surviving depository corporation will be adequate and that the financial condition of the surviving depository corporation will be satisfactory.

(b) That the directors and executive officers of the surviving depository corporation will be satisfactory.

(c) That the surviving depository corporation will afford reasonable promise of successful operation and that it is reasonable to believe that the surviving depository corporation will be operated in a safe and sound manner and in compliance with all applicable laws.

(d) That the merger will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the merger that has been determined by agreement between the disappearing depository corporation and the surviving depository corporation in an arm's-length transaction, the commissioner shall find that the term is fair, just, and equitable to the disappearing depository corporation and the surviving depository corporation.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the merger.

(Amended by Stats. 1996, Ch. 1064, Sec. 521.5. Effective January 1, 1997. Operative July 1, 1997.)

4908.07. After an application for approval of a merger has been approved and all conditions precedent to the merger have been fulfilled, the commissioner shall approve the merger.

(Amended by Stats. 1996, Ch. 1064, Sec. 521.7. Effective January 1, 1997. Operative July 1, 1997.)

4908.08. A merger shall have the same effect as provided in Section 1107 of the Corporations Code and Section 4889 in the case of a merger of the type defined in Section 4880.

(Added by Stats. 1996, Ch. 887, Sec. 46. Effective September 25, 1996.)

4908.09. Promptly after a merger becomes effective, the surviving depository corporation shall:

(a) Surrender to the commissioner for cancellation the certificates of authority or licenses issued by the commissioner to the disappearing depository corporation.

(b) File with the commissioner any report regarding the merger that the commissioner may require.

(Amended by Stats. 1996, Ch. 1064, Sec. 521.8. Effective January 1, 1997. Operative July 1, 1997.)

4908.10. (a) After a merger becomes effective, the surviving depository corporation may issue an officers' certificate, stating that the disappearing depository corporation merged into the surviving depository corporation and specifying the time at which the merger became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the merger and of the regularity of the proceedings taken for the merger and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.

(Added by Stats. 1996, Ch. 887, Sec. 46. Effective September 25, 1996.)

CHAPTER 5. CONVERSION

(Chapter 5 added by Stats. 1982, Ch. 1411, Sec. 3.)

Article 1. Conversion of California State Depository Corporation Into California State Depository Corporation

(Heading of Article 1 amended by Stats. 1995, Ch. 480, Sec. 174. Effective October 2, 1995.)

4920. In this article, unless the context otherwise requires, "conversion" means any of the conversions described in Section 4921.

(Amended by Stats. 1996, Ch. 1064, Sec. 522. Effective January 1, 1997. Operative July 1, 1997.)

4921. With the approval of the commissioner, a California state depository corporation of any class may convert into a California state depository corporation of another class pursuant to this article.

(Amended by Stats. 1996, Ch. 1064, Sec. 523. Effective January 1, 1997. Operative July 1, 1997.)

4922. (a) A converting depository corporation shall adopt, and shall file with the commissioner an application for approval of, such amendments to its articles as may be necessary to carry out the conversion. Section 904 of the Corporations Code shall not apply to the amendments.

(b) A converting depository corporation shall adopt, and shall file with the commissioner an application for approval of, such amendments to its bylaws as may be necessary to carry out the conversion. The amendments shall not take effect until they are approved by the commissioner and the conversion becomes effective.

(Amended by Stats. 1996, Ch. 1064, Sec. 524. Effective January 1, 1997. Operative July 1, 1997.)

4923. In obtaining the approval of outstanding shares or shareholders required for any amendment to articles or bylaws called for in Section 4922, a converting depository corporation shall provide to its shareholders information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank, the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.

(Amended by Stats. 1996, Ch. 1064, Sec. 525. Effective January 1, 1997. Operative July 1, 1997.)

4924. A converting depository corporation shall file with the commissioner an application for approval of the conversion.

(Amended by Stats. 1996, Ch. 1064, Sec. 526. Effective January 1, 1997. Operative July 1, 1997.)

4925. If the commissioner finds all of the following with respect to an application for approval of a conversion, the commissioner shall approve the application:

(a) That the shareholders' equity of the resulting depository corporation will be adequate and that the financial condition of the resulting depository corporation will be satisfactory.

(b) That the directors, executive officers, and any controlling person of the resulting corporation will be satisfactory.

(c) That the name of the resulting depository corporation will not resemble so closely as to be likely to cause confusion the name of any other bank, savings association, or industrial loan company, as the case may be, that is transacting or has recently transacted business in this state.

(d) That the resulting depository corporation will afford reasonable promise of successful operation and that it is reasonable to believe that the resulting depository corporation will be operated in a safe and sound manner and in compliance with all applicable laws.

(e) In the case of a conversion of a California state savings association, that the conversion will not have a seriously adverse effect on the total availability of financing for housing in any market area of the converting savings association in this state or that any effect of that type is clearly outweighed in the public interest by the probable effect of the conversion in meeting the convenience and needs of the community to be served. Nothing in this subdivision authorizes the commissioner to require the resulting depository corporation to make financing for housing available.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the conversion.

(Amended by Stats. 1996, Ch. 1064, Sec. 527. Effective January 1, 1997. Operative July 1, 1997.)

4927. After an application for approval of a conversion has been approved and all conditions precedent to the conversion have been fulfilled, the commissioner shall approve the amendments to the articles of the converting depository corporation called for in Section 4922, endorse the approval on the certificate of amendment or other instrument containing the amendments, and specify the time at which the certificate of amendment or other instrument is to be filed with the

Secretary of State. The certificate of amendment or other instrument shall be filed with the Secretary of State at the time so specified by the commissioner, and at the time of the filing, the conversion shall become effective for all purposes.
(Amended by Stats. 1996, Ch. 1064, Sec. 529. Effective January 1, 1997. Operative July 1, 1997.)

4928. When a conversion becomes effective, the commissioner shall:

(a) (1) In case the resulting depository corporation is a California state bank, issue to the resulting depository corporation a certificate of authority authorizing it to transact commercial banking business or commercial banking business and trust business, as the case may be.

(2) In case the resulting depository corporation is a California state savings association, issue to the resulting depository corporation a license authorizing it to transact business as a state savings association.

(3) In case the resulting depository corporation is a California industrial loan company, issue to the resulting depository corporation a certificate of authority authorizing it to transact business as an industrial loan company.

(b) In any case, issue to the resulting depository corporation certificates of authority, licenses, or other appropriate authorizations for the branch offices, places of business, extensions of offices, and other facilities, if any, that the converting depository corporation was operating and that the resulting depository corporation is to continue to operate.
(Amended by Stats. 1996, Ch. 1064, Sec. 530. Effective January 1, 1997. Operative July 1, 1997.)

4929. Promptly after a conversion becomes effective, the resulting depository corporation shall:

(a) Surrender to the commissioner for cancellation the certificates of authority or licenses issued to the converting depository corporation by the commissioner; and

(b) File with the commissioner such report regarding the conversion as the commissioner may require.
(Amended by Stats. 1996, Ch. 1064, Sec. 531. Effective January 1, 1997. Operative July 1, 1997.)

4930. (a) After a conversion becomes effective, the commissioner shall issue, upon application, a certificate under his or her official seal, stating that the converting depository corporation converted into the resulting depository corporation and specifying the time at which the conversion became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the conversion and of the regularity of the proceedings taken for the conversion and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.
(Amended by Stats. 1996, Ch. 1064, Sec. 532. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Conversion of Federal Depository Corporation Into California State Depository Corporation
(Heading of Article 2 amended by Stats. 1995, Ch. 480, Sec. 182. Effective October 2, 1995.)

4940. In this article, unless the context otherwise requires, "conversion" means any of the conversions described in Section 4941.
(Amended by Stats. 1996, Ch. 1064, Sec. 533. Effective January 1, 1997. Operative July 1, 1997.)

4941. With the approval of the commissioner:

(a) A national banking association may convert into a California state bank pursuant to this article and federal law.

(b) A federal depository corporation of any class may convert into a California state depository corporation of another class pursuant to federal law and this article.
(Amended by Stats. 1996, Ch. 1064, Sec. 534. Effective January 1, 1997. Operative July 1, 1997.)

4942. A converting depository corporation shall adopt a plan of conversion pursuant to the provisions of federal law.
(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4943. In obtaining any approval of outstanding shares required for a plan of conversion, a converting depository corporation shall provide to its shareholders information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank, the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.
(Amended by Stats. 1996, Ch. 1064, Sec. 535. Effective January 1, 1997. Operative July 1, 1997.)

4944. A converting depository corporation shall file the following with the commissioner:

(a) The plan of conversion.

(b) An officer's certificate certifying that the plan of conversion has been approved as required by federal law.

(c) An application for approval of the conversion.
(Amended by Stats. 1996, Ch. 1064, Sec. 536. Effective January 1, 1997. Operative July 1, 1997.)

4945. If the commissioner finds all of the factors set forth in Section 4925 with respect to an application for approval of a conversion, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application for approval of the conversion.
(Amended by Stats. 1996, Ch. 1064, Sec. 537. Effective January 1, 1997. Operative July 1, 1997.)

4946. After an application for approval of a conversion has been approved by the commissioner but before the conversion becomes effective, the converting depository corporation shall file with the commissioner an application for approval of the articles of the resulting depository corporation. When the commissioner approves the articles, the commissioner shall endorse the approval on the articles. After the articles are filed with the Secretary of State, the resulting depository corporation shall file with the commissioner a copy of the articles certified by the Secretary of State.
(Amended by Stats. 2003, Ch. 404, Sec. 13. Effective January 1, 2004.)

4948. (a) After an application for approval of a conversion has been approved and all conditions precedent to the conversion have been fulfilled, the commissioner shall:

(1) In case the resulting depository corporation is a California state bank, issue to the resulting depository corporation a certificate of authority authorizing it to transact commercial banking business or commercial banking business and trust business, as the case may be.

(2) In case the resulting depository corporation is a California state savings association, issue to the resulting depository corporation a license authorizing it to transact business as a California state savings association.

(3) In case the resulting depository corporation is a California industrial loan company, issue to the resulting depository corporation a certificate of authority authorizing it to transact business as an industrial loan company.

(b) Upon the issuance of the certificate of authority or license pursuant to subdivision (a), the conversion shall become effective for all purposes.
(Amended by Stats. 1996, Ch. 1064, Sec. 540. Effective January 1, 1997. Operative July 1, 1997.)

4949. When a conversion becomes effective, the commissioner shall issue to the resulting depository corporation certificates of authority, licenses, or other appropriate authorizations for the branch offices, places of business, extensions of offices, and other facilities, if any, that the converting depository corporation was operating and that the resulting depository corporation is to continue to operate.
(Amended by Stats. 1996, Ch. 1064, Sec. 541. Effective January 1, 1997. Operative July 1, 1997.)

4950. When a conversion becomes effective:

(a) The converting depository corporation shall cease to exist.

(b) The resulting depository corporation shall succeed, without other transfer, to all the rights and property of the converting depository corporation and shall be subject to all the debts and liabilities of the converting depository corporation in the same manner as if the resulting depository corporation had itself incurred them.

(c) All rights of creditors of the converting depository corporation and all liens upon the property of the converting depository corporation shall be preserved unimpaired, provided that such liens upon the property of the converting depository corporation shall be limited to the property affected thereby immediately prior to the time when the conversion becomes effective.

(d) Any action or proceeding pending by or against the converting depository corporation may be prosecuted to judgment, which shall bind the resulting depository corporation, or the resulting depository corporation may be proceeded against or substituted in place of the converting depository corporation.

(e) Any reference to the converting depository corporation in any writing, whether executed or taking effect before or after the conversion, shall be deemed a reference to the resulting depository corporation if not inconsistent with the other provisions of such writing.

(f) In case the converting depository corporation was transacting trust business, the resulting depository corporation shall succeed, without further transfer, to the rights, obligations, properties, assets, investments, deposits, demands, agreements, and trusts of the converting depository corporation under all trusts, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities to the same extent as if the resulting depository corporation had originally assumed such fiduciary or representative capacities, and the resulting depository corporation shall be entitled to take and execute the appointment to all executorships, trusteeships, guardianships, and other fiduciary or representative capacities to which the converting depository corporation is or may be named in wills, whenever probated, or to which the converting depository corporation is or may be named or appointed by any other instrument.
(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4951. Promptly after a conversion becomes effective, the resulting depository corporation shall:

(a) Surrender to the regulator of the converting depository corporation for cancellation the certificates of authority or licenses issued to the converting depository corporation by the regulator; and

(b) File with the regulator of the converting depository corporation such report regarding the conversion as the regulator may require.
(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4952. (a) After a conversion becomes effective, the commissioner shall issue, upon application, a certificate under his or her official seal, stating that the converting depository corporation was converted into the resulting depository corporation and specifying the time at which the conversion became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the conversion and of the regularity of the proceedings taken for the conversion and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.
(Amended by Stats. 1996, Ch. 1064, Sec. 543. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Conversion of California State Depository Corporation Into Federal Depository Corporation
(Heading of Article 3 amended by Stats. 1995, Ch. 480, Sec. 191. Effective October 2, 1995.)

4960. In this article, unless the context otherwise requires, "conversion" means any of the conversions described in Section 4961.
(Amended by Stats. 1995, Ch. 480, Sec. 192. Effective October 2, 1995.)

4961. (a) A California state bank may convert into a national banking association pursuant to this article and federal law.

(b) A California state depository corporation of any class may convert into a federal depository corporation of another class pursuant to this article and federal law.
(Repealed and added by Stats. 1995, Ch. 480, Sec. 194. Effective October 2, 1995.)

4961.5. (a) No provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, prohibits or restricts the conversion of a California state bank.

(b) No provision of Division 2 (commencing with Section 5000) prohibits or restricts the conversion of a California state savings and loan association.

(c) No provision of Division 7 (commencing with Section 18000), except the provisions of Chapter 10 (commencing with Section 18660) of Division 7, prohibits or restricts the conversion of a California industrial loan company.
(Amended by Stats. 1996, Ch. 887, Sec. 49. Effective September 25, 1996.)

4962. (a) A converting depository corporation shall make a plan of conversion, stating:

(1) That the converting depository corporation shall be converted into the resulting depository corporation.

(2) Proposed articles of the resulting depository corporation.

(3) Manner of converting the securities of the converting depository corporation into securities of the resulting depository corporation.

(4) Such other provisions as may be appropriate.

(b) (1) The plan of conversion shall be approved by the board of the converting depository corporation, and the principal terms of the plan of conversion shall be approved by the outstanding shares of the converting depository corporation.

(2) (A) Any amendment to the plan of conversion shall be approved by the board of the converting depository corporation and, if the amendment changes any of the principal terms of the plan of conversion, by the outstanding shares of the converting depository corporation.

(B) If the plan of conversion is amended and if the amendment is approved as required by subparagraph (A), the plan of conversion, as thus amended, shall constitute the plan of conversion.

(3) Any approval of the outstanding shares of the converting depository corporation required by this subdivision may be given before or after the approval of the board of the converting depository corporation.

(c) The board of the converting depository corporation may, in its discretion and without further approval of the outstanding shares, abandon the conversion at any time before the conversion becomes effective.
(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4963. A conversion shall have the same effect as provided in Section 4950 in the case of a conversion of the type defined in Section 4940.
(Amended by Stats. 1995, Ch. 480, Sec. 197. Effective October 2, 1995.)

4964. Promptly after a conversion becomes effective, the resulting depository corporation shall:

(a) Surrender to the commissioner for cancellation the certificates of authority or licenses issued by the commissioner to the converting depository corporation; and

(b) File with the commissioner such report of the conversion as the commissioner may require.
(Amended by Stats. 1996, Ch. 1064, Sec. 544. Effective January 1, 1997. Operative July 1, 1997.)

4965. (a) After a conversion becomes effective, the resulting depository corporation may issue an officers' certificate, stating that the converting depository corporation converted into the resulting depository corporation and specifying the time at which the conversion became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the conversion and of the regularity of the proceedings taken for the conversion and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.
(Added by Stats. 1982, Ch. 1411, Sec. 3.)

4966. (a) Within 60 days after a conversion, the resulting depository corporation shall file with the Secretary of State an officers' certificate reciting the name of the converting depository corporation, the name of the resulting depository corporation, the effective date of the conversion, and that the conversion has been completed in compliance with the provisions of federal law. The Secretary of State shall enter the fact of the conversion on the Secretary of State's corporation records for the converting depository corporation, and the converting depository corporation shall thereafter not be deemed to be a corporation organized under the laws of this state.

(b) As to any conversion, whenever effected, if an officers' certificate has not been filed pursuant to subdivision (a) within 60 days after the completion of the conversion, the commissioner may file a report with the Secretary of State setting forth, to the extent the commissioner has knowledge he or she considers reliable, the recitals specified in subdivision (a), and the Secretary of State shall record the fact of the conversion with the same effect as provided in subdivision (a).
(Amended by Stats. 1996, Ch. 1064, Sec. 545. Effective January 1, 1997. Operative July 1, 1997.)

DIVISION 1.6.

(Division 1.6 added by Stats. 2001, Ch. 732, Sec. 1. Effective January 1, 2002.
Note: Ch. 732 provided no descriptive title for this division, which relates to the subject of "covered loans".)

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

(Chapter 1 added by Stats. 2001, Ch. 732, Sec. 1. Effective January 1, 2002.)

4970. For purposes of this division:

(a) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act and the regulations adopted thereunder by the Federal Reserve Board.

(b) (1) "Covered loan" means a consumer loan in which the original principal balance of the loan does not exceed two hundred fifty thousand dollars ($250,000) in the case of a mortgage or deed of trust, and where one of the following conditions are met:

(A) For a mortgage or deed of trust, the annual percentage rate at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

(B) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount.

(2) The dollar amount specified in paragraph (1) shall be adjusted every five years in accordance with the California Consumer Price Index.

(c) "Points and fees" shall include the following:

(1) All items required to be disclosed as finance charges under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from time to time, except interest.

(2) All compensation and fees paid to mortgage brokers in connection with the loan transaction.

(3) All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the person originating the covered loan receives direct compensation in connection with the charge.

(d) "Consumer loan" means a consumer credit transaction that is secured by real property located in this state used, or intended to be used or occupied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit. "Consumer loan" does not include a reverse mortgage, an open line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations (Regulation Z), or a consumer credit transaction that is secured by rental property or second homes. "Consumer loan" does not include a bridge loan. For purposes of this division, a bridge loan is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(e) "Original principal balance" means the total initial amount the consumer is obligated to repay on the loan.

(f) "Licensing agency" shall mean the Department of Real Estate for licensed real estate brokers, the Department of Corporations for licensed residential mortgage lenders and licensed finance lenders and brokers, and the Department of Financial Institutions for commercial and industrial banks and savings associations and credit unions organized in this state.

(g) "Licensed person" means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000)), a residential mortgage lender licensed under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank organized under the Banking Law (Division 1 (commencing with Section 99)), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000)), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)). Nothing in this division shall be construed to prevent any enforcement by a governmental entity against any person who originates a loan and who is exempt or excluded from licensure by all of the licensing agencies, based on a violation of any provision of this division. Nothing in this division shall be construed to prevent the Department of Real Estate from enforcing this division against a licensed salesperson employed by a licensed real estate broker as if that salesperson were a licensed person under this division. A licensed person includes any person engaged in the practice of consumer lending, as defined in this division, for which a license is required under any other provision of law, but whose license is invalid, suspended or revoked, or where no license has been obtained.

(h) "Originate" means to arrange, negotiate, or make a consumer loan.
(i) "Servicer" has the same meaning provided in Section 6
(i) (2) of the Real Estate Settlement Procedures Act of 1974.
(Amended by Stats. 2001, Ch. 733, Sec. 1. Effective January 1, 2002. Applicable, by Sec. 10 of Ch. 733, only to covered loans applied for on or after July 1, 2002.)

CHAPTER 2. PROHIBITED ACTS

(Chapter 2 added by Stats. 2001, Ch. 732, Sec. 1. Effective January 1, 2002.)

4973. The following are prohibited acts and limitations for covered loans:

(a)(1) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan.

(2) A covered loan may include a prepayment fee or penalty up to the first 36 months after the date of consummation of the loan if:

(A) The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.

(B) The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates, points, and fees that would be available to the consumer for accepting a covered loan without a prepayment penalty.

(C) The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six months' advance interest, at the contract rate of interest then in effect, on the amount prepaid in any 12-month period in excess of 20 percent of the original principal amount.

(D) A covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.

(E) The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.

(b) (1) A covered loan with a term of 5 years or less may not provide at origination for a payment schedule with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan.

(2) For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, "bridge loan" means a loan with a maturity of less than 18 months that only requires payments of interest until the time when the entire unpaid balance is due and payable.

(c) A covered loan shall not contain a provision for negative amortization such that the payment schedule for regular monthly payments causes the principal balance to increase, unless the covered loan is a first mortgage and the person who originates the loan discloses to the consumer that the loan contains a negative amortization provision that may add principal to the balance of the loan.

(d) A covered loan shall not include terms under which periodic payments required under the loan are consolidated and paid in advance from the loan proceeds.

(e) A covered loan shall not contain a provision that increases the interest rate as a result of a default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration for the indebtedness.

(f) (1) A person who originates covered loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of a covered loan that is structured to increase to a specific designated rate, stated as a number or formula, at a specific predetermined date not exceeding 37 months from the date of application, this evaluation shall be based upon the fully indexed rate of the loan calculated at the time of application.

The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, do not exceed 55 percent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means.

(2) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 55 percent of the consumer's monthly gross income.

(3) In the case of a stated income loan, the reasonable belief requirement in paragraph (1) shall apply, however, for stated income loans that belief may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

(g) A person who originates a covered loan shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, to a third-party escrow agent for the benefit of the contractor in accordance with terms and conditions established in a written escrow agreement signed by the consumer, the person who originates a covered loan, and the contractor prior to the disbursement of funds. No payments, other than progress payments for home-improvement work that the consumer certifies is completed, shall be made to an escrow account or jointly to the consumer and the contractor unless the person who originates the loan is presented with a signed and dated completion certificate by the consumer showing that the home-improvement contract was completed to the satisfaction of the consumer.

(h) It is unlawful for a person who originates a covered loan to recommend or encourage a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances all or any portion of the existing consumer loan or debt.

(i) A covered loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply if repayment of the loan has been accelerated in accordance with the terms of the loan documents (1) as a result of the consumer's default, (2) pursuant to a due-on-sale provision, or (3) due to fraud or material misrepresentation by a consumer in connection with the loan or the value of the security for the loan.

(j) A person who originates a covered loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points.

(k)(1) A covered loan shall not be made unless the following disclosure, written in 12-point font or larger, has been provided to the consumer no later than three business days prior to signing of the loan documents of the transaction:

CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many other factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. Higher rates and fees may be justified depending on the individual circumstances of a particular consumer's application. You should shop around and compare loan rates and fees.

This particular loan may have a higher rate and total points and fees than other mortgage loans and is, or may be, subject to the additional disclosure and substantive protections under Division 1.6 (commencing with Section 4970 of the Financial Code. You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's counseling hotline at 1-888-466-3487 or go to www.hud.gov/fha/sfh/hcc for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application.

If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

(2) It shall be a rebuttable presumption that a licensed person has met its obligation to provide this disclosure if the consumer provides the licensed person with a signed acknowledgment of receipt of a copy of the notice set forth in paragraph (1).

(l)(1) A person who originates a covered loan shall not steer, counsel, or direct any prospective consumer to accept a loan product with a risk grade less favorable than the risk grade that the consumer would qualify for based on that person's then current underwriting guidelines, prudently applied, considering the information available to that person, including the information provided by the consumer.

A person shall not be deemed to have violated this section if the risk grade determination applied to a consumer is reasonably based on the person's underwriting guidelines if it is an appropriate risk grade category for which the consumer qualifies with the person.

(2) If a broker originates a covered loan, the broker shall not steer, counsel, or direct any prospective consumer to accept a loan product at a higher cost than that for which the consumer could qualify based on the loan products offered by the persons with whom the broker regularly does business.

(m) A person who originates a covered loan shall not avoid, or attempt to avoid, the application of this division by doing the following:

(1) Structuring a loan transaction as an open-end credit plan for the purpose of evading the provisions of this division when the loan would have been a covered loan if the loan had been structured as a closed end loan.

(2) Dividing any loan transaction into separate parts for the purpose of evading the provisions of this division.

(n) A person who originates a covered loan shall not act in any manner, whether specifically prohibited by this section or of a different character, that constitutes fraud.

(Amended by Stats. 2001, Ch. 733, Sec. 2. Effective January 1, 2002. Applicable, by Sec. 10 of Ch. 733, only to covered loans applied for on or after July 1, 2002.)

CHAPTER 3. ENFORCEMENT

(Chapter 3 added by Stats. 2001, Ch. 732, Sec. 1. Effective January 1, 2002.)

4974. (a) Any compliance failure that was not willful or intentional and resulted from a bona fide error, that occurred notwithstanding the maintenance of procedures reasonably adopted to avoid those errors, including, but not limited to, those involving clerical, calculation, computer malfunction and programming, and printing errors shall be corrected no later than 45 days after receipt of the complaint or discovery of the error. A person who originates a covered loan shall not be administratively, civilly, or criminally liable for a bona fide error corrected pursuant to this section.

(b) If a person who originates covered loans makes a loan where the person knew of and showed reckless disregard for a violation of this division by a broker, the person and broker shall be jointly and severally liable for all damages awarded under this division with respect to the broker's unlawful conduct.

This section does not impose or transfer liability for a breach of the broker's fiduciary duty.

(Amended by Stats. 2001, Ch. 733, Sec. 3. Effective January 1, 2002. Applicable, by Sec. 10 of Ch. 733, only to covered loans applied for on or after July 1, 2002.)

4975. (a) (1) Any licensed person who violates any provision of Section 4973, 4979.6, or 4979.7 shall be deemed to have violated that person's licensing law.

(2) After a knowing and willful violation, the licensing agency may bring a proceeding to suspend the license of the licensed person for not less than six months and not more than three years.

(b) After a knowing and willful violation resulting in a second or subsequent administrative or civil action, the licensing agency may bring a proceeding to permanently revoke the license of the licensed person or impose any lesser licensed sanction for at least three years.

(c) A licensing agency may exercise any and all authority and powers available to it under any other provisions of law, to administer and enforce this division including, but not limited to, investigating and examining the licensed person's books and records, and charging and collecting the reasonable costs for these activities. The licensing agency shall not charge a licensed person twice for the same service. Any civil, criminal, and administrative authority and remedies available to the licensing agency pursuant to its licensing law may be sought and employed in any combination deemed advisable by the licensing agency to enforce the provisions of this division.

(d) Nothing in this section shall be construed to impair or impede a licensing agency's authority under any other provision of law.

(Amended by Stats. 2001, Ch. 733, Sec. 4. Effective January 1, 2002. Applicable, by Sec. 10 of Ch. 733, only to covered loans applied for on or after July 1, 2002.)

4977. (a) A licensing agency may, after appropriate notice and opportunity for hearing, by order levy administrative penalties against a person who violates any provision of this division, and the person shall be liable for administrative penalties of not more than two thousand five hundred dollars ($2,500) for each violation. Except for licensing agencies exempt from the provisions of the Administrative Procedure Act, any hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the licensing agency shall have all the powers granted under that act.

(b) Any person who willfully and knowingly violates any provision of this division shall be liable for a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the licensing agency in any court of competent jurisdiction.

(c) Nothing in this section requires exhaustion of administrative remedies prior to an injured party bringing a civil action.

(d) If the licensing agency determines that it is in the public interest, the licensing agency may include, in any action for penalties authorized by subdivision (b), a claim for relief in addition to the penalties, including a claim for restitution or disgorgement, and the court shall have jurisdiction to award the additional relief.

(e) Nothing in this section shall be construed to impair or impede the Attorney General from representing a licensing agency in bringing an action to enforce this division at the request and on behalf of the licensing agency.

(f) In any action brought by the licensing agency, or the Attorney General acting at the request and on behalf of the licensing agency, under this division in which a judgment against a person is rendered, the licensing agency or the Attorney General shall be entitled to recover costs which, in the discretion of the court, may include an amount representing reasonable attorney's fees and investigative expenses for services rendered for deposit in the appropriate fund of that licensing agency.

(g) The amounts collected under subdivisions (a) and (b) shall be deposited in the appropriate fund of the licensing agency to be used by that licensing agency, subject to appropriation by the Legislature, for the purposes of education and enforcement in connection with abusive lending practices.

(Amended by Stats. 2001, Ch. 733, Sec. 5. Effective January 1, 2002. Applicable, by Sec. 10 of Ch. 733, only to covered loans applied for on or after July 1, 2002.)

4978. (a) A person who fails to comply with the provisions of this division is civilly liable to the consumer in an amount equal to any actual damages suffered by the consumer, plus attorneys fees and costs. For a willful and knowing violation of this division, the person shall be liable to the consumer in the amount of fifteen thousand dollars ($15,000) or the consumers actual damages, whichever is greater, plus attorneys fees and costs.

(b) (1) If a provision in a contract in a covered loan violates subdivision (a), (b), (c), (d), (e), or (i) of Section 4973, Section 4979.6, or Section 4979.7, that provision is unenforceable. A court in which any action is brought by, or on behalf of, an aggrieved consumer for relief may issue an order or injunction to reform the terms of the covered loan to conform to the provisions of this division.

(2) A court may, in addition to any other remedy, award punitive damages to the consumer upon a finding that such damages are warranted pursuant to Section 3294 of the Civil Code.

(c) Nothing in this section is intended, nor shall be construed, to abrogate existing common law provisions prohibiting double recovery of damages.

(Amended by Stats. 2001, Ch. 733, Sec. 6. Effective January 1, 2002. Applicable, by Sec. 10 of Ch. 733, only to covered loans applied for on or after July 1, 2002.)

4978.6. A person who originates covered loans shall inform any employee, who originates covered loans on behalf of the person, of the administrative or civil penalties for a violation of this division.

(Amended by Stats. 2001, Ch. 733, Sec. 7. Effective January 1, 2002. Applicable, by Sec. 10 of Ch. 733, only to covered loans applied for on or after July 1, 2002.)

4979. Upon request, a person who originates a covered loan shall provide the licensing agency or the consumer, at no cost, documentation regarding his or her loan that clearly demonstrates whether any loan is a covered loan. This documentation shall include, but not be limited to, full disclosure of the original principal balance, the annual percentage rate, and the total points and fees, as defined in Section 4970.

(Amended by Stats. 2001, Ch. 733, Sec. 8. Effective January 1, 2002. Applicable, by Sec. 10 of Ch. 733, only to covered loans applied for on or after July 1, 2002.)

4979.5. (a) A person who provides brokerage services to a borrower in a covered loan transaction by soliciting lenders or otherwise negotiating a consumer loan secured by real property, is the fiduciary of the consumer, and any violation of the person's fiduciary duties shall be a violation of this section. A broker who arranges a covered loan owes this fiduciary duty to the consumer regardless of who else the broker may be acting as an agent for in the course of the loan transaction.

(b) Except for a broker or a person who provides brokerage services, no licensed person or subsequent assignee shall have administrative, civil, or criminal liability for a violation of this section.

(Added by Stats. 2001, Ch. 732, Sec. 1. Effective January 1, 2002. Applicable, by Sec. 3 of Ch. 732, to loans applied for on or after July 1, 2002.)

4979.6. A person who originates a covered loan shall not make a covered loan that finances points and fees in excess of one thousand dollars ($1,000) or 6 percent of the original principal balance, exclusive of points and fees, whichever is greater.

(Added by Stats. 2001, Ch. 732, Sec. 1. Effective January 1, 2002. Applicable, by Sec. 3 of Ch. 732, to loans applied for on or after July 1, 2002.)

4979.7. On or after July 1, 2002, a person who originates a consumer loan shall not finance, directly or indirectly, into a consumer loan or finance to the same borrower within 30 days of a consumer loan any credit life, credit disability, credit property, or credit unemployment insurance premiums, or any debt cancellation or suspension agreement fees, provided that credit insurance premiums, debt cancellation, or suspension fees calculated and paid on a monthly basis shall not be considered financed by the person originating the loan. For purposes of this section, credit insurance does not include a contract issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a mortgagor's default.

(Amended by Stats. 2001, Ch. 733, Sec. 9. Effective January 1, 2002. Applicable, by Sec. 10 of Ch. 733, only to covered loans applied for on or after July 1, 2002.)

4979.8. The provisions of this division shall not impose liability on an assignee that is a holder in due course. The provisions of this division shall not apply to persons chartered by Congress to engage in secondary mortgage market transactions.

(Added by Stats. 2001, Ch. 732, Sec. 1. Effective January 1, 2002. Applicable, by Sec. 3 of Ch. 732, to loans applied for on or after July 1, 2002.)

DIVISION 1.7. SECURITIES SALES

(Division 1.7 added by Stats. 1990, Ch. 1545, Sec. 1.)

4981. Any financial institution doing business in this state, or any other person, that sells to the public at any retail branch office at which deposits are accepted, any security which is not a deposit, and which is not insured by an agency or instrumentality of the United States, or a private share insurance or guaranty arrangement, shall provide the customer a disclosure statement as defined in subdivision (a).

(a) For the purposes of this section:

(1) "Disclosure statement" means, in addition to any other disclosure required by law, a disclosure in writing, in accordance with subdivision (b), provided to a customer each time the customer purchases securities from an employee or any other person in a retail branch office.

(2) "Financial institution" means a depository institution, the deposits of which are insured by a federal deposit insurance agency or instrumentality, or a private share insurance or guaranty arrangement, including, but not limited to, banks, savings banks, savings associations, credit unions, and industrial loan companies.

(3) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, or any other security within the meaning of Section 25019 of the Corporations Code.

(4) "Public" means individuals and includes members of a credit union. "Public" does not include institutional investors as set forth in subdivision (i) of Section 25102 of the Corporations Code.

(5) "Retail branch office" means only that part of a financial institution's premises open to the public for purposes of accepting insured deposits.

(6) "Deposit" includes shares of credit unions and investment certificates of industrial loan companies.

(b) Any disclosure statement provided pursuant to this section shall contain a sentence in at least 10-point bold type to the effect that: "I understand that the product or products I am purchasing or may purchase are not deposits and may not be insured by an agency or instrumentality of the United States such as the Federal Deposit Insurance Corporation (FDIC)." For credit unions, the disclosure statement provided pursuant to this section shall contain a sentence in at least 10-point bold type to the effect that: "I understand that the product or products I am purchasing or may purchase are not deposits and may not be insured by an agency of the United States such as National Credit Union Share Insurance Fund (NCUSIF), or a private share insurance or guaranty arrangement." With respect to agreements for the purchase of securities executed by a customer at a retail branch office of the institution which accepts deposits, a customer shall be required to acknowledge in writing that he or she has received and read this statement.

(c) Notwithstanding the provisions of subdivision (b), in the case of account relationships opened, or securities sold, by telephone or electronic order, the requirements of this section are met if the disclosure statement is provided at the time the new account documents are sent to the customer.

(d) The provisions of this section shall not apply to sales of securities or contracts entered into for the purchase of securities prior to January 1, 1991.

(Added by Stats. 1990, Ch. 1545, Sec. 1.)

4982. Any violation of this division by a bank is a violation of Division 1 (commencing with Section 99); a violation by a savings association is a violation of Division 2 (commencing with Section 5000); a violation by a credit union is a violation of Division 5 (commencing with Section 14000); and a violation by an industrial loan company is a violation of Division 7 (commencing with Section 18000).

(Added by Stats. 1990, Ch. 1545, Sec. 1.)

4983. Nothing in this division shall be construed or interpreted to mean that this division in any way gives a financial institution the authority to offer or sell any type of security that it could not otherwise offer or sell under state or federal law.

(Added by Stats. 1990, Ch. 1545, Sec. 1.)

DIVISION 1.8. PERSONS CONNECTED WITH FINANCIAL INSTITUTIONS

(Division 1.8 added by Stats. 1990, Ch. 947, Sec. 2.)

4990. (a) Any person convicted of a felony violation of any of the provisions specified in subdivision (b) shall not serve in any capacity as a director or officer or in any other position involving any management duties with a financial institution in this state with accounts insured by an agency or instrumentality of the United States or a private share insurance or guaranty arrangement. This subdivision does not, however, apply to any director or officer of a financial institution, or to persons serving in managerial positions for financial institutions, whose office or employment with a financial institution commenced, and whose felony conviction occurred, prior to January 1, 1991.

(b) Subdivision (a) applies to felony convictions of offenses specified in Chapter 18 (commencing with Section 3350) of

Division 1, Article 4 (commencing with Section 5300) of Chapter 1 of

Division 2, Article 8 (commencing with Section 14750) of Chapter 4 of

Division 5, and Chapter 6 (commencing with Section 18435) of Division 7. Subdivision (a) also applies to felony convictions of offenses specified in provisions of the laws of the United States added or amended by the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73).

(c) On and after January 1, 1991, any person who seeks employment by, or a controlling interest in, a financial institution specified in subdivision (a) shall, as a condition to obtaining that employment or controlling interest, permit the financial institution, its regulatory agency, or both to have access to that person's state summary criminal history information, as defined in Section 11105 of the Penal Code, for purposes of determining whether the person has a prior conviction of a felony offense specified in subdivision (b) or any theft offense.

(d) Any state summary criminal history information obtained pursuant to this subdivision shall be kept confidential and no recipient under this subdivision shall disclose the contents other than for the purpose of determining eligibility for employment by, or acquisition of a controlling interest in, a financial institution specified in subdivision (a).

(e) The authority granted by this section to the Commissioner of Financial Institutions and other regulatory agencies shall be in addition to any other authority granted by law to obtain information about the background of any person. Nothing in this section shall be construed to limit any authority of the Commissioner of Financial Institutions or any regulatory agency otherwise provided by law.

(Amended by Stats. 1996, Ch. 1064, Sec. 546. Effective January 1, 1997. Operative July 1, 1997.)

4991. (a) In response to a request by another bank, savings association, credit union, or any other financial institution it is not unlawful for a bank, savings association, credit union, or any other financial institution to provide a written employment reference which advises of the applicants' involvement in a theft, embezzlement, misappropriation, or other defalcation which has been reported to state or federal authorities pursuant to state or federal banking or financial institutions law. In order for the immunity provided in subdivision (b) to apply, a copy of the written employment reference shall be sent concurrently by the financial institution providing the reference, to the last known address of the person concerning whom the reference is provided.

(b) No bank, savings association, credit union, or any other financial institution shall be civilly liable for providing an employment reference as specified in subdivision (a), unless the information provided is false and the bank, savings association, credit union, or other financial institution providing the false information does so with knowledge and malice.

(Added by Stats. 1990, Ch. 947, Sec. 2.)

DIVISION 2. SAVINGS ASSOCIATION LAW

(Division 2 repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

CHAPTER 1. SHORT TITLE, GENERAL DEFINITIONS, AND GENERAL PROVISIONS

(Chapter 1 added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 1. Short Title

(Article 1 added by Stats. 1983, Ch. 1091, Sec. 2.)

5000. This division may be cited as the "Savings Association Law."
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 2. General Definitions

(Article 2 added by Stats. 1983, Ch. 1091, Sec. 2.)

5100. When used in this division, the words and phrases set forth in this article shall have the meanings given in this article unless the context requires another meaning.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5100.2. For purposes of this division:

(a) Any reference to regulations of the federal Office of Thrift Supervision or the Federal Deposit Insurance Corporation shall also be deemed to include and refer to regulations adopted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, to the extent these regulations have been continued in effect and made enforceable by the Office of Thrift Supervision or Federal Deposit Insurance Corporation, respectively, pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73).

(b) Any reference to charters issued by the Office of Thrift Supervision shall also be deemed to include and refer to charters issued by the Federal Home Loan Bank Board.
(Added by Stats. 1990, Ch. 1118, Sec. 1.)

5100.5. "Affiliated person" of a savings association means the following:

(a) A director, officer, or controlling person of the savings association.

(b) A spouse of a director, officer, controlling person of the savings association.

(c) A member of the immediate family of a director, officer, or controlling person of the savings association, who has the same home as that person or who is a director or officer of any subsidiary of the savings association or of any holding company affiliate of the savings association.

(d) Any corporation or organization other than the savings association or a corporation or organization through which the savings association operates, of which a director, officer or controlling person of the savings association meets any of the following criteria:

(1) Is chief executive officer, chief financial officer, or a person performing similar functions.

(2) Is a general partner.

(3) Is a limited partner who, directly or indirectly either alone or with his spouse and the members of his immediate family who are also affiliated persons of the savings association, owns an interest of 10 percent or more in the partnership (based on the value of his contribution) or who, directly or indirectly with other directors, officers, and controlling persons of the savings association and their spouses and their immediate family members who are also affiliated persons of the savings association owns an interest of 25 percent or more in the partnership.

(4) Directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the savings association, owns or controls 10 percent or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of the savings association and their spouses and their immediate family members who are also affiliated persons of the savings association, 25 percent or more of any class of equity securities.

(e) Any trust or other estate in which a director, officer, or controlling person of the savings association or the spouse of the person has a substantial beneficial interest or as to which the person or his or her spouse serves as trustee or in a similar fiduciary capacity.
(Repealed and added by Stats. 1990, Ch. 1118, Sec. 3.)

5100.6. "Affiliate" of a savings association, unless otherwise defined, includes any corporation, business trust, unincorporated association or other similar organization which meets the criteria of subdivision (a), (b), or (c), as follows:

(a) The savings association directly or indirectly, owns or controls either a majority of the voting shares or more than 50 per centum of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions.

(b) Control thereof is held, directly or indirectly through stock ownership or in any other manner, by the shareholders of a savings association who own or control either a majority of the shares of the savings association or more than 50 per centum of the number of shares voted for the election of directors of that savings association at the preceding election, or by trustees for the benefit of the shareholders of any savings association.

(c) A majority of its directors, trustees, or other persons exercising similar functions are directors of any one savings association.

(Added by Stats. 1990, Ch. 1118, Sec. 4.)

5100.7. "Controlling person" of a savings association means any person or entity which (a) either directly or indirectly or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing, 10 percent or more of the voting shares or rights of the association or (b) controls in any manner the election or appointment of a majority of the directors of the association. However, a director of a savings association shall not be deemed to be a controlling person of the association based upon his or her voting, or acting in concert with other directors in voting, proxies (a) obtained in connection with an annual solicitation of proxies or (b) obtained from savings account holders and borrowers if the proxies are voted as directed by a majority vote of the entire board of directors of that association, or of a committee of those directors if the committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

(Added by Stats. 1990, Ch. 1118, Sec. 5.)

5100.8. "Immediate family" of any natural person means any of the following (whether by the full or half blood or by adoption):

(a) The person's spouse, father, mother, children, brothers, sisters, and grandchildren.

(b) The father, mother, brothers, and sisters of the person's spouse.

(c) The spouse of a child, brother, or sister of the person.

(Added by Stats. 1990, Ch. 1118, Sec. 6.)

5100.9. "Institution-affiliated party" means any of the following:

(a) Any director, officer, employee or controlling stockholder of, or agent for, a savings association.

(b) Any person who has filed or is required to file an application to become a savings and loan holding company with the commissioner pursuant to Section 5801.

(c) Any shareholder, consultant, joint venture partner, and any other person as determined by the commissioner (by regulation or case-by-case) who participates in the conduct of the affairs of a savings association.

(d) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any of the following which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the savings association:

(1) Any violation of law or regulation.

(2) Any breach of fiduciary duty.

(3) Any unsafe or unsound practice.

(Added by Stats. 1990, Ch. 1118, Sec. 7.)

5101. "Approved by the members," in the case of a mutual association, means approved by a majority of all votes cast at a duly held regular or special meeting or by the written consent (including consents by proxy) of a majority of the total votes of members outstanding at the close of business on the next business day prior to the date that the requisite written consents have been filed with the association.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5102. (a) "Association" or "savings association" means a mutual or stock savings association, savings and loan association or savings bank subject to the provisions of this division, but excluding a federal association.

(b) "Federal association" means a savings and loan association or federal savings bank that is chartered by the Office of Thrift Supervision under Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. Sec. 1464), as amended.

(Amended by Stats. 1990, Ch. 1118, Sec. 8.)

5103. "Certificate of authority" means:

(a) A certificate of authority to transact the business of an association, which is issued by the commissioner pursuant to this division.

(b) An uncanceled annual license issued to an association under prior law which is valid on the effective date of this division.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5103.5. "Commercial paper" means any note, draft, or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(Added by Stats. 1984, Ch. 225, Sec. 1. Effective June 21, 1984.)

5104. "Commissioner" means the Commissioner of Financial Institutions.

(Amended by Stats. 1996, Ch. 1064, Sec. 547. Effective January 1, 1997. Operative July 1, 1997.)

5105. "Community" means a centralized area or locality in which a body of inhabitants is gathered in one group having common residential, social, or business interests. The term does not necessarily mean a municipal corporation or other political subdivision. A community need not be limited by lines and boundaries. A city, village, town, or other governmental unit, either incorporated or unincorporated, may constitute one community, but a large, populous area under one or more forms of government may be composed of several communities.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5105.5. "Consumer loan" means a loan for personal, family, or household purposes, and loans reasonably incident thereto, and may be made as either open-end or closed-end consumer credit, but does not include credit extended in connection with credit cards or bona fide overdraft loans.

(Added by Stats. 1984, Ch. 225, Sec. 2. Effective June 21, 1984.)

5105.8. "Corporate debt security" means a marketable obligation, evidencing the indebtedness of any corporation in the form of a bond, note, or debenture, or both note and debenture, which is commonly regarded as a debt security and is not predominantly speculative in nature. A security is marketable if it may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.

(Added by Stats. 1984, Ch. 225, Sec. 3. Effective June 21, 1984.)

5106. "Department" means the Department of Financial Institutions.

(Amended by Stats. 1996, Ch. 1064, Sec. 548. Effective January 1, 1997. Operative July 1, 1997.)

5107. "Financial institution" means a thrift institution, commercial bank, or trust company.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5108. "Impaired condition" means a condition in which the assets of an association in the aggregate do not have a value, as determined in accordance with generally accepted accounting principles, equal to or greater than the aggregate amount of liabilities of the association to its creditors, including the holders of its savings accounts and all other persons who are creditors.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5109. "Mutual association" means an association for which the articles of incorporation do not authorize the issuance of capital stock.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5110. "Member" means a person holding a savings account of a mutual association. A joint and survivorship or other multiple owner constitutes a single membership.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5111. "Mutual capital certificate" means a certificate evidencing an investment in a mutual association and issued pursuant to provisions of this division.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5112. "Net worth certificate" means a certificate issued by an association in accordance with Section 13i of the Federal Deposit Insurance Act, as amended (12 U.S.C., Sec. 1823i) and regulations promulgated thereunder by the Federal Deposit Insurance Corporation.

(Amended by Stats. 1990, Ch. 1118, Sec. 8.5.)

5113. "Person" means any individual, domestic, or foreign corporation, entity, voting trust, business trust, partnership, limited liability company, association, syndicate, organized group of persons, or similar organization, group or entity, whether incorporated or not.

(Amended by Stats. 1994, Ch. 1010, Sec. 113. Effective January 1, 1995.)

5114. "Primarily residential property" means real estate on which there is located, or will be located pursuant to a real estate loan, any of the following:

(a) A structure or structures designed or used primarily for residential rather than nonresidential purposes and consisting of more than one dwelling unit.

(b) A structure or structures designed or used primarily for residential rather than nonresidential purposes for students, residents, and persons under the care of, or the employees or members of the staff of, an educational, health, or welfare institution or facility.

(c) A structure or structures that are used in part for residential purposes for not more than one family and in part for business purposes if the residential use of the structure or structures is substantial and permanent and not merely transitory.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5114.5. "Residential real estate" means any improved real property that is used or intended to be used as a residence and contains not more than four dwelling units.
(Added by Stats. 1985, Ch. 983, Sec. 1.5. Effective September 26, 1985.)

5115. "Real estate loan" means a loan or other obligation secured by a lien on real estate, if:

(a) The security property is real estate as defined pursuant to Section 658 of the Civil Code.

(b) The security interest of the association may be enforced as a real estate mortgage, deed of trust, or its equivalent.

(c) The security property is capable of separate appraisal.

(d) The association relies substantially upon the real estate as primary security for the loan.

(e) With regard to security property which is a leasehold or other interest for a period of years, the term of interest extends, or is subject to extension or renewal at the option of the association, for a term of at least five years following maturity of the loan.
(Amended by Stats. 1984, Ch. 225, Sec. 4. Effective June 21, 1984.)

5116. "Savings account" means that part of the savings liability of an association that is credited to the holder of the account. A savings account may be referred to as a deposit. For the purposes of Sections 6661, 6662, and 6663 and Article 4 (commencing with Section 6725) through Article 10 (commencing with Section 7000), inclusive, of Chapter 5 of this division, the term "savings account" includes shares, demand accounts, savings deposits and other savings accounts of federal associations.
(Amended by Stats. 1985, Ch. 983, Sec. 1.7. Effective September 26, 1985.)

5117. "Savings bank" means a savings bank organized under this division.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5117.5. "Savings institution" means a financial institution as defined in Section 5102.
(Added by Stats. 1984, Ch. 868, Sec. 2.5.)

5118. "Savings liability" means the aggregate amount of savings accounts of depositors, including interest credited to the accounts, less redemptions and withdrawals.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5119. "Service corporation" means a corporation, other than a wholly owned subsidiary referred to in Section 7300 or a wholly owned subsidiary doing business as a finance subsidiary in accordance with the requirements of 12 C.F.R. 563.132, in which at least 80 percent of the shares of stock having voting power are owned by one or more associations or federal associations. As used in this section "voting power" shall have the same meaning as defined in Section 194.5 of the Corporations Code.
(Amended by Stats. 1990, Ch. 1118, Sec. 8.6.)

5120. "Statutory net worth" or "net worth" means the sum of the following:

(a) Issued and outstanding capital stock.

(b) Issued and outstanding capital certificates.

(c) Paid-in surplus.

(d) Retained earnings.

(e) Pledged savings accounts of a mutual association with the approval of the commissioner.

(f) General reserves and other amounts as the commissioner prescribes.
(Amended by Stats. 1985, Ch. 983, Sec. 1.76. Effective September 26, 1985.)

5121. "Stock association" means an association for which the articles of incorporation authorize the issuance of capital stock.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5122. "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association which is organized and operating pursuant to the provisions of this division.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5123. "Thrift institution" means an association, a cooperative bank, a homestead association, a building and loan association, a federal association, a federal savings bank, a state or federal credit union, an industrial loan company, and a supervised thrift and residential financing institution of a substantially similar nature.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5124. "Withdrawal value" means the amount credited to a savings account less lawful deductions, as shown by the records of the association.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 3. General Provisions
(Article 3 added by Stats. 1983, Ch. 1091, Sec. 2.)

5203. (a) The name, rights, powers, privileges, and immunities of each association in existence on the effective date of this division shall be governed by the provisions of this division to the same extent and effect as if the association had been incorporated pursuant to this division. The articles of incorporation and bylaws of an association existing on the effective date of this division may be amended to conform to the provisions of this division, with or without the issuance or approval by the commissioner of conformed copies of those documents, and the provisions in the articles and bylaws are superseded to the extent that they are inconsistent with the provisions of this division, except that the obligations of the existing association between the association and its stockholders, members, or any valid contract between the stockholders or members of the association or between the association and any other persons, existing at the time this division takes effect, shall not be impaired by the provisions of this division. With these exceptions, each association in existence on the effective date of this division shall possess all the rights, powers, privileges, and immunities and shall be subject to all the duties, liabilities, disabilities, and restrictions conferred and imposed by this division, notwithstanding anything to the contrary in its articles of incorporation, bylaws, or rules.

(b) The power of each association in existence on the effective date of this division pursuant to its articles of incorporation or bylaws to issue voting interests to savings account holders, shall not be impaired by any provision of this division.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5204. (a) Wherever it is stated in this division that an agreement or contract contrary to any of the division's provisions is void, the statement is limited to the particular portion of the agreement or contract that is contrary to the provision, and the entire agreement or contract is not void unless the particular part is not a separable portion.

Unless expressly so provided by the commissioner, the violation of any provision of this division does not render invalid any agreement, contract, stock, savings account, note, trust deed, mortgage, or other instrument.

(b) No provision of this division imposing any liability, either civil or criminal, applies to any act done or omitted in good faith in conformity with any rule, regulation, approval, consent, order, direction, or other act of the commissioner, even if the rule, regulation, approval, consent, order, direction, or other act of the commissioner is amended, rescinded, or determined invalid by judicial or other authority, after the act or omission.
(Amended by Stats. 1985, Ch. 983, Sec. 1.78. Effective September 26, 1985.)

5205. Whenever the term " association" is used in any provision of law, such term shall be deemed to include savings banks organized under this division; and wherever the term "federal association" is so used, such term shall be deemed to include federal savings banks.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5205.5. (a) All references in this division to financial statements, balance sheets, income statements, and statements of changes in financial position of an association and all references to assets, liabilities, earnings, retained earnings, shareholders' equity, and similar accounting items of an association, mean financial statements or items prepared or determined in conformity with generally accepted accounting principles then applicable which fairly present in conformity with generally accepted accounting principles the matters that they purport to present, subject to any specific accounting treatment required or permitted by any provision of this division, or by any regulation or order issued under this division.

(b) The commissioner may, by regulation or order, require any financial statement or accounting item of an association to be prepared or determined in a manner other than in conformity with generally accepted accounting principles if

it is found that the other manner of preparation or determination is necessary or appropriate to carry out the purposes or provisions of this division. A report utilizing accounting methods required pursuant to the provisions of this subdivision shall not be available for other than purposes as provided by the commissioner.
(Amended by Stats. 1985, Ch. 983, Sec. 1.8. Effective September 26, 1985.)

5206. Whenever the terms "board of directors," "directors," or "director" are used in any provision of law, such terms shall mean, with respect to savings banks organized under this division, "board of trustees," "trustees," or "trustee."
(Amended by Stats. 1984, Ch. 868, Sec. 3.5.)

5207. If any provision, clause, or phrase of this division or application to any person or circumstance is held invalid, its invalidity shall not affect other provisions or applications of this division that can be given effect without the invalid provisions or application, and to this end, the provisions of this division are separable.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5208. This division, being a comprehensive coverage of its subject matter, shall not be deemed to be impliedly repealed, in whole or in part, by subsequent legislation not specifically repealing it, if that construction can be avoided.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5209. Insofar as the provisions of this division are inconsistent with any other law in effect at the time the provisions of this division are enacted, the provisions of this division shall control. Except as provided in subdivision (a) of Section 6500, nothing within this section is intended to provide for preemption of other provisions of law expressly overruling the provisions of this division and enacted subsequent to the effective date of the inconsistent provision within this division.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 4. Penalties
(Article 4 added by Stats. 1987, Ch. 1162, Sec. 4. Effective September 26, 1987.)

5300. Every person who willfully violates or willfully fails to comply with any of the provisions of this division is guilty of a public offense. Except where the offense is declared to be a felony or a misdemeanor or a different punishment is prescribed, a person convicted under this section shall be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment.
(Added by renumbering Section 5302 by Stats. 1990, Ch.1118, Sec. 12.)

5301. (a) The commissioner may refer such evidence as is available concerning any violation of this division or of any regulation, order issued by the commissioner, or of any condition imposed in writing by the commissioner in connection with any grant of any application or request by the savings association or of a written agreement between the savings association and the commissioner to the Attorney General or to the district attorney of the county in which the violation occurred, who may, with or without such a referral, institute appropriate civil or criminal proceedings under this division.

(b) The commissioner and his or her counsel, deputies, or assistants may, upon request of the Attorney General or district attorney, assist the Attorney General or district attorney in presenting law or facts at any trial in these proceedings.
(Added by Stats. 1990, Ch. 1118, Sec. 11.)

5302. (a) Whoever knowingly violates subdivision (a) or (b) of Section 6525.5 shall be punished by a fine of not more than one million dollars ($1,000,000) for each day the violation continues, by imprisonment in the state prison for 2, 3, or 4 years, or by both that fine and imprisonment.

(b) Any person who is subject to an order issued pursuant to Section 8201 who knowingly violates the order, directly or indirectly, shall be punished by a fine of not more than one million dollars ($1,000,000) for each day violation continues, by imprisonment in state prison for 2, 3, or 4 years, or by both that fine and imprisonment.
(Added by Stats. 1990, Ch. 1118, Sec. 13.)

5303. Any officer, director, employee, or agent of any association (a) who willfully makes or knowingly concurs in the making or publishing of a false or untrue material entry in any book, record, report, statement concerning the business or affairs of the association, or statement of condition or in connection with any transaction of the association, with intent to deceive any officer or director thereof, or with intent to deceive any agency or examiner, whether private or public, employed or lawfully appointed to examine into the assocation's condition or to examine into any of the association's affairs or transactions, or with intent to deceive any public officer, office, or board to which the association is required by law to report or which has authority by law to examine into the association's affairs or transactions or (b) who, with like

intent, willfully omits to make a material new entry of any matter particularly pertaining to the business, property, condition, affairs, transactions, assets, or accounts of the association in any appropriate book, record, report, or statement of the association, which entry is required to be made by law or generally accepted accounting principles applicable to a savings institution, or (c) who, with like intent, willfully alters, abstracts, conceals, refuses to allow to be inspected by the commissioner or the commissioner's deputies or examiners, or destroys any books, records, reports, or statements of the association made, written, or kept, or required to be made, written, or kept by him or her or under his or her direction, shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment in the state prison for 2, 3, or 4 years, or by both that fine and imprisonment.
(Amended by Stats. 1990, Ch. 1118, Sec. 14.)

5304.(a) It is unlawful for any person to corruptly give, offer, or promise anything of value to any other person, with intent to influence or reward any institution-affiliated party in connection with any business or transaction of a savings association.

(b) It is unlawful for any institution-affiliated party to corruptly solicit or demand for the benefit of any person, or corruptly accept or agree to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of the savings association.

(c) Any person who violates subdivision (a) or (b) shall be punished by a fine of not more than one million dollars ($1,000,000) or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, by imprisonment in the state prison for 2, 3, or 4 years, or by both that fine and imprisonment. However, if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed one thousand dollars ($1,000), the offense shall instead be punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment in the county jail for not more than one year or in the state prison, or by both that fine and imprisonment.

(d) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business or where the amount of money or monetary worth of the thing of value is one hundred dollars ($100) or less.
(Repealed and added by Stats. 1990, Ch. 1118, Sec. 16.)

5305. Any institution-affiliated party who abstracts or willfully misapplies any of the money, funds, or property of the savings association, or willfully misapplies its credit, is guilty of a felony and shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment in the state prison for 2, 3, or 4 years, or by both that fine and imprisonment. However, if the amount abstracted or willfully misapplied does not exceed one hundred dollars ($100), the offense shall instead be punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment in the county jail for not more than one year or in the state prison, or by both that fine and imprisonment.
(Added by Stats. 1990, Ch. 1118, Sec. 17.)

5306. Any institution-affiliated party who knowingly executes, or attempts to execute, a scheme or artifice to defraud a savings association or to obtain any of the moneys, funds, credits, assets, securities or other property owned by or under the custody or control of a savings association by means of false or fraudulent pretenses, representations, or promises, shall be punished by a fine of not more than one million dollars ($1,000,000), by imprisonment in state prison for 2, 3, or 4 years, or by both that fine and imprisonment.
(Added by Stats. 1990, Ch. 1118, Sec. 18.)

5307. Whoever willfully and knowingly makes, issues, circulates, transmits, or causes or knowingly permits to be made, issued, circulated, or transmitted, any statement or rumor which is written, printed, reproduced in any manner, or communicated by word of mouth, that is untrue in fact and is directly or by inference false, or malicious in that it is calculated to injure the reputation or business, financial condition, or standing of any association shall be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment.
(Added by renumbering Section 5300 by Stats. 1990, Ch.1118, Sec. 9.)

5308. Whoever knowingly makes or causes to be made, directly or indirectly, or through any agency whatsoever, any false statement or report, or willfully overvalues any land, property, or security, for the purpose of influencing in any way the action of any association upon any application, advance, discount, purchase or repurchase agreement, commitment, or loan or the change or extension of any of these transactions by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security for these transactions shall be punished by a fine of not more than ten thousand dollars ($10,000) or, by imprisonment in the county jail not exceeding one year or in the state prison, or by both that fine and imprisonment.
(Added by renumbering Section 5301 by Stats. 1990, Ch. 1118, Sec. 10.)

5309. (a) A person shall be sentenced to consecutive terms for each violation of Section 5303, 5304, 5305, or 5306 up to a mandatory term of 20 years in state prison if all of the following are charged in the accusatory pleading and admitted by the defendant, or found to be true by the trier of fact:

(1) The person is an institution affiliated party.

(2) The person engaged in a pattern and practice of activity involving multiple violations of Section 5303, 5304, 5305, or 5306.

(3) The person acted with intent to cause substantial harm, or with reckless disregard of the possibility of causing substantial harm, to the savings institution.

(4) The violations did in fact result in substantial harm to the savings institution.

(b) No part of a consecutive sentence required pursuant to subdivision (a) may be suspended or revoked by the court.

(c) Nothing in subdivision (a) shall limit the court's discretion to sentence the defendant to a consecutive term longer than provided for in that subdivision, if otherwise permitted by law.

(d) Nothing in subdivision (a) shall limit the court's discretion to order consecutive sentences for violations of Section 5303, 5304, 5305, or 5306 under any other provision of law.

(Added by renumbering Section 5307 (as added by Stats. 1990, Ch. 118, Sec. 18.5) by Stats. 1991, Ch. 1091, Sec. 30.)

5310. (a) Any person violating or conspiring to violate Sections 5303, 5304, 5305, or 5306 shall be subject to a civil penalty in an amount assessed by the court in a civil action under this section.

(b) The maximum amount of the penalty which may be imposed under this section shall be determined in accordance with the following:

(1) Except as provided by paragraphs (2) and (3), the civil penalty shall not exceed one million dollars ($1,000,000).

(2) In the case of a continuing violation, the amount of the civil penalty may exceed the amount described in paragraph (1), but may not exceed the lesser of one million dollars ($1,000,000) for each day the violation continues or five million dollars ($5,000,000).

(3) If any person derives pecuniary gain from the violation, or if the violation results in pecuniary loss to a person other than the violator, the amount of the civil penalty may exceed the amounts described in paragraphs (1) and (2) but may not exceed the amount of that gain or loss.

(c) A civil action to recover a civil penalty under this section shall be brought in the name of the people of the State of California by the Attorney General, who shall be required to establish the right to recovery by a preponderance of the evidence.

(d) For the purpose of conducting a civil investigation in contemplation of proceeding under this section, the Attorney General may do all of the following:

(1) Administer oaths and affirmations.

(2) Take evidence.

(3) By subpoena or subpoena duces tecum, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry.

(Added by Stats. 1990, Ch. 1118, Sec. 19.)

5311. (a) Any fine or civil penalty imposed under this chapter shall be based upon the ability of the defendant to pay. In setting the amount of the fine or civil penalty, consideration shall also be given to the seriousness of the offense, the amount of any pecuniary gain by the defendant, and the amount of any pecuniary loss, other than defendant's own loss, caused by the offense.

(b) A civil penalty may not be imposed against a person under this chapter if that person has been punished by a fine or imprisonment for the same violation.

(c) A fine may not be imposed under this chapter if a civil penalty has previously been imposed for the same violation.

(Added by Stats. 1990, Ch. 1118, Sec. 19.5.)

Article 5. Criminal Forfeiture
(Article 5 added by Stats. 1990, Ch. 1118, Sec. 20.)

5320. If a person is convicted of a violation of Section 5303, 5304, 5305, or 5306, or is convicted of a felony for a violation of Section 25540 or 25541 of the Corporations Code in connection with the operation of a lending institution subject to the jurisdiction of the department pursuant to this division, or is convicted of a felony violation of Section 487 or 504 of the Penal Code in connection with the operation of a lending institution subject to the jurisdiction of the department pursuant to this division any property which constitutes or is derived from proceeds traceable to that violation is subject to forfeiture pursuant to this article.
(Amended by Stats. 1996, Ch. 1064, Sec. 549. Effective January 1, 1997. Operative July 1, 1997.)

5321. (a) The prosecuting agency shall, prior to, in conjunction with, or subsequent to the criminal proceeding, file a petition of forfeiture with the superior court of the county in which the defendant has been or will be charged with the underlying criminal offense. The petition shall allege that the defendant has engaged in acts chargeable as crimes pursuant to the criminal provisions enumerated in Section 5320 and shall identify the property subject to forfeiture. A notice regarding the petition shall be provided, by personal service or registered mail, to every person who may have an interest in the property specified in the petition. However, if the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. The notice shall state that any interested person may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. The notice shall set forth the time within which a claim of interest in the property seized is required to be filed.

(b) If the property alleged to be subject to forfeiture is real property, the prosecuting agency shall, at the time of filing the petition of forfeiture, record a lis pendens in each county in which the real property is situated which specifically identifies the property by legal description, the name of the owner of record as shown on the latest equalized assessment roll, and assessor's parcel number. The judgment of forfeiture shall not affect the interest in real property of any third party which was acquired prior to the recording of the lis pendens.

(c) If a petition of forfeiture is filed pursuant to this section prior to filing of the complaint in a criminal action, the prosecuting agency shall provide concurrent notice to any parties subject to the proposed forfeiture that they are targets of an anticipated criminal action.

(d) If a petition of forfeiture is filed pursuant to this section prior to the filing of a complaint in a criminal action, the petition and any injunctive order shall be dismissed by operation of law, unless a criminal complaint or grand jury indictment is filed within 120 days after the filing of the petition. If a petition is dismissed pursuant to this section, it shall not be refiled, except upon the filing of a criminal complaint or grand jury indictment.
(Amended by Stats. 1992, Ch. 1280, Sec. 2. Effective January 1, 1993.)

5322. (a) Any person claiming an interest in the property may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General or district attorney, as appropriate.

(b) (1) If, at the end of the time set forth in subdivision (a), an interested person, other than the defendant, has not filed a claim, the court, upon motion, shall declare that the person has defaulted upon his or her alleged interest, and it shall be subject to forfeiture upon proof of the provisions of subdivision (d).

(2) The defendant may admit or deny that the property is subject to forfeiture pursuant to the provisions of this article. If the defendant fails to admit or deny or to file a claim of interest in the property or proceeds, the court shall enter a response of denial on behalf of the defendant.

(c) (1) The forfeiture proceeding shall be set for hearing in the superior court in which the underlying criminal offense will be tried.

(2) If the defendant is found guilty of the underlying offense, the issue of forfeiture shall be promptly tried, either before the same jury or before a new jury in the discretion of the court, unless waived by the consent of all parties.

(d) At the forfeiture hearing, the prosecuting agency shall have the burden of establishing beyond a reasonable doubt that the defendant was engaged in actions in violation of Sections 5303, 5304, 5305, and 5306 and that the property specified in the petition otherwise meets the criteria for forfeiture under Section 5320. If a jury is the trier of fact, the verdict shall be unanimous in order to impose the forfeiture.
(Added by Stats. 1990, Ch. 1118, Sec. 20.)

5323. (a) Concurrent with, or subsequent to, the filing of the petition, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo of the property alleged in the petition of forfeiture:

(1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that such property may be maintained and preserved.

(b) No preliminary injunction may be granted or receiver appointed without notice, that meets the requirements of Section 5321, to all the interested parties, including actual notice to targets of the anticipated criminal action, and a hearing to determine that such an order is necessary to preserve the property, pending the outcome of the criminal proceedings, and that there is probable cause to believe that the property alleged in the forfeiture proceedings are proceeds or property interests forfeitable under Section 5320. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(1) In determining whether to issue a preliminary injunction or temporary restraining order in a proceeding brought by a prosecuting agency in conjunction with or subsequent to the underlying criminal proceeding, the court shall weigh the relative degree of certainty of the outcome on the merits and the consequences to each of the parties of granting the interim relief. If the prosecution is likely to prevail on the merits and the potential harm to the public outweighs the potential harm to the defendants and the interested parties, the court should grant injunctive relief. The court shall give significant weight to the following factors:

(A) The public interest in preserving liquid capital and other financial assets pendente lite.

(B) The difficulty of preserving financial assets pendente lite where the underlying alleged crimes involve issues of fraud and moral turpitude.

(C) The fact that the requested relief is being sought by a public prosecutor on behalf of alleged victims of financial crimes.

(D) The likelihood that substantial public harm has occurred where financial crimes are alleged to have been committed.

(2) In determining whether to issue a permanent injunction or temporary restraining order in a proceeding brought by a prosecuting agency before the filing of a complaint in the underlying criminal proceeding, the court shall weigh the relative degree of certainty of the outcome on the merits and the consequences to each of the parties of granting the interim relief.

(3) No injunctive order issued under this section shall impair the ability of a defendant or interested party to pay the actual legal fees or retainer for his or her legal defense to the criminal charges and the petition for forfeiture.

(c) Notwithstanding any other provision of law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties, but the court shall give significant weight to the unique circumstances of public agencies, as opposed to private litigants, in determining whether to order a surety bond or undertaking.

(d) The court shall, in making its orders, seek to protect the interests of those who may be involved in the same enterprise as the defendant, but who were not involved in the commission of the violation of a crime enumerated in Section 5320.

(Amended by Stats. 1992, Ch. 1280, Sec. 3. Effective January 1, 1993.)

5324. (a) If the trier of fact at the forfeiture hearing finds that the alleged property or proceeds is forfeitable pursuant to Section 5320, the court shall declare that property or proceeds forfeited to the state or local governmental entity, subject to distribution as provided in Section 5325. No property solely owned by a bona fide purchaser for value shall be subject to forfeiture.

(b) If the trier of fact at the forfeiture hearing finds that the alleged property is forfeitable pursuant to Section 5320, but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired that interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due to that person is less than the appraised value of the property, that person may pay to the state or the local governmental entity which initiated the forfeiture proceeding, the amount of the difference between the appraised value of the property and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon that payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to make that payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and any indicia of ownership of the property shall be forwarded. The appraised value shall be determined as of the date judgment is entered either (a) by agreement between the holder of the lien, mortgage, security interest, or interest under a conditional sales contract and the governmental entity

involved or (b) if they cannot agree, then by a court-appointed appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

(c) If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the county if the district attorney is the prosecutor, by the city if the city attorney is the prosecutor, or by the Department of General Services if the Attorney General is the prosecutor. Notice of the sale shall be provided by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

(Added by Stats. 1990, Ch. 1118, Sec. 20.)

5325. Notwithstanding that no response or claim has been filed pursuant to Section 5322, in all cases where property is forfeited pursuant to this article and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage or security interest, if any, and from the balance of any forfeited funds to any victim of a crime enumerated in Section 5320 committed by the defendant, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all such lienholders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed. The aggregate of all money distributed pursuant to this subdivision and all money received pursuant to a restitution order of a court shall not exceed the amount of the person's interest in the property or proceeds.

(b) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this article.

(c) The balance of forfeiture funds remaining after the obligations in subdivisions (a) and (b) have been satisfied shall be paid to the general fund of the state or local governmental entity, whichever prosecutes.

(Amended by Stats. 1992, Ch. 1280, Sec. 4. Effective January 1, 1993.)

Article 6. Civil Penalties

(Article 6 added by Stats. 1990, Ch. 1118, Sec. 21.)

5330. The commissioner may impose civil penalties on any savings association, and any institution-affiliated party as follows:

(a) Except as provided in subdivision (b) or in subdivisions (c) and (d), any savings association which, and any institution-affiliated party who, commits any of the following violations shall forfeit and pay a civil penalty of not more than five thousand dollars ($5,000) for each day during which the violation continues:

(1) Violation of any statute or regulation.

(2) Violation of any order issued by the commissioner.

(3) Violation of any condition imposed in writing by the commissioner in connection with the grant of any application or other request by the savings association.

(4) Violation of any written agreement between the savings association and the commissioner.

(b) Any savings association which, and any institution-affiliated party who, (1) commits any violation specified in subdivision (a), (2) recklessly engages in an unsafe or unsound practice in conducting the affairs of the savings association, or (3) breaches any fiduciary duty shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day during which the violation, practice, or breach continues if the violation, practice, or breach (1) is part of a pattern of misconduct,

(2) causes or is likely to cause more than a minimal loss to the savings association, or (3), was committed by an institution-affiliated party and results in pecuniary gain or other benefit to that institution-affiliated party.

(c) Notwithstanding subdivisions (a) and (b), any savings association which, and any institution-affiliated party who, (1) knowingly commits any violation specified in subdivision (a), engages in any unsafe or unsound practice in conducting the affairs of the savings association, or breaches any fiduciary duty, and (2) knowingly or recklessly causes a substantial loss to the savings association or, in the case of an institution-related party, a substantial pecuniary gain or

other benefit to the institution-related party results by reason of violation, practice or breach, shall forfeit and pay a civil penalty in an amount not to exceed the maximum amount determined under this subdivision for each day during which the violation, practice, or breach continues. The maximum daily amount of any civil penalty which may be assessed pursuant to this subdivision for any violation, practice, or breach described in the subdivision is as follows:

(1) In the case of any person other than a savings association, an amount not to exceed one million dollars ($1,000,000).

(2) In the case of any savings institution, an amount not to exceed the lesser of one million dollars ($1,000,000) or 1 percent of the total assets of the association.

(d) (1) Any penalty imposed under subdivisions (a), (b), or

(c) may be assessed and collected by the commissioner by written notice.

(2) If, with respect to any assessment under paragraph (1) a hearing is not requested pursuant to subdivision (g) within the period of time allowed under subdivision (g), the assessment shall constitute a final and unappealable order.

(e) The commissioner may compromise, modify or remit any penalty which may be assessed or which has been assessed pursuant to subdivision (a), (b), or (c).

(f) In determining the amount of any penalty imposed under subdivision (a), (b), or (c), the commissioner shall take into account the appropriateness of the penalty with respect to all of the following:

(1) The size of financial resources and good faith of the savings association or other person charged.

(2) The gravity of the violation, practice, or breach.

(3) The history of previous violations, unsafe or unsound practices, or breaches of fiduciary duty.

(4) Such other matters as justice may require.

(g) The savings association or other person against whom any penalty is assessed under this section shall be afforded a departmental hearing if the association or person submits a request for a hearing within 20 days after the issuance of the notice of assessment.

(h) (1) If any savings association or institution-related party fails to pay an assessment after any civil monetary penalty assessed under this section has become final, the department shall recover the amount assessed by action in superior court.

(2) Notwithstanding any other provision of law, review under Section 8055 of the validity or appropriateness of any civil penalty assessed under this section shall be conducted solely pursuant to Section 1085 of the Code of Civil Procedure.

(i) All penalties collected under authority of this section shall be deposited in the Savings and Loan Account in the Financial Institutions Fund.

(Amended by Stats. 1996, Ch. 1064, Sec. 550. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 2. CORPORATE ORGANIZATION AND CORPORATE CHANGES

(Chapter 2 added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 1. Organizing Permit

(Article 1 added by Stats. 1983, Ch. 1091, Sec. 2.)

5400. (a) No funds from proposed stockholders, members, or organizers of any proposed association may be collected until a verified application for an organizing permit has been filed and a permit has been issued by the commissioner authorizing collection of funds, and then only in accordance with the terms of the permit.

(b) As used in this chapter, the term "organizer" means a person who agrees to contribute funds to a proposed association to be used for its organization expenses.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5401. The application for an organizing permit shall be in writing and shall be filed in the office of the commissioner. The application shall be executed and verified by the chairman of the organizers, who shall be elected by a majority vote of the organizers, and shall include the following:

(a) The names and addresses of the organizers of the proposed association and, to the extent known, its proposed directors and officers, together with the proposed amount of capital stock and savings accounts to be purchased and funds for organization expenses to be contributed by each.

(b) The proposed location of its office.

(c) A copy of any contract proposed to be used for the solicitation of subscriptions for stock and savings accounts and funds for its organization expenses.

(d) A copy of any advertisement, circular, or other written matter proposed to be used for soliciting stock and savings accounts subscriptions and funds for organization expenses.

(e) An itemized estimate of the organization expenses proposed to be incurred.

(f) A copy of the certificate of reservation of name issued under Section 5403. The name selected shall conform with the requirements of Article 4 (commencing with Section 5650).

(g) Any additional information that the commissioner may require by written instructions.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5402. (a) The commissioner may impose conditions in an organizing permit concerning the deposit in escrow of funds collected pursuant to the permit, the manner of expenditure of the funds, and any other conditions deemed reasonable and necessary or advisable for the protection of the public, the subscribers, and the organizers.

(b) Contributions of organization expenses may be repaid to organizers on a pro rata basis by the association in amounts not to exceed its net income from operations after provision for statutory reserves.

(Amended by Stats. 1984, Ch. 287, Sec. 3. Effective July 6, 1984.)

5403. (a) Before filing an application for an organizing permit with the commissioner under Section 5400, an organizer shall file with the Secretary of State an application for a certificate of a reservation of the name for the proposed association in accordance with the provisions of Article 5 (commencing with Section 5650).

(b) The application filed with the Secretary of State shall recite the fact of the application to be filed under Section 5400 and the Secretary of State shall issue a certificate of reservation of name upon payment of any required fee.

(c) Notwithstanding the provisions of subdivision (c) of Section 201 of the Corporations Code, the name contained in the certificate of reservation of the name shall be reserved to the applicant until (1) the commissioner denies the petition for a certificate of authority, or (2) if a certificate of approval of articles of incorporation is issued, as long as it continues in effect, or (3) for a period of up to one year from the date when the certificate of reservation of the name is issued, whichever of these occurs first.

(d) The Secretary of State may, upon the request of the applicant and the approval of the commissioner, extend the reservation of the name for an additional six months.

(Amended by Stats. 1984, Ch. 868, Sec. 4.)

Article 2. Petition for Certificate of Authority
(Article 2 added by Stats. 1983, Ch. 1091, Sec. 2.)

5500. Within 60 days after issuance of an organizing permit under Article 1 (commencing with Section 5400) any person may request authority to form a capital stock or mutual association by filing with the commissioner three copies of a petition for a certificate of authority and proposed articles of incorporation. The petition shall also be accompanied by three copies of proposed bylaws which shall make provisions for the following:

(a) Annual and special meetings of members or stockholders, and notice of meetings.
(b) Procedure for nomination of directors.
(c) Meetings of board of directors.
(d) Resignation and removal of directors.
(e) Compensation of directors.
(f) Officers.
(g) Execution of instruments.
(h) Evidence of savings accounts.
(i) Corporate seal.
(j) Fiscal year.
(k) Amendments.
(l) Disaster preparedness.
(m) Other matters, if any.

The petitioners shall submit with their petitions any applicable filing fee prescribed under Section 9001 and any statements, exhibits, maps, and other data that the commissioner may require by written instruction in a form which is sufficiently detailed and comprehensive to enable the commissioner to make a decision on the petition based on the criteria set out in Section 5502.
(Amended by Stats. 1988, Ch. 718, Sec. 1.5.)

5501. Upon receipt of a petition for a certificate of authority, the commissioner shall give written notice to each association that a petition for the issuance of a certificate has been made. The notice shall state the name of the proposed association, where the petitioners propose to establish the home office of the association, and if the commissioner determines that a hearing is to be held on the petition, the time and place of the hearing. The hearing shall be held 10 or more days after the mailing of the notice but in no event later than 60 days after the mailing of the notice. Any interested person may appear at the hearing in person or by agent or attorney, and orally or in writing show cause upon any relevant ground why a certificate should not be issued.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5501.5. The articles of incorporation of each domestic association incorporated after January 1, 1984, shall include a statement that it is formed for each of the following purposes:

(a) To engage primarily in the specific business of a savings association and any other lawful activities not prohibited to a savings association by applicable laws and regulations.

(b) To encourage industry, frugality, home building, and the accumulation of savings. That statement shall add either "among its members" or "among its savings account holders" and may also add "and among others."

(c) For the loaning of the money accumulated, with the interest and earnings thereon. The statement shall add either "to its members" or "to its savings account holders" and the statement may also add "and to others."

(d) For the repayment subject to the provisions of this division and any act amendatory thereof or supplementary thereto of the savings and interest to each savings account holder whenever the savings account holder desires to withdraw the same, or when the association desires to repay the same.

(e) In the case of a stock association, for the purpose of issuing capital stock and savings accounts.

(f) In the case of a mutual association, for the purpose of accumulating capital by the issuance of savings accounts and to grant holders of savings accounts the right to be a member of the association with entitlement to one vote for each one hundred dollars ($100) of the withdrawal value of each savings account to be voted in person or by proxy to transact the business of the association.

(g) For any and all purposes specified in the Savings Association Law with all the rights, powers, privileges and immunities as set forth in that law.

The above provisions are in lieu of paragraph (1) of subdivision (b) of Section 202 of the Corporations Code and may be supplemented or modified with such provisions as the commissioner may approve.
(Amended by Stats. 1988, Ch. 718, Sec. 2.)

5502. The commissioner shall not approve any petition for certificate of authority unless it is found from the data furnished with the petition, the evidence adduced at the hearing, if one is held, and official records, that the prerequisites of this division have been complied with and that:

(a) The character, responsibility, financial resources, and general fitness of the persons named in the petition warrant belief that the business of the proposed association will be honestly and efficiently conducted in accordance with the intent and purpose of this division and that the proposed association will have qualified full-time management.

(b) There is a public need for the proposed association and the business plan, and the anticipated volume of business of the proposed association indicates a profitable operation.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5503. (a) The commissioner shall, within a reasonable time after the petition is filed, or within a reasonable time after the hearing, if one is held, either approve or deny the petition for a certificate of authority.

(b) If approved, the commissioner shall issue a certificate of approval of the articles of incorporation of the association and shall issue a notice of conditional approval of the petition for a certificate of authority. Upon satisfaction of all of the conditions in the notice, the commissioner shall execute and issue to the association a certificate of authority.

(c) If denied, upon written request of any petitioner, the commissioner shall provide the statutory reason for denial. Denial of the petition is a final decision and the petitioner shall not be entitled to any further administrative remedy. The petitioner shall discontinue the use of the reserved name and provide evidence to the commissioner that the Secretary of State has been notified to release the name reservation.

(Amended by Stats. 1987, Ch. 730, Sec. 2.)

5504. Upon issuance of a certificate of approval of articles of incorporation to a proposed association, the commissioner shall attach the original signed copy of the certificate of approval to the original signed copy of the articles and deliver it to the proposed association for filing with the Secretary of State. Corporate existence shall begin on the date of filing of the articles with the Secretary of State. Prior to the date the commissioner issues the association a certificate of authority, the activities of the association shall be limited to completing its organization activities and the association shall not open its office for transacting business with the public.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5505. The articles of incorporation of a proposed association shall not be filed in the office of the Secretary of State unless a certificate of approval of the articles of incorporation issued by the commissioner is attached thereto.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5506. Within 30 days after the corporate existence of an association begins, the directors of the association shall hold an organization meeting and shall elect officers pursuant to the provisions of this division and the bylaws. At the organization meeting, the directors shall take any other action that is appropriate in connection with the organization of the association. The commissioner may extend by order the time within which the organization meeting shall be held.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 3. Postincorporation Organization of Associations

(Article 3 added by Stats. 1983, Ch. 1091, Sec. 2.)

5600. (a) The board of directors of an association which is in the process of organization shall select a financial institution within this state as a depository for stock, savings account and mutual capital certificate subscription funds.

(b) The financial institution shall assure the safekeeping of the subscription funds and the delivery of these funds to the association after the issuance of the certificate of authority and after the bonding of the officers. In the event of the failure to complete the organization of the association and to commence business, the financial institution shall insure the return of the amounts collected to the respective subscribers or their assigns, plus any earnings on the funds, less reasonable charges of the financial institution for services as depository of the funds.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5601. Before a certificate of authority is issued, the capital of the association shall be paid into the association and, in the case of stock, shall be the sum of the par or initially stated value of all shares of capital stock, plus the initial paid-in surplus. The minimum required capital shall be established by regulations, or instructions, issued by the commissioner.

(Amended by Stats. 1984, Ch. 287, Sec. 3.5. Effective July 6, 1984.)

5602. In addition to the minimum capital required, the commissioner may require that the consideration for the issuance of capital stock shall be sufficient to create a paid-in surplus in an amount satisfactory to the commissioner. The minimum capital and surplus may be used for the reserves required by law and for other purposes as may be permitted by

the board of directors, provided that the par value or stated value of the stock subscribed shall be maintained as the permanent capital of the association, as required by Sections 5604 and 5605.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5603. In the case of a stock association, prior to issuance of a certificate of authority, the association shall file with the commissioner a statement in a form and with supporting data and proof that the commissioner may require, that verifies that the entire capital and paid-in surplus has been unconditionally paid in, that these funds are on deposit with the depository financial institution, and that all conditions contained in the notice of conditional approval of the petition for a certificate of authority have been met.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5604. (a) In the case of a stock association, on or after the date the commissioner issues the association a certificate of authority, the association shall issue the capital stock necessary to satisfy the minimum capital requirements of Section 5601 and any additional capital stock approved for issuance by its board of directors, up to the amount authorized in its articles of incorporation, and shall issue no additional shares except as authorized in this division.

(b) The capital stock of an association, when issued, shall constitute permanent capital and shall not be retired or withdrawn except as provided in this division until all liabilities of the association have been satisfied in full, including the withdrawal value of all savings accounts, and until outstanding capital certificates have been retired.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5605. (a) Any association that does not commence business within one year after the date of the issuance of its certificate of approval of articles of incorporation shall forfeit its certificate of approval of articles of incorporation, unless the commissioner, before the expiration of the one year period, shall have approved the extension of time within which it may commence business, upon a written application stating the reasons for delay. Upon forfeiture, the association's certificate of approval of articles of incorporation shall expire. Amounts credited on savings accounts or paid in on capital stock, including any income earned on these funds, shall be returned on a pro rata basis to their respective subscribers.

(b) The commissioner shall immediately notify the Secretary of State of forfeiture under this section.
(Amended by Stats. 1986, Ch. 361, Sec. 3.)

5606. (a) Prior to doing business in this state, an association shall obtain and maintain insurance of its savings accounts by the Federal Deposit Insurance Corporation.

(b) Prior to doing business in this state, a foreign savings association, as defined in Sections 10000 and 10010, shall maintain insurance of its savings accounts by the Federal Deposit Insurance Corporation.

(c) The commissioner may enforce any statutes pertaining to, or any regulations of, the Federal Deposit Insurance Corporation or the Office of Thrift Supervision insofar as those statutes and regulations apply to associations, and may enforce any and all other federal statutes and regulations applicable to associations.
(Amended by Stats. 1990, Ch. 1118, Sec. 22.)

5612. For the purposes of this article, "security" means any stock, subordinated debenture, warrant, or right or option to purchase any stock issued by an association.
(Added by Stats. 1988, Ch. 718, Sec. 4.)

5613. (a) No association shall sell, except upon a sale for a delinquent assessment made in accordance with the provisions of the General Corporation Law, or offer for sale, or take subscriptions for, or issue any of its securities (except stock dividends), until the association has applied for and obtained from the commissioner a permit authorizing it to offer, sell or issue that security.

(b) Notwithstanding subdivision (a), an association may enter into agreements for the sale of securities with accredited investors (as defined in Section 230. 215 of the Securities Exchange Commission regulations) or persons approved by the commissioner prior to obtaining a permit pursuant to subdivision (a).

(c) The commissioner may, by regulation, instruction, or order exclude certain transactions from the operation of this section.
(Amended by Stats. 1988, Ch. 718, Sec. 5.)

5614. (a) Except as provided in subdivision (b), no issued and outstanding stock of an association shall be sold or offered for sale to the public, nor shall subscriptions be solicited or taken for those sales, until the association or the selling stockholders have applied for and obtained from the commissioner a permit authorizing the sale of the capital stock.

(b) Subdivision (a) shall not apply to any of the following:

(1) An offering involving less than 10 percent of the issued and outstanding capital stock of an association and less than five hundred thousand dollars ($500,000).

(2) An offering made under a registration statement filed under the Securities Act of 1933.

(3) Any offering exempted by regulation, instruction, or order issued in writing by the commissioner.

(Amended by Stats. 1987, Ch. 730, Sec. 4.)

5615. An application for a permit to sell securities shall be in writing, verified as provided in the Code of Civil Procedure for the verification of pleadings, and shall be filed in the office of the commissioner by the association or the selling stockholders. The application shall include the following:

(a) Regarding the association.

(1) The names and addresses of its officers.

(2) The location of its office.

(3) A balance sheet or statement of its financial condition as of a date within 90 days of the filing date.

(4) A copy of all minutes of any proceedings of its directors, shareholders, or stockholders relating to or affecting the issue of such securities.

(b) Regarding the offering.

(1) A brief description of the method by which the securities are to be offered for sale, including the offering price and the underwriting commissions and expense, if any.

(2) A copy of a prospectus or advertisement or other description of the securities prepared for distribution or publication in accordance with requirements prescribed by the commissioner.

(3) A copy of any contract concerning the sale of the securities.

(4) With respect to any permit issued pursuant to Section

5614, the names and addresses of the selling stockholders and of the officers of any selling corporation and the partners of any selling partnership.

(c) Such additional information as the commissioner may require.

(d) An application fee as prescribed by the commissioner pursuant to Section 9001.

(Amended by Stats. 1988, Ch. 718, Sec. 6.)

5616. Upon the filing of the application for a permit to sell securities, the commissioner shall examine the application and other papers and documents filed therewith, and he or she may make a detailed examination, audit, and investigation of the association and its affairs. If the commissioner finds that the proposed plan for the issue and sale of such securities is fair, just, and equitable, the commissioner shall issue to the applicant a permit authorizing it to issue and dispose of its securities in such amounts and for such considerations and upon such terms and conditions as the commissioner may provide in the permit. If the commissioner does not so find, the commissioner shall deny the application and notify the applicant in writing of his or her decision.

(Amended by Stats. 1988, Ch. 718, Sec. 7.)

5617. Every permit to sell securities shall recite in bold type that the issuance thereof is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be issued.

(Amended by Stats. 1988, Ch. 718, Sec. 8.)

5618. The commissioner may amend, alter, or revoke any permit issued by the commissioner, or temporarily suspend the rights of the association under such permit.

(Added by Stats. 1984, Ch. 287, Sec. 10. Effective July 6, 1984.)

Article 4. Issuance of Stock and Certificates

(Article 4 added by Stats. 1983, Ch. 1091, Sec. 2.)

5620. (a) A stock association may issue shares of common stock and preferred stock, with or without par value, and common and preferred stock may be divided into classes and the classes into series.

(b) Stock associations which have withdrawable shares outstanding as of the effective date of this section may continue to issue savings accounts in that form and the holders of these accounts shall have the same rights as they had before this section became law.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5621. (a) With the approval of the commissioner, a mutual association may amend its articles of incorporation to authorize the issuance of stock and may issue stock. Any amendment to the articles of incorporation and bylaws of an association which for the first time authorizes it to issue stock shall be approved by the vote or written assent of a majority of the total votes of members outstanding, except that the amendment shall require approval only of the commissioner and board of directors of an association if the commissioner finds that grounds exist for the appointment of a conservator for the association pursuant to subdivision (a) of Section 8225.

(b) An amendment to the articles of incorporation of an association pursuant to this section may include provisions with respect to the surplus, reserves, and undivided profits of the association and in that case the surplus, reserves, and undivided profits shall be retained and disposed of in accordance with those provisions.

(c) The corporate existence of a mutual association which amends its articles of incorporation pursuant to this section to authorize the issuance of stock and which issues stock shall continue to be, and the resulting stock association shall be deemed to be, a continuation of the mutual association. The Legislature finds and declares that Section 563b.41 (d)(3) of Title 12 of the Code of Federal Regulations sets forth the law of this state with regard to the continuity of corporate existence in mutual association to stock association conversions and that this section has reflected that law from the time of the original adoption of Section 563b.41 of Title 12 of the Code of Federal Regulations.
(Amended by Stats. 1989, Ch. 868, Sec. 2. Effective September 26, 1989.)

5622. Capital stock of a stock association shall be issued pursuant to the following requirements:

(a) Except for stock issued pursuant to a stock dividend, stock split, reverse stock split, reclassification of outstanding stock into stock of another class, exchange of outstanding stock for stock of another class or other change affecting outstanding stock or an employee stock option plan or a plan of merger, consolidation, conversion from a mutual to a stock association, or other type of reorganization that has been approved by the commissioner, the consideration for the issuance of capital stock shall be money paid, debts or securities canceled or tangible or intangible property actually received either by the association or by a wholly owned subsidiary. The par value or stated value of stock shall be maintained as the permanent capital of the association and any additional amount paid in shall be credited to paid-in surplus.

(b) The aggregate par value or stated value of all outstanding shares of capital stock shall be the permanent capital of the association and except as otherwise specifically provided by this division, capital stock shall not be retired until final liquidation of the association.

(c) No association shall reduce the par or stated value of its outstanding capital stock without first obtaining the written approval of the commissioner, and approval shall be withheld if the reduction would cause the par or stated value of outstanding capital stock to be less than the minimum required by this division or would result in less than adequate statutory net worth as the commissioner may determine under Section 6475.

(d) No association shall retire any part of its capital stock unless the retirement is approved by the commissioner.

(e) No association shall make loans secured by its capital stock.

(f) With the written approval of the commissioner, an association may purchase its capital stock or may contract with a stockholder for purchase of stock upon the stockholder's death. However, the purchase shall not reduce the net worth accounts of the association, or any of them, to an amount less than required by applicable law. An association which agrees with a stockholder to purchase that stockholder's capital stock upon death may purchase insurance upon the life of the stockholder to fund or partially fund the purchase.
(Amended by Stats. 1987, Ch. 1162, Sec. 6. Effective September 26, 1987.)

5623. A mutual association may issue mutual capital certificates in accordance with regulations of the commissioner.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5624. An association may issue net worth certificates in accordance with applicable regulations of the Office of Thrift Supervision or the Federal Deposit Insurance Corporation.
(Amended by Stats. 1990, Ch. 1118, Sec. 23.)

Article 5. Association Name, Office
(Article 5 added by Stats. 1983, Ch. 1091, Sec. 2.)

5650. Notwithstanding the provisions of subdivision (a) of Section 201 of the Corporations Code and Division 1 of the Financial Code, the name of every association shall include either the words "savings association," "savings and loan association," "savings bank" or such other designation as the commissioner may approve. These words shall be preceded by an appropriate descriptive word or words approved by the commissioner.
(Amended by Stats. 1984, Ch. 868, Sec. 5.)

5651. (a) No certificate of approval of articles of incorporation of a proposed association having the same name as an association in existence in this state on the date an application is filed under Section 5401, or a name so nearly resembling it as to be likely to deceive, shall be issued by the commissioner, except to an association formed by the reincorporation, reorganization, or consolidation of the association with other associations, or upon the sale of the property or franchise of an association. The commissioner may presume that the use of any word or words already adopted,

appropriated, or used in its corporate name by any association then existing in this state, except the words "the," "and," "mutual," "guarantee," "building," "loan," "savings," "association," or "bank," constitutes such similarity of names as to be likely to mislead the public.

(b) An association shall not adopt or change to a name that will result in unfair competition or public confusion, or be deceptive, scandalous, or otherwise unsuitable.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5652. Except as otherwise authorized under existing law, no person, unless lawfully authorized to do business in this state under the provisions of this division and who is actually engaged in carrying on a savings association business, shall:

(a) Do business under any name or title that contains the following terms:

(1) "Savings association."

(2) "Savings bank."

(3) "Savings and loan association."

(4) "Building and loan association."

(5) "Building association."

(6) Any combination employing either or both of the words "building," or "loan," with one or more of the words "saving," "savings," or words of similar import.

(7) Any combination employing one or more of the words "saving," "savings," or words of similar import with one or more of the words "association," "bank," "institution," "society," "company," "fund," "corporation," or words of similar import.

Notwithstanding the provisions of this subdivision, use of the term "savings bank" in a name or title is not prohibited to any person regulated by the provisions of Division 1 (commencing with Section 99), Division 7 (commencing with Section 18000), or under procedures and regulations promulgated by the Comptroller of the Currency, Federal Reserve Board, Office of Thrift Supervision, Federal Housing Finance Board, or Federal Deposit Insurance Corporation. Any reference to the term "savings bank" in this division is not intended to apply to any person other than persons authorized to do business in this state under this division.

(b) Use any name or sign or circulate or use any letterhead, billhead, circular or paper whatever, or advertise or represent in any manner that indicates or reasonably implies that the business is the character or kind of business carried on or transacted by an association or is likely to lead any person to believe that the business is that of an association.

(Amended by Stats. 1996, Ch. 1064, Sec. 551. Effective January 1, 1997. Operative July 1, 1997.)

5653. Upon application by the commissioner or any association, a court of competent jurisdiction may issue an injunction to restrain any person from violating or continuing to violate any of the provisions of Section 5652. Any person who violates any provision of Section 5652 shall be punished by a fine of not more than five thousand dollars ($5,000), and each day of violation shall constitute a separate offense. The prohibitions of Section 5652 shall not apply to any corporation or association formed for the purpose of promoting the interests of thrift institutions, the membership of which is comprised of thrift institutions, their officers, or other representatives.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5654. (a) Without the prior approval of the commissioner, as provided in this division, no association shall do any of the following:

(1) Establish or maintain any office, other than its home office, which shall be in the location named in the certificate of authority.

(2) Change the location or designation of any office from its approved location or designation.

(3) Change its corporate name by amendment of its articles of incorporation and its certificate of authority. A change of name is subject to the same criteria as set out in Sections 5650 and 5651.

(4) Amend its articles of incorporation or bylaws.

(5) Establish or maintain a subsidiary.

(6) Acquire all or substantially all of the assets or savings account liabilities of a branch or branches of another financial institution.

(b) Applications for approval under this section shall be filed in the office of the commissioner, shall include information as prescribed by regulation or written instruction of the commissioner, and shall be accompanied by any filing fee prescribed by the commissioner pursuant to Section 9001.

(c) A public hearing may be held on applications filed under this section in accordance with procedures prescribed by law or by regulations adopted by the commissioner.

(d) No certificate of amendment or other certificate to amend the articles of incorporation of an association shall be filed in the office of the Secretary of State unless there is attached thereto the certificate of the commissioner approving the certificate.

(e) Applicants filing under this division shall publish notice as prescribed by the commissioner.
(Amended by Stats. 1988, Ch. 718, Sec. 9.)

5655. No association shall advertise or hold itself out to the public as a bank. This subdivision shall not be construed to prohibit an association which is a savings bank from advertising or holding itself out to the public as a "savings bank."
(Added by Stats. 1984, Ch. 287, Sec. 12. Effective July 6, 1984.)

Article 6. Conversions
(Article 6 added by Stats. 1983, Ch. 1091, Sec. 2.)

5700. A state association may convert itself into a federal association by following the procedure outlined in Sections 5701 through 5708.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5701. At any regular or special meeting called to consider the conversion of an association into a federal association, in the case of a stock association, the stockholders entitled to vote and any members entitled to vote, by an affirmative majority of the votes cast in person or by proxy; and in the case of a mutual association the members, by action on a proposal approved by the members, may resolve to convert the association into a federal association.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5702. Any executor, administrator, guardian, conservator of a natural person or receiver, and any fiduciary or trustee, and any public corporation, political subdivision, public instrumentality, charitable institution, educational and eleemosynary institution, trust company or financial institution, and any insurance company or cemetery association may, without obtaining court approval:

(a) Vote in person or by proxy in favor of or against converting a state association into a federal association, or may approve or disapprove the determination to so convert.

(b) Exchange any stock, savings accounts, or other rights or claims, for securities issued by the federal association, and hold the securities as legal investments.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5703. Promptly after the meeting approving a conversion into a federal association, the association shall file in the office of the commissioner a certificate verified by the president or vice president and the secretary or assistant secretary of the association. The certificate shall contain a copy of the minutes of the meeting and a statement of the number of stockholders and members entitled to vote and the number voting to approve the determination to convert the association into a federal association. A like certificate shall be filed in the office of the Secretary of State.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5704. A certified copy of the certificate required by Section 5703 filed in the office of the Secretary of State is presumptive evidence of the holding of the meeting, the action taken at the meeting, and of the approval of stockholders and members.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5705. After the meeting of the stockholders and members, the association shall take any action necessary to make it a federal association, and promptly after receipt of the federal charter the association shall file in the office of the commissioner and in the office of the Secretary of State, a copy of the charter issued to it by the Office of Thrift Supervision or a certificate showing the organization of the association as a federal association certified by or on behalf of the Office of Thrift Supervision. Upon the filing of this instrument in the office of the Secretary of State the association ceases to be a state association and is a federal association.
(Amended by Stats. 1990, Ch. 1118, Sec. 25.)

5706. At the time the conversion into a federal association becomes effective the association ceases to be supervised by this state and all of the property of the association, including all of its right, title, and interest in and to all property of every kind and character immediately, by operation of law and without any conveyance, or transfer and without any further act or deed, is vested in the association under its new name and style as a federal association and under its new jurisdiction.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5707. The converted federal association shall have, hold, and enjoy the property mentioned in Section 5706 in its own right as fully and to the same extent as the property was possessed, held, and enjoyed by it as a state association and the federal association shall continue to be responsible for all of the obligations of the converted state association to the same extent as though the conversion had not taken place. The federal association is merely a continuation of the state association under a new name and new jurisdiction and the revision of its corporate structure as is considered necessary for its proper operation under the new jurisdiction.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5708. Where a copy of a charter of a federal association, issued by the Federal Home Loan Bank Board pursuant to the laws of the United States was filed with the Secretary of State prior to September 13, 1941, with the intent of converting a building and loan association organized and existing under the laws of this state into a federal association, those conversions are validated, legalized, ratified and confirmed.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5709. Any federal association may convert itself into an association by following the procedure set forth in Sections 5710 through 5718.
(Amended by Stats. 1984, Ch. 287, Sec. 12.5. Effective July 6, 1984.)

5710. At any regular or special meeting called to consider the action, the stockholders and members entitled to vote by an affirmative majority of the votes cast in person or by proxy, may resolve to convert a federal association into an association.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5711. Copies of the minutes of the proceedings of the meeting of the stockholders or members in which they vote to convert into an association, verified by the president or vice president and the secretary or an assistant secretary, shall be filed promptly after the meeting in the office of the commissioner, and, in duplicate, with the federal home loan bank of which the association is a member.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5712. The verified copies of the minutes of the meeting, when filed as required by Section 5711, are presumptive evidence of the holding and action of the meeting.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5713. After a meeting as provided for in Section 5710, the federal association shall take or cause to be taken such action as shall make it an association in the manner prescribed and authorized by this division. The directors elected at the meeting shall file the documents with applicable fees and take such proceedings as are required by this division in the case of the original incorporation of an association. The decision for approval or denial shall be issued in writing. No association incorporated by conversion from a federal association is required to comply with any of the provisions of law or any regulations promulgated by the commissioner relating to the minimum amounts of capital required to be subscribed in connection with the original incorporation of an association under this division.
(Amended by Stats. 1986, Ch. 361, Sec. 4.5.)

5714. The directors of an association converted from a federal association may insert in the articles of incorporation the following statement: "This association is incorporated by conversion from a federal savings and loan association. "
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5715. Promptly after the filing of the articles of incorporation with the Secretary of State, there shall be filed with the federal home loan bank of which the association is a member, two copies of the articles of incorporation, certified by the Secretary of State.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5716. Upon the filing of the articles of incorporation with the Secretary of State, the federal association ceases to be a federal association and is an association under the laws of this state. All of the property of the federal association, including all of its right, title, and interest in and to all property of every kind and character immediately, by operation of law and without any conveyance or transfer, and without any further act or deed, is vested in the association under its new name and style as an association and under its new jurisdiction.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5717. The converted association shall have, hold, and enjoy the property mentioned in Section 5716 in its own right as fully and to the same extent as the property was possessed, held and enjoyed by it as a federal association and the converted association continues responsible for all of the obligations of the converted federal association to the same extent as though conversion had not taken place. The association is merely a continuation of the federal association under a new name and new jurisdiction and such revision of its corporate structure as is considered necessary for its proper operation under the new jurisdiction.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5718. In the event stock is to be issued by the converted association, the commissioner may issue an organizing permit to the federal association or to the board of directors elected to serve after conversion, authorizing the association or the board of directors to take subscriptions to stock, to collect subscription payments and to impound the payments pending the issuance of stock, and authorizing the converted association to issue stock after the filing of its articles of incorporation with the Secretary of State. The commissioner may require that all stock to be initially issued be subscribed and fully paid. The commissioner may also issue a certificate of authority to the converted association to be effective upon filing of its articles of incorporation, and may also issue any other orders and permits necessary to authorize the association to continue business without interruption upon the filing of its articles of incorporation.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 7. Power to Reorganize, Merge, Consolidate, or Transfer Assets
(Article 7 added by Stats. 1983, Ch. 1091, Sec. 2.)

5750. (a) Pursuant to a plan or agreement (referred to as "agreement" in this article) adopted by the board of directors and approved by the commissioner as fair, just and equitable, and as adequately protecting the interests of the association, its members, or stockholders, its savings account holders and the public, an association shall have the power to reorganize or to merge or consolidate with or transfer all or substantially all its assets to another association or federal association, or any other corporation, provided that the principal terms of the plan of the reorganization, merger, consolidation, or transfer shall, in the case of a stock association, be approved at an annual meeting or at any special meeting, or by the written consent of the stockholders voting on the action, by not less than a majority of the total number of votes eligible to be cast. In the case of a mutual association, if required by the commissioner, the principal terms of such a plan shall be approved by members representing not less than a majority of the voting power.

(b) In all cases the survivor association shall succeed to all the rights, obligations, and relations of the constituent associations.

(c) As a step in a plan of the reorganization, merger, consolidation, or transfer under this section, an interim corporation may be formed. As used in this section, "interim corporation" means a corporation formed to facilitate the acquisition of 100 percent of the voting stock of an existing association or other insured stock institution by or for a newly formed company or an existing savings and loan holding company or to facilitate any other transaction the commissioner may approve.
(Amended by Stats. 1987, Ch. 730, Sec. 5.)

5751. At the sole discretion of the commissioner a public hearing may be held on applications filed under this article, in accordance with procedures established by the commissioner by regulation.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5752. Applications filed under this article shall be accompanied by any applicable filing fee prescribed by the commissioner pursuant to Section 9001.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5753. The provisions of Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall apply only to stockholders and shares of stock owned by them in the association being merged, or where assets are being transferred into a surviving association, or where a merger or transfer is approved under the provisions of this article by written consent of the stockholders.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5754. In a merger the agreement shall state any matters with respect to which the articles of the surviving association are deemed amended and the articles shall be amended accordingly, without any further proceedings, upon the effective date of the merger, but with respect to any amendments, the agreement shall meet the requirements of Section 907 of the Corporations Code in identifying any provisions to be amended, stricken, or added and shall set forth in full the wording of the provision as amended or added or the wording of the amended articles if they be amended in full.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5755. When a merger or consolidation agreement has been approved by the directors and the stockholders or members of an association, the association shall mail notice of the approval to each of its stockholders or members at least 10 days before filing the certificate as provided in this section unless the consents of all stockholders or members entitled to vote have been solicited and received in writing.

After approval by the directors and stockholders or members has been given, the association shall prepare and submit to the commissioner for written approval a certificate in the form of an officers' certificate (Section 173 of the Corporations Code) which shall set forth the following:

(a) An identification of the agreement of merger or consolidation by reference to names of parties and date.

(b) That the agreement was approved by the board of directors of the association.

(c) The total number of outstanding shares of each class of stock entitled to vote, or in the case of a mutual association the total value of accounts outstanding.

(d) That the principal terms of the agreement were approved by the vote or written consent of a number of shares of each class of stock which equaled or exceeded the vote required, or in the case of a mutual association that approval by the members was not required by the commissioner or that the principal terms of the agreement were approved by the vote or written consent of members holding a total value of accounts which equaled or exceeded the vote required.

(e) The percentage vote required of each class.

(f) That the agreement for merger or consolidation submitted to the commissioner for written approval and for filing with the Secretary of State concurrently with this certificate is the agreement hereinabove referred.

(g) Any additional matters that the commissioner may require.

(Amended by Stats. 1986, Ch. 361, Sec. 5.)

5756. Any amendment to a merger or consolidation agreement may be adopted, and the agreement so amended may be approved at the meeting of the stockholders or members of any of the associations or by written consent of the stockholders or members, in the same manner and by the same vote as the original agreement. If the agreement so amended is approved at a meeting or by written consent by the stockholders or members and by the board of directors of each of the associations by the vote or written consent required for approval of the original agreement, the agreement so amended shall be signed and acknowledged and shall have certified therewith the approval of the directors and of the stockholders or members in the same manner as provided for in the original agreement, and shall then constitute the merging or consolidating agreement.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5757. Notwithstanding any other provision of law, the approval of transactions under this article shall not be required by any borrowers or by holders of savings accounts in associations that issue stock.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5758. The executed agreement, or an executed counterpart of it and the respective certificate of each constituent association or any other corporation and of the surviving association shall be filed with the Secretary of State. Neither the agreement nor any certificate shall be filed, however, unless the commissioner's written approval is attached and until there has been filed with the Secretary of State, by or on behalf of each association or any other corporation taxed under the provisions of Chapter 2 (commencing with Section 23101) of Part 11 of Division 2 of the Revenue and Taxation Code, the existence of which is terminated by the merger or consolidation, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the act have been paid or secured. The effective date of the merger or consolidation under this article shall be the date of the filing with the Secretary of State of the copy of the approved agreement of merger or consolidation. A copy of the approved agreement certified by the Secretary of State shall be filed with the commissioner.

If the resulting association is a federal association, the effective date of merger shall be the date the merger is effective under regulations of the Office of Thrift Supervision.

(Amended by Stats. 1990, Ch. 1118, Sec. 26.)

5759. An association may acquire all or at least 90 percent of the issued and outstanding stock of another association, or any other corporation, with the prior written approval of the commissioner upon conditions that the commissioner may impose as a step in a plan of merger to be approved by the commissioner. The acquisition of stock shall be upon terms as may be approved by the board of directors of the acquiring association and ratified by the vote or written consent of holders of a majority of the outstanding stock of each class of stockholders of the acquiring association.

(Amended by Stats. 1984, Ch. 868, Sec. 7.)

5760. (a) Any association, owning all the outstanding stock of any corporation, may merge its wholly owned subsidiary corporation if the laws under which the subsidiary corporation exists permit a merger as this section provides. The association shall submit to the commissioner for approval a certificate of ownership in its name signed by its president or a vice president, and its secretary or an assistant secretary, which shall be verified by their affidavit, stating, in effect, that the matters set forth in the certificate are true of their own knowledge. The certificate shall set forth:

(1) That it owns all the outstanding stock of the merged corporation.

(2) A copy of the resolution adopted by its board of directors to merge the corporation, and to assume all of its obligations.

(3) The time and place of the meeting of the board of directors at which the resolution was adopted, and the vote by which it was adopted.

(b) If an association owns less than all the outstanding stock but at least 90 percent of the outstanding shares of stock of each class of a corporation or corporations, domestic or foreign, the merger of the subsidiary corporation or corporations into the parent association may be effected by resolutions adopted by the boards of the parent and each subsidiary corporation, and the filing of a certificate of ownership as provided in subdivision (d). The resolution of the board of the parent association shall provide for the merger, shall provide that the parent association assumes all the liabilities of each subsidiary corporation and shall set forth the securities, cash property or rights to be issued, paid, delivered or granted by the parent association upon surrender of each share of stock of each subsidiary corporation not owned by the parent association. The resolution of the board of each subsidiary corporation shall approve the fairness of the consideration to be received for each share of stock of the subsidiary corporation not owned by the parent association.

(c) Notwithstanding any other provision of law, in any merger pursuant to this section, the parent association may change its name regardless of whether the name so adopted is the same or similar to that of one of the disappearing associations. In this case the resolution shall provide for the amendment of articles to change the name.

(d) After adoption of the resolution or resolutions of merger, as provided under subdivision (b), the association shall submit to the commissioner for approval a certificate of ownership in its name signed by its president or a vice president, and its secretary or an assistant secretary, which shall be verified by their affidavit, stating, in effect, that the matters set forth in the certificate are true of their own knowledge. The certificate shall set forth:

(1) That the association owns at least 90 percent of the outstanding stock of the merged corporations.

(2) A copy of the resolution adopted by the association's board of directors to merge the corporation, to assume all of its obligations, and including the resolution for a change of name if applicable.

(3) A copy of the resolution or resolutions adopted by the board of each subsidiary corporation, if required.

(4) The time and place of the meeting of the boards of directors of the parent and the subsidiary at which the resolutions were adopted, and the vote by which they were adopted.

(e) In the event all of the outstanding shares of stock of a subsidiary domestic corporation party to a merger effected under this section are not owned by the parent association immediately prior to the merger, the parent association shall, at least 20 days before the effective date of the merger, give notice to each stockholder of the subsidiary corporation that the merger will become effective on or after a specific date, which notice shall contain (1) a copy of the resolutions of the boards of directors of the parent and the subsidiary required by subdivision (b) above and (2) the information which must accompany the notice required by subdivision (a) of Section 1301 of the Corporations Code. The notice shall be sent by mail addressed to the stockholder at the address of the stockholder as it appears on the records of the corporation. The stockholder shall have the right to demand payment of cash for the shares of stock of the stockholder pursuant to the provisions of Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code.

(f) If a merger authorized by this section is approved, the commissioner shall attach to the certificate written approval, and the certificate shall be filed with the Secretary of State. A copy of the approved certificate certified by the Secretary of State shall be filed with the commissioner. Thereupon, all of the estate, property, rights, privileges, and franchises of the merged corporation shall vest in and be held and enjoyed by the parent association as fully as the same were before held and enjoyed by the merged corporation, but subject to all the liabilities and obligations of the merged corporation and the rights of all creditors. The parent association shall not, however, thereby acquire the right to engage in any business or to exercise any right, privilege, or franchise of a kind which it could not lawfully engage in or exercise under the provisions of this division. The parent association shall be deemed to have assumed all the liabilities and obligations of the merged corporation, and shall be liable in the same manner as if it had itself incurred the liabilities and obligations.

(g) If the merged subsidiary is a domestic corporation, a copy of the certificate shall be filed in the office of the Secretary of State on behalf of the subsidiary corporation. If the merged subsidiary is a foreign corporation qualified for the transaction of intrastate business in this state there shall be filed in the office of the Secretary of State on behalf of the foreign subsidiary a certificate of surrender and right to transact intrastate business as provided in Section 2112 of the Corporations Code. No copy of the certificate shall be filed unless there is also filed with the Secretary of State the certificate of satisfaction of the Franchise Tax Board that all taxes imposed upon the subsidiary corporation by the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, have been paid or secured.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5761. The directors of an association may, in their discretion, abandon a transaction under this article, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the stockholders or members of the association, at any time before the transaction has been completed.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

5762. The commissioner may adopt rules and regulations relating to any transaction regulated by this article.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 8. Holding Companies and Stock Acquisitions
(Article 8 added by Stats. 1983, Ch. 1091, Sec. 2.)

5800. For the purposes of this article the following words and phrases shall have the following meanings:

(a) "Savings and loan holding company" means any person that either, directly or indirectly, or acting in concert with one or more other persons:

(1) Owns, controls, or holds with power to vote, or holds proxies to vote:

(A) Where the association or savings and loan holding company has fewer than 500 stockholders or members, 25 percent or more of the outstanding voting capital stock of any capital stock association or savings and loan holding company or 25 percent or more of the total number of votes or proxies of votes eligible to be cast by the members of any mutual association located in this state.

(B) Where the association or savings and loan holding company has at least 500 stockholders or members, 10 percent or more of the outstanding voting capital stock of any capital stock association or savings and loan holding company or 10 percent or more of the total number of votes or proxies of votes eligible to be cast by the members of any mutual association located in this state.

(2) Controls in any manner, whether by the holding of proxies or otherwise, the election of a majority of the directors of any association or savings and loan holding company located in this state.

(b) Notwithstanding subdivision (a), an individual or group of individuals shall not be deemed to be a "savings and loan holding company" solely because an individual or group of individuals solicits, holds, or votes proxies in an association if, at the time of receiving the proxies, the individual or group of individuals serve as directors of the association and solicited or received the proxies pursuant to authorization by the board of directors of the association.

(c) "Subsidiary" of a person means any person, except an individual that is directly or indirectly owned, controlled, or otherwise held by that person to the extent or in the manner described in the preceding subdivision.

(d) "Completed application" means an application for acquisition of control of an association, as filed with the commissioner, together with any amendments by the applicant, additional information requested in writing by the commissioner, and accompanied by the applicable filing fee pursuant to Section 9001. If the additional required information is not received within 30 days of the date of the request, the commissioner may consider the application complete upon written notice to the applicant.
(Amended by Stats. 1987, Ch. 730, Sec. 6.)

5801. (a) Except as provided in subdivision (b), no person may become a savings and loan holding company, or thereafter register under Section 5804, unless the commissioner approves a completed application. The application shall be in a form prescribed by the commissioner, contain the following information and any additional information that the commissioner may determine by regulation or by written instructions to be necessary or appropriate to preserve the public interest, the integrity of the state's savings association system, and to protect the interests of savings account holders, borrowers, and stockholders resident in this state:

(1) The identity, experience, and financial and managerial resources of each acquiring person by whom or on whose behalf the application is made.

(2) The terms, conditions, and method of any proposed acquisition, including copies of all tender offers used or to be used in connection with any proposed acquisition of capital stock.

(3) The source, kind, and amount of the consideration used or to be used in making the acquisition, and, if any part of the consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction and the names of all participating persons.

(4) Any plans or proposals that any acquiring person may have to liquidate or convert the association or savings and loan holding company, to sell its assets or merge it with any company, to change the number of its employees in this state or the terms and conditions of their employment, or to make any other substantial change in its business, corporate structure, management or employees upon becoming a holding company.

(5) The names of those officers and directors that the acquiring person proposes to install in any change of managements, and for each of those officers and directors a financial statement, a description of experience in savings association related matters, and a statement as to whether the officer or director ever has been found guilty of misrepresentation, fraud, or financial misdealings.

(6) If any tender offer, request or invitation for tenders or other agreement to acquire control is proposed to be made by means of a registration statement under the federal Securities Act of 1933, as amended, or in circumstances requiring the disclosure of similar information under the federal Securities Exchange Act of 1934, as amended, or in an application filed with the Office of Thrift Supervision or Federal Deposit Insurance Corporation requiring similar disclosure, that registration statement or application may be filed with the commissioner in lieu of the requirements of this section.

(b) The commissioner may exempt any transaction from the operation of this section if the commissioner determines that regulation of the transaction is not necessary or appropriate.

(Amended by Stats. 1990, Ch. 1118, Sec. 27.)

5802. The commissioner shall within 60 days after the date of filing of a completed application, unless good cause is shown why a decision to approve or deny could not be made within 60 days, approve the application with any conditions reasonably necessary or advisable in the public interest, or deny the application. The commissioner shall determine whether the following criteria are met, and if the criteria are not met, the application shall be denied:

(a) The acquisition, under any federal or state law, will not substantially lessen competition and will not in any manner be in restraint of trade or result in a monopoly, or be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the savings association business in any part of the state unless the commissioner finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest in meeting the convenience and needs of the community that the association serves.

(b) The financial condition of any acquiring person will not jeopardize the financial stability of the association or the savings and loan holding company sought to be acquired and will not prejudice the interest of the savings account holders, borrowers, or stockholders of the association and is in the public interest.

(c) The plan or proposal under which the acquiring person intends to liquidate the savings association or the savings and loan holding company, to sell its assets or to merge it with any person or association, or to make any other major change in its business or corporate structure or management, is fair and reasonable to the association, its savings account holders, borrowers, and resident stockholders, and will not tend to impair the integrity of the state's savings association system, and is in the public interest.

(d) The competence, experience, integrity, and resources of any acquiring person indicate that approval would be in the interest of the association, its savings account holders, borrowers, and resident stockholders and of the community that the association serves.

(e) The requirements of this article have been met.

(f) The acquisition would not violate state or federal law and the commissioner determines that approval is in the public interest.

(g) The applicant has provided all information requested by the commissioner.

(Amended by Stats. 1987, Ch. 730, Sec. 8.)

5803. (a) After the decision under this article by the commissioner either approving or denying the application, upon the filing with the commissioner within 30 days after the date of the decision of a written request for a hearing by any person aggrieved by the decision, the commissioner shall hold a public hearing on the merits of the request, after which the decision shall be affirmed, modified, or reversed.

(b) The commissioner shall have authority to amend, suspend, or revoke an approval of the application for acquisition of control upon failure of the applicant to meet the conditions of the approval, or upon a finding that the approval was based on false statements, misrepresentations, or omission of material facts.

(Amended by Stats. 1987, Ch. 730, Sec. 9.)

5804. (a) Within 60 days following approval, or a later date if extended by the commissioner, each savings and loan holding company shall register with the commissioner in a prescribed form which shall require information with respect to the financial condition, ownership, operations, management, and intercompany relationships of the savings and loan holding company and its subsidiaries, and related matters as the commissioner may deem necessary or appropriate.

(b) The registration shall automatically expire if the approval of the application for acquisition of control is revoked or suspended or the person ceases to be a savings and loan holding company.

(c) The commissioner shall be notified in writing by a registered savings and loan holding company upon any change in its beneficial or legal ownership of stock of an association.

(Amended by Stats. 1987, Ch. 730, Sec. 10.)

5806. Each savings and loan holding company, which is not an individual, shall pay an initial and an annual registration fee of five hundred dollars ($500) if the registrant's association subsidiaries have total assets of up to one hundred million dollars ($100,000,000) or one thousand dollars ($1,000) if the subsidiaries have total assets of one hundred million dollars ($100,000,000) or more. These fees shall be paid within 30 days following notice from the commissioner that payment is due.
(Amended by Stats. 1989, Ch. 868, Sec. 3. Effective September 26, 1989.)

5807. When a savings and loan holding company has satisfied the requirements of this article, the commissioner shall issue the holding company a certificate of registration, and shall send a copy to each association subsidiary in this state with respect to which the holding company has registered.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5808. No association that is a subsidiary in this state of any savings and loan holding company that does not have in effect a certificate of registration for that association as required by this article or whose holding company has failed to comply with (1) an order of a court made in respect to the provisions of this division or

(2) an order of the commissioner under Section 8200, shall knowingly, without consent of the commissioner, do any of the following:

(a) Transfer or register stock or other securities on its books for or issue certificates to its holding company.

(b) Pay dividends on stock of which its holding company is the record or beneficial owner.

(c) Permit the voting of stock owned or controlled by its holding company.

(d) Make any other payments of any nature to its holding company.

(e) Enter into any agreement, contract, or transaction with its holding company.
(Amended by Stats. 1987, Ch. 730, Sec. 11.)

5809. (a) The commissioner from time to time may require reports from any savings and loan holding company and its subsidiaries in a format deemed necessary or appropriate and relevant to the jurisdiction and responsibilities of the commissioner under this division. Any savings and loan holding company and its subsidiaries shall file reports and be subject to examination as required by the commissioner in the manner provided for associations in Article 3 (commencing with Section 8150) of Chapter 7.

(b) The cost of any examination may be assessed against each savings and loan holding company examined and the assessment shall be paid to the department.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

5810. The commissioner shall have the enforcement powers with respect to savings and loan holding companies and their subsidiaries that are provided with respect to associations in Section 8200.
(Amended by Stats. 1987, Ch. 1162, Sec. 9. Effective September 26, 1987.)

5811. This article shall not apply to an acquisition of stock made pursuant to a plan or agreement of reorganization, merger, consolidation, or transfer of assets under Section 5750.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 9. Dissolution
(Article 9 added by Stats. 1983, Ch. 1091, Sec. 2.)

5850. (a) An association may dissolve pursuant to the General Corporation Law (Division 1 (commencing with Section 100) of Title 1 of the Corporations Code).

(b) In the case of a mutual association, the required vote of members to elect voluntarily to wind up and dissolve shall be by members representing 50 percent or more of the voting power required to elect directors of the association.

(c) No certificate of election to dissolve or certificate of dissolution of an association shall be filed with the Secretary of State unless there is attached thereto the certificate of the commissioner approving the same.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 10. Mutual Holding Companies
(Article 10 added by Stats. 1988, Ch. 718, Sec. 10.)

5860. Notwithstanding any other provision of law, but subject to prior approval of the commissioner, any mutual association may reorganize so as to become a mutual holding company by causing a reorganized savings and loan association to be incorporated and organized as a stock association under this chapter, transferring to the reorganized stock

association a substantial part of the assets of that mutual association and causing the reorganized stock association to assume all or a substantial part of the liabilities of the mutual association, including all of its savings account liabilities.
(Added by Stats. 1988, Ch. 718, Sec. 10.)

5861. Upon transfer of assets and assumption of liabilities pursuant to Section 5860, persons who prior thereto held savings accounts with, or other rights as creditors of, the mutual association with respect to accounts and liabilities transferred shall have such accounts and rights solely with respect to the reorganized stock association, and the corresponding liability or obligation of the mutual association to those persons shall be assumed by the reorganized stock association without a change in terms. Persons who had ownership, liquidation, or voting rights with respect to the mutual association shall continue to have those rights solely with respect to the mutual association in its reorganized form as a mutual holding company.
(Added by Stats. 1988, Ch. 718, Sec. 10.)

5862. A reorganization of a mutual association pursuant to this article shall be approved by the board of directors and by the members of the mutual association.
(Added by Stats. 1988, Ch. 718, Sec. 10.)

5863. An application to the commissioner for approval of a reorganization under this article shall contain such relevant information as the commissioner may require. The commissioner may disapprove any proposed mutual holding company formation and refuse to issue a certificate of authority for the reorganized stock association only if within 60 days after the date of filing of a completed application he or she finds the following:

(a) The disapproval is necessary to prevent unsafe and unsound practices.

(b) The financial or managerial resources of the mutual association warrant disapproval.

(c) The mutual association fails to furnish the information required by the commissioner pursuant to this section.

(d) The mutual association fails to comply with the requirements of Section 5862.

(Added by Stats. 1988, Ch. 718, Sec. 10.)

5864. In connection with reorganization pursuant to the provisions of this article, a mutual association may, subject to the approval of the commissioner, retain capital assets at the holding company level to the extent that the capital exceeds adequate reserves as prescribed by state or federal law.
(Added by Stats. 1988, Ch. 718, Sec. 10.)

5865. A mutual holding company shall be deemed to be a savings association continuing its organization under this division and may engage only in activities authorized for an association, but may not issue or accept savings accounts or other deposits and the provisions of subdivision (a) of Section 5606 requiring insurance of savings accounts by the Federal Deposit Insurance Corporation shall not be applicable. The articles of incorporation of the mutual holding company shall be amended to delete any inappropriate statements otherwise required by Section 5501.5 and shall include the following statement:

"This corporation is a mutual holding company organized under the California Savings Association Law (Article 10 (commencing with Section 5860) of Chapter 2 of Division 2 of the Financial Code)."
(Amended by Stats. 1990, Ch. 1118, Sec. 28.)

5866. Sections 5801, 5802, and 5803 shall not apply to a reorganization pursuant to this article.
(Added by Stats. 1988, Ch. 718, Sec. 10.)

5867. Notwithstanding any other provision of law, a reorganized stock association may exercise any and all powers, rights, and privileges of and be subject to all limitations not inconsistent with this article which are applicable to stock associations as provided in this division.
(Added by Stats. 1988, Ch. 718, Sec. 10.)

5868. A reorganized stock association shall have the power to issue additional amounts of capital stock to the mutual holding company of which it is a subsidiary and, in addition, to other persons an amount of capital stock and securities convertible into capital stock which in the aggregate does not exceed 49 percent of the issued and outstanding capital stock of that organized association. For the purposes of the 49 percent limitation, any issued and outstanding securities that are convertible into capital stock shall be considered issued and outstanding capital stock.
(Added by Stats. 1988, Ch. 718, Sec. 10.)

CHAPTER 3. CORPORATE ADMINISTRATION

(Chapter 3 added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 1. Meetings of Members of Mutual Associations

(Article 1 added by Stats. 1983, Ch. 1091, Sec. 2.)

6000. An annual meeting of the members of each mutual association shall be held at a time and place fixed in the bylaws of the association.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6001. Special meetings of the members of a mutual association may be called at any time by the president or the board of directors, and shall be called by the president, a vice president, or the secretary upon the written request of members holding of record in the aggregate at least 10 percent of the outstanding savings deposits of the association. Such written request shall state the purposes of the meeting and shall be delivered at the principal office of the association addressed to the president.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6002. Notice of each annual and special meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal office of the association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record at the last address of the member appearing on the books of the association. Such notice shall state the name of the association, the place of the meeting, the time when it shall convene and, in the case of a special meeting, the purpose or purposes for which the meeting is called. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. Notice need not be given to any member who in person or by proxy, in writing, waives notice of such meeting.

(Amended by Stats. 1985, Ch. 983, Sec. 2.5. Effective September 26, 1985.)

6003. In the consideration of all questions requiring action by the members of a mutual association, each member shall be entitled to cast one vote for each one hundred dollars ($100), or fraction thereof, of the withdrawal value of his or her savings account or accounts. No member, however, shall be entitled to cast more than 1,000 votes nor shall votes be cumulated for the election of directors.

(Amended by Stats. 1984, Ch. 287, Sec. 14.7. Effective July 6, 1984.)

6004. (a) In order that the association may determine the members entitled to notice of any meeting or to vote or entitled to receive any distribution or entitled to exercise any rights in respect of any other lawful action, the board of directors of the association may fix, in advance, a record date, which shall not be more than 60 or less than 10 days prior to the date of such meeting or more than 60 days prior to any other action, provided, however, that if the provisions hereof conflict with the provisions of any federal statute or regulation relating to fixing of record dates for associations, the provisions of the federal statute or regulation shall prevail.

(b) If no record date is fixed pursuant to subdivision (a) above:

(1) The record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the business day next preceding the day on which notice is given or first published, or if notice is waived, at the close of business on the business day next preceding the date on which the meeting is held.

(2) The record date for determining members entitled to give consent to action in writing without a meeting, when no prior action by the board of directors has been taken, shall be the date on which the first written consent is given.

(3) The record for determining members for any other purpose shall be at the close of business on the day on which the board adopts the resolution relating thereto, or the 60th day prior to the date of such other action, whichever is later.

(c) A determination of members of record entitled to notice of or to vote at a meeting of members shall apply to any adjournment of the meeting unless the board fixes a new record date for the adjourned meeting.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6005. At any meeting of the members, voting may be in person or by proxy, provided that no proxy is eligible to be voted at any meeting unless it has been filed with the secretary of the association, for verification, prior to the meeting. Each proxy shall be in writing and when filed with the secretary, shall, unless otherwise specified in the proxy, continue in force from year to year until revoked by a writing delivered to the secretary or by a subsequent proxy executed by the member executing the prior proxy or as to any meeting by attendance at such meeting and voting in person by the person

executing the proxy. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, written notice of such death or incapacity is received by the association. Section 604 of the Corporations Code does not apply to any mutual association.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6006. Any number of members present at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of members shall determine any question unless this division specifically provides otherwise.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 2. Access to Books and Records; Communication with Stockholders or Members; Derivative Actions
(Article 2 added by Stats. 1983, Ch. 1091, Sec. 2.)

6050. (a) The register of stockholders or members, the books of account, and the minutes of an association shall be subject to inspection upon the written demand of any stockholder or member or group of stockholders or members at any reasonable time during usual business hours, for a proper purpose reasonably related to the stockholder's or member's interest. The right of inspection is limited to a stockholder, or member, or group of stockholders or members, who hold of record voting shares having a cost of not less than one hundred thousand dollars ($100,000), or who hold of record voting shares constituting not less than 1 percent of the outstanding voting shares, provided in either case, the stockholder, member, or group of stockholders or members, have been holders of record of the voting shares for at least six months before making the written demand. The right of inspection created by this subdivision shall extend to the records of each subsidiary of an association subject to this subdivision and includes the right to make extracts.

(b) Notwithstanding the right of inspection granted in subdivision (a), no stockholder, member, or group of stockholders or members, shall have the right to inspect or make extracts of any portion of any register, book, or minutes of an association containing any of the following:

(1) A list of depositors in or borrowers from the association.

(2) The addresses of depositors or borrowers from the association.

(3) Individual deposit or loan balances or records.

"Records" for the purposes of this paragraph means confidential facts pertaining to personal financial information about an individual, including, but not limited to, an individual's credit file and any loan application.

(4) Any data from which any of the information described in paragraphs (1) to (3), inclusive, could be reasonably constructed.

(c) Each association director shall have the right at any reasonable time to inspect all books, records, documents of every kind, and the physical properties of that association. The inspection may be made in person or by agent or attorney, and the right of inspection includes the right to make extracts. In the case of foreign associations the right of inspection extends only to books, records, documents, and property located in this state.

(d) Savings accountholders who are not stockholders, members, or directors of an association shall have no right of inspection under this section.
(Amended by Stats. 1991, Ch. 458, Sec. 1.)

6051. (a) If any member, members, stockholder or stockholders desire to communicate with other members or stockholders of an association about any question pending or to be presented for consideration at a meeting of the members or stockholders, the association shall furnish upon request a statement of the approximate number of members or stockholders of the association at the time of the request, and an estimate of the cost of forwarding the communication. The requesting member, members, stockholder or stockholders shall then submit the communication, together with a sworn statement that the proposed communication is not for any reason other than the business welfare of the association, to the commissioner. If after examination of the facts the commissioner finds it to be appropriate, truthful, and in the best interests of the association and the association's members or stockholders, the commissioner shall execute a certificate setting out the facts and findings and shall forward the certificate together with the communication to the association and direct that the communication be prepared and mailed by the association to the members or stockholders upon the payment to it by those making the request of the expenses of preparation and mailing.

(b) If the commissioner finds the proposed communication to be inappropriate, untruthful, or contrary to the best interests of the association and its members or stockholders, the commissioner may deny or make other disposition of the

request to communicate deemed proper and shall execute a certificate setting out facts and findings and deliver it to the party or parties making the request together with an order denying or making other disposition of the request.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6052. (a) No action may be instituted or maintained in the right of any association by any savings account holder who is not a stockholder or member of the association.

(b) An action may be instituted or maintained in the right of an association by a stockholder or member of that association only if all the following conditions exist:

(1) The plaintiff alleges in the complaint that the plaintiff was a registered stockholder or member at the time of the transaction or any part of it, or that the stock or membership devolved upon the plaintiff by operation of law from a holder who was a holder at the time of the transaction or any part of it.

(2) The plaintiff alleges in the complaint with particularity the efforts of the plaintiff to secure from the board of directors the desired action and alleges further that the plaintiff has either informed the association or its board of directors in writing of the ultimate facts of each cause of action against each defendant director or delivered to the association or its board of directors a true copy of the complaint which plaintiff proposes to file, and the reasons for the plaintiff's failure to obtain the desired action or the reasons for not making an effort to secure the desired action from the association.

(3) The commissioner has determined, after a hearing upon at least 20 days' written notice to the association and each of its directors, that the action is proposed in good faith and that there is a reasonable probability that the prosecution of the action will benefit the association and its stockholders or members.

(c) Subdivisions (c), (d), (e), and (f) of Section 800 of the Corporations Code apply to any actions under this section.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6053. In the case of an association which converts from a mutual association to a stock association, for a period of up to five years from the date of conversion, special meetings of the stockholders of a stock association may be called at any time by the president, or the board of directors, and shall be called by the president, vice president, or secretary upon the written request of stockholders holding of record in the aggregate at least 20 percent of the outstanding shares of the association, which request shall state the purpose of the meeting and shall be delivered at the principal office of the association addressed to the president. The date for any special meeting called by stockholders shall be set by the board of directors and shall be not less than 60 nor more than 90 days after the date of receipt of the request.
(Added by Stats. 1984, Ch. 868, Sec. 8.)

Article 3. Financial Statement Publication
(Article 3 added by Stats. 1983, Ch. 1091, Sec. 2.)

6100. Each association shall prepare and publish annually within the time prescribed by the commissioner in a newspaper of general circulation in the county in which its home office is located, and shall deliver to each member or stockholder upon request, a statement of its financial condition in the form prescribed or approved by the commissioner.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 4. Directors
(Article 4 added by Stats. 1983, Ch. 1091, Sec. 2.)

6150. (a) The business of each association shall be directed by a board of directors elected by ballot by a plurality of the votes of the members or stockholders present or voting by proxy.

(b) Each director and officer of an association has a legal responsibility and fiduciary duty to administer the affairs of and provide sound management to the association.

(c) In the case of an association which converts from a mutual association to a stock association, for a period of up to five years from the date of conversion, cumulative voting shall not be required in the election of directors unless otherwise provided in the association's articles of incorporation.
(Amended by Stats. 1986, Ch. 1158, Sec. 2. Effective September 26, 1986.)

6151. No person shall be eligible for election or shall serve as a director or officer of an association who has been convicted of a criminal offense involving dishonesty or a breach of trust.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6152. (a) A director shall automatically cease to be a director upon being adjudicated as bankrupt or upon conviction of a criminal offense involving dishonesty or a breach of trust.

(b) In the case of an association which converts from a mutual association to a stock association, for a period of up to five years from the date of the conversion, a director may not otherwise be removed except for cause on the affirmative vote of a majority of the votes of members or stockholders eligible to be cast at a legal meeting.
(Amended by Stats. 1984, Ch. 868, Sec. 10.)

6153. Directors shall be elected for periods of three years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board of directors each year.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6154. If the members or stockholders fail to elect a director to fill each vacancy created by an increase in the number of directors, the current directors may fill the vacancy by electing a director to serve until the next annual meeting of the members or stockholders at which time a director shall be elected to fill the vacancy for the unexpired term for the class of directors in which the vacancy exists.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6155. Whenever the number of directors is changed and vacancies caused by the change are filled, the directors so elected shall be elected to terms in accordance with the provisions of Section 6153.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6156. (a) Any vacancy among directors, not filled by the members or stockholders, may be filled by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of the members or stockholders, at which time a director shall be elected to fill the vacancy for the unexpired term for the class of director in which the vacancy exists.

(b) In the event of a vacancy on the board of directors from any cause, the remaining directors shall have full power and authority to continue direction of the association until the vacancy is filled.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6157. Every savings association subject to the new director or senior executive officer notice requirements of Section 32 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831i) based upon recent chartering or change of control or failure to maintain the minimum required capital or otherwise troubled condition shall provide the commissioner, at the same time the notice is submitted to the appropriate federal agency, with a copy of the notification submitted in compliance with that requirement.
(Added by Stats. 1990, Ch. 1118, Sec. 29.)

Article 5. Indemnity Bonds
(Article 5 added by Stats. 1983, Ch. 1091, Sec. 2.)

6200. Except as provided in subdivision (b) of Section 6203, all directors, officers, and employees of an association shall, before entering upon the performance of any of their duties, execute their individual bonds with adequate corporate surety payable to the association as an indemnity for any loss the association may sustain of money or other property by or through any fraud, dishonesty, forgery or alteration, larceny, theft, embezzlement, robbery, burglary, hold-up, wrongful or unlawful abstraction, misapplication, misplacement, destruction or misappropriation, or any other dishonest or criminal act or omission by the director, officer, or employee.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6201. Associations that employ collection agents, who for any reason are not covered by a bond required under Section 6200, shall provide for the bonding of each of those agents in an amount equal to at least twice the average monthly collection of the agent. The agents shall be required to make settlement with the association at least monthly.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6202. No indemnity bond coverage is required of any agent that is a financial institution insured by the Federal Deposit Insurance Corporation.
(Amended by Stats. 1990, Ch. 1118, Sec. 30.)

6203. (a) The amounts and form of indemnity bonds and sufficiency of the surety shall be approved by the board of directors and by the commissioner.

(b) In lieu of individual bonds, a blanket bond, protecting the association from loss through any act or acts of any director, officer, employee or agent, may be obtained.

(c) A true copy of every indemnity bond shall be on file at all times at the association's home office.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6204. Indemnity bonds shall provide that their cancellation either by the surety or by the insured shall not become effective unless and until 10 days' notice in writing first shall have been given to the commissioner, unless the cancellation is approved earlier by the commissioner.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 6. Records
(Article 6 added by Stats. 1983, Ch. 1091, Sec. 2.)

6450. Each association shall keep correct and complete books and records of accounts, as specified in Section 1500 of the Corporations Code.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6451. (a) Except as provided in subdivision (b), each agency of an association, as defined in Section 6551, shall keep an original record of each transaction of business completed on behalf of the association at the agency.

(b) Records of transactions are not required to be maintained at the agency if they are maintained at the association's home office or branch office.
(Amended by Stats. 1989, Ch. 868, Sec. 4. Effective September 26, 1989.)

6452. Each association shall observe generally accepted accounting principles and practices except to the extent that the commissioner may require or permit different accounting treatment of accounts by regulation.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6453. Each association shall close its books at the close of business at least annually, or more often if authorized or required in writing by the commissioner.
(Amended by Stats. 1986, Ch. 361, Sec. 8.)

6454. No association by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any other person, partnership, association, or corporation or under any title or designation that is not truly descriptive of the assets.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6455. (a) Each association shall maintain complete loan and investment records, and shall do so in a manner satisfactory to the commissioner. Detailed records necessary to make determinations of compliance by an association with the requirements of Chapter 6 (commencing with Section 7200) and other provisions of this division shall be maintained at all times.

(b) The record of each real estate loan or other secured loan or investment shall contain documentation satisfactory to the commissioner of the type, adequacy and characteristics of the security.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6456. Each mutual association shall maintain membership records which shall show the name and address of the member and the date of membership.
(Amended by Stats. 1985, Ch. 983, Sec. 4. Effective September 26, 1985.)

6457. Each capital stock association shall maintain a register of stockholders.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6458. (a) Any association may cause any or all records of the association to be copied or reproduced by any photostatic, photographic, or microfilming process that correctly and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a film or other durable material.

(b) Any copy or reproduction made under subdivision (a) shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence.

(c) A facsimile, exemplification, or certified copy of any copy made pursuant to subdivision (a), or a reproduction produced from a film record, shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.
(Added by renumbering Section 6460 by Stats. 1984, Ch. 287, Sec. 15. Effective July 6, 1984.)

Article 7. Statutory Net Worth; Reserve Accounts
(Article 7 added by Stats. 1983, Ch. 1091, Sec. 2.)

6475. (a) Each association shall maintain an adequate statutory net worth appropriate for the conduct of its business and the protection of its savings account holders.

(b) The commissioner shall fix a minimum statutory net worth requirement applicable to all associations, which shall not be less than 3 percent of an association's total assets. In defining total assets, the commissioner may issue regulations to exclude from the total asset figure any asset items deemed appropriate by the commissioner.

(c) If the statutory net worth falls below the level specified by the commissioner, the commissioner may require the association to increase its statutory net worth within the time and in a manner designated by the commissioner, so as to bring the amount to the level determined adequate under this section, and may require the association to do any one or more of the following:

(1) Increase its liquid assets and maintain that increased liquidity at the level specified by the commissioner.

(2) Cease to:

(A) Accept savings accounts of all classes or categories, except in exchange for accounts already outstanding.

(B) Accept savings accounts of any particular class, category, or amount.

(C) Receive additional funds upon savings accounts already outstanding other than installment accounts.

The provisions of paragraph (2) of subdivision (c) shall not prevent an association from crediting to savings accounts the interest earned on the accounts.

(3) Cease all lending, lending in a particular area, or making a particular type or category of loans.

(4) Cease purchase of loans or other investments.

(5) Cease or limit promotional expenditures.

(6) Convene a meeting or meetings of its board of directors with the commissioner in attendance to accomplish the objectives of this section.

(7) Take any other steps that the commissioner deems necessary to safeguard the interests of the association and the public.

(Amended by Stats. 1988, Ch. 718, Sec. 11.)

6476. Each association shall set up and maintain the reserves required by, and may set up and maintain any additional reserves that are permitted by, this division.

The board of directors may make additional transfers to surplus or other reserve accounts.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6477. Any association which, for the purpose of evading provisions of this division or any order of the commissioner, knowingly participates, directly or indirectly, in an exchange with another association of any loan, investment, or other asset held by either association in violation of any provision of this division or any order of the commissioner, shall, upon direction of the commissioner, set up and maintain a reserve in the full amount of the asset acquired and shall not include that reserve in its statutory net worth.

(Added by Stats. 1986, Ch. 1158, Sec. 3. Effective September 26, 1986.)

CHAPTER 4. POWERS OF ASSOCIATIONS

(Chapter 4 added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 1. General Powers

(Article 1 added by Stats. 1983, Ch. 1091, Sec. 2.)

6500. (a) Each association incorporated pursuant to or operating under the provisions of this division shall have all the powers enumerated, authorized, and permitted by this division and other rights, privileges, and powers, and may engage in any activities singly or with others, that are incidental to or reasonably necessary or appropriate for the accomplishment of the objects and purposes of the association, as provided by this division. Among others, and except as otherwise limited by the provisions of this division, each association shall have the powers set out in this chapter. Associations shall be subject to the provisions of the General Corporation Law (Division 1 (commencing with Section 100) Title 1 of the Corporations Code) and shall also have all the powers and privileges provided in the General Corporation Law of this state to other corporations except those powers and privileges that are expressly denied to associations in this division. If any provision of the General Corporation Law is inconsistent with any provision of this division, the provisions of this division shall prevail.

(b) All references in this division to the General Corporation Law mean the General Corporation Law effective January 1, 1977, and any subsequent amendments thereto.

(c) In the application of Chapter 23 (commencing with Section 2300) of the Corporations Code to associations, the definition of effective date in Section 2300 is January 1, 1978.

(Amended by Stats. 1984, Ch. 287, Sec. 16. Effective July 6, 1984.)

6501. An association may have perpetual existence, adopt and use a corporate seal which may be affixed by imprint, facsimile, or otherwise, and adopt and amend bylaws as provided in this division.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6502. An association may sue, be sued, complain, and defend in any court.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6502.5. An association may, acquire, hold, sell, develop, subdivide, dispose of, and convey real and personal property consistent with its objects and powers. It may mortgage, pledge, or lease any real or personal property and may take the property by gift, devise, or bequest.

(Added by Stats. 1990, Ch. 1118, Sec. 31.)

6503. (a) No association or subsidiary thereof, without the prior written consent of the commissioner, shall enter into either of the following:

(1) Any transaction or modification of any transaction with an affiliated person to buy, lease, or sell real or personal property, or take that property by gift.

(2) Any consulting contracts or contracts for services with an affiliated person.

(b) As a condition to approving a transaction specified in subdivision (b), the commissioner shall make both of the following findings:

(1) The terms of the transaction are fair to, and in the best interests of, the savings association or subsidiary. In the case of real or personal property transactions, this finding shall be supported by an appraisal not prepared by an affiliated person or employee of the association or subsidiary.

(2) The transaction was approved in advance by a resolution duly adopted with full disclosure by at least a majority (with no director having an interest in the transaction voting) of the entire board of directors of the association or subsidiary (or alternatively by a majority of the total votes eligible to be cast by the voting members or stockholders of the association at a meeting called for that purpose, with no votes cast by proxies not solicited for that purpose). For purposes of this subdivision, "full disclosure" shall include, but not be limited to, (A) the affiliated person's source of financing for any real property involved in the transaction and (B) whether the association or any subsidiary thereof has a deposit relationship with any financial institution or holding company or affilite thereof providing the financing.

(Amended by Stats. 1990, Ch. 1118, Sec. 32.)

6504. (a) Except by the prior written consent of the commissioner, an association in organization that is not a member of a federal home loan bank may borrow money from any source not more than an aggregate amount equal to 25 percent of its assets on the date of borrowing, and may pledge and otherwise encumber any of its assets to secure its debts.

(b) An association that is a member of a federal home loan bank may borrow money from any source without limitation and may pledge and otherwise encumber any of its assets to secure its debts or savings accounts.

(Amended by Stats. 1985, Ch. 983, Sec. 5. Effective September 26, 1985.)

6505. (a) An association may issue and sell, directly or through underwriters, capital certificates that represent nonwithdrawable capital contributions, and constitute part of the reserves and statutory net worth of the association. The certificates shall have no voting rights and shall be subordinate to all savings accounts, debt obligations, and claims of creditors of the association. The certificates shall constitute a claim in liquidation against any reserves, surplus, and other statutory net worth accounts remaining after the payment in full of all savings accounts, debt obligations, and claims of creditors. The capital certificates shall be entitled to the payment of interest prior to the allocation of any income to surplus or other statutory net worth accounts of the association and may be issued with a fixed rate of interest or with a prior claim to distribution of a specified percentage of any net income remaining after required allocations to reserves, or a combination of those features. Losses may be charged against capital certificates only after reserves, surplus, and other statutory net worth accounts have been exhausted.

(b) To the extent permitted by its articles of incorporation, an association authorized to issue capital stock may provide for the conversion of capital certificates into common stock.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6507. An association may qualify as and become a member of a federal home loan bank and a home loan bank established as an agency or instrumentality of this state.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6508. An association may become a member of, deal with, maintain reserves or deposits with, or make reasonable payments or contributions to any organization or instrumentality whether government or private, to the extent that the organization or instrumentality assists in furthering or facilitating the association's purposes, powers, services, or community responsibilities, and it may comply with any reasonable requirements or conditions of eligibility.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6509. An association may act as depository for receipt of payments of federal or state taxes and loan funds, and may satisfy any related federal or state statutory or regulatory requirements, including pledging of assets as collateral, payment of interest at prescribed rates, and, notwithstanding any other provision of this division, may issue the accounts subject to the right of immediate withdrawal.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6510. An association may sell any loan, including a participating interest in a loan, at any time.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6511. Loans secured by real property may be sold to, and are legal investments for, among others, any public or private pension fund, credit union, labor union fund, or public employee association and may be purchased by those institutions directly from an association. Nothing in this subdivision shall be construed as altering any limits imposed by law on the extent of participation in an investment that is made by any entity covered by this subdivision.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6513. An association may service loans and investments for others.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6514. (a) An association may act, and receive compensation for so acting, as trustee of any trust created or organized in the United States and forming a part of a stock bonus, pension, or profit-sharing plan that qualifies for specific tax treatment under Section 401 of the Internal Revenue Code of 1986 (26 U.S.C., Sec. 401), as amended.

(b) It may also act, and receive compensation for so acting, as trustee or custodian of an individual retirement account within the meaning of Section 408 of the Internal Revenue Code of 1986, as amended.

(c) Assets of the trust or account must be invested only in savings accounts of the association, in obligations or securities issued by the association, or in other investments that are approved by the commissioner.

(d) All assets held in fiduciary capacity by any association under the authority of this section may be commingled and consolidated for appropriate purposes of investment if records reflecting each separate beneficial interest are maintained by the fiduciary or by another appropriate party who assumes that duty.

(e) The trustee or custodian may accept noncash assets under this section if the assets are converted into cash as soon as practicable.

(Amended by Stats. 1990, Ch. 1118, Sec. 32.5.)

6515. (a) Notwithstanding any provisions of Division 1 (commencing with Section 99), Section 202 of the Corporations Code, or any other provisions of law relating to trusts and trust authority, subject to regulations of the commissioner, an association may act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which banks, trust companies, or other corporations are permitted to act under the laws of this state, directly or through a state or nationally chartered subsidiary.

(b) All acts provided in this code to be performed by the commissioner, the State Treasurer, or other public officials for or in respect to the deposit of securities by trust companies for the protection of court and private trusts shall be performed as well for or in respect to the deposit of securities by any association or the trust companies of any association organized or doing business under the laws of this state, or by any federal association authorized to transact a trust business. An association may advertise its authority to engage in and conduct a trust business and to advertise for and solicit a trust business in this state, notwithstanding any other provision of law.

(c) Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made by, or forbearances of, an association or federal association, or a service corporation which is authorized to exercise trust powers, when the association, federal association, or service corporation is acting in its fiduciary capacity as trustee.

(d) Subdivision (c) creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the Constitution. Notwithstanding any other provision of law, subdivision (c) does not exempt an association, federal association, or a service corporation of such associations, from complying with all other laws and regulations governing the business in which the association, federal association, or service corporation is engaged.

(Amended by Stats. 1996, Ch. 1064, Sec. 552. Effective January 1, 1997. Operative July 1, 1997.)

6516. (a) Subject to regulations issued by the commissioner, an association may own and use or participate in the use or ownership and use of remote service units.

(b) A remote service unit is not a branch or agency.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6517. Subject to Regulation E (12 CFR Part 205) and to rules and regulations of the commissioner, an association may transfer funds between holders of savings accounts, and third parties, or their designees, by means of an electronic funds transfer system. No system or any part of it, including terminals or processing centers, shall of itself be considered a branch office or agency.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6518. (a) An association may maintain and rent safes, boxes, or other receptacles or premises for the safekeeping of personal property upon terms and conditions that may be agreed upon.

(b) An association that rents or otherwise makes safe-deposit boxes available to the public is entitled to all of the remedies set forth in Article 2 (commencing with Section 1660) of Chapter 13 of Division 1, and may dispose of the unclaimed contents of safe-deposit boxes in the manner set forth in that article.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6519. An association may sell money orders, travel checks, and similar instruments drawn by it on its bank accounts or as agent for any organization empowered to sell the instruments through agents within this state.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6520. An association, service corporation, or a person authorized in writing by an association may act as an agent for others except that an association may not act as an insurer or transact insurance as agent for an insurer. Any savings and loan association holding company or any service corporation that acts as an agent of an insurer shall conform to the requirements of Section 7455 and Section 770.1 of the Insurance Code.

(Amended by Stats. 1985, Ch. 983, Sec. 6.5. Effective September 26, 1985.)

6521. (a) Notwithstanding the provisions of Division 6 (commencing with Section 17000) or any other provision of law, an association or service corporation may act as an escrow agent in connection with the sale, transfer, encumbering or leasing of real or personal property.

(b) The name for any subdivision of an association operating as an escrow agent pursuant to this section, if different from the name of the association, shall be approved by the commissioner.

(Amended by Stats. 1985, Ch. 983, Sec. 7. Effective September 26, 1985.)

6522. (a) An association that declares and pays dividends may distribute its own shares or may make payments in cash or property. Payment of cash or property shall be made only if there is a sufficient balance of unappropriated retained earnings which is that portion of income retained in the business since its organization or reorganization and which has not been appropriated or reserved for some specific purpose. Dividends shall not be distributed unless the association meets its required statutory net worth before and after that distribution. No dividends shall be paid if that payment would cause the association to be in an impaired condition.

(b) A stock split, as defined in Section 188 of the Corporations Code, and a reverse stock split, as defined in Section 182 of the Corporations Code, are authorized and shall not be construed to be dividends within the meaning of this section.

(c) Any distribution of permanent capital or paid in surplus shall require prior approval of the commissioner.

(d) Any shareholder who receives any distribution prohibited by this section with knowledge of facts indicating the impropriety thereof is liable to the association for the amount received. The commissioner may bring an action for the benefit of the association to recover the distribution from the shareholder.

(Amended by Stats. 1987, Ch. 1162, Sec. 11. Effective September 26, 1987.)

6523. (a) An association may use advertising, whether printed, broadcasted by radio, televised, displayed, or communicated in any other manner or make any representation that is accurate and does not misrepresent its services, contracts, investments, or financial condition.

(b) The commissioner may require an association to file a true copy of the text of any advertising in the office of the commissioner at least five days prior to its issuance, circulation, or publication. Advertising filed under this subdivision may be used upon the commissioner's express approval or failure to disapprove it within five days of its filing.

(c) Associations shall not issue, circulate, or publish any advertising after notice in writing from the commissioner that in the commissioner's opinion the advertising is inaccurate or misrepresents the association's services, contracts, investments, or financial condition.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6524. An association may organize, sponsor, operate, control, or render investment advice to, an investment company, or underwrite, distribute, or sell securities of any investment company which has qualified to sell its securities in this state pursuant to Part 2 (commencing with Section 25100) of Division 1 of Title 4 of the Corporations Code, if the officers and employees of the association who sell these securities meet such standards with respect to training experience, and sales practices as established by the Savings and Loan Commissioner. For the purpose of this section, "investment company" means an investment company as defined in the Investment Company Act of 1940 (15 U.S.C., Sec. 80a-1 et seq.).

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6525. (a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, an association, a subsidiary or affiliate of an association, or any officer or employee thereof may deliver fingerprints taken of a director, an officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the person fingerprinted relating to convictions, and to any arrest for which that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may pursuant to Section 13300 of the Penal Code, furnish to the officer of the association or subsidiary or affiliate thereof responsible for the final decision regarding employment of the person fingerprinted, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the association, subsidiary, or affiliate summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the association, subsidiary, or affiliate determines that employment of the person fingerprinted would constitute an unreasonable risk to the association, subsidiary, or affiliate or its customers, the person fingerprinted may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting association, subsidiary, or affiliate pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the person fingerprinted.

(d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(e) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a savings association, whether directly, indirectly, or through one or more intermediaries.

(Amended by Stats. 1989, Ch. 868, Sec. 6. Effective September 26, 1989.)

6525.5. Except with the prior written consent of the commissioner:

(a) No person who has been convicted of any criminal offense involving dishonesty or breach of trust may participate, directly or indirectly, in any manner in the conduct of the affairs of a savings association.

(b) A savings association shall not permit any person who has been convicted of any criminal offense involving dishonesty or breach of trust to participate, directly or indirectly, in any manner in the conduct of the affairs of the savings association.
(Added by Stats. 1990, Ch. 1118, Sec. 33.)

6526. An association may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practice for Documentary Credits Act and may pledge collateral to secure its obligations thereunder. Except as otherwise provided by regulations of the commissioner, such issuance shall be subject to the following requirements:

(a) Each letter of credit must conspicuously state that it is a letter of credit.

(b) The issuer's undertaking must contain a specified expiration date or be for a definite term, and must be limited in amount.

(c) The issuer's obligation to pay must be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or non-performance by the parties to the underlying transaction.

(d) The account party must have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

To the extent funds are advanced under a letter of credit without compensation from the account party, the amount shall be treated as an extension of credit subject to percentage of assets limits and other requirements under an applicable provision of this division.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6527. If a loan or other investment is authorized under more than one section of this division an association may designate under which section the loan or investment has been made. Such a loan or investment may be apportioned among appropriate categories, and may be moved, in whole or in part, from one category to another.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6528. An association may provide correspondent services primarily to other depository institutions to the extent that the activity does not violate other provisions of law.

(a) An association may maintain a noninterest-bearing account at any institution at which accounts are insured by the Federal Deposit Insurance Corporation, if the account is necessary or incidental to a correspondent relationship.

(b) An association may receive non-interest-bearing deposits from correspondent institutions for use as compensating balances, for settlement purposes, or for other purposes incidental to a correspondent relationship. These deposits may be payable on demand and subject to withdrawal by negotiable or transferable instrument, order, or authorization. These deposits shall not give rise to voting rights of membership in a state mutual association.
(Amended by Stats. 1990, Ch. 1118, Sec. 34.)

6529. (a) No affiliated person of a savings association may receive, either directly or indirectly, from the association, a subsidiary thereof, or any other source any fee or other compensation of any kind in connection with the procurement of a loan from that association or subsidiary.

(b) No savings association shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a real estate closing service shall be referred to any person by the savings association or by a subsidiary or affiliated person thereof, in connection with any loan on real property made by a savings association or subsidiary thereof.

(c) Other than for services actually performed, no person shall give and no savings association or subsidiary or affiliated person thereof shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate closing service in connection with a transaction involving a loan on real property made by a savings association or subsidiary thereof.

(d) For purposes of subdivisions (b) and (c), "real estate closing service" includes any service provided in connection with the execution of a real estate escrow transaction, including, but not limited to, title searches, title examinations, the provision of title reports, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate licensee, and the handling of the processing.
(Added by Stats. 1990, Ch. 1118, Sec. 35.)

6530. (a) No savings association may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request

of the employee) provided information to the commissioner, the Attorney General, or any district attorney regarding a possible violation of any law or regulation by the savings association or any of its officers, directors, or employees.

(b) Any employee or former employee who believes he or she has been discharged or discriminated against in violation of subdivision (a) may file a civil action in superior court before the close of the 2-year period beginning on the date of that discharge or discrimination. The plaintiff shall also file a copy of the complaint initiating the civil action with the commissioner.

(c) If the court determines that a violation of subdivision

(a) has occurred, it may order the association which committed the violation to do any of the following:

(1) Reinstate the employee to his or her former position.

(2) Pay compensatory damages.

(3) Take other appropriate actions to remedy any past discrimination.

(d) The protections of this section shall not apply to any employee who does either of the following:

(1) Deliberately causes or participates in the alleged violation of law or regulation.

(2) Knowingly or recklessly provides substantially false information to the commissioner, the Attorney General, or any district attorney.

(Added by Stats. 1990, Ch. 1118, Sec. 36.)

Article 2. Branching and Agency Powers
(Article 2 added by Stats. 1983, Ch. 1091, Sec. 2.)

6550. (a) A branch office is a legally established place of business of an association other than the home office, a remote service unit, or any agency, authorized by the board of directors and approved by the commissioner, where the business of an association may be conducted.

(b) An association may, with the approval of the commissioner, conduct business outside this state, subject to the laws of the state in which the business is done.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6551. (a) An agency of an association is a place or facility, stationary or mobile, other than the home office, a remote service unit, or a branch office, at or through which the association may transact business that is specified by the board of directors and approved by the commissioner.

(b) The agency may perform other special duties and functions as may be directed from time to time by the home office or a branch office and approved by the commissioner.

(c) An agency may perform only those activities, duties, or functions as are authorized for savings associations by the provisions of this division or regulations of the commissioner.

(Amended by Stats. 1988, Ch. 718, Sec. 11.5.)

6552. No association may establish or maintain a branch office or agency without the prior written approval of the commissioner, except that temporary and incidental agencies may be created for individual transactions and for special temporary purposes without approval.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6553. (a) Each application for approval of the establishment and maintenance of a branch office or one or more agencies shall include the following:

(1) The proposed location of the branch or agency.

(2) The functions to be performed at the branch or agency.

(3) Any additional information the commissioner deems necessary to reach a decision.

(b) Each application shall be accompanied by the filing fee as prescribed pursuant to Section 9001 and by a budget of the association for the current earnings period and for the next succeeding annual period, which reflects the estimated additional expense of the maintenance of each branch or agency covered by the application.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6554. Upon receipt of a complete application for a branch office, the commissioner shall give written notice of the filing of the application to each association. The notice shall state the name of the association and the name of the city or community in which the branch is proposed to be located.

(Amended by Stats. 1985, Ch. 983, Sec. 8. Effective September 26, 1985.)

6555. (a) Before acting on an application for a branch office, the commissioner may hold a hearing at a time and place specified in a notice of hearing.

(b) If a hearing is to be held, the hearing shall not be held less than 10 days after the mailing of a notice of hearing under subdivision (a).

(c) Any person may appear at the hearing in person or by agent or attorney, and, pursuant to regulations issued by the commissioner, show cause why the application should not be approved.

(Amended by Stats. 1985, Ch. 983, Sec. 9. Effective September 26, 1985.)

6556. (a) Upon review of the application for a branch office or agency and after a hearing on the branch application, if one is deemed necessary, the commissioner shall determine whether all of the following criteria are met:

(1) The applicant's policies, financial condition, and operations afford no basis for supervisory objection.

(2) The proposed branch office or agency will be opened within a reasonable time after approval, as determined by the commissioner.

(b) If the commissioner determines that the criteria set forth in subdivision (a) are met the application shall be approved.

(c) If the commissioner determines that the criteria set forth in subdivision (a) are not met the application shall be denied.

(Amended by Stats. 1987, Ch. 730, Sec. 13.)

6557. The provisions of this article relating to branch office and agency applications do not apply to a branch office or agency of an existing association acquired pursuant to a merger, consolidation, conversion, or transfer of assets.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6558. The commissioner may adopt rules and regulations relating to any action pertaining to branch offices and agencies regulated by this article.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

CHAPTER 5. SAVINGS OPERATIONS

(Chapter 5 added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 1. Savings Liability

(Article 1 added by Stats. 1983, Ch. 1091, Sec. 2.)

6600. The savings liability of an association shall consist only of the aggregate amount of its savings accounts, plus interest earned or credited to the accounts, less redemption and withdrawal payments.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6601. Except as limited by the association from time to time or by state or federal law or regulations, account holders may make additions to their savings accounts in amounts and at times they elect.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6602. Savings accounts may be opened for cash or, subject to any limitations or restrictions in regulations issued by the commissioner, for property in which the association is authorized to invest. In the absence of fraud in the transaction, the value of the property taken in payment, as determined by the board of directors, shall be conclusive.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6603. No member of a mutual association is responsible for any losses of the association, no savings account is subject to assessment, and no savings account holder is liable for any unpaid installments on the account.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 2. Savings Accounts

(Article 2 added by Stats. 1983, Ch. 1091, Sec. 2.)

6651. Except for savings accounts issued in marketable or bearer form, savings accounts shall be represented only by the account of each savings account holder on the books of the association, and the accounts or any interest in the accounts shall be transferable only on the books of the association and upon proper written application, and acceptance by the association of the transferee as a holder upon terms approved by the board of directors.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6652. (a) Upon the filing with an association by the savings account holder of record as shown by the books of the association, or by the holder's legal representative, of an affidavit to the effect that the evidence of account, if any, has been lost or destroyed, and that the account has not been pledged or assigned in whole or in part, the association shall issue a new evidence of account, if applicable, in the name of the holder of record.

(b) The new evidence of account may state that it is issued in lieu of the one lost or destroyed and that the association shall not be liable for the loss or destruction of the original evidence of account.

(c) The association may require an indemnification or a bond in an amount it deems sufficient to indemnify the association against any loss which might result from the issuance of a new evidence of account under this section.
(Amended by Stats. 1984, Ch. 287, Sec. 19. Effective July 6, 1984.)

6653. (a) No association shall, directly or indirectly, for the opening or increasing of any savings account, give, sell, dispose of, or permit the giving, selling, or disposition of, for any one opening or increase anything having a cost or value in excess of the amount authorized by the commissioner by regulation.

(b) Notwithstanding subdivision (a) the commissioner is authorized to impose by regulation restrictions on associations, relating to the distribution and advertising of giveaways, equivalent to those imposed on federal associations doing business in this state.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6653.5. (a) A troubled savings association may not accept funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more accounts.

(b) Any renewal of a savings account in any troubled savings association and any rollover of any amount on deposit in such a savings account shall be treated as an acceptance of funds by the troubled savings association for purposes of subdivision (a).

(c) The commissioner may, on a case-by-case basis and upon application by a savings association, waive the applicability of subdivision (a) upon a finding that the acceptance of these deposits does not constitute an unsafe or unsound practice with respect to that savings association.

(d) The commissioner may impose, by regulation or order, such additional restrictions on the acceptance of broker deposits by any troubled savings association as the commissioner may determine to be appropriate.

(e) For purposes of this section:

(1) "Deposit broker," except as otherwise provided in paragraph (2), means either of the following:

(A) Any person engaged in (i) the business of placing deposits, or facilitating the placement of deposits, of third parties with financial institutions or (ii) the business of placing deposits with financial institutions for the purpose of selling interests in those deposits to third parties.

(B) An agent or trustee who establishes a savings account to facilitate a business arrangement with a financial institution to use the proceeds of the account to fund a prearranged loan.

(2) Subject to paragraph (3), "deposit broker" does not include any of the following:

(A) A savings association with respect to funds placed with that savings association.

(B) An employee of a savings association with respect to funds placed with the employing savings association.

(C) A trust department of a savings association, if the trust in question has not been established for the primary purpose of placing funds with financial institutions.

(D) The trustee of a pension or other employee benefit plan, with respect to funds of the plan.

(E) A person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan, provided that that person is performing managerial functions with respect to the plan.

(F) The trustee of a testamentary account.

(G) The trustee of an irrevocable trust (other than one described in subparagraph (B) of paragraph (1), as long as the trust in question has not been established for the primary purpose of placing funds with financial institutions.

(H) A trustee or custodian of a pension or profitsharing plan qualified under Section 401(d) or 403(a) of the federal Internal Revenue Code of 1986.

(I) An agent or nominee whose primary purpose is not the placement of funds with financial institutions.

(3) The exceptions specified in paragraph (2) do not apply to, and the term "deposit broker" includes, any savings association, and any employee of any savings association, that engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to those deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other associations and federal associations in the savings association's normal market area.

(4) "Employee" means any person meeting all of the following criteria:

(A) The person is employed exclusively by the savings association.

(B) The person's compensation is primarily in the form of a salary.

(C) The person does not share that compensation with a deposit broker.

(D) The person's office space or place of business is used exclusively for the benefit of the savings association which employs the person.

(5) "Troubled savings association" means any savings association which does not meet the minimum capital requirements applicable with respect to that savings association.

(Added by Stats. 1990, Ch. 1118, Sec. 37.)

6660. (a) For the purposes of this section:

(1) "Account" means withdrawable or repurchasable shares, investment certificates, deposits, or savings accounts as defined in Section 561.2, 561.16, 561.28, 561.29, 561.42, or 563.6 of Title 12 of the Code of Federal Regulations pursuant to which the account holder from time to time may make deposits and effect withdrawals.

(2) "Account holder" means a person who is identified on the signature card for an account, or in the absence of a signature card, a person who has an interest in an account which is reflected on the records of the association for that account to whom statements of account or other notices are normally given, or the agent of such person.

(3) "Charges" means those charges which an association may, from time to time, impose on an account in the normal course of business in the operation of the account and, does not include:

(A) Charges which may be imposed for extraordinary services furnished at the specific request of the account holder.

(B) Charges or amounts required to be disclosed to the depositor pursuant to the Truth-in-Lending Act (15 U.S.C. Sec. 1601 et seq.) and Regulation Z (12 C.F.R. 226.1 et seq.), as amended.

(4) "Customer" means one or more natural persons.

(5) "Debt" means an interest-bearing obligation or an obligation that by its terms is payable in installments, which has not been reduced to judgment, arising from an extension of credit to a natural person primarily for personal, family,

or household purposes, and does not mean a charge for savings and loan services, for a debit for uncollected funds, for dishonored checks cashed for a customer, or for an overdraft account imposed by an association on a savings account.

(b) An association is limited in exercising any setoff for a debt claimed to be owed to the association by a customer in that a setoff shall not result in an aggregate balance of less than one thousand dollars ($1,000) as shown on the records of the association for all accounts maintained by a customer with the association or any of its branches.

(c) Not later than the day following the exercise of any setoff with respect to an account for any debt claimed to be owed to the association by a customer, the association shall deliver to each customer personally or send by first-class mail postage prepaid to the address of each customer as shown on the records of the association a written notice in at least 10-point type containing the following:

(1) A statement that the association has set off all or part of a debt against the customer's account, identifying the account, and giving the respective balances before and after the setoff.

(2) A statement identifying the debt setoff against the account and giving the respective balances due before and after the setoff.

(3) A statement that if the customer claims that the debt has been paid or is not now owing, or that the funds in the account consist of moneys expressly exempt pursuant to Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, and listed in the notice, the customer may execute and return the notice to the association by mail at the address shown or personally to the branch where the customer's account is maintained not later than 20 days after the date of mailing or personal delivery.

(4) A statement that (A) if the notice is executed and returned, the association may file an action in court to collect the debt, (B) that if a lawsuit is filed, the customer will be notified and have an opportunity to appear and defend, and (c) that if the association is successful, the customer will be liable for court costs, and attorney's fees, if the debt so provides.

(5) A response form in at least 10-point type containing substantially the following:

"The debt described in the Notice of Setoff received from the savings and loan association is ____ is not ____ my debt or the debt of another person in whose name the account is maintained.

"I claim that the debt:

____ has been paid.
____ is not now owing.
____ is not subject to setoff because the money in the account is:
____ Paid earnings (CCP 704.070)
____ Proceeds from execution sale of or insurance for for loss of a motor vehicle (CCP 704.010)
____ Proceeds from execution sale of household furnishings or other personal effects (CCP 704.020)
____ Relocation benefits (CCP 704.180)
____ Life insurance proceeds (CCP 704.100)
____ Disability and health insurance benefits (CCP 704.130)
____ Workers' compensation benefits (CCP 704.160)
____ Unemployment or strike benefits (CCP 704.120)
____ Retirement benefits including, but not limited to, social security benefits (CCP 704.080, 704.110, 704.115)
____ Public assistance benefits including welfare payments and supplemental security income (SSI) or charitable aid (CCP 704.170)
____ Proceeds from sale of or insurance for damage or destruction of a dwelling (CCP 704.720, 704.960)
____ Proceeds from execution sale of or insurance for loss of tools of a trade (CCP 704.060)
____ Award of damages for personal injury (CCP 704.140) or wrongful death (CCP 704.150)
____ Financial aid paid by an institution of higher education to a student for expenses while attending school (CCP 704.190)

I declare under penalty of perjury that the foregoing is true and correct.
Executed at _____, California on _____
City or County Date
Signed: _____"

(d) If the response form described in subdivision (c) executed by the customer is received by the association not later than 20 days after the date of mailing or personal delivery of the written notice, the amount of the setoff for any debt

claimed to be owed to the association by a customer, and any service charges resulting from the setoff, shall be reversed and shall be credited to the customer's account not later than the end of the third business day following receipt of the executed response form.

(e) The limitations provided in this section do not apply to accounts in which the association has a security interest expressed by a written contract as collateral for the debt owing to the association by the customer.

(f) The limitations provided in this section do not apply when a customer previously has authorized an association in writing to periodically debit an account as the agreed method of payment of the debt.

(g) The limitations provided in this section shall apply only to the exercise by an association of a setoff with respect to debts claimed to be owing to it by customers on or after July 1, 1976.

(h) Nothing in this section shall prejudice a person's right to assert exemptions under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, or to assert a claim or defense as to the validity of the debt, in a judicial proceeding.

(Amended by Stats. 1994, Ch. 68, Sec. 8. Effective May 9, 1994.)

6661. Notice to an association or federal association of an adverse claim to a savings account of, or to personal property held for the account of, any person shall be disregarded, and the association or federal association, notwithstanding the notice, shall honor withdrawal applications and shall pay withdrawals and interest to the person or persons to whose credit the account stands or shall deliver the property to or upon the order of the person for whose account the property is held, without any liability on the part of the association or federal association; subject, however, to the exceptions provided in subdivisions (a) and (b):

(a) If an adverse claimant delivers to the association or federal association at the office at which the account is carried or the property held an affidavit of the claimant stating that of the claimant's own knowledge the person to whose credit the deposit stands or for whose account the property is held is a fiduciary for the adverse claimant and that the claimant has reason to believe the fiduciary is about to misappropriate the account or the property, and stating the facts upon which the claim of fiduciary relationship and the belief are founded, the association or federal association shall refuse to pay withdrawals or interest on the account and shall refuse to deliver the property for a period of not more than three court days (including the day of delivery) from the date that the association or federal association received the adverse claimant's affidavit, without liability on its part and without liability for the sufficiency or truth of the facts alleged in the affidavit.

(b) If at any time, either before, after, or in the absence of the filing of an affidavit by the adverse claimant, the adverse claimant procures and serves upon the association or federal association at the office at which the account is carried or the property held a restraining order, injunction, or other appropriate order against the association or federal association from a court of competent jurisdiction in an action in which the adverse claimant and all persons in whose names the account stands or for whose account the property is held are the parties, the association or federal association shall comply with the order or injunction, without liability on its part.

(c) The provisions of this section shall be applicable even though the name of the person appearing on the books to whose credit the account stands or for whose account the property is held is modified by a qualifying or descriptive term such as "agent," "trustee," or other word or phrase indicating that the person may hold the account or property in a fiduciary capacity.

(d) Nothing in the California Multiple-Party Accounts Law contained in Part 2 (commencing with Section 5100) of Division 5 of the Probate Code limits the applicability of this section.

(Amended by Stats. 1990, Ch. 79, Sec. 5. Operative July 1, 1991, pursuant to Stats. 1990, Ch. 710, Sec. 46.)

6662. Nothing in this chapter shall prohibit an association or federal association from issuing tenancy in common, community property, and other types of savings accounts authorized by law.

(Added by Stats. 1984, Ch. 958, Sec. 3.)

6663. If any attachment is levied upon any savings account or any other property maintained with an association or federal association, a copy of the writ and notice of attachment shall be served upon the manager or any other officer of the association or federal association. Service shall be made at the office or branch at which the savings account or other property is maintained, if the office or branch is in operation at the time of the service or, if the office, agency, or branch is not in operation at the time of service, at the home office of the association or federal association. Writs and notices of attachment which are not so served are not effective as to any savings account or other property maintained with the association or federal association, irrespective of any other provision of law relating to service of attachments.

(Added by Stats. 1985, Ch. 983, Sec. 10. Effective September 26, 1985.)

Article 3. Contracts for Savings Programs
(Article 3 added by Stats. 1983, Ch. 1091, Sec. 2.)

6700. An association may contract with the proper authorities of any public or nonpublic elementary or secondary school or institution of higher learning, or any public or charitable institution caring for minors, for the participation and implementation by the association in any school or institutional thrift or savings plan, and it may accept savings accounts at the school or institution, either by its own collector or by any representative of the school or institution that becomes the agent of the association for that purpose.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6701. An association may contract with any employer, as follows:

(a) With respect to the solicitation, collection, and receipt of savings by payroll deduction to be credited to a designated account or accounts of its employees who voluntarily elect to participate.

(b) With respect to the direct deposit of wages or salary paid to the account of the employee by electronic or other medium upon authorization in writing by the employee and designation of the association as the recipient of the deposits.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

6702. An association may pay commissions or fees in cash or merchandise for soliciting deposits to any employee of the association or to any broker or agent as determined by the association.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 4. Powers of Attorney on Savings Accounts
(Article 4 added by Stats. 1983, Ch. 1091, Sec. 2.)

6725. (a) Notwithstanding any other provision of law, an association or federal association may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals either in whole or in part from the savings account of a holder, whether minor or adult, until it receives written notice or is on actual notice of the revocation of authority, whether the revocation is express or by operation of law.

(b) Except as provided in Division 4.5 (commencing with Section 4000) of the Probate Code, written notice of the death or adjudication of incompetency of the account holder that is delivered to the office where the account is maintained shall constitute written notice of revocation of the authority of the attorney-in-fact.

(c) No association or federal association shall be liable for damages, penalty, or tax by reason of any payment made pursuant to this section.
(Amended by Stats. 1994, Ch. 307, Sec. 12. Effective January 1, 1995.)

Article 5. Married Persons and Minors
(Article 5 added by Stats. 1983, Ch. 1091, Sec. 2.)

6750. Except as otherwise expressly provided in this article, an association or federal association may issue savings accounts to any married person or minor as the sole and absolute owner of the account, and receive payments by or for the owner, and pay withdrawals, accept pledges to the association, and act in any other manner with respect to the accounts on the order of a married person or minor. A married person or minor may establish a trust under Sections 401 and 408 of the Internal Revenue Code of 1986, as amended, and an association or federal association may issue savings accounts to the trust.
(Amended by Stats. 1990, Ch. 1118, Sec. 37.5.)

6751. Any payment or delivery of rights to a married person, to any minor, or to a trust established by or for a married person, or a minor, or a receipt or acquittance signed by a married person or by a minor who holds a savings account, shall be a sufficient release of the association or federal association for any payment made or delivery of rights to the married person or minor.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6752. (a) In the case of a minor, the receipt, acquittance, pledge, or other action required by the association or federal association to be taken by the minor shall be binding upon the minor with like effect as if the minor were of full age and legal capacity.

(b) Except under subdivision (c), the parent or guardian of the minor shall not have the power to attach or transfer any savings account issued to or in the name of the minor, provided that a parent or guardian of a minor aged 13 or less may require, by written notice delivered to the office where the account is maintained, that the signatures of both the minor and the parent or guardian be required for withdrawals from the account.

(c) In the event of the death of a minor the receipt or acquittance of either parent, guardian, or foster parent of the minor is a sufficient discharge of the association or federal association for any sums not exceeding in the aggregate two thousand five hundred dollars ($2,500) unless the minor has given written notice to the association or federal association to accept the signature of the parent, guardian or foster parent to withdraw a greater amount.
(Amended by Stats. 1984, Ch. 958, Sec. 4.)

Article 6. Multiple-Party Accounts
(Heading of Article 6 amended by Stats. 1989, Ch. 397, Sec. 7. Operative July 1, 1990, by Sec. 42 of Ch. 397.)

6800. An account in an association or federal association that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part 2 (commencing with Section 5100) of Division 5 of the Probate Code.
(Amended by Stats. 1990, Ch. 79, Sec. 6. Operative July 1, 1991, pursuant to Stats. 1990, Ch. 710, Sec. 46.)

6804. No association or federal association paying any survivor in accordance with Part 2 (commencing with Section 5100) of Division 5 of the Probate Code shall, because of the payment, be liable for any estate, inheritance, or succession taxes that may be due this state.
(Amended by Stats. 1990, Ch. 79, Sec. 7. Operative July 1, 1991, pursuant to Stats. 1990, Ch. 710, Sec. 46.)

6805. The pledge or hypothecation to any association or federal association of all or part of a multiple party account, as defined in Section 5132 of the Probate Code, signed by any one or more tenants, whether minor or adult, upon whose signature or signatures withdrawals may be made from the account shall, unless the terms of the account provide specifically to the contrary, be a valid pledge and transfer to the association or federal association of that part of the account pledged or hypothecated, and shall not operate to sever or terminate all or any part of the account.
(Amended by Stats. 1989, Ch. 397, Sec. 13.5. Operative July 1, 1990, by Sec. 42 of Ch. 397.)

Article 7. Accounts of Administrators, Executors, Guardians, Custodians, Trustees, and Other Fiduciaries (Article 7 added by Stats. 1983, Ch. 1091, Sec. 2.)

6850. Any association may accept fiduciary savings accounts in the name of any administrator, executor, custodian, conservator, guardian, trustee, or other fiduciary for a named beneficiary or beneficiaries.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6851. (a) The withdrawal value of a fiduciary account, and interest on it, or other rights relating to it, may be paid or delivered, in whole or in part, to the fiduciary without regard to any notice to the contrary as long as the fiduciary is living.

(b) The payment or delivery to the fiduciary or a receipt or acquittance signed by a fiduciary to whom payment or delivery of rights is made shall be a sufficient release of an association for the payment or delivery.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6852. (a) Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship has been given to an association and the association has no written notice of any other disposition of the beneficial estate, the withdrawal value of the account, and interest on it, or other rights relating to it, may, at the option of an association, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries.

(b) In the absence of written notice to the contrary an association may presume that each beneficiary of an account with two or more beneficiaries has an undivided equal beneficial interest in the account.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

6855. No association paying any fiduciary, beneficiary, or designated person in accordance with this article or the California Multiple-Party Accounts Law contained in Part 2 (commencing with Section 5100) of Division 5 of the Probate Code shall, because of the payment, be liable for any estate, inheritance, or succession taxes that may be due this state.
(Amended by Stats. 1990, Ch. 79, Sec. 8. Operative July 1, 1991, pursuant to Stats. 1990, Ch. 710, Sec. 46.)

6856. The provisions of this article apply to federal associations to the extent that they are not inconsistent with and do not infringe upon federal laws governing federal associations.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 8. Accounts of Incompetents
(Article 8 added by Stats. 1983, Ch. 1091, Sec. 2.)

6900. If an association or federal association has received no written notice and is not on actual notice that the savings account holder has been adjudicated incompetent, it may pay or deliver funds to the account holder in accordance with the provisions of the savings account contract, and the receipt or acquittance of the holder shall be a sufficient release of that association or federal association for the payment or delivery.
(Amended by Stats. 1984, Ch. 958, Sec. 11.)

Article 9. Accounts of Deceased Nonresidents
(Article 9 added by Stats. 1983, Ch. 1091, Sec. 2.)

6950. (a) When a savings account is held in any association or federal association by a person who dies while domiciled in a sister state or foreign nation, the account, together with additions and interest, or any part of it, shall be exempt from any taxation otherwise imposed by this state.

(b) When a savings account is held in any association or federal association by a person who dies while domiciled in a sister state, the account, together with additions and interest, or any part of it, shall be paid to the sister state personal representative or other claimant under the Probate Code, provided the personal representative or other claimant has furnished the association or federal association with all of the documentation required under applicable provisions of the Probate Code and evidence of ownership of the account, if any, issued under Section 6652.

(c) Upon payment or delivery to the personal representative or other claimant after receipt of the documents specified in subdivision (b), the association or federal association is released and discharged to the same extent as if the payment or delivery had been made to a legally qualified local personal representative, and is not required to account for the application or disposition of the property.
(Amended by Stats. 1988, Ch. 1199, Sec. 14. Operative July 1, 1989, by Sec. 119 of Ch. 1199.)

6951. No action at law or in equity shall be maintained against an association or federal association for payment made in accordance with this article.
(Amended by Stats. 1984, Ch. 958, Sec. 12.)

Article 10. Savings Accounts as Legal Investments and as Security; Public Funds
(Article 10 added by Stats. 1983, Ch. 1091, Sec. 2.)

7000. (a) Administrators, executors, custodians, conservators, guardians, trustees, and other fiduciaries, insurance companies, business and manufacturing companies, banks, trust companies, credit unions, and other types of similar financial organizations, charitable, educational, eleemosynary and public corporations, funds and organizations, and municipalities and other public corporations and bodies, and public officials are specifically authorized and empowered to invest funds held by them, without any order of any court, in savings accounts of associations and federal associations and the investments are legal investments for those funds.

(b) No association shall have on deposit at any one time funds of the State of California, of the cities, counties, and other political subdivisions of the state, and of the public corporations and districts of the state, that, in the aggregate, exceed in amount 400 percent of its statutory net worth. The amount of funds on deposit secured by surety bonds shall not at any time, in the aggregate, exceed 100 percent of statutory net worth. The limitations of this subdivision as to the amount of funds which may be on deposit at any one time shall not apply to negotiable certificates of deposit.

(c) An association or federal association may act as a depositary or fiscal agent for the holding or handling of public funds notwithstanding the fact that a member of the legislative body or an officer or employee of the depositor is an officer, employee, or stockholder of the association or federal association, or of a savings and loan holding company or service corporation of the association or federal association.

(d) Under this section a member of a legislative body, or an officer or employee shall not be deemed “interested in any contract” as that phrase is used in Section 1090 of the Government Code, if that person’s sole interest is the fact that the person is an officer, employee, or stockholder of the association or federal association selected to act as depositary, paying agent, or fiscal agent or of its savings and loan holding company or service corporation.

(e) An officer or employee of a local public agency shall be deemed to have only a “remote interest” in a contract, as that term is used in Section 1091 of the Government Code, where the contract is entered into without competitive bidding

under a procedure established by law, if the sole interest is that of an officer, director, or employee, of an association or federal association or savings and loan holding company or service corporation of the association or federal association with which a party to the contract has the relationship of borrower or depositor, debtor, or creditor, and if the conditions of subdivision (a) of Section 1091 of the Government Code are met.
(Amended by Stats. 1985, Ch. 983, Sec. 10.5. Effective September 26, 1985.)

7001. (a) Whenever, under the laws of this state or otherwise, a deposit of securities is required for any purpose, the savings accounts and accounts made legal investments by this article shall be acceptable deposits.

(b) Whenever, under the laws of this state or otherwise, a bond is required with security, the bond may be furnished, and the savings accounts and accounts made legal investments by this article in the amount of the bond shall be acceptable as security without other security.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

7002. The provisions of this article supplement any and all other laws relating to and declaring what shall be legal investments for the persons, fiduciaries, corporations, organizations' funds, municipalities, bodies, and officials referred to in this article and supplement the laws relating to the deposit of securities and the making and filing of bonds for any purpose.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 11. Interest
(Article 11 added by Stats. 1983, Ch. 1091, Sec. 2.)

7050. An association may issue savings accounts earning interest at different rates of return. The annual rate of return paid on a savings account may either be fixed at the time the account is issued or may vary on any basis specified at the time the account is accepted.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

7051. An association may classify its savings accounts on any basis including, but not limited to, character, amount, or duration of the account, regularity of additions, or location of origin of the account.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

7052. Except for accounts that are classified according to a specified contractual time or notice period, interest shall be based on the withdrawal value of each savings account at the beginning of the accounting period, plus additions made during the period (less amounts previously withdrawn and noticed for withdrawal, which for interest purposes shall be deducted from the latest previous additions) computed at the rate for the time the funds have been invested, determined as provided in Section 7053.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

7053. (a) The date of investment in a savings account shall be the date of actual receipt by the association of the account or an addition to the account, except that if the association shall so determine, accounts in one or more classifications or additions received by the association on or before a date not later than the 20th day of the month (unless the day determined is not a business day, in which case it may be the next succeeding business day) shall receive interest as if invested on the first day of the month in which the payments were received.

(b) If the association makes a determination under subdivision (a) it also shall determine that payments received subsequent to that determination date shall either receive interest as if invested on the first day of the next succeeding month, or receive interest from the date of actual receipt by the association, except as provided by Section 866.3.
(Amended by Stats. 1985, Ch. 983, Sec. 11. Effective September 26, 1985.)

7054. The board of directors, by resolution, may determine any of the following:

(a) That interest shall not be paid on designated types of savings accounts from which withdrawals may be made upon demand or by negotiable and transferable order or authorization.

(b) That an association may establish minimum balance requirements for savings accounts to be eligible for distribution of interest.

(c) That, subject to applicable maximum regulatory limitations, an association may pay interest on a savings account at a rate or anticipated rate of return determined at the time that the account is accepted.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

7055. The directors shall determine the method of calculating the amount of any interest on any savings account classification as provided in this article and the time or times when the interest is to be paid or credited.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 12. Withdrawals
(Article 12 added by Stats. 1983, Ch. 1091, Sec. 2.)

7100. (a) Notwithstanding any other provision of law, but subject to subdivision (b), an association may permit the owner of a deposit or account to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

(b) With respect to deposits or accounts on which interest or dividends are paid, subdivision (a) shall apply only to the deposits or accounts which consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes and which is not operated for profit.

(c) Notwithstanding any other provision of law, an association may provide for the automatic transfer of funds services at the direction of an account holder.
(Amended by Stats. 1988, Ch. 718, Sec. 12.)

Article 13. Redemption
(Article 13 added by Stats. 1983, Ch. 1091, Sec. 2.)

7150. At any time funds are on hand for the purpose, an association shall have the right to redeem by lot or otherwise, as the board of directors may determine, all or any part of any of its savings accounts on an interest date by giving 30 days' notice by registered mail addressed to each affected account holder at the holder's last address as recorded on the books of the association.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

7151. Except with the prior consent of the commissioner, no association shall redeem any of its savings accounts when the association is in an impaired condition and when it has applications for withdrawal that have been on file more than 14 days and have not been reached for payment.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

7152. The redemption price of savings accounts redeemed shall be the full value of the account redeemed, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal value.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

7153. If the notice of redemption under Section 7150 has been given, and if on or before the redemption date the funds necessary for the redemption have been set aside and continue to be available for the redemption, interest upon the accounts called for redemption shall cease to accrue from and after the interest date specified as the redemption date and all rights with respect to those accounts shall terminate after the redemption date, except only as to any right of the account holder of record to receive the redemption price without interest.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

7154. (a) All certificates of ownership evidencing former savings accounts that have been called for redemption must be tendered for payment within the time limit specified in subdivision (b) of Section 1513 of the Code of Civil Procedure for escheat of unclaimed funds.

(b) Savings accounts that are not tendered for payment as set forth in this section shall escheat to the state as provided in the Unclaimed Property Law, Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

CHAPTER 6. INVESTMENT OPERATIONS

(Chapter 6 added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 1. Required Liquidity

(Article 1 added by Stats. 1983, Ch. 1091, Sec. 2.)

7200. No association shall invest in any security under this chapter, other than in liquid assets, or in any loan at any time if the association fails to meet the minimum liquidity requirements prescribed by Section 566.2 of Title 12 of the Code of Federal Regulations, unless the commissioner has issued prior written approval. "Liquid assets," as used in this section, has the same meaning as defined by the regulations codified in Section 566.1 of Title 12 of the Code of Federal Regulations.

(Amended by Stats. 1990, Ch. 1118, Sec. 37.8.)

Article 2. Investment in Securities

(Article 2 added by Stats. 1983, Ch. 1091, Sec. 2.)

7250. Notwithstanding any other provision of law, an association may invest in the following securities without limit, and in addition may invest not in excess of 5 percent of its assets in other securities that are deemed prudent by the association:

(a) Bonds or other interest bearing notes and obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest, or obligations that are fully guaranteed as to principal and interest by, the United States, any state, or any state's political subdivisions, including its agencies, corporations and instrumentalities.

(b) Stock, bonds or obligations of any federal home loan bank.

(c) Stock or obligations of any international home loan bank or similar agency incorporated by authority of an act of Congress.

(d) Stock, obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or any other agency of the United States and an association may issue and sell securities that are guaranteed under paragraph (g) of Section 306 of the National Housing Act (12 U.S.C. Sec. 1701 et seq.).

(e) Bonds, other evidences of indebtedness or obligations of, or guaranteed as to principal and interest by, the Dominion of Canada or any of its provinces, provided that the principal and interest of the obligations are payable in United States funds.

(f) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, by the Inter-American Development Bank, or by the Asian Development Bank.

(g) Demand, time or savings deposits, shares or accounts, or other obligations of any financial institution the accounts of which are insured by a federal agency.

(h) Commercial paper and corporate debt securities. Investments under this subdivision in the paper or securities of any one obligor or maker shall not exceed the greater of (1) the amount a national bank having identical total capital and surplus could so invest in the paper or securities of any one obligor or maker, or (2) the amount a commercial bank, as defined in Section 105, having an identical shareholders' equity could so invest in the paper or securities of any one obligor or maker.

(i) Shares or certificates in any open-end management investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by the management company's investment policy, changeable only if authorized by shareholder vote, primarily to investments authorized under this section.

(j) Bankers' acceptances of the kind, character, and maturity eligible for rediscount with a Federal Reserve bank, and such other bonds and securities as authorized by Article 2.5 (commencing with Section 7260) or as the commissioner may authorize by rules and regulations.

(Amended by Stats. 1990, Ch. 1118, Sec. 38.)

7250.5. No savings association may directly or indirectly acquire or retain any corporate debt security unless the corporate debt security is rated in one of the four highest rating categories by at least one nationally recognized rating service.
(Added by Stats. 1990, Ch. 1118, Sec. 39.)

7251. An association holding investments which have been approved by the commissioner shall not be required to dispose of them or to establish a reserve account if later the commissioner rescinds approval of the investments.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

7252. (a) Notwithstanding any other provisions of this chapter, an association may, subject to regulations of the commissioner, invest in the capital stock, obligations, or other securities of service corporations.

(b) The total of all investments under this section shall not exceed 10 percent of the total assets of the savings association.

(c) A service corporation in which a savings association may invest shall only engage in those activities reasonably related to the activities of savings associations as the commissioner may approve.

(d) An association may make an investment under this section notwithstanding that the service corporation in which investment is authorized has invested in any other corporation (1) that is not incorporated in this state, or (2) that has stock available for purchase by persons other than associations.
(Amended by Stats. 1990, Ch. 1118, Sec. 40.)

Article 2.5. Other Authorized Investments in Bonds and Securities
(Article 2.5 added by Stats. 1988, Ch. 718, Sec. 14.)

7260. Stock of a Federal Reserve bank.
(Added by Stats. 1988, Ch. 718, Sec. 14.)

7261. Bonds of the State of California and those for which the faith and credit of the State of California are pledged for the payment of principal and interest, and registered warrants of the State of California.
(Added by Stats. 1988, Ch. 718, Sec. 14.)

7262. Bonds of any flood control and water conservation districts, or any zone thereof, having an assessed valuation on taxable real property of not less than one million dollars ($1,000,000), county, city and county, city, metropolitan water district, municipal utility district, any special district established by and within any municipal utility district, transit district, rapid transit district, including sales tax revenue bonds of that district of the State of California (herein referred to generally as public corporations) except the bonds of any particular such public corporation which may be declared ineligible for investment by commercial banks by regulations of the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 553. Effective January 1, 1997. Operative July 1, 1997.)

7263. Bonds of any other political subdivision, public corporation, or district of the State of California (herein referred to generally as public corporations) having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of those bonds upon all property within its boundaries subject to taxation by the public corporation, provided the net direct debt of that public corporation together with its net overlapping debt does not exceed 25 percent of the assessed valuation of the taxable property within its boundaries according to the last offical equalized county assessment roll.
(Added by Stats. 1988, Ch. 718, Sec. 14.)

7264. Bonds or other evidences of indebtedness of, or which are unconditionally guaranteed by the State of Israel, the United States of Mexico, the Commonwealth of Puerto Rico, or any state of the United States other than California, for the payment of both principal and interest of which in United States dollars, the faith and credit of that entity is pledged; in limited obligations; and in the bonds or other evidences of indebtedness of any city, county, political subdivision, public corporation, or district (herein referred to generally as public corporations) of any state of the United States other than California, or of the State of Israel, or of the United States of Mexico, or of the Commonwealth of Puerto Rico, having the power without limit as to rate or amount to levy taxes to pay the principal and interest of those bonds upon all property within its boundaries subject to taxation by that public corporation; subject to the following:

(a) In the case of bonds constituting general obligations of any such state, commonwealth, dominion, or country, the state, commonwealth, dominion, or country has not within 10 years prior to that investment defaulted for a period of more than 90 days in the payment of any part of either principal or interest of any of its debts.

(b) In the case of limited obligations of any such state or commonwealth, (1) that the state or commonwealth has not within 10 years prior to the date of the investment defaulted for a period of more than 90 days in the payment of either principal or interest of any of its debts; (2) the special taxes pledged for the payment of the limited obligations shall have

been collected for five fiscal years next preceding any investment and during the five fiscal years shall have averaged at least 1 ½ times the debt service requirements, including those for principal, interest, and sinking fund, on all such special obligations existing at the time; and (3) the special taxes for each of those five fiscal years shall have equaled at least the amount of all the debt service requirements on those special obligations.

(c) In the case of bonds or other evidences of indebtedness of any public corporation of any state other than California, or of such commonwealth:

(1) The public corporation has had a corporate existence or been otherwise established and functioning for at least 10 years prior to the time of the investment.

(2) The public corporation has a population of at least 50,000 inhabitants according to the last federal or state census.

(3) The public corporation for a period of at least 10 years prior to the investment has not defaulted in the payment of any part of the principal or interest of any of its debts for a period of more than 90 days.

(4) The net direct debt together with the net overlapping debt of the public corporation does not exceed 10 percent of the assessed valuation of the property subject to taxation by the public corporation according to the last, official equalized assessment roll or list upon the basis of which taxes for debt service are based. For the purposes of this subdivision:

(A) The term "net direct debt" of any public corporation means all indebtedness of every kind after deducting from that indebtedness sinking funds available for the payment thereof, any indebtedness evidenced by tax anticipation notes for the payment of which nondelinquent taxes are pledged, obligations payable only from special assessments, revenue obligations payable only from special revenues pledged for their payment, and the proportion of any indebtedness issued for revenue-producing works, properties, or utilities which have been in operation for at least one year as the amount of the annual net revenue therefrom bears to the amount of the annual debt service requirements of those bonds.

(B) The term "net overlapping debt" of any public corporation means that proportion of the net direct debt, as defined, of any other public corporation (herein called overlapping corporation) which lies wholly or partially within the boundaries of the public corporation as the assessed valuation of the taxable property of the overlapping public corporation lying within the boundaries of the public corporation as shown by the last official equalized county assessment roll bears to the assessed valuation of all taxable property of the overlapping public corporation as shown by the last official equalized county assessment roll.

(Added by Stats. 1988, Ch. 718, Sec. 14.)

7265. Bonds of any irrigation district, water, storage district, water conservation district, county water district, reclamation district, drainage district, and any district the primary function of which is the irrigation, reclamation, or drainage of land within its boundaries, located in California, other than bonds referred to in Section 7262, subject to any of the following:

(a) The bonds qualify under Section 7263.

(b) The bonds have been certified as legal securities pursuant to Chapter 1 (commencing with Section 20000) of Division 10 of the Water Code and the certification remains unrevoked.

(c) The total outstanding bonded indebtedness of the district, including bonds authorized, but not issued, but excluding bonds payable solely from revenues and not directly or indirectly from assessments, does not exceed 50 percent of the aggregate of the assessed value of the lands, exclusive of improvements, subject to assessment by the district, and the value of the property owned by the district or to be acquired or constructed with the proceeds of the bonds under consideration.

(Added by Stats. 1988, Ch. 718, Sec. 14.)

7266. Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, the Farm Credit Act of 1971, in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, and the Farm Credit Act of 1971, and in stocks, bonds, debentures, participations, and other obligations of, or issued by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(Amended by Stats. 1990, Ch. 1118, Sec. 40.5.)

7267. Bonds, notes, or other obligations issued by the Federal Financing Bank, the United State Postal Service, or issued or assumed by the International Bank for Reconstruction and Development, the Tennessee Valley Authority, the Inter-American Development Bank, the Government Development Bank for Puerto Rico, the Asian Development Bank, or the African Development Bank.

(Added by Stats. 1988, Ch. 718, Sec. 14.)

7268. (a) Notes with a maturity not exceeding 15 months after the date of issue, issued in anticipation of uncollected taxes, income, revenue, cash receipts, and other moneys of the State of California or any city, county, city and county, or school district, therefore, provided the notes and warrants and the interest thereon shall be a first lien and charge against, and shall be payable from, the first moneys received by the local agency from the pledged moneys, provided the total amount of the notes issued at any one time or during any specified period does not exceed 85 percent of the receipts or revenues.

(b) Grant anticipation notes issued by the agencies and payable not later than 36 months after the date of issue, provided that the total amount of the notes and interest payable thereon issued at any one time or during any specified period does not exceed 80 percent of the grant funds stated in writing by the granting authority as committed, appropriated and shall be paid on a specified date or dates within a 36-month period from the dating of the notes.
(Added by Stats. 1988, Ch. 718, Sec. 14.)

7269. In revenue securities of any state of the United States, or of the Commonwealth of Puerto Rico, and of any city, county, city and county, political subdivision, public corporation, or district (herein referred to generally as public corporations) of any such state or commonwealth and of any department, board, agency, or authority of any such state or commonwealth or of any public corporation subject to the following:

(a) The revenue securities constitute obligations payable out of the revenues from a revenue-producing property owned, controlled, or operated by the state, commonwealth, public corporation, or by a department, board, agency, or authority thereof and are secured by those revenues.

(b) Either:

(1) The new income from the property available for the payment of the securities for the five fiscal years next preceding any such investment, shall have averaged at least one and one-tenth times all debt service requirement for principal, interest, and sinking fund of all revenue securities payable only out of the revenues from the property during each of those fiscal years, and for each of those five fiscal years shall have equaled at least all debt service requirements for principal, interest, and sinking fund of those securities, and for the last fiscal year shall have amounted to at least the maximum annual debt service requirement for any fiscal year thereafter on all such securities which were outstanding during the last fiscal year and which will be outstanding in any fiscal year thereafter.

The gross income from the property, the net income from which is pledged for the payment of those securities, in the last fiscal year prior to that investment was not less than one million dollars ($1,000,000), is located in California, and was not less than five million dollars ($5,000,000) if located elsewhere.

The issuer is obligated to maintain rates at least sufficient to meet debt service requirements and those obligations are legally enforceable.

(2) The issuer of the securities is entitled to receive under a legally enforceable contract with a corporation any of the securities of which are a legal investment for commercial banks under Division 1, annual payments averaging not less than nine hundred thousand dollars ($900,000) a year commencing with the completion of a project or projects as fixed in the construction contract therefore and continuing during the maximum term for which those revenue securities are to mature.

The issuer of the securities is obligated to maintain rates to produce revenue, or will receive contract payments, either or both of which will be sufficient to meet debt service requirements and that obligation contract is legally enforceable.

(c) The public corporation or any department, board, agency, or authority thereof which issues the securities, if existing elsewhere than in California, has not within 10 years prior to that investment defaulted for a period of more than 90 days in the payment of principal or interest on any of its debts.
(Added by Stats. 1988, Ch. 718, Sec. 14.)

7270. Bonds of any local public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured either, (a) by an agreement between the public housing agency and the Public Housing Administration in which the public housing agency agrees to borrow from the Public Housing Administration, and the Public Housing Administration agrees to lend to the public housing agency, prior to the maturity of those obligations (which obligations shall have a maturity of not more than 18 months), moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on the obligations) will suffice to pay the principal of those obligations with interest to maturity thereon, which moneys under the terms of that agreement are required to be used for the purpose of paying the principal of, and the interest on, those obligations at their maturity, or (b) by a pledge of annual contributions under an annual contributions contract between the public housing agency and the Public Housing Administration if the contract shall contain the covenant by the Public Housing Administration which is authorized by subsection (b) of Section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in the contract pursuant to subsection (b) of Section 22 of the United States Housing Act of 1937 shall not be

less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on those obligations.
(Added by Stats. 1988, Ch. 718, Sec. 14.)

7271. Bonds secured by an insurance commitment of the Federal Housing Administration.
(Added by Stats. 1988, Ch. 718, Sec. 14.)

7272. Evidences of indebtedness of companies incorporated in the United States and, directly or indirectly, engaged in manufacturing, extraction, merchandising, or commercial financing and in bonds of authorities established pursuant to the California Industrial Development Financing Act (Title 10 (commencing with Section 91500) of the Government Code), to which those institutions are obligated with respect to payment, provided:

(a) Any unsecured evidences of indebtedness shall be issued by a company substantially all of whose property is free of mortgage and shall carry a covenant by the obligor that they will be secured equally with any mortgage bond, except a purchase money mortgage, which may be later issued.

(b) The company is of such size as to attract at least statewide interest in its publicly held securities and its gross income shall have averaged not less than ten million dollars ($10,000,000) and its net income shall have averaged not less than one million dollars ($1,000,000) for the five fiscal years preceding the investment and its gross income was not less than one million dollars ($1,000,000) for at least three of those five fiscal years.

(c) Working capital as measured by consolidated current assets less consolidated current liabilities as shown in the latest published balance sheet shall exceed 150 percent of the total of consolidated debt due in longer than one year and "minority interest" (i.e., any outstanding interest in a subsidiary having a prior claim on the earnings of the subsidiary), except that the foregoing ratio requirement shall not apply in the case of evidences of indebtedness of any corporation whose consolidated gross assets less any valuation reserves exceed five hundred million dollars ($500,000,000) and whose consolidated current assets exceed consolidated current liabilities by at least one hundred million dollars ($100,000,000) as shown by the latest published balance sheet. When new financing is involved, the changes in gross assets, capital structure, and working capital shall be considered and reliance may be placed on the representations made in the official prospectus prepared under the rules of the Securities and Exchange Commission as to the application of the proceeds of that financing.

(d) The total consolidated debt of the company including current liabilities and "minority interest" (i.e. any outstanding interest in a subsidiary having a prior claim on the earnings of the subsidiary), as shown on the latest published balance sheet, does not exceed 33 1/3 percent of its gross assets less valuation reserves.

(e) The consolidated annual net income for the five fiscal years next preceding the investment, before deductions of state and federal taxes imposed on or measured by income or profits but after deducting all charges (including reserves, regularly recurring charges for amortization of discount, and expense allocable to funded debt) (1) shall have averaged not less than six times the annual consolidated interest charges existing at the time the investment is made; (2) in at least three of those five fiscal years shall have been at least four times the annual consolidated interest charges for the same year; and (3) for the fiscal year next preceding the investment shall have been not less than six times the consolidated interest charges for that year and not less than six times the annual consolidated charges on the funded debt outstanding at the time of the investment.
(Added by Stats. 1988, Ch. 718, Sec. 14.)

7273. Fixed interest railroad bonds meeting the requirements of subdivisions (a) and (b), bonds secured by a mortgage on jointly operated railroad facilities meeting the requirements of subdivision (c), and railroad equipment trust certificates meeting the requirements of subdivision (d), as follows:

(a) The railroad bonds are issued by or are assumed, guaranteed, or provision is made unconditionally for the payment of principal and interest on specified dates, by a solvent railroad company:

(1) Which operates at least 500 miles of standard gauge road within the continental United States and which has had average annual operating revenues of at least ten million dollars ($10,000,000) during the five years next preceding the investment.

(2) Whose average annual balance of income available for fixed charges for the last 15 years for which the necessary statistical data are available, when divided by an amount equal to its fixed charges for the last fiscal year, shall produce a quotient which is at least 15 percent higher than the quotient obtained by dividing the average annual balance of income available for fixed charges of all class 1 railroads for the same 15 year period by an amount equal to the fixed charges of all class 1 railroads for the last year in the period.

(3) Whose average "balance of net income" (computed by deducting the sum of its fixed charges and contingent interest charges for the latest fiscal year from the average annual balance available for fixed charges for the latest 15 years for which the necessary statistical data are available) when divided by its average annual railroad operating income

for the same 15 year period, shall produce a quotient at least 15 percent greater than the quotient obtained by dividing the average balance of income of all class 1 railroads, computed in the same manner, by the average annual railway operating income of all class 1 railroads for the same 15 year period.

(4) Whose average balance of income available for fixed charges for the last three fiscal years preceding the investment (or for such lesser number of fiscal years as may have elapsed since December 31, 1946) has not been less than one and one-half times its fixed charges for the last fiscal year.

(b) The railroad bonds are secured by any of the following:

(1) A mortgage (either direct or collateral) which shall be a first mortgage on not less than 75 percent of the mileage subject to the mortgage.

(2) A first mortgage on terminal properties comprising the company's principal freight or passenger terminal in a city of not less than 250,000 population according to the latest federal or state census.

(3) A refunding mortgage on not less than 75 percent of the railroad mileage owned or operated by the issuing company under which bonds may be issued for retirement or refunding of all debts secured by prior liens on all or any part of the property (other than liens on equipment) subject to the mortgage; provided, that the amount of debt senior to the refunding mortgage is not more than 50 percent of the sum of all senior debt and the refunding mortgage, or that underlying mortgage bonds in an amount equal to at least 50 percent of the debt outstanding under the refunding mortgage are pledged as security under that refunding mortgage.

(4) A first mortgage on railroad property leased to and operated by the company where the lease extends beyond the maturity date of the bonds and the company has guaranteed, assumed, or committed itself under the terms of the lease to pay principal and interest on the bonds.

(c) Bonds secured by a mortgage on jointly operated railroad facilities shall be secured by a first mortgage on a terminal, depot, tunnel, or bridge used by or leased to two or more railroads which have jointly and severally agreed unconditionally to pay the interest and principal payment, one of which railroads shall meet the requirements set forth in subdivision (a).

(d) Railroad equipment trust certificates shall be issued by a solvent class 1 railroad whose average balance of income available for fixed charges for the last three fiscal years preceeding the investment (or for such lesser number of fiscal years as may be elapsed since December 31, 1946) shall be not less than one and one-half times its fixed charges for the last fiscal year. Those certificates shall be issued to provide funds for the construction or acquisition of new standard gauge railroad equipment made with the approval of the Interstate Commerce Commission and secured by an equipment trust, lease, conditional sales contract, or first lien on the equipment. The aggregate principal amount of the obligations shall not exceed 80 percent of the purchase price of the equipment and the certificates shall mature within 15 years of the date of issuance in equal annual, semiannual, or monthly installments, beginning not later than one year after the date of issuance.

(e) As used in this section, the terms "balance of income available for fixed charges," "fixed charges," "contingent interest," and "railway operating income" shall have the same meaning as in the accounting reports filed by common carriers by rail pursuant to regulations of the Interstate Commerce Commission, except that "balance of income available for payment of fixed charges" shall be computed before deduction of federal income of excess profits taxes, and "fixed charges" and "contingent interest" of the railroad shall be those charges existing as of the time the computation is made excluding charges with respect to debt which has been retired or will be retired within six months and for the payment of which funds have been or are contemporaneously being set aside in trust but including charges with respect to new debt issued or in the process of being issued.

(Added by Stats. 1988, Ch. 718, Sec. 14.)

7274. Bonds and debentures of gas, electric, or gas and electric companies meeting the requirements of subdivision (a), bonds and debentures of telephone companies meeting the requirements of subdivision (b), and the bonds and debentures of water companies meeting the requirements of subdivision (c), as follows:

(a) Bonds or debentures of gas, electric, or gas and electric companies shall be of an issue which originally amounted to not less than one million dollars ($1,000,000) and, if bonds, be secured by a mortgage on substantially all of its physical property, and, if debentures, shall be issued by a company substantially all of whose physical property is free of mortgage and shall carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a public utility corporation, which does all of the following:

(1) Derives more than 50 percent of its gross operating revenue from the business of supplying electricity, artificial gas, or natural gas or all or any of these services, and at least 80 percent of its gross operating revenue from all or any of the public utility businesses enumerated in this section.

(2) Has a gross operating revenue of not less than seven million five hundred thousand dollars ($7,500,000) for its most recent fiscal year.

(3) Has a funded debt not exceeding two-thirds of the value of its physical property as shown by the books of the corporation or by a statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves for depreciation, retirement, or amortization of such physical property (physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation).

(4) Has had earnings including earnings of subsidiaries mentioned in paragraph (3), available for interest payments, before deduction of state and federal taxes imposed on or measured by income or profits, during four of the five most recent fiscal years and during the most recent fiscal year equal to at lease twice the existing annual interest charges on the corporation's total funded debt during those respective fiscal years.

(b) Bonds or debentures of telephone companies shall be of an issue originally amounting to at least one million dollars ($1,000,000) and, if bonds, secured by a mortgage on substantially all of the physical property of the company and, if debentures, be issued by a company substantially all of whose physical property is free of mortgage and shall carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a company subject to the following:

(1) The company has during its last fiscal year had gross revenues of at least seven million five hundred thousand dollars ($7,500,000), more than 50 percent of which was derived from owned properties used in furnishing telephone and other communication services and at least 80 percent of its gross revenues from all or any of the public utility businesses enumerated in this section.

(2) The funded debt does not exceed two-thirds of the value of its physical property as shown by the books of the corporation or by a statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves shown on the statement for depreciation, retirement, or amortization as the physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) For four of the five most recent fiscal years and for the last fiscal year has had earnings, including earnings of subsidiaries mentioned in paragraph (2), available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, at least equal to twice the interest charges on the company's total funded debt during such respective fiscal years.

(c) Water company bonds or debentures shall be of an issue originally amounting to at least one million dollars ($1,000,000) and if bonds, secured by a first mortgage on the company's property, and if debentures, issued by a company substantially all of whose property is free of mortgage and carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a company subject to the following:

(1) The company is the supplier of substantially all water for domestic use in a community or communities having a population of not less than 25,000.

(2) The funded debt of the company does not exceed two-thirds of the value of its physical property as shown by the published statement of the company for its next preceding fiscal period, less the amount of any reserves shown for depreciation, retirement, or amortization of such physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) For four out of the five most recent fiscal year and for the most recent fiscal year has had earnings including those of subsidiaries mentioned in paragraph (2) available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, of at least one and one-half times the interest charges on the company's total funded debt during those respective fiscal years.

(Added by Stats. 1988, Ch. 718, Sec. 14.)

7275. As used in this article, "funded debt" means all interest-bearing indebtedness of a corporation not maturing within one year of the date it was incurred.

(Added by Stats. 1988, Ch. 718, Sec. 14.)

Article 3. Investment in Business Property
(Heading of Article 3 amended by Stats. 1984, Ch. 287, Sec. 23. Effective July 6, 1984.)

7300. (a) Each association shall have power to invest in real property, tangible personal property and interests in real property for the conduct of the business of the association, or its service corporation, which power shall include the ownership of stock of a wholly owned subsidiary corporation having as its exclusive activity the ownership and management of the property or interests.

(b) As used in this section, the term "real property" includes structures or buildings located on land owned in fee or held under a lease or sublease by the association with an unexpired term, including extensions or renewals that are automatically effective or may be exercised at the association's option, of 25 years at the date of execution by the association of the lease or sublease.

(c) No association may without written approval of the commissioner purchase, sell, or pay interest on or dividends involving, gold or silver bullion or related instruments or securities except gold coins minted and issued by the United States Treasury pursuant to Public Law 99-185, 99 Stat. 1177 (1985).
(Amended by Stats. 1987, Ch. 1162, Sec. 12. Effective September 26, 1987.)

Article 4. Purchase of Real Estate
(Article 4 added by Stats. 1983, Ch. 1091, Sec. 2.)

7350. (a) An association may acquire and hold stock of one or more corporations the primary activities of which are engaging in real property investment, in which event the sum of (1) investments made by an association pursuant to the authority of this subdivision, (2) any loans and guarantees extended by an association to, or for the benefit of, corporations the stock of which it holds pursuant to the authority of this subdivision, and (3) real property investments made pursuant to the authority of subdivision (b), unless a higher percentage is approved by the commissioner in writing, shall not exceed 10 percent of the total assets of the association.

(b) An association may engage in real property investment. The total of all real property investments made pursuant to the authority of this subdivision, unless a higher percentage is approved by the commissioner in writing, shall not exceed the total shareholders' equity of the association.

(c) Prior to initially engaging in real property investment activities authorized by subdivision (a) or (b), an association shall make application with the commissioner for approval of its general plan of real property investment. The application for approval shall be in letter form, shall contain a copy of the general plan for real property investment as approved or adopted by the board of directors of the association, which shall include a brief description of either the activities of the corporations the association will invest in or the activities the association will engage in, or both, the approximate amount to be invested, the extent, if any, of diversification of those activities or investment, and the approximate date of the initial investment, and shall be signed by the chief executive officer of the association. Unless the commissioner finds (1) that the capital, assets, management, earnings, and liquidity of the association are, on a composite basis, not satisfactory or (2) that the plan for the association to engage in real property investment or to acquire and hold the stock of one or more real property investment corporations is unsafe or unsound, the commissioner shall approve the application. An application for approval shall be deemed approved on the 46th day after the application is filed with the commissioner, unless the commissioner earlier makes a final decision on the application or extends the period for approving or denying the application. For purposes of this subdivision, an application for approval shall be deemed to be filed with the commissioner on the date when the application, substantially in compliance with the requirements of this subdivision, is received by the commissioner. Upon the filing of the application for approval, the applicant shall pay to the commissioner a filing fee of five hundred dollars ($500).

(d) As used in this section, "real property investment" means all forms of investing in real property, whether direct or in the form of partnerships, joint ventures, or other methods of investment. It includes, but is not limited to, the purchasing, subdividing, and developing of real property or any interest therein, the building of residential housing or commercial improvements, and the owning, renting, leasing, managing, operating for income, or selling of that property.

(e) The legality of any investment lawfully made pursuant to former Section 7350, as repealed by the act enacting this section, shall not be affected by this section, nor shall this section be construed to require the changing of any investments lawfully made prior to January 1, 1991.
(Repealed and added by Stats. 1990, Ch. 1118, Sec. 41.5.)

Article 5. Investment in Loans
(Article 5 added by Stats. 1983, Ch. 1091, Sec. 2.)

7450. (a) An association may make any loan authorized by this division, but the association shall first determine that the type, amount, purpose, and repayment provisions of the loan in relation to the borrower's resources and credit standing support the reasonable belief that the loan will be financially sound and will be repaid according to its terms, and that the loan is not otherwise unlawful.

(b) Subject to any regulations of the commissioner, an association may make or acquire loans directly or indirectly to or from any director, officer, affiliated person, or any parent or subsidiary. Loans made or acquired, directly or indirectly, the proceeds of which are intended to inure or have inured to the benefit of these parties are subject to the same regulations.

(Amended by Stats. 1987, Ch. 1162, Sec. 13. Effective September 26, 1987.)

7450.2. Except with the prior written consent of the commissioner, no association shall knowingly make:

(a) Any loan to any corporation of which 10 percent or more of the stock is owned or controlled individually or collectively by any one or more of the directors, officers, employees, or substantial stockholders of the association.

As used in this subdivision, "substantial stockholder" means a person who has a real or beneficial ownership of more than 10 percent of the outstanding stock of the association. For this purpose, stock owned by the person's immediate family shall be deemed owned by that person.

(b) Any loan the proceeds of which are intended to inure to the benefit of any corporation specified in subdivision (a).

(Added by Stats. 1986, Ch. 1158, Sec. 6. Effective September 26, 1986.)

7451. Except as otherwise provided by the commissioner, an association shall not make or acquire total loans with respect to one borrower or on one project in an amount exceeding 25 percent of the net worth of the association. As used in this section, "one borrower" has the meaning defined in Section 7453.

(Amended by Stats. 1990, Ch. 1118, Sec. 42.)

7452. (a) An association may make consumer loans, provided that the total of such loans shall not exceed 30-percent of the assets of the association.

(b) An association may include loans to dealers in consumer goods to finance inventory and floor planning in the total investment as part of the 30-percent limitation described in subdivision (a). For purposes of the limitations on loans to one borrower, loans to dealers in consumer goods to finance inventory and floor planning shall be treated as commercial loans.

(Amended by Stats. 1984, Ch. 225, Sec. 5. Effective June 21, 1984.)

7453. (a) An association may make, invest in, sell, purchase, participate in, or otherwise deal in secured or unsecured loans for agricultural, business, commercial, or corporate purposes, provided that the total investment in such loans does not exceed 10 percent of the assets of the association.

(b) An association may invest in, sell, purchase, participate in, or otherwise deal in loans specified in subdivision

(a) which are originated by any savings association, federal association, holding company of a federally insured savings association, commercial bank, bank holding company, subsidiary of a bank holding company, or insurance company, provided that the total investment in such loans shall not exceed 10 percent of the association's assets.

(c) For the purposes of this section, the term "loan" does not include any corporate debt security unless it is rated in one of the four highest rating categories by at least one nationally recognized rating service.

(d) No association shall make, invest in, purchase, or participate in a loan for agricultural, business, commercial, or corporate purposes to one borrower, except as the commissioner may approve in writing, if the sum of the amount of the association's interest in the loan and the total balance of the association's interest in all outstanding loans for those purposes owed to the association by that borrower exceed the greater of (1) the amount a national bank having an identical total capital and surplus could lend to one borrower, or (2) the amount a commercial bank, as defined in Section 105, having an identical total shareholders' equity, capital notes, and debentures, could lend to one borrower. This subdivision shall not apply to loans (1) secured by real property, (2) sold without recourse, (3) on the security of the association's deposit accounts, or (4) of unsecured day funds, including federal funds or similar unsecured loans.

(e) As used in this section the term "one borrower" means:

(1) Any person that is, or upon the making of a loan will

become, an obligor on the loans. However, a guarantor shall not be included within the meaning of "obligor" if, in connection with a loan the association has determined, in good faith, that the primary obligor has qualified for the loan irrespective of the existence of the guarantor. In the case of a loan that has been assumed by a third party with the consent of the association, the former debtor and any guarantor shall not be deemed to be an "obligor."

(2) Nominees of the obligor.

(3) All persons, trusts, syndicates, partnerships and corporations of which the obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of 10 percent or more based on the value of his or her capital contribution, or a record or beneficial stockholder owning 10 percent or more of the capital stock.

(4) If the obligor is a trust, syndicate, partnership or corporation, all trusts, syndicates, partnerships and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10 percent or more based on the value of his or her capital contribution, or record or beneficial stockholder owning 10 percent or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10 percent or more based on the value of his or her capital contribution, or record or beneficial stockholder owning 10 percent or more of the capital stock of the obligor.

(Amended by Stats. 1990, Ch. 1118, Sec. 43.)

7454. Each association is authorized to issue credit cards, extend credit in connection with the cards, and otherwise engage in or participate in credit card operations. The provisions of Title 2 (commencing with Section 1801) of the Civil Code shall not apply to any credit extended by an association pursuant to the provisions of this section.

(Amended by Stats. 1985, Ch. 983, Sec. 12.4. Effective September 26, 1985.)

7455. No association or director, officer, or employee of an association shall require, as a condition to the granting of any loan or the extension of any other service by the association, that the borrower or any other person undertake a contract of insurance with any specific company, agency, or individual.

(Added by Stats. 1984, Ch. 287, Sec. 27. Effective July 6, 1984.)

7456. Any loan commitment made by an association shall be counted as an investment and shall be included in total assets of the association only to the extent that funds have been advanced (and not repaid) pursuant to the commitment. For the purposes of this section, the term "loan commitment" includes a loan in process, a letter of credit, or any other commitment to extend credit.

(Added by Stats. 1984, Ch. 225, Sec. 7. Effective June 21, 1984.)

7457. An association may make loans on the security of its savings accounts, whether or not the borrower is the owner of the account, subject to the limitations of this article.

(Added by Stats. 1984, Ch. 868, Sec. 11.2.)

7458. An association may make overdraft loans specifically related to transaction accounts, subject to regulations issued by the commissioner.

(Added by Stats. 1984, Ch. 868, Sec. 11.3.)

7459. In addition to establishing reserves pursuant to Section 6476, an association or federal association, as defined in Section 5102, may establish a separate loan reserve account regarding losses resulting from fraud by a borrower and may recover any of those losses from that borrower.

(Added by Stats. 1985, Ch. 656, Sec. 2.)

7460. (a) Notwithstanding Section 726 of the Code of Civil Procedure or any other provision of law to the contrary, an association, a federal association, an affiliate of an association or federal association, a service corporation, or any successor in interest thereto, that originates, acquires, or purchases, in whole or in part, any loan secured directly or collaterally, in whole or in part, by a mortgage or deed of trust on real property, or any interest therein, may bring an action for recovery of damages, including exemplary damages not to exceed 50 percent of the actual damages, against a borrower where the action is based on fraud under Section 1572 of the Civil Code and the fraudulent conduct by the borrower induced the original lender to make that loan.

(b) The provisions of this section shall not apply to loans secured by single-family, owner-occupied residential real property, when the property is actually occupied by the borrower as represented to the lender in order to obtain the loan and the loan is for an amount of one hundred fifty thousand dollars ($150,000) or less, as adjusted annually, commencing on January 1, 1987, to the Consumer Price Index as published by the United States Department of Labor.

(c) Any action maintained under this section for damages shall not constitute a money judgment for deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d of the Code of Civil Procedure.

(Amended by Stats. 1986, Ch. 173, Sec. 2.)

7461. The provisions of any deed of trust or mortgage on real property which authorize an association, federal association, affiliate or service corporation of an association or federal association, or any successor in interest thereto, to accelerate the maturity date of the principal and interest on any loan secured thereby or to exercise any power of sale or other remedy contained therein upon the failure of the trustor or mortgagor to pay, at the times provided for under the terms of the deed of trust or mortgage, any taxes, rents, assessments, or insurance premiums with respect to the property

or the loan, or any advances made by the association, federal association, affiliate or service corporation of an association or federal association, or any successor in interest thereto, shall be enforceable whether or not impairment of the security interest in the property has resulted from the failure of the trustor or mortgagor to so pay the taxes, rents, assessments, insurance premiums, or advances.
(Added by Stats. 1987, Ch. 397, Sec. 3.)

7462. The provisions of any deed of trust or mortgage on real property which authorize an association, federal association, affiliate or service corporation of an association or federal association, or any successor in interest thereto, to receive and control the disbursement of the proceeds of any policy of fire, flood, or other hazard insurance respecting the property shall be enforceable whether or not impairment of the security interest in the property has resulted from the event that caused the proceeds of the insurance policy to become payable.
(Added by Stats. 1987, Ch. 397, Sec. 4.)

Article 6. Real Estate Loans
(Article 6 added by Stats. 1983, Ch. 1091, Sec. 2.)

7500. (a) Subject to limitations, if any, within this chapter, an association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans, including construction loans, made on the security of residential or nonresidential real property, or interests in these loans.

(b) No investment in real property or a real estate loan shall be made by an association until one or more written appraisal reports, prepared at the request of an association or its agent, have been submitted to the association by a person or persons meeting the qualification standards for an appraiser as set forth in the commissioner's regulations. No commitment to disburse shall be made by the association until the person or persons have been duly appointed and qualified as appraisers by the association. Such a person or persons shall have made a physical inspection and submitted to the association a fully documented appraisal of the real estate that would secure the loan or constitute the investment, or, in the case of a purchased loan, the person or persons have reviewed and approved an appraisal report in support of the loan. If the balance of any purchased loan is one million dollars ($1,000,000) or more, the person or persons reviewing and approving the appraisal report shall have inspected the real estate. Each appraisal report submitted to an association pursuant to this subdivision shall be signed and shall include the tax identification number, social security number, or other form of verifiable identification of the person or persons signing the appraisal report.

(c) For the purpose of determining appraised value, unimproved property without offsite improvements shall be evaluated as though offsite improvements have been installed if a subdivision map has been recorded and a bond or other instrument guaranteeing installation of the offsite improvements has been accepted by the governing authorities in connection with the recording of the subdivision map.
(Amended by Stats. 1988, Ch. 718, Sec. 15.)

7501. Each real estate loan shall be evidenced by a note or instrument of obligation for the amount of the loan. The note or instrument shall specify the amount and terms of repayment including any penalty or charge for late payment, and may contain all other terms of the loan contract.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

7502. (a) Each real estate loan shall be secured by a deed of trust, mortgage, or other transaction or instrument constituting a lien or claim, or its equivalent, upon the real estate securing the loan, according to any lawful and recognized practice that is suited to the transaction. Any deed of trust or other instrument or transaction constituting a lien or claim is included in the term "mortgage" in this division.

(b) A mortgage shall provide specifically for full protection to the association with respect to the loan and additional advances, including any terms and conditions that the association deems necessary and appropriate to state the agreement between the parties.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

7503. Except as specified by the loan contract or by Section 2954.8 of the Civil Code, an association shall have no obligation to pay interest to the borrower upon funds credited to an impound, trust, or other type of account for payment of taxes, insurance, or other charges relating to the property, or to invest them for the benefit of the borrower, unless the funds have been placed in an interest bearing savings account under the terms of the loan contract.
(Amended by Stats. 1984, Ch. 287, Sec. 29. Effective July 6, 1984.)

7504. Notwithstanding any other provision of law, an association may adjust the interest rate, payment, balance, or term-to-maturity on any loan secured by real property as authorized by the loan contract, and may receive a portion of

the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property during the loan term or at maturity exceeds the original appraised value, subject to the limitations of subdivision (b) and Section 341 of P.L. 97-320 (H.R. 6267, the Garn-St. Germain Depository Institutions Act of 1982).

(a) For the purposes of this section:

(1) "Fully amortized loan" means a loan in which, at inception of the loan, the entire principal balance, together with accrued interest, shall be payable with the scheduled term of the loan in substantially equal installments (excepting the last payment, which may be smaller than a regular scheduled payment).

(2) "Home loans" means loans made on the security of one-to four-unit residential dwellings (including condominiums and cooperatives), combinations of these dwellings and business property (where no more than 20 percent of the total appraised value of the real estate is attributable to the business use), farm residences and combinations of farm residences and commercial farm real property.

(3) "Nonamortized loan" means a loan in which none of the principal balance shall be payable prior to the maturity of the loan.

(4) "Open end line of credit" means a loan plan in which the association reasonably contemplates repeated transactions; the association may impose interest from time to time on the unpaid principal of the loan plan, and the amount of credit that may be extended to the borrower during the term of the loan plan (up to any limit set by the association) is generally made available to the extent that any outstanding principal balance is repaid.

(5) "Partially amortized loan" means a loan in which some but not all of the principal balance, together with accrued interest, shall be payable prior to the maturity of the loan.

(6) "Reverse annuity mortgage" means an instrument which provides for periodic payments to be made to a homeowner based on accumulated equity. The payments are made monthly directly by the association, or are made through the purchase of an annuity from an insurance company. The loan becomes due on a specified date after disbursement of the entire principal amount of the loan or when a specified event occurs, such as sale of the property or death of the borrower. The interest rate on this instrument may be fixed, or may be adjusted periodically as provided by this section.

(b) Adjustments to the interest rate, payment, balance, or term-to-maturity on home loans shall be subject to the limitations of this subdivision.

(1) The loan term shall not exceed 40 years, with interest payable at least semiannually, except as expressly authorized by this section.

(2) The loan balance for other than nonamortized and open end line of credit loans shall be repayable in at least semiannual installments; provided, that loans on the security of farm residences and combinations of farm residences and commercial farm real property may be repayable in annual installments.

(3) The loan may be fully amortized, partially amortized, nonamortized, a reverse annuity mortgage, or an open end line of credit loan. The loan contract may provide for the deferral of principal and capitalization of a portion of interest, or of all interest, in the case of loans to natural persons secured by borrower-occupied real property and on which periodic advances are being made.

(4) (A) At origination, the loan-to-value ratio may not exceed the maximum permitted by Section 7509, as determined by the association's board of directors (but not more than 100 percent). During the term of the loan, the loan-to-value ratio may increase above the maximum percentage otherwise permissible if the increase results from an adjustment described in paragraph (3) or (5). The commissioner shall assume continued compliance with applicable loan-to-value limitations where the original loan-to-value ratio met the requirements of this paragraph, but in no event may the loan balance exceed 125 percent of the original appraised value of the security property during the term of the loan unless pursuant to clause (i) of subparagraph (B) of paragraph (5) of subdivision (b) or unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the 10th year of the loan, to a level sufficient to amortize the loan at the then existing interest rate and loan balance over the remaining term of the loan. However, this 125 percent limitation shall not apply to the portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property.

(B) If, at maturity of a loan secured by a home that provides for adjustments pursuant to paragraph (3) or (5), the ratio of the loan balance to the current market value of the security property exceeds the maximum permissible amount under Section 7509, the association may offer to refinance the loan if (i) the refinanced loan complies with subdivision (b) of Section 7509 and (ii) the loan contract for the refinanced loan requires that, in addition to full or partial amortization of the loan, the pro rata portion, based on the number of installments due annually, of estimated annual taxes and assessments on the security property be paid in advance to the association with each installment payment.

(5) For any home loan secured by borrower-occupied property or property to be occupied by the borrower, adjustments to the interest rate, payment, balance, or term-to-maturity shall comply with the limitations of this paragraph.

(A) Adjustments to the interest rate shall correspond directly to the movement of an interest rate index or of a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, which index is readily available to, and verifiable by, the borrower and is beyond the direct control of the association. An association also may increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase and the time at which it may be made and which is set forth in the loan contract. An association, in its sole discretion, may decrease the interest rate at any time.

(B) Adjustments to the payment and the loan balance that do not reflect an interest rate adjustment may be made if: (i) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the direct control of the association; (ii) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment as set forth in the loan contract; or (iii) in the case of an open end line of credit loan, the adjustment reflects an advance taken by the borrower under the line of credit, or a payment made by the borrower, that is permitted by the loan contract.

(c) Any combination of indices or a moving average of index values may be used as an index, and an association (i) may use more than one index during the term of a loan, if set forth in the loan contract and (ii) may provide for the selection of a substitute index by the association in the event the index being used is no longer available to or verifiable by the borrower or as otherwise provided in the loan contract.

(D) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance. A loan contract may provide an association with the right to call the loan due and payable either after a specified period of time has elapsed following the date of the loan contract or as specified in a reverse annuity mortgage.

(6) For any home loan secured by borrower-occupied property and on which the interest rate may be adjusted pursuant to paragraph (5), an association may not impose a prepayment charge on any prepayment made within 90 days of a required notice of an interest-rate increase with respect to the loan.

(c) Disclosure and notices for loans made pursuant to this section shall comply with the regulations codified in Section 563.99 of Title 12 of the Code of Federal Regulations.

(Amended by Stats. 1990, Ch. 1118, Sec. 43.5.)

7505. (a) Notwithstanding any other provision of law, an association may originate, invest in, sell, purchase, service, participate, or otherwise deal in loans (including construction loans) on the security of real property for primarily residential (other than a one- to four-unit dwelling) or nonresidential use, subject to the limitations of this article.

(b) An association's aggregate investment in real property loans for primarily nonresidential use under this section shall not exceed 40 percent of assets.

(Amended by Stats. 1987, Ch. 730, Sec. 15.)

7505.5. (a) A savings association may make loans the principal purpose of which is to provide financing with respect to what is, or what is to become, primarily residential real estate, for which the association relies substantially on the borrower's general credit standing and projected future income for repayment, without other security, or relies on other assurances for repayment, including guarantees or other obligations of third parties.

(b) An association's aggregate investment in residential real estate loans described in subdivision (a) shall not exceed an amount equal to 5 percent of the association's assets.

(Added by Stats. 1990, Ch. 1118, Sec. 44.)

7506. Notwithstanding any other provision of the law, an association may make a loan secured by an assignment of a loan or loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loan or loans.

(Added by Stats. 1983, Ch. 1176, Sec. 9.)

7507. (a) An association may make loans or advances of credit, or invest in interests therein, on the security of real property, which loans, advances of credit, or investments are not otherwise authorized under the law because of the following reasons:

(1) The loan-to-value ratio, stated maturity, or loan amount is in excess of the maximum allowable limits.

(2) Lack of any required borrower certification or required private mortgage insurance.

(3) The loan would cause an applicable percentage-of-assets category to be exceeded.

(4) A combination of the foregoing factors.

(b) Investments made under the authority of this section are subject to the following restrictions:

(1) No association shall have investments under this section aggregating at any one time more than 5 percent of its total assets.

(2) Each investment made under this section shall be fully documented to support the conclusion that it was made on a prudent basis.

(3) Loans made pursuant to this section shall comply with subparagraph (D) of paragraph (5), and paragraph (6), of subdivision (b), of Section 7504, where applicable.

(Amended by Stats. 1990, Ch. 1118, Sec. 45.)

7509. (a) At the time of origination, a real estate loan may not exceed 100 percent of the market value of security property. An association shall, by vote of its board of directors, establish maximum loan-to-value-ratio s for loans made on the security of real estate, and the resolution adopting those ratios shall be included in the minutes of the directors' meeting. Home loans, as defined in Section 7504, made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value-ratios adopted pursuant to this subdivision with the excess secured by the savings account.

However, for loans orginated in excess of 90 percent of the initial appraised value of the security property, the savings account shall consist only of funds belonging to the borrower, the borrower's family, or the borrower's employer, and the loans shall not exceed the appraised value of the real estate.

(b) With respect to home loans originated or refinanced in excess of 90 percent of the appraised value of the security property, that part of the unpaid balance that exceeds 80 percent of the property value shall be insured or guaranteed by a mortgage insurance company that the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer."

(c) With respect to all other loans on the security of real estate originated in excess of 90 percent of the appraised value of the security property, an association's board of directors shall approve each of these loans prior to its origination and that approval shall be recorded in the minutes of its meeting.

(d) An association shall not make a loan secured by unimproved real property if the loan-to-value ratio would exceed 80 percent of the appraised value of the unimproved real property securing the loan.

(e) In determining compliance with maximum loan-to-value-ratio limitations for real estate loans, at the time of making a loan an association shall add together the unpaid amount, or in the case of a line-of-credit loan the approved credit limit, of all recorded loans secured by prior mortgages, liens, or other encumbrances on the security property that would have priority over the association's lien, and shall not make such a loan unless the total amount of those loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed the applicable maximum loan-to-value-ratio limitations prescribed in this subdivision. In determining the value of the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed.

(f) "Value" for a real estate loan means the market value of the real estate.

(Amended by Stats. 1990, Ch. 1118, Sec. 46.)

Article 7. Successors in Interest in Loans

(Article 7 added by Stats. 1983, Ch. 1091, Sec. 2.)

7600. In the case of any investment made by an association in a real estate loan, in the event all or part of the ownership of the real estate security becomes vested in a person other than the party or parties originally executing the security instruments, and provided there is not an agreement in writing to the contrary, an association may, without notice to the party or parties, deal with a successsor in interest to the mortgage and debt in the same manner as with the original party or parties, and may forbear to sue or may extend time for payment of or otherwise modify the terms of the debt, without discharging or in any way affecting the original liability of the party or parties or their debt.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 8. Salvage of Loans and Investments

(Article 8 added by Stats. 1983, Ch. 1091, Sec. 2.)

7650. (a) Except as provided in subdivision (b), nothing in this division or the laws of this state shall be construed as denying to an association the right to invest its funds, operate a business, manage or deal in property, or take any other action over whatever period of time may reasonably be necessary to avoid loss on a loan or investment made or an obligation created in good faith.

(b) Associations which do not meet the requirements of Section 6475, or have been issued an order pursuant to Section 8200, shall not take any action pursuant to this section without first obtaining approval, in writing, from the commissioner.
(Amended by Stats. 1985, Ch. 983, Sec. 12.7. Effective September 26, 1985.)

Article 9. Usury Exemption
(Article 9 added by Stats. 1983, Ch. 1091, Sec. 2.)

7675. (a) Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made or arranged by, or forbearances of, an association; a federal association; a qualified foreign savings association; an entity that is a savings and loan holding company; a subsidiary of a savings and loan holding company that is not an association; or a service corporation which is a subsidiary of an association, a federal association, or a qualified foreign savings association. As used in this section, the terms "savings and loan holding company" and "subsidiary" mean a savings and loan holding company or a subsidiary, as defined in Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a), and the term "service corporation" means a service corporation described in Section 5(c)(4)(B) of the Home Owners' Loan Act of 1933 (12 U.S.C. Sec. 1464), as amended, or Section 7252, or a wholly owned subsidiary referred to in Section 7300.

(b) Subdivision (a) creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution. Notwithstanding any other provision of law, subdivision

(a) does not exempt an association; a federal association; a foreign savings association; a savings and loan holding company, a subsidiary of a savings and loan holding company; a service corporation which is a subsidiary of an association; a federal association, or foreign savings association from complying with all other law and regulations governing the business in which the association, federal association, foreign savings association, savings and loan holding company, subsidiary of a savings and loan holding company, or service corporation which is a subsidiary of an association, a federal association, or a foreign savings association is engaged.

(c) For purposes of this section, "foreign savings association" means a foreign savings association as defined in Chapter 10 (commencing with Section 10000) or Chapter 10.1 (commencing with Section 10010) and "qualified foreign savings association" means a foreign savings association that has been authorized to conduct the business of an association in this state by the commissioner.
(Amended by Stats. 1990, Ch. 1118, Sec. 46.5.)

Article 10. Finance Leasing
(Article 10 added by Stats. 1984, Ch. 225, Sec. 8. Effective June 21, 1984.)

7700.3. An association may engage in leasing activities that are the functional equivalent of lending, subject to the limitations of Sections 7701 to 7704, inclusive.
(Added by Stats. 1985, Ch. 983, Sec. 13. Effective September 26, 1985.)

7701. An association may become the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if:

(1) The lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of the lease.

(2) At the expiration of the lease, the association's interest in the property shall be liquidated or released on a net basis as soon as practicable.
(Added by Stats. 1984, Ch. 225, Sec. 8. Effective June 21, 1984.)

7702. (a) A lease of tangible personal property made to a natural person for personal, family, or household purposes pursuant to this section shall be subject to all limitations applicable to the amount of an association's investment in consumer loans.

(b) A lease made for commercial, corporate, business, or agricultural purposes pursuant to this section shall be subject to all limitations applicable to the amount of an association's investment in commercial loans.

(c) A lease of residential or nonresidential real property made pursuant to this section shall be subject to all limitations applicable to the amount of an association's investment in real estate loans.
(Added by Stats. 1984, Ch. 225, Sec. 8. Effective June 21, 1984.)

7703. For the purposes of this article:

(a) A "net lease" is a lease under which the association will not, directly or indirectly, provide or be obligated to provide for:

(1) The servicing, repair, or maintenance of the leased property during the lease term.

(2) The purchasing of parts and accessories for the leased property; provided that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full pay-out requirement of this section.

(3) The loan of replacement or substitute property while the leased property is being serviced.

(4) The purchasing of insurance for a lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance.

(5) The renewal of any license, registration, or filing for the property unless such action by the association is necessary to protect its interest as an owner or financer of the property.

(b) A "full-payout" lease is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals, estimated tax benefits, and the estimated residual value of the property at the expiration of the initial term of the lease; provided that no more than 20 percent of the return may be realized from the residual value of the property at the expiration of the initial term of the lease. Both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property. The maximum term of a full-payout lease shall be 40 years.

(Added by Stats. 1984, Ch. 225, Sec. 8. Effective June 21, 1984.)

7704. If, in good faith, an association believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, the provisions of Sections 7702 and 7703 of this article shall not prevent the association:

(a) As the owner and lessor under a net, full pay-out lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease.

(b) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease.

(c) From including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in subdivisions (a) and (b) of this section.

(Added by Stats. 1984, Ch. 225, Sec. 8. Effective June 21, 1984.)

Article 10.5. Leasing

(Heading of Article 10.5 renumbered from Article 10
(as added by Stats. 1984, Ch. 287) by Stats. 1990, Ch. 216, Sec. 24.
Note: Prior to 1991, this article commenced with Section 7700.)

7720. (a) An association may invest in tangible personal property, including without limitation, vehicles, mobilehomes, machinery, equipment, or furniture, and may hold the property for rental or sale.

(b) Investment under this section is limited to not in excess of 10 percent of the total assets of the association.

(Added by renumbering Section 7700 by Stats. 1990, Ch. 216, Sec. 25.)

Article 11. Hazard Insurance

(Article 11 added by Stats. 1988, Ch. 718, Sec. 17.)

7800. Subject to the provisions of Section 2955.5 of the Civil Code, the board of directors of every association and affiliate or service corporation of an association shall establish standards for the maintenance of hazard insurance which are considered necessary to protect the institution's interest in real estate security for its loans. The standards may include establishment of criteria based on such factors as recognized financial ratings of insurers and coverage forms, but those standards may not be based on the insurer's corporate structure. Subject to compliance with these standards, an association, an affiliate or service corporation of an association shall permit a borrower to have reasonable freedom of choice in selecting the insurer to provide hazard insurance coverage on the real estate security.

(Added by Stats. 1988, Ch. 718, Sec. 17.)

CHAPTER 7. SUPERVISION

(Chapter 7 added by Stats. 1983, Ch. 1091, Sec. 2.)

Article 1. Department of Savings and Loan

(Article 1 added by Stats. 1983, Ch. 1091, Sec. 2.)

8009. (a) Except where required by law, regulation, or court order, or permitted under subdivision (b), the commissioner, and all employees of the department, shall not disclose any information acquired by them in the discharge of their duties as prescribed by this division.

(b) The commissioner may furnish information relating to the condition or operation of any association or other person to state and federal authorities that supervise financial institutions, to state, local and federal law enforcement agencies, and state agencies that are engaged in any investigation of an unsafe or unsound business practice.

(c) No record or document in the possession or custody of the department which contains information specified in subdivision (a) shall be produced pursuant to a subpoena duces tecum addressed to the commissioner or any employee of the department except upon a determination of a court of competent jurisdiction that disclosure of the information in the record or document would serve the public interest and assist the department in conducting the duties prescribed by this subdivision. With respect to each item subject to the subpoena duces tecum, the court shall either make this determination or shall determine that the item is not subject to disclosure. The court's determination shall be made upon hearing on a motion by the subpoenaing party under this subdivision to compel production of the document or record.

(Amended by Stats. 1989, Ch. 868, Sec. 9. Effective September 26, 1989.)

8010. The commissioner, after a determination of value made in accordance with Article 4 (commencing with Section 8150) of Chapter 7, may order that assets, individually or in the aggregate, to the extent that the assets are overvalued on an association's books, be charged off against current operations, or that a special reserve or reserves equal to the overvaluation be set up by transfers from retained earnings or reserves.

(Amended by Stats. 1989, Ch. 868, Sec. 10. Effective September 26, 1989.)

Article 2. Savings and Loan Account

(Heading of Article 2 amended by Stats. 1996, Ch. 1064, Sec. 562.3. Effective January 1, 1997. Operative July 1, 1997.)

8030. (a) To meet the operating costs and expenses of the department in administering this division and other laws relating to savings associations or the savings association business, for the payment of which no provision is otherwise made, the commissioner shall require each association doing business in this state to pay in advance an annual assessment for its pro rata share of all operating costs and expenses as estimated by the commissioner for the ensuing year.

(b) As used in this article, "association" includes a foreign savings association doing business in this state under an approval issued by the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 562.5. Effective January 1, 1997. Operative July 1, 1997.)

8031. The proportion of operating costs and expenses to be assessed against each association shall be determined and prescribed by the commissioner by regulation. The total amount assessed for all associations, together with any existing surplus, shall not exceed the amount of the budget for the ensuing fiscal year plus a reasonable reserve for contingencies.

(Amended by Stats. 1984, Ch. 287, Sec. 35. Effective July 6, 1984.)

8032. (a) On or before the 20th day of June of each year the commissioner shall notify each association by mail of the amount assessed and levied against it.

(b) Except as provided in this article, an association shall pay one-half or more of the amount assessed so as to be received by the commissioner not later than the 10th day of July and shall pay the remainder so as to be received by the commissioner not later than the following 10th day of January.

(c) If payment is not received by the commissioner on time, the commissioner shall assess and collect in addition to the annual assessment, a penalty of 5 percent of the unpaid assessment for each month or part of a month that the payment is delinquent.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

8033. If an association ceases to be an association by reason of merger, consolidation, conversion, acquisition of assets, or a similar type of transaction, any unpaid assessment for the fiscal year ended June 30 in which the conversion, merger, or acquisition occurs shall be due and payable on or before the day preceding the date of the conversion, merger,

or acquisition. Payment of the unpaid assessment under this section shall be a condition of approval of any transaction requiring the commissioner's approval.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

8034. (a) If a new domestic association is formed during a fiscal year, the initial assessment provided for by this article shall be computed on the same basis as if such new association had been an association and assessed on or before the 20th day of June in the fiscal year preceding the initial assessment except that the initial assessment shall be based on the assets of the new association at the time of issuance of its certificate of authority and, except as provided in subdivision (b), the assessment shall be reduced, if the certificate of authority is not issued in July, by one-twelfth for each full month of the fiscal year which has expired at the time of issuance of the certificate of authority and shall be payable in full on the date of issuance.

(b) In the levy and collection of an assessment under this article, no association shall be assessed for, or be permitted to pay less than five hundred dollars ($500) for the unexpired portion of the fiscal year in which the domestic association is formed.
(Amended by Stats. 1984, Ch. 868, Sec. 15.5.)

8035. If any domestic association proposes to acquire the assets of any federal association or any state or national bank by transfer, conversion, or otherwise, the initial assessment provided for by this article shall be computed on the same basis as if the federal association or state or national bank had been an association and assessed on or before the 20th day of June in the fiscal year preceding the initial assessment, except that the initial assessment shall be based on the assets of the federal association or of the state or national bank, as shown by the institution's report to the Office of Thrift Supervision, the commissioner, or the Comptroller of the Currency, respectively, next preceding the 20th day of June in the fiscal year preceding the initial assessment and the assessment shall be reduced, if the certificate of authority is not issued in July, by one-twelfth for each full month of the fiscal year which has expired at the time of the issuance of the certificate of authority and shall be payable in full on the date of issuance.
(Amended by Stats. 1996, Ch. 1064, Sec. 563. Effective January 1, 1997. Operative July 1, 1997.)

8035.5. As of the operative date of this section:

(a) The Savings Association Special Regulatory Fund is converted into a separate account in the Financial Institutions Fund and designated as the Savings and Loan Account.

(b) All moneys and other assets and all liabilities of the

Savings Association Special Regulatory Fund shall be transferred to the Savings and Loan Account.
(Added by Stats. 1996, Ch. 1064, Sec. 563.5. Effective January 1, 1997. Operative July 1, 1997.)

8036. All money collected or received by the commissioner under this division or any other law relating to savings associations or the savings association business, except money belonging to associations whose business property and assets are in the possession of the commissioner, shall be deposited with the State Treasurer to the credit of the Savings and Loan Account in the Financial Institutions Fund.
(Amended by Stats. 1996, Ch. 1064, Sec. 564. Effective January 1, 1997. Operative July 1, 1997.)

8037. All expenses of the department in administering the division and other laws relating to savings associations or to the savings association business shall be paid by the Savings and Loan Account; and, except as otherwise provided in Section 276 or 277, and the Savings and Loan Account shall be used only for such purposes.
(Repealed (by Sec. 565) and added by Stats. 1996, Ch. 1064, Sec. 565.5. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. General Supervisory Powers and Duties of Commissioner

(Heading of Article 3 renumbered from Article 2 by Stats. 1984, Ch. 287, Sec. 37. Effective July 6, 1984.)

8050. (a) The commissioner shall have general supervision over all (1) associations, (2) savings and loan holding companies, (3) service corporations, (4) finance subsidiaries, and (5) other persons that are subject to the provisions of this division.

(b) The commissioner shall enforce the purposes of this division by use of the powers conferred by it and by an action in any court of competent jurisdiction if required.
(Amended by Stats. 1990, Ch. 1118, Sec. 46.7.)

8051. Each decision, order, or instruction shall be in writing signed by the commissioner or a deputy commissioner and shall be sent by registered or first-class mail, addressed to the home office of the appropriate association or person.
(Amended by Stats. 1986, Ch. 361, Sec. 10.)

8053. The commissioner may from time to time issue, amend and rescind any rules, regulations, forms, and orders that are necessary to carry out the provisions of this division, including rules and regulations governing the administration of any association, savings and loan holding company and their subsidiaries, and defining any terms whether or not used in the law insofar as the definitions are not inconsistent with the provisions of this division. The commissioner may waive any requirement of any rule or regulation in situations where, in the commissioner's opinion, the requirement is not necessary in the public interest or for the protection of the public.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

8054. (a) Notwithstanding any other provision of law, whenever by statute or regulation there is extended to federal associations doing business in this state any right, power, privilege, or duty not authorized for state associations, the commissioner may by regulation extend to state associations that right, power, privilege, or duty.

(b) Any regulation adopted under this section shall expire at 12 p.m. on December 31 of the year following the calendar year in which it is promulgated.

(c) For the purposes of Chapter 3.5 (commencing with

Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code regulations adopted under this section are subject only to the provisions of Sections 11343.4, 11346.1, and 11349.6 of the Government Code.

(d) The provisions of this section shall not apply to any federal statute or regulation promulgated prior to January 1, 1984.
(Amended by Stats. 1995, Ch. 938, Sec. 9.2. Effective January 1, 1996.)

8055. Every final decision of the commissioner is subject to judicial review in accordance with law. An action or proceeding for judicial review pursuant to this section shall be commenced within 60 days after issuance of the final decision.
(Added by Stats. 1986, Ch. 361, Sec. 12.)

Article 4. Reports and Examinations
(Heading of Article 4 renumbered from Article 3 by Stats. 1984, Ch. 287, Sec. 38. Effective July 6, 1984.)

8150. (a) On or before the last day of January in each year, or within 30 days following the end of the fiscal year, each association, savings and loan holding company, and those subsidiaries of an association or savings and loan holding company that the commissioner may require, shall make an annual written report to the commissioner, in a format to be prescribed by the commissioner.

(b) Each report shall be verified by an authorized officer.
(Amended by Stats. 1984, Ch. 868, Sec. 16.)

8151. Each association, savings and loan holding company and subsidiary of any association or savings and loan holding company that is required to file an annual report under Section 8150 also shall make any other reports that the commissioner may from time to time require, which shall be in a format and filed on a date that the commissioner may prescribe and shall, if required by the commissioner, be verified in the same manner as the annual report.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

8152. From time to time the commissioner may, without previous notice, examine or cause an examination to be made into the affairs of each association, and any office of the association within or outside this state, savings and loan holding company and subsidiary of any association or savings and loan holding company subject to this division.
(Amended by Stats. 2003, Ch. 404, Sec. 15. Effective January 1, 2004.)

8153. (a) In lieu of a report or an examination under Section 8150 or 8152, the commissioner may accept any report made to, or examination made by, a federal or state authority that supervises financial institutions, or by a certified or other public accountant or firm of certified or other public accountants selected by the association and approved by the commissioner.

(b) An examination under Section 8152 may be conducted in conjunction with an examination by a federal authority that supervises financial institutions.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

8154. (a) Whenever, in the judgment of the commissioner, the condition of any association, savings and loan holding company, or any of their subsidiaries renders it necessary or expedient to make an extra examination or audit or to devote any extraordinary attention to its affairs, the commissioner shall do so or may appoint a certified public accountant or any expert to do so.

(b) The association, savings and loan holding company, or subsidiary specially examined under this section may be required to pay the actual expenses incurred by the commissioner for all extra services rendered by the commissioner, by the appointed accountant, or any expert.
(Amended by Stats. 1988, Ch. 718, Sec. 18.)

8155. (a) The commissioner is authorized in connection with any examination or audit of any association or any subsidiary to cause to be made appraisals of real estate or other property held by it or securing its assets.

(b) Unless otherwise ordered by the commissioner, appraisal of real estate or other property in connection with any examination or audit pursuant to this article shall be made by a department appraiser or by an independent professional appraiser employed or selected by the commissioner, and the cost of the appraisal promptly shall be paid by the association or subsidiary to the commissioner or directly to the appraiser upon receipt by it of a statement of cost bearing the written approval of the commissioner.

(c) A copy of the report of each appraisal caused to be made by the commissioner pursuant to this section shall be furnished to the association or subsidiary within a reasonable time, not to exceed 60 days, following the completion of the appraisals.
(Added by Stats. 1983, Ch. 1091, Sec. 2.)

8156. (a) Each association shall at least annually cause its books and accounts to be audited at its own expense by a certified public accountant or firm of certified public accountants selected by the association and approved by the commissioner.

(b) The annual audit date and audit period shall be approved in writing by the commissioner prior to commencement of the audit.

(c) Each savings association which engages certified public accountant services for any audit shall transmit to the accountant or accountants copies of the most recent report of condition made by the association pursuant to state or federal law and a copy of the most recent report of examination received by the savings association.

(d) In addition to the copies of the reports required to be provided pursuant to subdivision (c), each savings association shall provide the auditing accountant or accountants with all of the following:

(1) A copy of any supervisory memorandum of understanding with the association and any written agreement between the association and any federal financial regulatory agency or the commissioner which is in effect during the period covered by the audit.

(2) A report of any action initiated or taken pursuant to subdivisions (a), (b), (c), (e), (g), (i), or (s) of Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), and a report of any action taken by the commissioner pursuant to Section 8200 or 8201, or any other civil monetary penalty assessed under any provision of law with respect to the savings association or any institution-affiliated party.
(Amended by Stats. 1990, Ch. 1118, Sec. 47.)

8157. (a) The commissioner may prescribe the scope of the annual audit and may require the auditor to furnish information in addition to that contained in the audit report.

(b) Each association shall furnish the commissioner annually, within 90 days after the end of the period covered by the audit, five copies of the financial statements, which shall be accompanied by a report signed by the auditor, prepared and containing the information prescribed in regulations of the commissioner. The financial statements shall be certified by the auditor.
(Amended by Stats. 1986, Ch. 361, Sec. 13.5.)

8158. (a) The commissioner, or any department employee authorized by the commissioner, shall have free access to all books and records of an association, savings and loan holding company, and any of their subsidiaries that relate to the business of the association, holding company, or subsidiary, and to the books and records kept by any officer, agent, or employee that relate to the business of the association, holding company, or subsidiary.

(b) The commissioner, or any department employee authorized by the commissioner, may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any association, savings and loan holding company, any of their subsidiaries, or any other person, in relation to their affairs, transactions, and conditions, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

(c) This section applies to all parties designated in subdivisions (a) and (b) when an association is placed in conservatorship or receivership.
(Amended by Stats. 1987, Ch. 730, Sec. 19.)

8159. For each department examination or appraisal made outside this state, a reasonable fee and the actual traveling expenses incurred shall be paid to the department by the association, savings and loan holding company, or subsidiary so examined.
(Amended by Stats. 1988, Ch. 718, Sec. 19.)

8160. If an association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company fails to report to the commissioner as required by this article, the commissioner may impose penalties in accordance with the following:

(a) Any association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company which (1) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error (A) fails to make, obtain, transmit, or publish any report or information required by the commissioner by the due date set forth in this article or, if no due date is set forth in this article, the date specified by the commissioner, or (B) submits or publishes any false or misleading report or information or (2) inadvertently transmits or publishes any report which is minimally late, shall be subject to a civil penalty of not more than two thousand dollars ($2,000) for each day during which the failure continues or the false or misleading information is not corrected. The association, savings and loan holding company, or subsidiary of an association or savings and loan holding company shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(b) Any association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company which (1) fails to make, obtain, transmit, or publish any report or information required by the commissioner by the due date set forth in this article or, if no due date is set forth in this article, the date specified by the commissioner or (2) submits or publishes any false or misleading report or information, in a manner not described in subdivision (a) shall be subject to a civil penalty of not more than twenty thousand dollars ($20,000) for each day during which the failure continues or the false and misleading information is not corrected.

(c) Any association, savings and loan holding company, or any subsidiary of an association or savings and loan holding company which knowingly or with reckless disregard for the accuracy of any information or report subject to this section submits or publishes any false or misleading report or information, shall be subject to a civil penalty of not more than one million dollars ($1,000,000) or 1 percent of total assets of the savings institution, whichever is less, per day for each day during which the false or misleading information is not corrected.

(d) Any penalty imposed under subdivisions (a), (b), or (c) shall be assessed and collected by the commissioner in the same manner as provided in Section 5330.
(Repealed and added by Stats. 1990, Ch. 1118, Sec. 49.)

Article 5. Enforcement
(Heading of Article 5 renumbered from Article 4 by Stats. 1984, Ch. 287, Sec. 40. Effective July 6, 1984.)

8200. The commissioner may issue cease and desist orders which may order affirmative action in accordance with the following:

(a) If the commissioner, as a result of any examination or from any report, finds or has reasonable cause to believe (1) that any savings association, savings and loan holding company or any of their subsidiaries, or an institution-affiliated party, (A) is violating or has violated any provision of this division or the laws of this state or of the United States or any order, regulation, or any condition imposed in writing by the commissioner in connection with the granting of any application of an association or any written agreement entered into with the commissioner or (B) is engaging or has engaged in an unsafe or unsound business practice, or (2) that an association, savings and loan holding company, or any of their subsidiaries are maintaining books and records that are so incomplete and inaccurate that the commissioner is unable, through the normal supervisory process, to determine their financial condition or the details or purpose of any transaction that may have a material effect on their financial condition, the commissioner may issue a formal written order to be served by delivery to the home office of the association or to the person named in the order. The order shall state the alleged violation or practice and state the facts in support of the allegation, and shall order discontinuance of the violation or practice and order conformance with all requirements of law. The commissioner may require the association or other named person to take affirmative action (A) to prevent the insolvency or dissipation of assets of the association, or (B) to restore the books and records to a complete and accurate state.

(b) The authority of the commissioner to issue orders to correct any conditions resulting from any violation or practice includes the authority to require the person named in the order to do any of the following:

(1) Make restitution or provide reimbursement, indemnification, or guarantee against loss if (A) the person named in the order was unjustly enriched in connection with the violation or practice or (B) the violation or practice involved a reckless disregard for any state or federal statute or applicable regulations or prior order of the commissioner.

(2) Restrict the growth of the association.

(3) Dispose of any loan or asset involved.

(4) Rescind agreements or contracts.

(5) Employ qualified officers or employees (who may be subject to prior approval of the commissioner at his or her direction).

(6) Take such other action as the commissioner determines to be appropriate.

(c) The authority to issue orders includes the authority to place limitations on the activities or functions of the person named in the order.

(d) The order shall specify an effective date, which may be immediate or may be at a later date, and shall remain in effect until withdrawn by the commissioner or until terminated by a court order.

(e) Any association or person affected by an order of the commissioner may apply within 10 days after service of the order to a court having jurisdiction for an immediate hearing and may request a stay of the order until the hearing has been completed. The hearing shall be held as provided in a notice to the commissioner by the court.

(f) The commissioner may, on or after the effective date of the order, apply for enforcement of the order to the superior court in the county in which the home office of the association or the person is located. The order shall be enforced ex parte and without notice by the court. The proceedings shall be given precedence over other cases pending in court, and shall in every way be expedited.

(g) Whether upon application by the commissioner or by the person named in the order, the court shall have jurisdiction, shall adjudicate the question, and shall enter and enforce the proper order or orders.

(Repealed and added by Stats. 1990, Ch. 1118, Sec. 51.)

8201.(a) Whenever the commissioner determines that any institution-affiliated party or any director, officer, or employee of a savings and loan holding company or affiliate thereof has committed any of the following violations, engaged or participated in any of the following unsafe or unsound practices, or committed any of the following breaches of fiduciary duty that meet the additional criteria of subdivision (b), the commissioner may serve upon that person a written notice of the commissioner's intent to order the removal of the person from his or her office or employment or to prohibit any further participation (in any manner) in the conduct of the affairs of any savings association, or both:

(1) Violation of any statute or regulation, any cease and desist order which has become final, any condition imposed in writing by the commissioner in connection with the grant of any application or other request by the savings association or any written agreement between the savings institution and the commissioner.

(2) Engaging or participating in any unsafe or unsound practice in connection with any savings association.

(3) Committing or engaging in any act, omission, or practice which constitutes a breach of the person's fiduciary duty.

(b) A violation, practice, or breach specified in subdivision (a) is subject to the commissioner's authority under this section if the commissioner finds both of the following:

(1) By reason of the violation, practice, or breach (A) the savings association has suffered or will probably suffer financial loss or other damage (B) the interests of the savings association's depositors have been or could be prejudiced, or (c) the institution-affiliated party or other person specified in subdivision

(a) has received financial gain or other benefit by reason of the violation, practice, or breach.

(2) The violation, practice, or breach (A) involves personal dishonesty on the part of the institution-affiliated party or other person specified in subdivision (a) or (B) demonstrates willful or continuing disregard by the institution-affiliated party or other person for the safety or soundness of the savings institution.

(c) The written notice shall contain a full statement of the alleged violations, practices, or breaches of fiduciary duty, shall state the facts alleged in support of the violation, practice or breach, and shall state the commissioner's intention to enter a removal or prohibition order, or both. The notice shall be delivered to the board of directors of the association, savings and loan holding company, or subsidiary, and to the institution-affiliated party or other director, officer, or employee concerned. If a hearing on the matter is requested within 10 days after service of the written notice, the commissioner shall hold a public hearing at which any pertinent evidence relating to the matters set forth in the written notice may be presented. After the hearing, the commissioner, on the basis of the evidence presented at the hearing, may proceed to enter

(1) an order for the immediate removal of the institution-affiliated party or director, officer, or employee affected, (2) an order prohibiting further participation by the person, in any manner, in the conduct of the affairs of any savings association, (3) a reprimand of the individuals and entities or other persons concerned, or (4) a dismissal of the entire matter.

(d) If no hearing is requested within the time specified, the commissioner may proceed to issue orders of removal, prohibition, or both on the basis of the facts set forth in the written notice.

(e) No institution-affiliated party or director, officer, or employee who has been removed from his or her position pursuant to a removal order that has become final, shall thereafter participate in any manner in the conduct of the affairs of the savings association from or with respect to which that director, officer, or employee was removed, or without prior written approval of the commissioner, serve as a director, officer, or employee of any other savings association. No institution-affiliated party, including an officer, director, or employee, who is subject to an order of prohibition which has become final shall thereafter participate, in any manner, in the conduct of the affairs of any savings association.

(f) In respect to any officer, director, or employee of a savings association, savings and loan holding company or subsidiary thereof who is the subject of a written notice served by the commissioner pursuant to subdivision (a), the commissioner may, if the commissioner deems it necessary for the protection of the savings association or the interests of the association's depositors, by written notice to that effect served upon the officer, director, employee, suspend him or her from office or prohibit him or her from further participation in any manner in the conduct of the affairs of the savings association or related entity, or take both these actions.

The suspension or prohibition shall become effective upon service of the notice and, unless stayed by the court in proceedings authorized by subdivision (g), shall remain in effect pending completion of the proceedings pursuant to the written notice served under subdivision (a) and until the effective date of an order entered by the commissioner under subdivision (c) or (d). Copies of the notice shall also be served upon the savings association, savings and loan holding company, or subsidiary of which the person is a director, officer, or employee.

(g) Within 10 days after any director, officer, or employee has been suspended from office or prohibited from participation in the conduct of the affairs of a savings association, savings and loan holding company, or subsidiary thereof under subdivision (f), the director, officer, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings pursuant to subdivision (c), and the court shall have power to stay the suspension or prohibition.

(Repealed and added by Stats. 1990, Ch. 1118, Sec. 53.)

8202. (a) The commissioner shall publish and make the following available to the public:

(1) Any final order issued with respect to any administrative enforcement proceeding initiated by the commissioner pursuant to this division or any other provision of law.

(2) Any modification to, or termination of, any final order specified in paragraph (1).

(b) If the commissioner makes a determination in writing that the publication of any final order pursuant to subdivision (a) would seriously threaten the safety or soundness of a savings association, the commissioner may delay the publication of the order for a reasonable time.

(Added by Stats. 1990, Ch. 1118, Sec. 54.)

Article 6. Conservatorship

(Heading of Article 6 renumbered from Article 5 by Stats. 1984, Ch. 287, Sec. 41. Effective July 6, 1984.)

8225. (a) Whenever the commissioner deems it necessary in order to conserve the assets of any association for the benefit of the depositors and other creditors, or if the commissioner finds any of the following with respect to any association: (1) the association is in an impaired condition; (2) the association is engaging in practices that threaten to result in an impaired condition; (3) the association has substantially dissipated its assets due to violation of law or regulation or to unsafe or unsound practice; (4) the association is in an unsafe or unsound condition to transact business; (5) the association is in violation of an order or injunction, as authorized by this division; or (6) the association refuses to submit its books, papers, and affairs to the inspection of the commissioner, the commissioner may, ex parte and without notice, appoint a conservator for the association.

(b) The conservator may be the commissioner, deputy commissioner or any other person.

(c) The conservator shall, upon appointment, immediately take possession of the books, records, and assets of every description of the association and shall take any further action as he or she may deem necessary to conserve the assets of the association pending further disposition of its business.

(d) Within six months of the date of appointment of the conservator, or within 12 months if the commissioner extends the six months' period, the association shall be returned to its board of directors to be managed and operated as if no conservator had been appointed, or a receiver shall be appointed as provided in Section 8250.

(e) If the commissioner or a department employee is appointed conservator no additional compensation shall be paid, but if another person is appointed then the compensation of the conservator, as determined by the commissioner, shall be paid by the association.

(f) Any expenses of such conservatorship shall be paid out of the assets of the association and shall be a lien against association assets prior to any other lien.

(Amended by Stats. 1989, Ch. 11, Sec. 1. Effective April 14, 1989.)

8226. Any conservator shall have all the rights, powers, and privileges possessed by the officers, directors, members and stockholders of the association.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

8227. Except as authorized by the commissioner, the conservator shall not retain special counsel or other experts, incur any expense other than normal operating expenses, or liquidate assets except in the ordinary course of operations.

(Amended by Stats. 1984, Ch. 868, Sec. 17.5.)

8228. The directors and officers shall remain in office and the employees shall remain in their respective positions, but the conservator may remove any director, officer, or employee, provided the order of removal of a director or officer shall be approved in writing by the commissioner.

(Added by Stats. 1983, Ch. 1091, Sec. 2.)

8229. (a) While the association is in the charge of a conservator, savings account holders, borrowers, and other obligors of the association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the conservator may permit savings account holders to withdraw their accounts from the association pursuant to the provisions of this division but shall not declare, credit, or distribute interest for savings accounts without prior approval of the commissioner.

(b) The conservator shall have power to accept savings accounts and additions to savings accounts, but any amounts received by the conservator may be segregated if the commissioner shall so order in writing. If so ordered, these amounts shall not be subject to offset and shall not be used to liquidate any indebtedness of the association existing at the time the conservator was appointed for it or any subsequent indebtedness incurred for the purposes of liquidating the indebtedness of the association existing at the time the conservator was appointed.

(c) All expenses of the association during conservatorship shall be paid by the association.

(Amended by Stats. 1984, Ch. 868, Sec. 17.7.)

8230. Whenever a conservator has taken possession of the property and business of any association pursuant to this article, that association, within 10 days after the taking, if it deems itself aggrieved thereby, may apply to the superior court in the county in which the home office of the association is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after hearing and determination of the facts, may dismiss the application or enjoin the commissioner from further proceedings and direct the commissioner to surrender the property and business to that association.

(Added by Stats. 1988, Ch. 718, Sec. 21.5.)

Article 7. Receivership

(Heading of Article 7 renumbered from Article 6 by Stats. 1984, Ch. 287, Sec. 42. Effective July 6, 1984.)

8250. (a) If the commissioner finds that any association

(1) is in an impaired condition, (2) is engaging in practices that threaten to result in an impaired condition, or (3) is in violation of an order or injunction issued pursuant to this division, the commissioner may appoint a receiver for the association.

(b) The receiver may be the commissioner, deputy commissioner or any other person.

(c) The receiver shall, upon appointment, immediately take possession of the books, records, and assets of every description of the association.

(Amended by Stats. 1988, Ch. 718, Sec. 22.)

8251. (a) In the case of an insured association, the appointment by the commissioner of a receiver under this article shall constitute an official determination of a public authority of this state pursuant to which a receiver is appointed for the purpose of liquidation as contemplated by and within the meaning of subdivision (d) of Section 401 of the National Housing Act of 1934 (12 U.S.C. Sec. 1701 et seq.), as amended.

(b) A receiver shall have all the powers and authority of a conservator plus the power to liquidate, and shall have any other powers and authority that are expressed in an order of a court.

(Amended by Stats. 1988, Ch. 718, Sec. 23.)

8252. If the commissioner or a department employee is appointed receiver, no additional compensation shall be paid, but if another person is appointed, then the compensation of the receiver, as determined by the court, shall be paid from the assets of the association.
(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

8253. If the association is an institution insured by the Federal Deposit Insurance Corporation, the Federal Deposit Insurance Corporation shall be tendered appointment as receiver or coreceiver. If it accepts the appointment, it may, nevertheless, make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver or coreceiver, provided the loan or purchase is approved by the court.
(Amended by Stats. 1990, Ch. 1118, Sec. 55.)

8254. Whenever a receiver has taken possession of the property and business of any association pursuant to this article, that association, within 10 days after the taking, if it deems itself aggrieved thereby, may apply to the superior court in the county in which the home office of the association is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after hearing and determination of the facts, may dismiss the application or enjoin the commissioner from further proceedings and direct the commissioner to surrender the property and business to that association.
(Added by Stats. 1988, Ch. 718, Sec. 24.)

CHAPTER 8. FEDERAL ASSOCIATIONS

(Chapter 8 repealed and added by Stats. 1987, Ch. 1162, Sec. 16. Effective September 26, 1987.)

8500. (a) Every federal association and the holders of stock, shares, share accounts, savings accounts, and certificate accounts issued by any federal association have all the rights, powers, and privileges, and are entitled to the same exemptions and immunities granted, respectively, to associations organized under the laws of this state and to the holders of their stock, membership accounts, and savings accounts.

(b) This section is in addition and supplemental to any provision that, by specific reference, is applicable to federal associations and their members or stockholders.

(Repealed and added by Stats. 1987, Ch. 1162, Sec. 16. Effective September 26, 1987.)

8501. No director of a federal association shall be liable for monetary damages to the federal association, its stockholders or members, based upon the laws of this state, to the extent that the stockholders, or in case of a mutual federal association the members of the federal association, adopt a resolution limiting liability. The resolution shall not eliminate or limit the liability of directors for any acts or omissions or transactions from which directors of a corporation may not be relieved of liability as set forth in the exception to paragraph (10) of Section 204 of the Corporations Code.

(Added by Stats. 1987, Ch. 730, Sec. 21.)

CHAPTER 9. FEES

(Chapter 9 added by Stats. 1983, Ch. 1091, Sec. 2.)

9000. Associations shall pay all fees required by this division to the department.

(Amended by Stats. 1996, Ch. 1064, Sec. 566. Effective January 1, 1997. Operative July 1, 1997.)

9001. (a) Except where otherwise expressly provided, the commissioner shall prescribe by regulation the amount of each fee expressly required by the provisions of this division, including both existing provisions and provisions that are added by future enactments.

(b) The commissioner may require, and prescribe by regulation the amount of a fee not to exceed one hundred dollars ($100), for filing any application that requires the commissioner's approval where a fee is not expressly required by the provisions of this division.

(Repealed and added by Stats. 1983, Ch. 1091, Sec. 2.)

CHAPTER 10. FOREIGN (NATIONAL) SAVINGS COMPANIES

(Chapter 10 added by Stats. 1986, Ch. 1057, Sec. 3.
Chapter 10 operative January 1, 1991, by Section 10009 (formerly 10003).)

10000. Terms not expressly defined in this chapter have the meaning given in Chapter 1 (commencing with Section 5000) or as the commissioner may provide by regulation. For the purposes of this chapter:

(a) "California savings association" means either (1) an association or (2) a foreign association or successor thereof that was licensed to do the business of an association in California on September 15, 1935.

(b) "Foreign holding company" means a savings and loan holding company as defined in Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a) or bank holding company as defined in Section 3 of the federal Bank Holding Company Act, as amended, (12 U.S.C. Sec. 1841 et seq.), which savings and loan or bank holding company (1) has its principal place of deposits outside of California and (2) does not control a subsidiary California savings association or a subsidiary federal association with, or a subsidiary foreign savings association with, an authorized home or branch office in California at which accounts may lawfully be opened and deposits may lawfully be accepted.

(c) "Foreign savings association" means an insured institution other than a California savings association and other than a federal association.

(d) "Insured institution" means an entity: (1) that is organized and licensed as a savings association, savings and loan association, or savings bank under the laws of another state of the United States and the deposits of which are insured by the FederalDeposit Insurance Corporation or (2) that is chartered by the Office of Thrift Supervision. However, "insured institution" does not include any savings bank of the type defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(g)).

(e) The "principal place of deposits" of an entity is that state in which the total deposits of all of that entity's depository operations and those of its affiliates are largest.
(Amended by Stats. 2004, Ch. 176, Sec. 5. Effective January 1, 2005.)

10001. (a) No person, other than a California savings association or other person authorized by this division, shall do any business of an association.

(b) No foreign savings association may control a California savings association.

(c) No foreign holding company may control a California savings association.

(d) The commissioner shall obtain an injunction or take other action necessary to prevent any person from unlawfully doing any business of an association in this state.
(Added by Stats. 1987, Ch. 1162, Sec. 19. Effective September 26, 1987. Operative January 1, 1991, by Section 10009.)

10002. Notwithstanding Section 10001, and subject to Section 10003, on and after January 1, 1991, a foreign savings association may conduct the business of an association in California or may acquire control of a California savings association, and a foreign holding company may acquire control of a California savings association; provided that, if the commissioner determines that the laws, court decisions, or practices of the jurisdiction under which the foreign savings association is incorporated or, in the case of a foreign holding company, the holding company's principal place of deposits, would operate to prohibit, restrict, condition, or otherwise limit a California savings association from conducting the business of, or acquiring control of, a savings association in the relevant jurisdiction pursuant to the laws, court decisions, or practices of that jurisdiction, a similar prohibition, restriction, condition, or limitation to be prescribed by regulation or order of the commissioner shall apply in California to the foreign savings association or foreign holding company.
(Added by renumbering Section 10001 by Stats. 1987, Ch. 1162, Sec. 18. Effective September 26, 1987. Section operative January 1, 1991, by Section 10009.)

10003. No foreign savings association may conduct the business of an association in California, and no foreign savings association or foreign holding company may acquire control of a California savings association, without the written approval of the commissioner. A foreign savings association or foreign holding company shall submit to the commissioner a written application for approval in the form and shall pay such fees as the commissioner prescribes. The foreign savings association or foreign holding company shall submit with the application such information, data, and records as the commissioner may require in order to make his or her determination. The commissioner may issue such regulations as he or she deems to be appropriate to preserve the public interest and integrity of the state's savings association system and to protect the interests of savings account holders, borrowers, and stockholders resident in this state. The commissioner may make arrangements with the supervisory officials of other states for reciprocal examination of California savings associations, foreign savings associations and foreign holding companies, and the imposition of fees therefor and may condition his or her approval pursuant to this chapter upon the existence of those arrangements.
(Added by renumbering Section 10002 by Stats. 1987, Ch. 1162, Sec. 20. Effective September 26, 1987. Section operative January 1, 1991, by Section 10009.)

10004. Except as expressly provided for in this chapter, any person who, as principal, agent, salesperson, solicitor, or in any other capacity, solicits or conducts in this state the business of selling, disposing of, taking, or soliciting savings accounts of any foreign savings association that has not complied with all the requirements of this chapter, is guilty of a public offense punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both a fine and imprisonment.
(Added by Stats. 1987, Ch. 1162, Sec. 22. Effective September 26, 1987. Operative January 1, 1991, by Section 10009.)

10005. For the purposes of this article and any other law of this state prohibiting, limiting, or regulating the doing of business or the selling, taking, or solicitation of savings accounts in this state by foreign savings associations or foreign corporations, any federally insured foreign savings association subject to state or federal supervision, which by law is subject to periodic examination by that supervisory authority and to a requirement of periodic audit, and any broker-dealer registered in accordance with the requirements of the Securities Exchange Act of 1934 and the Corporate Securities Law of 1968, and any partner, officer, director, branch manager, or person performing similar functions, and employees of that broker-dealer, shall not be considered to be doing business or selling, taking, or soliciting savings accounts in this state by reason of engaging in the following:

(a) (1) Any of the activities specified in subdivision (d) of Section 191 of the Corporations Code, or (2) the advertising or solicitation of savings accounts in this state by a federally insured foreign savings association through the media of the mail, radio, television, magazines, newspapers, or any other media that are published or circulated within this state,

except through or as a result of telemarketing, provided that the advertising or solicitation as a whole is accurate and does not create a misleading impression even though statements considered separately are literally accurate. A federally insured foreign savings association shall not sell, take or solicit savings accounts through telemarketing by use of the telephone or telephone transceiving equipment, or through the use of an automatic dial-announcing device as defined in Section 2871 of the Public Utilities Code.

(b) The offering by a registered broker-dealer of, or the placement by a registered broker-dealer of a customer's funds into, a savings account at a federally insured foreign savings association chartered under the laws of a state in which broker-dealers make available savings accounts of associations chartered under the laws of this state, provided that (1) any advertising, offering material, or solicitation as a whole is accurate and does not create a misleading impression even though statements considered separately are literally accurate and (2) the savings accounts of the federally insured foreign savings association are rated "investment grade" by either Standard & Poor's Corporation or Moody's Investors Service, Inc. based upon the foreign savings association's ability to repay the savings accounts independent of federal deposit insurance benefits.

(Amended (as amended by Stats. 1991, Ch. 1206, Sec. 3) by Stats. 1993, Ch. 469, Sec. 9. Effective January 1, 1994.)

10006. Except as provided by regulation, this division applies to a foreign savings association or its holding company as if business conducted in this state were that of a California savings association.

(Added by Stats. 1987, Ch. 1162, Sec. 24. Effective September 26, 1987. Operative January 1, 1991, by Section 10009.)

10007. If a foreign savings association is controlled by a foreign holding company, the requirements under this chapter applicable to both a foreign savings association and foreign holding company are required to be met.

(Added by Stats. 1987, Ch. 1162, Sec. 25. Effective September 26, 1987. Operative January 1, 1991, by Section 10009.)

10009. This chapter shall become operative on January 1, 1991.

(Added by renumbering Section 10003 by Stats. 1987, Ch. 1162, Sec. 21. Effective September 26, 1987.)

[CHAPTER 10.1. FOREIGN (REGIONAL) SAVINGS COMPANIES]

(Chapter 10.1 added by Stats. 1986, Ch. 1250, Sec. 3.
Repealed January 1, 1991, pursuant to Section 10050.)

10010. Terms not expressly defined in this chapter have the meaning given in Chapter 1 (commencing with Section 5000) or as the commissioner may provide by regulation. For the purposes of this chapter:

(a) "California savings association" means either (1) an association or (2) a foreign association or successor thereof that was licensed to do the business of an association in California on September 15, 1935.

(b) "Foreign holding company" means a savings and loan holding company as defined in Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a) or bank holding company as defined in Section 3 of the federal Bank Holding Company Act, as amended, (12 U.S.C. Sec. 1841 et seq.), which savings and loan or bank holding company (1) has its principal place of deposits outside of California and (2) does not control a subsidiary California savings association or a subsidiary federal association with, or a subsidiary foreign savings association with, an authorized home or branch office in California at which accounts may lawfully be opened and deposits may lawfully be accepted.

(c) "Foreign savings association" means an insured institution other than a California savings association and other than a federal association.

(d) "Insured institution" means an entity: (1) the deposits of which are insured by the Federal Deposit Insurance Corporation, (2) which is chartered by the Office of Thrift Supervision, or (3) which, because of its assets or activities, has a holding company that is regulated as a savings and loan holding company under Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a).

(e) The "principal place of deposits" of an entity is that state in which the total deposits of all of that entity's depository operations and those of its affiliates are largest.

(Amended by Stats. 1990, Ch. 1118, Sec. 57. Note: This section is part of the Chapter 10.1 (formerly, Sections 10010 to 10050) that was repealed on Jan. 1, 1991.)

DIVISION 4. AUTOMATED TELLER MACHINES: USER SAFETY

(Division 4 added by Stats. 1990, Ch. 825, Sec. 1.)

CHAPTER 1. INTENT

(Chapter 1 added by Stats. 1990, Ch. 825, Sec. 1.)

13000. It is the intent of the Legislature in enacting this division to enhance the safety of consumers using automated teller machines in California without discouraging the siting of automated teller machines in locations convenient to consumers' homes and workplaces. Since decisions concerning safety at automated teller machine sites are inherently subjective and because safety is a relative matter, the Legislature intends to establish as the standard of care applicable to operators of automated teller machines, in connection with user safety, the substantial compliance with the objective standards of Chapter 4 (commencing with Section 13040), the information requirements of Chapter 5 (commencing with Section 13050), and the good faith consideration of other safety issues as prescribed in Chapter 3 (commencing with Section 13030). The Legislature further recognizes the need for uniformity as to the establishment of automated teller machine safety standards and intends with this division to supersede and preempt any rule, regulation, code, statute, or ordinance of any city, county, city and county, municipality, or local agency regarding customer safety at automated teller machines in California.

(Added by Stats. 1990, Ch. 825, Sec. 1.)

CHAPTER 2. DEFINITIONS

(Chapter 2 added by Stats. 1990, Ch. 825, Sec. 1.)

13020. As used in this division:

(a) "Access area" means any paved walkway or sidewalk which is within 50 feet of an automated teller machine. The term does not include publicly maintained sidewalks or roads, as defined in Section 555 or Section 527 of the Vehicle Code.

(b) "Access device" shall have the same meaning as set forth in Federal Reserve Board Regulation E (12 C.F.R. Part 205), promulgated pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1601 et seq.).

(c) "Automated teller machine" means any electronic information processing device located in California which accepts or dispenses cash in connection with a credit, deposit, or convenience account. The term does not include devices used solely to facilitate check guarantees or check authorizations, or which are used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by a store cashier.

(d) "Candlefoot power" means the light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured.

(e) "Control" of an access area or defined parking area means to have the present authority to determine how, when, and by whom it is to be used, and how it is to be maintained, lighted, and landscaped.

(f) "Customer" means a natural person to whom an access device has been issued for personal, family, or household use.

(g) "Defined parking area" means that portion of any parking area open for customer parking which is (1) contiguous to an access area with respect to an automated teller machine; (2) regularly, principally, and lawfully used for parking by users of the automated teller machine while conducting automated teller machine transactions during hours of darkness; and (3) owned or leased by the operator of the automated teller machine or owned or controlled by the party leasing the automated teller machine site to the operator. The term does not include any parking area which is not open or regularly used for parking by users of the automated teller machine who are conducting automated teller machine transactions during hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of this subdivision and would therefore otherwise be a defined parking area, only the single parking level deemed by the operator of the automated teller machine to be the most directly accessible to the users of the automated teller machine shall be a defined parking area.

(h) "Hours of darkness" means the period that commences 30 minutes after sunset and ends 30 minutes before sunrise.

(i) "Operator" means any bank, savings association, credit union, industrial loan company, savings bank, or other business entity, or any person who operates an automated teller machine.

(Added by Stats. 1990, Ch. 825, Sec. 1.)

CHAPTER 3. LOCATION AND INSTALLATION

(Chapter 3 added by Stats. 1990, Ch. 825, Sec. 1.)

13030. On or before July 1, 1991, with respect to all existing installed automated teller machines in this state, and any automated teller machines installed after July 1, 1991, the operator shall adopt procedures for evaluating the safety of the automated teller machine. These procedures shall include a consideration of the following:

(a) The extent to which the lighting for the automated teller machine complies or will comply with the standards required by Chapter 4 (commencing with Section 13040).

(b) The presence of landscaping, vegetation, or other obstructions in the area of the automated teller machine, the access area, and the defined parking area.

(c) The incidence of crimes of violence in the immediate neighborhood of the automated teller machine, as reflected in the records of the local law enforcement agency and of which the operator has actual knowledge.

(Added by Stats. 1990, Ch. 825, Sec. 1.)

13031. It is not the intent of the Legislature in enacting this chapter to impose a duty to relocate or modify automated teller machines upon the occurrence of any particular events or circumstances, but rather to establish a standard of good faith for the evaluation of all automated teller machines as provided herein.

(Added by Stats. 1990, Ch. 825, Sec. 1.)

CHAPTER 4. LIGHTING

(Chapter 4 added by Stats. 1990, Ch. 825, Sec. 1.)

13040. (a) Each operator of an automated teller machine installed on or after July 1, 1991, shall comply with Section 13041 commencing on the date the automated teller machine is installed. Compliance with Section 13041 by operators as to automated teller machines existing as of July 1, 1991, shall be optional until July 1, 1993, and mandatory thereafter. This subdivision shall apply to an operator of an automated teller machine only to the extent that the operator controls the access area or defined parking area to be lighted.

(b) If an access area or a defined parking area is not controlled by the operator of the automated teller machine, and if the person who leased the automated teller machine site to the operator controls the access area or defined parking area, the person who controls the access area or defined parking area shall comply with Section 13041 as to any automated teller machine installed on or after July 1, 1991, commencing on the date the automated teller machine is installed; and as to any automated teller machine existing as of July 1, 1991, no later than on July 1, 1993.

(Added by Stats. 1990, Ch. 825, Sec. 1.)

13041. The operator, owner, or other person responsible therefor, shall provide lighting during hours of darkness with respect to an open and operating automated teller machine and any defined parking area, access area, and the exterior of an enclosed automated teller machine installation according to the following standards:

(a) There shall be a minimum of 10 candlefoot power at the face of the automated teller machine and extending in an unobstructed direction outward five feet.

(b) There shall be a minimum of two candlefoot power within

50 feet from all unobstructed directions from the face of the automated teller machine. In the event the automated teller machine is located within 10 feet of the corner of the building and the automated teller machine is generally accessible from the adjacent side, there shall be minimum of two candlefoot power along the first 40 unobstructed feet of the adjacent side of the building.

(c) There shall be a minimum of two candlefoot power in that portion of the defined parking area within 60 feet of the automated teller machine.

(Added by Stats. 1990, Ch. 825, Sec. 1.)

CHAPTER 5. CONSUMER EDUCATION

(Chapter 5 added by Stats. 1990, Ch. 825, Sec. 1.)

13050. Customers receiving access devices shall be furnished by the respective issuers thereof with notices of basic safety precautions which customers should employ while using an automated teller machine. This information shall be furnished by personally delivering or by mailing the information to each customer whose mailing address as to the account to which the access device relates is in this state. This information shall be furnished with respect to access devices issued on or after July 1, 1991, at or before the time the customer is furnished with his or her access device. With respect to a customer to whom an "accepted access device" (as defined in Federal Reserve Board Regulation E) has been issued prior to July 1, 1991, the information shall be delivered or mailed to the customer on or before December 31, 1991. Only one notice need be furnished per household, and if access devices are furnished to more than one customer for a single account or set of accounts or on the basis of a single application or other request for the access devices, only a single notice need be furnished in satisfaction of the notification responsibilities as to all those customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with any initial or periodic disclosure statement furnished pursuant to the Electronic Fund Transfer Act.
(Added by Stats. 1990, Ch. 825, Sec. 1.)

CHAPTER 6. EXEMPTIONS

(Chapter 6 added by Stats. 1990, Ch. 825, Sec. 1.)

13060. The provisions of this division shall not apply with respect to any automated teller machine which is:

(a) Located inside of a building, unless it is a freestanding installation which exists for the sole purpose of providing an enclosure for the automated teller machine.

(b) Located inside of a building, except to the extent a transaction can be conducted from outside the building.

(c) Located in any area, including any access area, building, enclosed space, or parking area which is not controlled by the operator.
(Added by Stats. 1990, Ch. 825, Sec. 1.)

CHAPTER 7. EFFECT OF COMPLIANCE

(Chapter 7 added by Stats. 1990, Ch. 825, Sec. 1.)

13070. This division supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, cities and counties, municipalities, and local agencies regarding customer safety at automated teller machines located in California.
(Added by Stats. 1990, Ch. 825, Sec. 1.)

DIVISION 4.5. AUTOMATED TELLER MACHINE SURCHARGE DISCLOSURE

(Division 4.5 added by Stats. 1992, Ch. 348, Sec. 1. Effective January 1, 1993.)

13080. (a) No operator of an automated teller machine (ATM) in this state shall impose any surcharge upon a customer for the usage of that machine whether or not the customer is using an access device issued by that operator unless that surcharge is clearly disclosed to the customer electronically on the automated teller machine. Unless the disclosure is made prior to the customer being obligated to pay the surcharge, the customer shall be provided an opportunity to cancel that transaction without incurring any surcharge. This subdivision does not apply to a point of sale transaction at an ATM.

(b) If the sale of a good or service is conducted at the ATM, the operator of that ATM shall disclose to the customer electronically on the ATM the total price of the good or service and any fee charged solely for the usage of the ATM. Unless the disclosure is made prior to the customer being obligated to pay for the good or service, the customer shall be provided with an opportunity to cancel the transaction without incurring any obligation.

(c) If a surcharge is imposed on a customer using an access device not issued by the operator, the operator shall disclose that the customer may also be charged an additional fee by his or her own institution.

(d) As used in this section, "operator," "automated teller machine," "customer," and "access device" have the meanings set forth in Section 13020. The term "surcharge" means any charge imposed by the operator of the ATM solely for use of the ATM. The term "service" includes, but is not limited to, receiving a statement of account activity.

(Amended by Stats. 1996, Ch. 98, Sec. 1. Effective January 1, 1997. Operative July 1, 1997, by Sec. 2 of Ch. 98.)

13081. (a) In enacting this section, the Legislature finds and declares all of the following:

(1) It is in the best interest of consumers in this state to be aware of fees they may be charged for using point-of-sale devices prior to being obligated to pay those fees.

(2) In 1996, the Legislature enacted Assembly Bill 3366 (Chapter 98 of the Statutes of 1996), which required operators of automatic teller machines (ATMs) to electronically disclose fees for transactions at those ATMs. That legislation did not require disclosure of fees at point-of-sale devices.

(3) In order to maximize consumer awareness of fees at point-of-sale devices, and to create equity between operators of ATMs and operators of point-of-sale devices, it is the intent of the Legislature in enacting this section to require the maximum feasible disclosure of fees at point-of-sale devices.

(b) No operator of a point-of-sale device in this state shall impose any fee upon a customer for the use of that device unless that fee is disclosed to the customer prior to the customer being obligated to pay for any goods or services. That disclosure shall be placed on or at the point-of-sale device as follows:

(1) For all point-of-sale devices, the fee disclosure shall be on a label meeting federal standards.

(2) For point-of-sale devices purchased on or after January 1, 2001, that have electronic displays, the fee disclosure shall also be electronic.

(c) For purposes of this section, the term "point-of-sale device" includes any device used for the purchase of a good or service where a personal identification number (PIN) is required, but does not include an access device as defined in subdivision (b) of Section 13020.

(d) For the purposes of this section, the term "operator of a point-of-sale device" means the person who imposes the fee on a customer for using a point-of-sale device to pay for a good or service.

(Amended by Stats. 1998, Ch. 485, Sec. 71. Effective January 1, 1999.)

13082. (a) Whenever a point-of-sale system is changed or modified to include a video touch screen or any other nontactile keypad, the point-of-sale device that would include the video touch screen or nontactile keypad shall also be equipped with a tactually discernible numerical keypad similar to a telephone keypad containing a raised dot with a dot base diameter between 1.5 millimeters and 1.6 millimeters and a height between 0.6 millimeters and 0.9 millimeters on the number 5 key that enables a visually impaired person to enter his or her own personal identification number or any other personal information necessary to process the transaction in a manner which provides the opportunity for the same degree of privacy input and output available to all individuals.

(b) (1) On or before January 1, 2010, any existing point-of-sale system, except as provided in paragraph (2), that includes a video touch screen or any other nontactile keypad shall also be equipped with a tactually discernable keypad as described in subdivision (a).

(2) At locations equipped with two or less point-of-sale machines, only one point-of-sale machine shall be required to be equipped with a tactually discernible keypad on or before January 1, 2010, as described in subdivision (a).

(c) On and after January 1, 2006, a manufacturer or distributor shall be required to offer for availability touch screen or other nontactile point-of-sale devices to be used and sold in this state that are equipped with tactually discernible keypads as described in subdivision (a) that enable a visually impaired person to enter his or her own personal identification number or any other personal information necessary to process a transaction in a manner that ensures personal privacy of the information being entered.

(d) As used in this section, "point-of-sale device" includes any device used by a customer for the purchase of a good or service where a personal identification number (PIN) is required, but does not include the following:

(1) An automated teller machine as defined in subdivision (c) of Section 13020.

(2) A point-of-sale device that is equipped to, or exclusively services, motor fuel dispensers.

(e) This section shall not be construed to preclude or limit any other existing right or remedy as it pertains to point-of-sale devices and accessibility.

(Added by Stats. 2004, Ch. 760, Sec. 2. Effective January 1, 2005.)

DIVISION 5. CREDIT UNIONS

(Division 5 repealed and added by Stats. 1979, Ch. 112.)

CHAPTER 1. GENERAL PROVISIONS

(Chapter 1 added by Stats. 1979, Ch. 112.)

Article 1. Definitions

(Article 1 added by Stats. 1979, Ch. 112.)

14000. This division shall be known as the "California Credit Union Law."
(Repealed and added by Stats. 1979, Ch. 112.)

14001. The definitions given in this division govern the construction of this division unless the context otherwise requires.
(Repealed and added by Stats. 1979, Ch. 112.)

14001.1. This division is applicable to any person, other than a federal credit union engaging in the business of a credit union in this state. For purposes of this division, "person" shall have the meaning set forth in Section 5065 of the Corporations Code.
(Added by Stats. 2002, Ch. 734, Sec. 3. Effective September 20, 2002.)

14001.5. If and to the extent that any provision of this division is preempted by federal law, the provision shall not apply and shall not be enforced.
(Added by Stats. 2002, Ch. 734, Sec. 4. Effective September 20, 2002.)

14002. A credit union is a cooperative, organized for the purposes of promoting thrift and savings among its members, creating a source of credit for them at rates of interest set by the board of directors, and providing an opportunity for them to use and control their own money on a democratic basis in order to improve their economic and social conditions. As a cooperative, a credit union conducts its business for the mutual benefit and general welfare of its members with the earnings, savings, benefits, or services of the credit union being distributed to its members as patrons.
(Amended by Stats. 1984, Ch. 209, Sec. 1.)

14002.5. (a) Except as provided in subdivision (b), all provisions of law applicable to nonprofit mutual benefit corporations generally (including, but not limited to, the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code)) shall apply to credit unions. However, whenever any provision of this division applicable to credit unions is inconsistent with any provision of law applicable to nonprofit mutual benefit corporations generally, the provision of this division shall apply and the inconsistent provision of law applicable to nonprofit mutual benefit corporations generally shall not apply to a credit union.

(b) Notwithstanding the provisions of subdivision (a), the following provisions of the Corporations Code are not applicable to credit unions:

(1) Section 7131.
(2) Subdivision (a) of Section 7132.
(3) Section 7142.
(4) Subdivision (c) of Section 7223.
(5) Subdivision (c) of Section 7225.
(6) Article 4 (commencing with Section 7240) of Chapter 2 of Part 3 of Title 1.
(7) Chapter 11 (commencing with Section 8110) of Part 3 of Division 2 of Title 1.
(8) Chapter 16 (commencing with Section 8610) of Part 3 of Division 2 of Title 1.
(9) Chapter 17 (commencing with Section 8710) of Part 3 of Division 2 of Title 1.

(Added by Stats. 2002, Ch. 734, Sec. 5. Effective September 20, 2002.)

14003. "Commissioner" means the Commissioner of Financial Institutions of the State of California.
(Amended by Stats. 1996, Ch. 1064, Sec. 568. Effective January 1, 1997. Operative July 1, 1997.)

14004. "Impaired capital" means that the losses or projected losses of a credit union are such that the book value of a member's share is reduced below 100 percent of the monetary amount of that share when initially purchased plus any accumulated dividends.
(Added by Stats. 1982, Ch. 716, Sec. 1.)

14005. Unless otherwise defined in this division, "insolvent" means a credit union has ceased to pay its debts in the ordinary course of business, or cannot pay its debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.
(Added by Stats. 1982, Ch. 716, Sec. 2.)

14006. "Credit manager" means a natural person approved by the board of directors and employed by a credit union to supervise the lending activities of the credit union in accordance with the loan policies established by the board of directors and consistent with the applicable state and federal law and regulations. A credit manager may be but is not required to be a member of the credit union.
(Added by Stats. 1982, Ch. 691, Sec. 1.)

14007. "Obligation" means any contractual obligation to the credit union for money borrowed or credit extended or guaranteed from its members, including, but not limited to, loans, lines of credit, agreements to extend credit, and lease agreements.
(Added by Stats. 1984, Ch. 789, Sec. 1.)

Article 2. General
(Article 2 added by Stats. 1979, Ch. 112.)

14050. The use by any person, other than those authorized by this division, of any name or title which contains the phrase "credit union," is a misdemeanor. Nonprofit associations, which are formed for the mutual benefit and protection of credit unions, by credit unions organized under this division, or under the provisions of the statutes of the United States applicable to credit unions or any nonprofit association formed for the mutual benefit and protection of credit union employees by bona fide employees of credit unions, may use the phrase "credit union" in the name or title designating any such association.
(Added by Stats. 1979, Ch. 112.)

14051. Any person who willfully and knowingly makes, circulates, or transmits to another or others any statement or rumor, written, printed or by word of mouth, which is untrue in facts and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any credit union doing business in this state, or who knowingly counsels, aids, procures, or induces another to start, transmit, or circulate any such statement or rumor, is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year, or both.
(Added by Stats. 1979, Ch. 112.)

14052. In addition to the powers enumerated in this division, every credit union has the general powers conferred upon corporations by the Nonprofit Mutual Benefit Corporation Law of this state unless restricted by this division.
(Amended by Stats. 1981, Ch. 714, Sec. 131.)

CHAPTER 2. FORMATION

(Chapter 2 added by Stats. 1979, Ch. 112.)

Article 1. Incorporation and Bylaws

(Article 1 added by Stats. 1979, Ch. 112.)

14100. (a) Credit unions shall be incorporated under the Nonprofit Mutual Benefit Corporation Law of this state.

(b) The Secretary of State shall not file the articles of incorporation of a credit union organized pursuant to subdivision (a) unless the approval of the commissioner is endorsed thereon.

(c) The Secretary of State shall not file articles of incorporation setting forth a name in which "credit union" or related words appear unless the approval of the commissioner is attached. This section shall not apply to the articles of any corporation subject to the California Credit Union Law on which the approval of the commissioner is endorsed.

(Amended by Stats. 2002, Ch. 734, Sec. 6. Effective September 20, 2002.)

14101. The articles of incorporation of every credit union shall set forth the following:

(a) The name of the corporation, which shall include the phrase "credit union."

(b) (1) The following statement:

The purpose of the corporation is to engage in credit union business and any other lawful activities which are not prohibited to a credit union by applicable laws or regulations.

(2) By December 31, 2003, each credit union that immediately prior to the enactment of this section was authorized to operate as a credit union shall amend its articles to comply with the provisions of paragraph (1). Notwithstanding Section 7813.5 of the Corporations Code, the amendment of the articles of a credit union as required by paragraph (1) may be adopted by approval of the board alone.

(c) The name and address in this state of the corporation's initial agent for service of process in accordance with subdivision

(b) of Section 8210 of the Corporations Code.

(d) The names and addresses of five or more persons appointed to act as initial directors.

(Amended by Stats. 2002, Ch. 734, Sec. 7. Effective September 20, 2002.)

14101.2. (a) The articles shall be signed by each director named in the articles, acknowledged pursuant to Section 5030 of the Corporations Code and filed in the office of the Secretary of State.

(b) Corporate existence shall begin upon the filing of the articles and shall continue perpetually, unless otherwise expressly provided by law.

(Amended by Stats. 2002, Ch. 734, Sec. 8. Effective September 20, 2002.)

14101.4. (a) The provisions of Section 14101, except as provided in subdivision (b) of that section, shall not apply to a credit union organized prior to January 1, 1981, but the articles of the credit union shall continue to be governed by the law applicable as of December 31, 1980, until an amendment of its articles pursuant to subdivision (b).

(b) Except as provided in subdivision (b) of Section 14101, a credit union organized prior to January 1, 1981, may amend its articles to conform to Section 14101 except that an initial agent for service of process shall not be set forth and the names and addresses of initial directors shall be deleted. The amendment may be adopted by the board of directors alone.

(Amended by Stats. 2002, Ch. 734, Sec. 9. Effective September 20, 2002.)

14101.6. (a) Every credit union shall, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period in each year, file, in a form prescribed by the Secretary of State, a statement containing: (1) the names and complete business or residence addresses of its chief executive officers, secretary and chief financial officer; (2) the street address of its principal office, if any; and (3) the name and address of a natural person residing in this state who will serve as the credit union's agent for service of process. The applicable filing period for a credit union shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall mail a form for compliance with this section to each credit union approximately three months prior to the close of the applicable filing period. The form shall state the due date thereof and shall be mailed to the last address of the credit union according to the records of the Secretary of State. Neither the failure of the Secretary of State to mail the form nor the failure of the credit union to receive it is an excuse for failure to comply with this section.

(b) Whenever any of the information required by subdivision

(a) is changed, the credit union may file a current statement containing all the information required thereby. In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivision (a). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the articles as to the agent for service of process and the address of the agent.

(c) An agent designated for service of process pursuant to subdivision (a) may file a signed and acknowledged written statement of resignation as such agent. Thereupon the authority of the agent to act in such capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement of resignation by mail to the credit union addressed to its principal office.

(d) If a natural person who has been designated agent for service of process pursuant to subdivision (a) dies or resigns or no longer resides in the state, the credit union shall forthwith file a designation of a new agent conforming to the requirements of subdivision (a).

(e) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(f) This section shall not be construed to place any person dealing with the credit union on notice of or in any duty to inquire about the existence or content of the statement filed pursuant to this section.

(Added by Stats. 1980, Ch. 321, Sec. 5.)

14101.8. (a) No amendment of the articles of a credit union shall become effective unless the certificate of amendment or other instrument setting forth the amendment is filed with the Secretary of State with the commissioner's approval endorsed thereon. The amendment shall become effective upon being filed with the Secretary of State. Promptly after the amendment becomes effective, the credit union shall file with the commissioner a copy of the certificate of amendment or other instrument certified by the Secretary of State.

(b) An amendment of the articles set forth in an agreement of merger that requires the approval of the commissioner shall not be subject to the provisions of subdivision (a). An amendment meeting this criteria shall become effective at the time the merger becomes effective, pursuant to this division.

(Added by Stats. 2002, Ch. 734, Sec. 10. Effective September 20, 2002.)

14102. (a) Amendments to the articles of incorporation of any credit union may be adopted by resolution of the board of directors, which is also adopted by a vote of a majority of the members of the credit union present, in person or by proxy, as provided in the credit union's bylaws, at any regular or special meeting of the members for which notice of the proposed amendments has been given; provided, however, that a minimum vote of at least 10 percent of the entire membership entitled to vote on the question votes in favor of the amendment and those voting in favor of the amendment constitute a majority of the members participating in the vote.

(b) The commissioner may approve the amendment according to the resolution adopted by the board of directors if approved by less than 10 percent of the entire membership as provided in this section if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the amendment or the ballot for written vote on the amendment was mailed to each member entitled to vote upon the question, (2) the notice or ballot disclosed the purpose of the meeting or the written vote, (3) the notice or ballot informed the membership that approval of the amendment might be sought pursuant to this section, and (4) a majority of the votes cast upon the question were in favor of the amendment.

(c) Notwithstanding subdivision (a) and Section 7812 of the Corporations Code, a credit union may amend its articles of incorporation to change its name with the approval of its board of directors and without the approval of its members.

(Amended by Stats. 1998, Ch. 539, Sec. 1. Effective January 1, 1999.)

14102.2. (a) No restated articles of a credit union shall become effective unless the certificate setting forth the restated articles, with the commissioner's approval endorsed thereon, is filed with the Secretary of State. The restated articles shall become effective upon being filed with the Secretary of State.

(b) Promptly after the restated articles become effective, the credit union shall file with the commissioner a copy of the certificate setting forth the restated articles, certified by the Secretary of State.

(Added by Stats. 2002, Ch. 734, Sec. 11. Effective September 20, 2002.)

14102.4. (a) No certificate of correction of a credit union shall become effective unless the certificate, with the commissioner's approval endorsed thereon, is filed with the Secretary of State. The certificate of correction shall become effective upon being filed with the Secretary of State.

(b) Promptly after the certificate of correction becomes effective, the credit union shall file with the commissioner a copy of the certificate of correction, certified by the Secretary of State.

(Added by Stats. 2002, Ch. 734, Sec. 12. Effective September 20, 2002.)

14102.6. (a) No certificate of revocation by a credit union shall become effective unless the certificate, with the commissioner's approval endorsed thereon, is filed with the Secretary of State. The certificate of revocation shall become effective upon being filed with the Secretary of State.

(b) Promptly after the certificate of revocation becomes effective, the credit union shall file with the commissioner a copy of the certificate of revocation, certified by the Secretary of State.

(Added by Stats. 2002, Ch. 734, Sec. 13. Effective September 20, 2002.)

14103. The bylaws shall prescribe the manner in which the business of the credit union shall be conducted with reference to the following matters:

(a) The purpose of the credit union.

(b) The qualification for membership.

(c) Determination of the month, time and place of the annual meeting; the manner of conducting meetings; the method by which members shall be notified of meetings; and the number of members which shall constitute a quorum.

(d) The authorized number of directors, the number of directors necessary to constitute a quorum, and the powers and duties of officers elected by the directors.

(e) The membership, powers, and duties of the supervisory committee.

(f) The membership, powers, and duties of the credit committee or if applicable, the general powers, responsibilities and duties of the credit manager.

(g) The manner in which the bylaws may be amended.

(Amended by Stats. 1985, Ch. 951, Sec. 1.)

Article 2. Certificate to Act as a Credit Union
(Article 2 added by Stats. 1979, Ch. 112.)

14150. No membership shares, certificates for funds or other securities shall be issued by any credit union until it has applied for and obtained from the commissioner a certificate authorizing it to act as a credit union.

(Added by Stats. 1979, Ch. 112.)

14151. Applications for a certificate to act as a credit union shall be made in writing to the commissioner, setting forth such information as the commissioner requires. The application shall be verified by one or more officers of the credit union authorized by its board of directors.

(Added by Stats. 1979, Ch. 112.)

14152. At the time of filing an application to operate as a credit union, the applicant shall pay to the commissioner a filing fee of five dollars ($5).

(Added by Stats. 1979, Ch. 112.)

14153. Upon the filing of the application for a certificate to act as a credit union, the commissioner shall examine the application together with the other papers and documents filed therewith. The commissioner may make any further investigation of the applicant and its affairs that he deems advisable.

(Added by Stats. 1979, Ch. 112.)

14154. If the commissioner determines that the applicant has satisfied the provisions of this division and does not find facts constituting reasons for denial as specified in Section 14155, the commissioner shall issue and deliver a certificate to the applicant to engage in business in accordance with the provisions of this division.

(Amended by Stats. 1980, Ch. 974, Sec. 3.)

14155. Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for a certificate to act as a credit union or an expansion of the field of membership of an existing credit union for any of the following reasons:

(a) The field of membership of the applicant is contrary to the principles of organizing credit unions, including principles of organizing credit unions based on common bond of occupation, association, or groups within a well-defined neighborhood, community or rural district.

(b) A false statement of a material fact has been made in the application for certificate.

(c) Any officer, director, or committee member of the applicant has, within the last 10 years, been (1) convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.

(d) The applicant or any officer, director, or committee member of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(e) The number of persons eligible for membership is less than 500.

(f) The applicant's showing as to the economic feasibility of the proposed credit union is inadequate. Notwithstanding anything to the contrary, nothing shall prohibit a credit union from admitting to membership any corporation formed to provide services to credit unions or to credit union members in which the credit union holds shares pursuant to Sections 14650 and 14651 and any limited liability company formed to provide services to credit unions or to credit union members in which the credit union holds membership or economic interests pursuant to Section 14651.

(Amended by Stats. 1998, Ch. 539, Sec. 1.4. Effective January 1, 1999.)

14156. Each certificate issued under this division remains in full force and effect until surrendered and accepted by the commissioner, or until suspended or revoked by the commissioner.

(Amended by Stats. 1989, Ch. 516, Sec. 1.)

CHAPTER 3. ADMINISTRATION AND POWERS OF THE COMMISSIONER

(Chapter 3 added by Stats. 1979, Ch. 112.)

Article 1. General

(Article 1 added by Stats. 1979, Ch. 112.)

14200. The powers of supervision and examination of all credit unions organized under the provisions of this division are vested in the commissioner.

(Repealed and added by Stats. 1979, Ch. 112.)

14200.1. There is in the Department of Financial Institutions, the Division of Credit Unions. The Division of Credit Unions has charge of the execution of the laws of this state relating to credit unions or to the credit union business.

(Added by Stats. 1996, Ch. 1064, Sec. 569. Effective January 1, 1997. Operative July 1, 1997.)

14200.2. The Chief Officer of the Division of Credit Unions is the Deputy Commissioner of Financial Institutions for the Division of Credit Unions. The Deputy Commissioner of Financial Institutions for the Division of Credit Unions shall administer the laws of this state relating to credit unions or the credit union business under the direction of and on behalf of the commissioner. The Deputy Commissioner of Financial Institutions for the Division of Credit Unions shall be appointed by the Governor and shall hold office at the pleasure of the Governor. The Deputy Commissioner of Financial Institutions shall receive an annual salary as fixed by the Governor.

(Added by Stats. 1996, Ch. 1064, Sec. 570. Effective January 1, 1997. Operative July 1, 1997.)

14201. The commissioner may establish or waive such rules and regulations as may be reasonable or necessary to carry out the purposes and provisions of this division.

(Amended by Stats. 1983, Ch. 263, Sec. 1.)

14202. The commissioner may by regulation authorize credit unions organized under the provisions of this division to engage in any activity authorized by law or regulation for credit unions organized under the laws of the United States. Any such regulation shall expire on the first day of January two years following the end of the calendar year in which such regulation was promulgated.

(Amended by Stats. 1982, Ch. 270, Sec. 1.)

14203. Upon request of the commissioner, a credit union shall furnish to the commissioner an authorization for examination of financial records of any capital funds, undivided profits, and reserve funds, maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(Amended by Stats. 1980, Ch. 1097, Sec. 2.)

14204. If the commissioner upon any examination, or from any report made to the commissioner, finds any credit union is violating the provisions of this division or the rules made pursuant to this division, or has impaired capital, or is insolvent, or is conducting its business in an unsafe or unauthorized manner, the commissioner may notify the credit union to, and the credit union shall, cease these practices. The commissioner may notify the credit union to, and the credit union shall, temporarily suspend or entirely cease the transaction of any new business or the portion thereof as is ordered by the commissioner. Within 10 days from the date of a notification or order pursuant to this section, the credit union may request a hearing. Neither the request for a hearing nor the hearing itself shall stay the notification or order issued by the commissioner under this section.

(Amended by Stats. 1996, Ch. 1064, Sec. 571. Effective January 1, 1997. Operative July 1, 1997.)

14205. The commissioner may, upon reasonable notice and opportunity to be heard, suspend or revoke any certificate if the commissioner finds that the credit union has violated any provisions of this division or any rule or regulation of the commissioner made pursuant to this division, or if any fact or condition exists which, if it had existed at the time of the original application for certificate, reasonably would have warranted the commissioner in refusing originally to issue such certificate.

(Amended by Stats. 1980, Ch. 974, Sec. 5.)

14207. In any proceeding under this law, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(Added by Stats. 1979, Ch. 112.)

14208. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or bar from any position of employment or management of, any credit union, any officer, director, or employee of, or person performing similar functions for, a credit union, if the commissioner finds that:

(1) The censure, suspension or bar is in the public interest, that the person has committed a violation of this division or rule of the commissioner, and that the violation was either willful or caused, or will probably cause, material damage to the credit union or any member thereof.

(2) Any officer, director, employee of, or person performing similar functions for a credit union has been convicted of, or pleaded nolo contendere to, a crime, or has been held liable in a civil action by final judgment if the crime or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property.

(Amended by Stats. 1982, Ch. 716, Sec. 4.)

14209. (a) Whenever it appears to the commissioner that any person has engaged in or is about to engage in any acts or practices constituting a violation of any provision of this division or any rule or order adopted pursuant to this division, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver or conservator, which may include the commissioner, may be appointed for the defendant or the defendant's assets, and any other ancillary relief may be granted as appropriate. A receiver or conservator appointed by the court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, trustees, or persons who exercise similar powers and perform similar duties, including the powers expressly authorized by subdivision (b) of Section 14300.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a), a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award the additional relief.

(Repealed and added by Stats. 1990, Ch. 1202, Sec. 2.)

14211. In determining for purposes of this division whether the capital of any credit union is adequate, the commissioner shall consider the following:

(a) The nature and volume of the business and the proposed business of the credit union.

(b) The amount, nature, quality, and liquidity of the assets of the credit union.

(c) The amount and nature of the liabilities, including contingent liabilities, of the credit union.

(d) The history of, and prospects for, the credit union to earn and retain income.

(e) The nature and scope of the operations of the credit union.

(f) The performance of the management of the credit union.

(g) Any other factors as are, in the opinion of the commissioner, relevant.

(Added by Stats. 2002, Ch. 734, Sec. 15. Effective September 20, 2002.)

Article 2. Examinations and Reports
(Article 2 added by Stats. 1979, Ch. 112.)

14250. (a) (1) The commissioner may at any time investigate into the affairs and examine the books, accounts, records, files, and any office within or outside of this state used in the business of every credit union, whether it acts or claims to act under or without authority of this division.

(2) The commissioner and the commissioner's duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of every credit union referred to in paragraph (1).

(b) (1) The commissioner shall examine every credit union organized under the laws of this state to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two years.

(2) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from the National Credit Union Administration or a credit union regulatory agency of another state of the United States is deemed to be an examination made by the commissioner.

(3) No provision of this subdivision shall be deemed to require that the commissioner make an examination onsite at the offices of a credit union.

(Amended by Stats. 2003, Ch. 404, Sec. 16. Effective January 1, 2004.)

14251. The commissioner upon the written consent of any credit union officer or director may make any examination of the credit union in any regularly established office of the commissioner.

(Repealed and added by Stats. 1979, Ch. 112.)

14252. (a) A credit union with total assets equal to or greater than ten million dollars ($10,000,000) shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(b) The audit report called for in subdivision (a) shall with all of the following provisions:

(1) The audit report shall contain the audited financial statements of the credit union for, or as of the end of, the fiscal year, prepared in accordance with generally accepted accounting principles that the commissioner may specify, and any other information that the commissioner may specify.

(2) The audit report shall be based upon an audit of the credit union, conducted in accordance with generally accepted auditing standards, and any other requirements that the commissioner may specify.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is acceptable to the commissioner.

(4) The audit report shall include, or be accompanied by, a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the credit union to take any action that the commissioner may find necessary or advisable to enable the independent certified public accountant or independent public accountant to remove the qualification.

(c) A credit union with total assets of less than ten million dollars ($10,000,000) shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(d) The audit report called for in subdivision (c) may comply with all the provisions of subdivision (b), or may consist of alternative procedures acceptable to the commissioner. An alternative procedures audit may be performed by any of the following:

(1) An independent certified public accountant.

(2) An independent public accountant.

(3) The credit union's supervisory committee, provided that the audit complies with the requirements of Section 14533.

(e) Notwithstanding subdivision (d), the commissioner may reject an alternative procedures audit that he or she determines is not satisfactory. If the commissioner rejects an alternative procedures audit for any reason, he or she may order a credit union to obtain an audit that is satisfactory to the commissioner.

(f) The commissioner may, by order or regulation, either unconditionally or upon specified terms and conditions, grant an exemption from this section in any case where the commissioner finds that the requirements of this section are not necessary or advisable.

(Amended by Stats. 2004, Ch. 324, Sec. 1. Effective January 1, 2005.)

14253. A credit union shall, when requested by the commissioner, submit its unaudited financial statements, prepared in accordance with generally accepted accounting principles and consisting of at least a balance sheet and statement of income as of the date and for the period specified by the commissioner. The commissioner may require the submission of such reports on a monthly or other periodic basis.

(Repealed and added by Stats. 1979, Ch. 112.)

14254.5. (a) Except as provided in subdivisions (b) and (c), within 10 business days of opening, closing, or relocating a branch office, a credit union shall notify the commissioner in writing of the action, including the street and mailing addresses of the branch office.

(b) A credit union shall not establish a branch office in another state of the United States without the approval of the governmental authority with jurisdiction to license or charter credit unions in that state. “State” has the meaning set forth in Section 146.7.

(c) A credit union shall not establish a branch office in a foreign nation without the prior written approval of the commissioner. “Foreign nation” has the meaning set forth in Section 139.3.

(Amended by Stats. 2000, Ch. 612, Sec. 2. Effective January 1, 2001.)

14255. Every credit union shall make other special reports to the commissioner as the commissioner may from time to time require. Such reports shall be in the form and filed at such date as prescribed by the commissioner, and shall if required by him, be verified in such manner as he prescribes.

(Repealed and added by Stats. 1979, Ch. 112.)

14256. (a) If any credit union fails to file with the commissioner any report required by this division on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner, within the

extended time, or fails to include in the report any matter required by the commissioner, the failure is grounds for the suspension or revocation of the certificate authorizing the credit union to act as a credit union.

(b) If any credit union fails to file with the commissioner any report required by this division or by any order or regulation of the commissioner, on or before the day designated for the filing of the report or, if the time for filing the report is extended by the commissioner, within the extended time, or fails to include in the report any matter required by the commissioner, the commissioner may order the credit union to pay to the commissioner a civil penalty imposed pursuant to Section 216.3.

(Amended by Stats. 2003, Ch. 445, Sec. 15. Effective January 1, 2004.)

14257. Investigation and examination reports prepared by the commissioner's duly designated representatives shall not be public records. The reports may be disclosed to the officers, directors, members of the supervisors committee, members of the credit committee and key management personnel of a credit union which is the subject of a report for the purpose of corrective action by those persons. The disclosure shall not operate as a waiver of the exemption specified in subdivision (d) of Section 6254 of the Government Code.

(Added by Stats. 1988, Ch. 651, Sec. 2.)

Article 3. Enforcement

(Heading of Article 3 amended by Stats. 2002, Ch. 734, Sec. 16. Effective September 20, 2002.)

14300. For purposes of this chapter, the following terms shall have the following meanings:

(a) "Officer with a subject institution" means the position of director, officer, or employee with the subject institution.

(b) "Subject institution" means any of the following:

(1) A California credit union.

(2) A subsidiary of a California credit union.

(3) A foreign, whether other state or other nation, credit union, other than a federal credit union, that maintains an office in this state, with respect to the office.

(4) Any other person, other than a federal credit union, conducting business in this state.

(c) "Subject person," when used with respect to a subject institution, means any of the following:

(1) A director, officer, employee, or agent of the subject institution.

(2) A member, consultant, joint venture partner, or other person that participates in the affairs of a subject institution.

(3) An independent contractor, including an appraiser or accountant, who knowingly or recklessly participates in any of the following acts if the act caused or is likely to cause a material financial loss to, or a significant adverse effect on, the subject institution.

(A) A violation of any applicable law, regulation, or order.

(B) A breach of fiduciary duty.

(C) An unsafe or unsound act.

(d) "Violation" includes any act done alone or with other persons for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation of any applicable statute, regulation, provision of a written order issued by the commissioner, or provision of a written operating agreement signed by the commissioner and a subject institution or subject person.

(Repealed and added by Stats. 2002, Ch. 734, Sec. 18. Effective September 20, 2002.)

14301. Any requirement in this chapter for notice or hearing before the commissioner issues an order may be waived by the person to whom the order is issued.

(Repealed and added by Stats. 2002, Ch. 734, Sec. 20. Effective September 20, 2002.)

14302. (a) The commissioner may bring an action in the name of the people of this state in the superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under, this division or any regulation or order issued under this division. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or other relief may be granted as appropriate.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the court pursuant to this section may, with the approval of the court, exercise all powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties. No action at law or in equity may be

maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the court.

(c) If the commissioner finds that it is in the public interest, the commissioner may include in an action authorized by subdivision (a) a claim for ancillary relief, including a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award ancillary relief.

(d) Neither the provision of subdivision (a) that authorizes the appointment of a monitor, receiver, conservator, or other designated fiduciary or officer of the court, nor any provision of subdivision (b) or (c), applies to any of the following:

(1) A California credit union that is authorized by the commissioner to transact credit union business.

(2) A foreign, whether other state or other nation, credit union that maintains an office in this state in accordance with federal law, the law of this state, and the law of the credit union's domicile.

(e) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect any right that another person may have to bring the same or similar actions or to seek the same or similar relief.

(Repealed and added by Stats. 2002, Ch. 734, Sec. 22. Effective September 20, 2002.)

14303. (a) The commissioner may, without any prior notice or hearing, order a person to cease and desist from violating Section 14150 if either of the following criteria are met:

(1) The commissioner finds that the person has violated Section 14150.

(2) The commissioner finds that there is reasonable cause to believe that the person will imminently violate Section 14150.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner, or within any longer period to which the person consents, the order shall be deemed rescinded.

(c) Within 30 days after the hearing, or within any longer period to which the person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of a person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Repealed and added by Stats. 2002, Ch. 734, Sec. 24. Effective September 20, 2002.)

14304. If, after notice and a hearing, the commissioner finds any of the factors set forth in subdivision (a) or (b) with respect to a subject institution or subject person, the commissioner may order the subject institution or subject person to cease and desist from the action or violation:

(a) That the subject institution or subject person has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that the subject institution or subject person will imminently engage or participate in any unsafe or unsound act with respect to the business of the subject institution.

(b) That the subject institution or subject person has violated, is violating, or that there is reasonable cause to believe that the subject institution or subject person will imminently violate, any provision of this division, of any regulation or order issued under this division, of any other applicable law, or of any written agreement with the commissioner.

(Repealed and added by Stats. 2002, Ch. 734, Sec. 26. Effective September 20, 2002.)

14305. (a) If the commissioner finds that any of the factors set forth in Section 14304 is true with respect to a subject institution or subject person and that the action or violation is likely to have any of the consequences set forth in paragraphs (1) to (4), inclusive, the commissioner may, without any prior notice or hearing, order the subject institution or subject person to cease and desist from the action or violation:

(1) To cause the insolvency of the subject institution.

(2) To cause significant dissipation of the assets or earnings of the subject institution.

(3) To weaken the condition of the subject institution.

(4) To otherwise prejudice the interests of the members of the subject institution.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), any subject institution or subject person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner, or within any longer period to which the subject institution or subject person consents, the order shall be deemed rescinded.

(c) Within 30 days after the hearing, or within any longer period to which the subject institution or subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject institution or subject person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject institution or subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Added by Stats. 2002, Ch. 734, Sec. 27. Effective September 20, 2002.)

14306. An order issued pursuant to Sections 14303 to 14305, inclusive, may include any of the following provisions:

(a) Require the subject institution or subject person to take affirmative action to correct any condition resulting from the action or violation, including any of the following actions:

(1) To make restitution or provide reimbursement, indemnification, or guarantee against loss, if the subject institution or subject person was unjustly enriched in connection with the action or violation or if the action or violation involved a reckless disregard for any provision of this division, any regulation or order issued under this division, any other applicable law, or any agreement with the commissioner.

(2) Restrict the growth of the subject institution.

(3) Dispose of any loan or other asset involved.

(4) Correct violations of law.

(5) Employ qualified officers or employees, who may be subject to approval of the commissioner.

(6) Take any other action that the commissioner may find to be necessary or advisable.

(b) Limit the business activities or functions of the subject institution or subject person.

(Added by Stats. 2002, Ch. 734, Sec. 28. Effective September 20, 2002.)

14307. (a) If the commissioner finds that a subject institution's books or records are so incomplete or inaccurate that the commissioner is unable through the normal supervisory process to determine the financial condition of the subject institution or of the details or purpose of any transaction or transactions that may materially affect the financial condition of the subject institution, the commissioner may, without any prior notice or hearing, order the subject institution to do any of the following:

(1) To cease any activity or practice that gave rise, in whole or in part, to the incomplete or inaccurate state of the books or records.

(2) To take affirmative action to restore the books or records to a complete and accurate state.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), any subject institution or subject person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner, or within any longer period to which the subject institution or subject person consents, the order shall be deemed rescinded.

(c) Within 30 days after the hearing, or within any longer period to which the subject institution or subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject institution or subject person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject institution or subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Added by Stats. 2002, Ch. 734, Sec. 29. Effective September 20, 2002.)

14308. If, after notice and a hearing, the commissioner finds that any of the factors set forth in subdivision (a), any of the factors set forth in subdivision (b), and any of the factors set forth in subdivision (c) are true with respect to a subject person of a subject institution, the commissioner may issue an order suspending or removing the subject person from the subject person's office, if any, with the subject institution and prohibiting the subject person from participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner:

(a) (1) That the subject person has, directly or indirectly, violated any provision of this division, of any regulation or order issued under this division, of any other applicable law relating to the business of the licensee, or of any written agreement with the commissioner.

(2) That the subject person has, directly or indirectly, engaged or participated in any unsafe or unsound act in connection with the business of the subject institution or any other business institution.

(3) That the subject person has, directly or indirectly, engaged or participated in any act which constitutes a breach of the subject person's fiduciary duty.

(b) That, by reason of the act, violation, or breach of fiduciary duty described in subdivision (a) the following have occurred:

(1) The subject institution or business institution has suffered or will probably suffer financial loss or other damage.

(2) The interests of the members of the subject institution have been or could be prejudiced.

(3) The subject person has received financial gain or other benefit.

(c) That the act, violation, or breach of fiduciary duty described in subdivision (a) either involves dishonesty on the part of the subject person or demonstrates the subject person's willful or continuing disregard for the safety or soundness of the subject institution or business institution.

(Added by Stats. 2002, Ch. 734, Sec. 30. Effective September 20, 2002.)

14309. (a) If the commissioner finds that any of the factors set forth in subdivision (a) of Section 14308, any of the factors set forth in subdivision (b) of Section 14308, and any of the factors set forth in subdivision (c) of Section 14308 are true with respect to a subject person of a subject institution, and that an action is necessary or advisable for the protection of the subject institution or the interests of the members of the subject institution, the commissioner may, without any prior notice or hearing, issue an order that does both of the following:

(1) Suspends the subject person from the subject person's office, if any, with the subject institution.

(2) Prohibits the subject person from participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner.

(b) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a), any subject person to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner or within any longer period to which the subject person consents, the order shall be deemed rescinded.

(c) Within 30 days after the hearing or within any longer period to which the subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Added by Stats. 2002, Ch. 734, Sec. 31. Effective September 20, 2002.)

14310. (a) If the commissioner finds that any of the factors set forth in paragraph (1) and the factor set forth in paragraph (2) are true with respect to a subject person or former subject person of a subject institution, the commissioner may, without any prior notice or hearing, issue an order suspending the subject person or former subject person from his or her office, if any, with the subject institution and prohibiting him or her from further participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner:

(1) That the subject person or former subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with commission of or participation in any of the following crimes:

(A) A crime that involves dishonesty or breach of trust and that is punishable by imprisonment for a term exceeding one year.

(B) A criminal violation of any provision of this division.

(C) A criminal violation of Section 1956, 1957, or 1960 of Title 18 of, or Section 5322 or 5324 of Title 31 of, the United States Code.

(D) A criminal violation of a law of any jurisdiction other than the United States that is substantially similar to any of the statutes specified in subparagraph (c).

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the interests of the members of the subject institution or may threaten to impair public confidence in the subject institution.

(b) An order issued pursuant to subdivision (a) shall remain in effect until the indictment or the information, complaint, or similar pleading is finally disposed of or, if the order is earlier terminated by the commissioner, until the order is so terminated.

(c) If the commissioner finds that the factors set forth in paragraphs (1) and (2) are true with respect to a subject person or former subject person of a subject institution, the commissioner may, without any prior notice or hearing, issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the

subject institution and prohibiting him or her from further participating in any manner in the conduct of the affairs of the subject institution without the approval of the commissioner:

(1) That the subject person or former subject person has been finally convicted of any crime of the type described in paragraph (1) of subdivision (a). For purposes of this paragraph, an agreement to enter a pretrial diversion or similar program is deemed to be a conviction.

(2) That continued or resumed service or participation by the subject person or former subject person may pose a threat to the interests of the members of the subject institution or may threaten to impair public confidence in the subject institution.

(d) (1) (A) Within 30 days after an order is issued pursuant to subdivision (a) or (c), any subject person or former subject person of a subject institution to whom the order is issued may file with the commissioner an application for a hearing on the order.

(B) If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner or within any longer period to which the subject person or former subject person consents, the order shall be deemed rescinded.

(C) Within 30 days after the hearing or within any longer period to which the subject person or former subject person consents, the commissioner shall affirm, modify, or rescind the order. If the commissioner fails to affirm, modify, or rescind the order within this time limit, the order shall be deemed rescinded.

(2) The right of any subject person or former subject person of a subject institution to whom an order is issued pursuant to subdivision (a) or (c) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(e) The fact that any subject person of a subject institution charged with a crime of the type described in paragraph (1) of subdivision (a) is not finally convicted of the crime does not preclude the commissioner from issuing an order regarding the subject person pursuant to any other section of this division.

(Added by Stats. 2002, Ch. 734, Sec. 32. Effective September 20, 2002.)

14311. (a) Any subject institution, subject person of a subject institution, or former subject person of a subject institution to whom an order is issued under Sections 14308 to 14310, inclusive, may apply to the commissioner to modify or rescind the order. In deciding the application, the commissioner shall consider whether it is in the public interest to modify or rescind the order and whether it is reasonable to believe that the subject person or former subject person will, if and when he or she becomes a subject person of a subject institution, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any subject institution, subject person of a subject institution, or former subject person of a subject institution to whom an order is issued under Sections 14308 to 14310, inclusive, to petition for judicial review of the order shall not be affected by the failure of the subject institution, subject person, or former subject person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

(Added by Stats. 2002, Ch. 734, Sec. 33. Effective September 20, 2002.)

14312. (a) For purposes of this section, "subject depository institution" means any of the following:

(1) A credit union that is organized under the laws of this state or that maintains an office in this state.

(2) An affiliate of an institution specified in paragraph (1).

(b) It shall be unlawful for a subject person or former subject person of a subject institution to whom an order is issued under Sections 14308 to 14310, inclusive, willfully to do, directly or indirectly, any of the following without the approval of the commissioner so long as the order is in effect:

(1) To act as a subject person of any subject depository institution.

(2) To vote any shares or other securities having voting rights for the election of any person as a director of a subject depository institution.

(3) To solicit, procure, transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of a subject depository institution having voting rights.

(4) To otherwise participate in any manner in the conduct of the affairs of any subject depository institution.

(Added by Stats. 2002, Ch. 734, Sec. 34. Effective September 20, 2002.)

14313. If the commissioner finds that any of the factors set forth in subdivisions (a) to (g), inclusive, are true with respect to a California credit union, the commissioner may by order, without any prior notice or hearing, take possession of the property and business of the California credit union:

(a) That the California credit union has violated any provision of this division, of another applicable law, of any order issued under this division, or of any written agreement with the commissioner, or has committed a material violation of any regulation of the commissioner.

(b) That the California credit union is conducting its business in an unsafe or unsound manner.

(c) That the California credit union is in such condition that it is unsafe or unsound for it to transact credit union business.

(d) That the California credit union has inadequate capital or is insolvent.

(e) That the California credit union failed to pay any of its obligations as they came due or is reasonably expected to be unable to pay its obligations as they come due.

(f) That the California credit union has ceased to transact credit union business.

(g) That the California credit union has, with the approval of its board, requested the commissioner to take possession of its property and business.

(Added by Stats. 2002, Ch. 734, Sec. 35. Effective September 20, 2002.)

14314. (a) If the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the California credit union may, within 10 days, apply to the superior court in the county where its principal executive office is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the California credit union to the California credit union or make any further order as may be just. The judgment of the court may be appealed by the commissioner or by the California credit union in the manner provided by law for appeals from the judgment of a superior court.

(b) At any time after the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the California credit union may, with the approval of the commissioner, resume business upon conditions as the commissioner may prescribe.

(Added by Stats. 2002, Ch. 734, Sec. 36. Effective September 20, 2002.)

14315. (a) On taking possession of the business and assets of any credit union as provided in this chapter, the commissioner may proceed to liquidate the credit union in the manner provided by Article 1 (commencing with Section 3100), except Sections 3100, 3101, and 3102, Article 3 (commencing with Section 3160), and Article 7 (commencing with Section 3240) of Chapter 17 of Division 1, and the provisions of those articles, except Sections 3100, 3101, and 3102, shall apply as if the California credit union were a California state commercial bank, or he or she may appoint a liquidating agent or a liquidating committee of three members of the credit union to liquidate the business and assets of the credit union in the manner provided in Article 2 (commencing with Section 15250) of Chapter 9, except that in lieu of the certificate required under Section 15252 the commissioner shall prepare and file in the office of the Secretary of State a certificate of commencement of liquidation proceedings upon taking possession of the business and assets, and the commissioner or his authorized deputy shall countersign the certificate referred to in Sections 15257 and 15258 whenever liquidation is involuntary. The commissioner may, however, prepare and file a final certificate whenever he or she retains possession of the assets of any credit union for the purpose of liquidation. The liquidating agent need not be a member of the credit union to be liquidated, and may be a person, firm, or corporation as determined by the commissioner.

(b) If the commissioner takes possession of the property and business of a California credit union pursuant to Section 14313, the commissioner may tender to the National Credit Union Administration an appointment as conservator or receiver of the California credit union. If the National Credit Union Administration accepts the appointment, the National Credit Union Administration shall have, in addition to any powers conferred by federal law, the powers conferred on the commissioner pursuant to subdivision (a).

(Added by Stats. 2002, Ch. 734, Sec. 37. Effective September 20, 2002.)

14316. The commissioner shall supervise the acts of the liquidating agent or the liquidating committee appointed under this article and may remove the liquidating agent or any member of the liquidating committee in his or her discretion.

(Added by Stats. 2002, Ch. 734, Sec. 38. Effective September 20, 2002.)

14317. If required by the commissioner, the liquidating agent or the members of the liquidating committee appointed under this article shall provide proof of bond coverage extending to the liquidating agent or members of the liquidating committee. The bond shall include coverage for fraud, dishonesty, and faithful performance. The premium for that bond shall be paid out of the assets of the credit union.

(Added by Stats. 2002, Ch. 734, Sec. 39. Effective September 20, 2002.)

14318. If the commissioner retains possession of the assets of a credit union for purposes of liquidation, the commissioner shall use the services of civil service employees of the commissioner's office and the attorneys employed by the commissioner or the Department of Justice shall render all necessary legal services, as the commissioner may request.

(Added by Stats. 2002, Ch. 734, Sec. 40. Effective September 20, 2002.)

14319. In any case where the commissioner takes possession of a subject institution pursuant to this article without a prior notice or hearing, or takes action against a subject person without prior notice or hearing, the commissioner shall, upon taking possession or taking the action, concurrently provide to the subject institution or person a written order. The order shall set forth the condition or conditions of the subject institution or action or actions of the subject person that constitute the basis or bases for the commissioner's action as to the subject institution or subject person. In any case where the commissioner takes possession of a subject institution pursuant to this article, the commissioner shall establish clear evidence upon which he or she is taking action against the subject institution.
(Added by Stats. 2002, Ch. 734, Sec. 41. Effective September 20, 2002.)

Article 4. Costs of Administration
(Article 4 added by Stats. 1979, Ch. 112.)

14350. The commissioner shall annually levy on and collect from credit unions holding certificates authorizing them to act as credit unions, pro rata on the basis of total assets, an assessment in a total amount that is sufficient in the commissioner's opinion to (a) meet the expenses of the department in administering this division and other laws relating to credit unions or the credit union business that are not otherwise provided for and (b) provide a reasonable reserve for contingencies.
(Repealed (Jan. 1, 1999) and added by Stats. 1998, Ch. 539, Sec. 9. Effective January 1, 1999. Addition operative July 1, 1999, by Sec. 47 of Ch. 539.)

14351. (a) The amount of the annual assessment on any credit union holding a certificate authorizing it to act as a credit union shall be the greater of (1) one thousand five hundred dollars ($1,500) or (2) the sum of the products determined by multiplying (A) increments of the credit union's total assets by (B) percentages of the base assessment rate, according to the following table:

Total Assets (In millions)	Percentage of Base Assessment Rate
First $3	85.0%
Next $3	30.0%
Next $4	12.5%
Excess over $10	11.0%

(b) The base assessment rate for each annual assessment shall be fixed by the commissioner but shall not exceed two dollars and twenty cents ($2.20) per one thousand dollars ($1,000) of total assets.
(Repealed (Jan. 1, 1999) and added by Stats. 1998, Ch. 539, Sec. 11. Effective January 1, 1999. Addition operative July 1, 1999, by Sec. 47 of Ch. 539.)

14352. For purposes of the annual assessment, the total assets of a credit union holding a certificate authorizing it to act as a credit union shall be determined as of a date fixed by the commissioner. However, if a credit union does not hold a certificate authorizing it to act as a credit union as of that date but does so as of the date when the annual assessment is levied, its total assets for purposes of the annual assessment shall be determined as of the date of the levy.
(Repealed (Jan. 1, 1999) and added by Stats. 1998, Ch. 539, Sec. 13. Effective January 1, 1999. Addition operative July 1, 1999, by Sec. 47 of Ch. 539.)

14353. (a) Whenever the commissioner levies an annual assessment on credit unions holding certificates authorizing them to act as credit unions, the commissioner shall promptly mail or otherwise deliver to each credit union assessed an invoice that shows (1) the amount of the credit union's annual assessment and (2) the date when the annual assessment is due and payable.

(b) The annual assessment on a credit union holding a certificate authorizing it to act as a credit union becomes a liability of the credit union on the date on which the commissioner levies the annual assessment.

(c) If the annual assessment on a credit union holding a certificate authorizing it to act as a credit union is not paid on time, the commissioner shall be entitled to and may collect, in addition to the amount of the annual assessment, a penalty of 5 percent of the amount of the unpaid annual assessment for each month or part of a month that the payment is delinquent.
(Repealed (Jan. 1, 1999) and added by Stats. 1998, Ch. 539, Sec. 15. Effective January 1, 1999. Addition operative July 1, 1999, by Sec. 47 of Ch. 539.)

14353.5. Whenever the commissioner finds it necessary or advisable to make an extra examination of a credit union, the commissioner may charge the credit union a fee of seventy-five dollars ($75) per hour for each examiner engaged in the extra examination, and the credit union shall, within 10 days after the mailing or other delivery of a statement by the commissioner, pay the fee charged by the commissioner.
(Added by Stats. 1998, Ch. 539, Sec. 16. Effective January 1, 1999. Operative July 1, 1999, by Sec. 47 of Ch. 539.)

14354. There is established the Credit Union Fund in the State Treasury.
(Amended by Stats. 2003, Ch. 404, Sec. 17. Effective January 1, 2004.)

14355. All money received or collected by the commissioner under this division or any other law relating to credit unions or the credit union business shall be paid at least once each week, accompanied by a detailed statement thereof, into the State Treasury to the credit of the Credit Union Fund.
(Added by renumbering Section 14354 (as amended by Stats. 1992, Ch. 427) by Stats. 1996, Ch. 1064, Sec. 575. Effective January 1, 1997. Operative July 1, 1997.)

14356. All expenses of the department in administering this division and other laws relating to credit unions or the credit union business shall be paid out of the Credit Union Fund; and, except as otherwise provided in Section 276 or 277, the Credit Union Fund shall be used only for such purposes.
(Added by Stats. 1996, Ch. 1064, Sec. 576. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. Credit Union Advisory Committee
(Article 5 added by Stats. 1996, Ch. 1064, Sec. 577. Effective January 1, 1997. Operative July 1, 1997.)

14380. There is established in the department a Credit Union Advisory Committee.
(Added by Stats. 1996, Ch. 1064, Sec. 577. Effective January 1, 1997. Operative July 1, 1997.)

14381. The Credit Union Advisory Committee shall advise the commissioner and the Deputy Commissioner of Financial Institutions for the Division of Credit Unions on matters relating to credit unions or the credit union business.
(Added by Stats. 1996, Ch. 1064, Sec. 577. Effective January 1, 1997. Operative July 1, 1997.)

14382. (a) The Credit Union Advisory Committee consists of seven members.

(b) The members of the Credit Union Advisory Committee shall be appointed by the Secretary of the Business, Transportation and Housing Agency.

(c) The term of a member of the Credit Union Advisory Committee is two years. However, a member may be reappointed.

(d) Membership in the Credit Union Advisory Committee is voluntary. No person is required to accept an appointment to the Credit Union Advisory Committee, and any member may resign by filing a resignation with the commissioner.

(e) No member of the Credit Union Advisory Committee shall receive any compensation, reimbursement for expenses, or other payment from the state in connection with service on the Credit Union Advisory Committee.
(Added by Stats. 1996, Ch. 1064, Sec. 577. Effective January 1, 1997. Operative July 1, 1997.)

14383. The Credit Union Advisory Committee shall meet at least once each calendar quarter.
(Added by Stats. 1996, Ch. 1064, Sec. 577. Effective January 1, 1997. Operative July 1, 1997.)

14384. The commissioner may by order or regulation prescribe rules governing the Credit Union Advisory Committee and its members, including such matters as meetings, quorum, and actions.
(Added by Stats. 1996, Ch. 1064, Sec. 577. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 4. MANAGEMENT AND OPERATIONS

(Chapter 4 added by Stats. 1979, Ch. 112.)

Article 1. General

(Article 1 added by Stats. 1979, Ch. 112.)

14400. (a) The savings capital of a credit union shall consist of the payments made by members on shares as set forth in the credit union's written savings capital structure policy pursuant to Section 14862.

(b) The equity capital of the credit union shall consist of the credit union's regular reserve account, the undivided earnings account, any appropriated undivided earnings accounts, and other forms of capital approved by the commissioner.
(Amended by Stats. 2000, Ch. 411, Sec. 1. Effective September 12, 2000.)

14401. A credit union may borrow money from any source in an aggregate amount not to exceed 50 percent of the paid-in and unimpaired capital and surplus of the credit union. Loans from the National Credit Union Central Liquidity Facility (12 U.S.C. Sec. 1795 et seq.) shall not be included in computing the aggregate borrowings of a credit union. For the purposes of this division, "certificate for funds" means borrowed money.
(Amended by Stats. 2004, Ch. 183, Sec. 107. Effective January 1, 2005.)

14402. Every credit union may purchase and hold, either individually or jointly with other credit unions or affiliated organizations, a lot and building to be employed principally for the transaction of business, and to provide for future expansion of the facilities of such organizations. Any excess space which is not occupied by the organizations purhasing and holding the building may be leased to the public. The lot and building may be sold, if all the holders of the property join in its sale.
(Repealed and added by Stats. 1979, Ch. 112.)

14403. Every credit union may purchase and hold, either individually or jointly with other credit unions or affiliated organizations, furniture, fixtures, vaults, and other personal property necessary or proper to carry on its business, and to equip or furnish any space in any building purchased or held individually or jointly with other credit unions or affiliated organizations under authorization of Section 14402, whether occupied by the credit union or leased to the public. The personal property may be sold, if all the holders of the property join in its sale.
(Amended by Stats. 1979, Ch. 811.)

14404. A credit union shall not invest more than the amounts permitted pursuant to regulations which shall be promulgated by the commissioner for the investments set forth in Sections 14402, 14403, 14650 and 14651.
(Repealed and added by Stats. 1983, Ch. 743, Sec. 2. Operative July 1, 1984, by Sec. 11 of Ch. 743.)

14405. Every credit union may:

(a) (1) Become a member of any organization or organizations composed of credit unions, credit associations, chambers of commerce, or financial institutions.

(2) Become a member of any nonprofit organization approved by the board of directors.

(b) Pay dues and assessments as may be levied upon it by any organization of which it is a member.
(Amended by Stats. 2000, Ch. 411, Sec. 2. Effective September 12, 2000.)

14406. The savings capital, undivided profits, and reserve funds of a credit union shall be deposited only in the following:

(a) Commercial banks or trust companies, incorporated under the laws of this state.

(b) National banks doing business in this state.

(c) Shares or periodic certificates for funds received by or any form of evidence of interest or indebtedness issued by any credit union organized under this division or by any other credit union if its member accounts are insured as provided for by Subchapter II of the Federal Credit Union Act (12 U.S.C. Sec. 1781 et seq.), or, alternatively, are insured by other means determined acceptable by the commissioner.

(d) Accounts with, investment certificates or withdrawable shares of, any savings and loan association doing business in this state that is an insured institution pursuant to the Federal Deposit Insurance Corporation Act (12 U.S.C. Sec. 1811 et seq.).
(Added by Stats. 2000, Ch. 529, Sec. 1. Effective January 1, 2001.)

14407. (a) Whenever the losses of any credit union resulting from a depreciation in the value of its securities or otherwise exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due its shareholders, the credit union may, if approved by a majority of all members at a meeting called to

consider the matter, order a reduction of the liability to each of its shareholders, so as to divide the loss equitably among the shareholders. If thereafter the credit union realizes from its assets a greater amount than was fixed in the order of reduction, the excess shall be divided among the shareholders whose assets were reduced, but to the extent of the reduction only.

(b) The commissioner may approve a reduction in the liability on shares approved by less than a majority of all members as provided in subdivision (a) if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the question was mailed to each member entitled to vote upon the question, (2) the notice disclosed the purpose of the meeting and properly informed the membership that approval of the reduction in liability might be sought pursuant to this subdivision, and (3) that a majority of the votes cast upon the question were in favor of the reduction in liability.

(Amended by Stats. 1998, Ch. 539, Sec. 18. Effective January 1, 1999.)

14408. No credit union shall make any gift or donation having a value in excess of one thousand dollars ($1,000) unless the gift or donation is in the best interest of the credit union, is approved by a resolution of the board of directors and is in conformance with any regulation or order that the commissioner may issue. The resolution of the board of directors approving the gift or donation shall identify the recipient of the gift or donation, state the value of the gift or donation, and specify the basis for the board's determination that the gift or donation is in the best interests of the credit union.

(Amended by Stats. 1998, Ch. 539, Sec. 19. Effective January 1, 1999.)

14409. (a) Every credit union shall obtain adequate bond or insurance coverage, for each director, officer, supervisory committee member, and credit committee member, for the credit manager, and for each employee.

(b) The commissioner may adopt regulations setting forth guidelines with respect to the minimum amount of the bond or insurance coverage deemed adequate. The regulations may be based upon the gross assets of the credit union and may contain a formula or schedule for the calculation of minimum bond or insurance coverage.

(Amended by Stats. 1998, Ch. 539, Sec. 20. Effective January 1, 1999.)

14409.2. (a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, any credit union or officer or employee thereof may deliver fingerprints taken of an applicant for employment by the credit union to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the applicant relating to convictions, and to any arrest for which the applicant is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the credit union responsible for the final decision regarding employment of the applicant, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the credit union, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the credit union determines that employment of the applicant would constitute an unreasonable risk to the credit union or its customers, the applicant may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting credit union pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the applicant.

(d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(Amended by Stats. 1982, Ch. 1203, Sec. 13. Effective September 22, 1982. Operative January 1, 1983, by Sec. 20 of Ch. 1203.)

14410. (a) No member of the board of directors, supervisory committee, or credit committee shall receive any compensation for his or her services as a member of the board of directors, supervisory committee, or credit committee, but he or she may be provided with reasonable health, accident, and similar insurance. Nothing in this subdivision shall prohibit a member of the board of directors, supervisory committee, or credit committee from receiving nonmonetary compensation that is incidental to the person's service as a member of the board of directors, supervisory committee, or credit committee, if and as approved by regulation or order of the commissioner.

(b) Notwithstanding subdivision (a), a director or committee member may be reimbursed for actual expenses incurred in the performance of his or her duties if reimbursement is made pursuant to the requirements of the commissioner's regulations controlling expense reimbursement by the credit union. Reimbursement for actual expenses may include,

among other things, travel expenses incurred on or relating to credit union business, and any other matters, categories, or items of expense that the commissioner may establish by regulation.

(c) Nothing in this section shall prevent any person from receiving compensation for actual services as a general manager, credit manager, loan officer, or other position as an employee of the credit union.
(Amended by Stats. 1998, Ch. 539, Sec. 21. Effective January 1, 1999.)

Article 2. Directors
(Article 2 added by Stats. 1979, Ch. 112.)

14450. The credit union shall be directed by a board consisting of an odd number of directors, at least five in number, each of whom shall be a member of the credit union in his own right, to be elected by the members at their annual meeting.
(Amended by Stats. 1979, Ch. 811.)

14451. Directors may be elected for a term of three years or less. If directors are elected for terms in excess of one year their terms of office shall be staggered so that insofar as possible an equal number of such terms shall expire each year.
(Repealed and added by Stats. 1979, Ch. 112.)

14452. The office of any director shall be declared vacant if such director is absent from three consecutive regular meetings of the board of directors unless excused therefrom.
(Repealed and added by Stats. 1979, Ch. 112.)

14452.5. A vacancy on the board of directors shall be filled in accordance with Section 7224 of the Corporations Code, subject to the following:

(a) A vacancy that exists due to the expiration of the term of a director shall be filled only by the members of a credit union.

(b) If the board of directors elects a director to fill a vacancy, the director so elected shall hold office only until the next annual meeting at which time the members shall elect a director to hold office until the expiration of the term for which elected.

(c) If the members elect a director to fill a vacancy, the director so elected shall hold office until the expiration of the term for which elected.
(Added by Stats. 1998, Ch. 539, Sec. 22. Effective January 1, 1999.)

14453. The board of directors of every credit union shall have the general management of the affairs, funds and records of the credit union. The board, with the written approval of the commissioner, may appoint an executive committee of no fewer than three directors, to serve at its pleasure, to act for it in the purchase and sale of securities, the investment and withdrawal of funds, in borrowing funds, and in making loans to other credit unions in accordance with the law and regulations.
(Amended by Stats. 1980, Ch. 52, Sec. 4.)

14454. The directors shall hold a meeting of all directors within 10 days after the annual meeting of members pursuant to Section 14804 for the purpose of electing the officers of the credit union as prescribed in Sections 14500 and 14501.
(Amended by Stats. 1985, Ch. 951, Sec. 4.)

14456. Unless the bylaws expressly reserve any or all of the following duties to the members, the directors have all of the following special duties:

(a) To act upon all applications for membership. The directors may delegate the power to approve applications for new membership to: (1) the chairperson of a membership committee or to an executive committee; or (2) any officer, director, committee member, or employee, pursuant to a written membership plan adopted by the board of directors, provided the board of directors reviews at least quarterly any membership application approved by an officer, director, committee member, or employee.

(b) To expel members for any of the following causes:

(1) Conviction of a criminal offense involving moral turpitude.

(2) Failure to carry out contracts, agreements or obligations with the credit union.

(3) Refusal to comply with the provisions of this division or of the bylaws.

Any members who are expelled by the board of directors have the right to appeal therefrom to the members, in which event, after hearing, the order of suspension may be revoked by a two-thirds vote of the members present at a special meeting to consider the matter.

(c) To determine from time to time the interest rate on obligations with members and to authorize the payment of interest refunds to borrowing members.

(d) To fix the maximum number of shares which may be held by, and, in accordance with Section 15100, establish the maximum amount of obligations which may be entered into with, any one member.

(e) To declare dividends on shares in accordance with the credit union's written capital structure policy and to determine the interest rate or rates which will be paid on certificates for funds.

(f) To amend the bylaws, except where membership approval is required.

(g) To fill vacancies in the credit committee, and to temporarily fill vacancies caused by the suspension of any or all members of the credit committee, pending a meeting of the members to determine whether to affirm the suspension and vacate the office, or to reinstate the member or members.

(h) To direct the deposit or investment of funds, except loans to members.

(i) To designate alternate members of the credit committee who shall serve in the absence or inability of the regular members to perform their duties.

(j) To perform or authorize any action not inconsistent with law or regulation and not specifically reserved by the bylaws for the members, and to perform any other duties as the bylaws may prescribe.

(Amended by Stats. 1998, Ch. 539, Sec. 22.5. Effective January 1, 1999.)

Article 3. Officers
(Article 3 added by Stats. 1979, Ch. 112.)

14500. (a) The officers of every credit union shall include a chairman or president, one or more vice chairmen or vice presidents, a secretary and a treasurer or chief financial officer.

(b) The officers of any credit union may include other officers with titles and duties specified in the bylaws or determined by resolution of the board as may be necessary for the conduct of its affairs. The president, or if there is no president, the chairman of the board, is the general manager and chief executive officer of the credit union, unless otherwise provided in the bylaws.

(c) Except as otherwise provided in a credit union's bylaws, officers, other than those officers elected pursuant to Section 14454 and required pursuant to subdivision (a), shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract or obligation with the credit union to which the officer is a party. An officer other than those officers required pursuant to subdivision (a), may, but need not be, a director of the credit union.

(Amended by Stats. 1985, Ch. 951, Sec. 6.)

14501. If the bylaws so provide, the directors may elect the same person as secretary and treasurer or chief financial officer.

(Amended by Stats. 1985, Ch. 951, Sec. 7.)

14502. The powers and duties of the officers of any credit union required pursuant to subdivision (a) of Section 14500 are as prescribed in the bylaws.

(Amended by Stats. 1985, Ch. 951, Sec. 8.)

Article 4. Supervisory Committee
(Article 4 added by Stats. 1979, Ch. 112.)

14550. Every credit union shall have a supervisory committee of at least three persons, each of whom shall be a member of the credit union.

(Repealed and added by Stats. 1979, Ch. 112.)

14551. The supervisory committee may:

(a) Suspend at any time by unanimous vote, at a meeting called for that purpose, the credit committee, or any member thereof, or the credit manager, or any member of the board of directors, or any officer.

(b) By a majority vote call a meeting of the members to consider any violation of this division or the bylaws, or any practices of the credit union which, in the opinion of the committee, are unsafe or unauthorized.

(c) Inspect the securities, cash, and accounts of the credit union.

(d) Fill vacancies in the supervisory committee until the next annual meeting of the members.

(e) Declare vacant any office of a member of the supervisory committee if such member is absent from three consecutive regular meetings of the supervisory committee unless excused therefrom or is completely inactive as a member of the supervisory committee for a consecutive 12 months' period.

(Amended by Stats. 1996, Ch. 330, Sec. 1. Effective January 1, 1997.)

14551.5. The supervisory committee shall be responsible for reviewing the credit union's policies and control procedures to safeguard against fraud and self-dealing, and the supervisory committee shall exercise whatever efforts are necessary pursuant to Sections 14551 and 14553 to meet those responsibilities.

(Added by Stats. 1996, Ch. 330, Sec. 2. Effective January 1, 1997.)

14552. The supervisory committee shall, within seven days after suspension of any or all members of the credit committee, or any member of the board of directors, or any other officer, cause notice of a special meeting to be given to the members to take such action regarding the suspension as the members deem necessary.

(Amended by Stats. 1985, Ch. 951, Sec. 9.)

14553. (a) The supervisory committee shall at least once each year make or cause to be made an audit of the books and records and an examination of the business and affairs of the credit union. The supervisory committee shall make a full report of the assets and liabilities, receipts and disbursements of the credit union to the board of directors. Those reports shall be presented at the annual meeting of members and filed with the records of the credit union.

(b) The supervisory committee may make or cause to be made any supplementary inspections of the securities, cash, and accounts of the credit union or audits as it deems necessary, and submit reports of those audits to the board of directors.

(Amended by Stats. 1998, Ch. 539, Sec. 23. Effective January 1, 1999.)

14554. No member of the supervisory committee shall serve as a member of the credit committee, as the credit manager, as a member of the board of directors, or as an employee of the credit union.

(Amended by Stats. 1982, Ch. 691, Sec. 6.)

14555. The commissioner may, after investigation and finding that the supervisory committee is not performing in conformance with this article, declare all offices of the supervisory committee of a credit union vacant and shall direct the board of directors of the credit union to call a special meeting of the members for the purpose of electing a new supervisory committee to serve until the next regular annual meeting.

(Amended by Stats. 1979, Ch. 811.)

Article 5. Credit Committee and Loan Officers

(Article 5 added by Stats. 1979, Ch. 112.)

14600. Every credit union shall have a credit committee of at least three persons, each of whom shall be a member of the credit union, or in the alternative, a credit manager, to have general supervision of all obligations of members. The bylaws of the credit union shall provide that either: (1) the members of the credit committee shall be elected by the members of the credit union at their annual meeting, or (2) they shall be appointed by the board of directors, or (3) that the board of directors may establish the position of credit manager in lieu of a credit committee. The bylaws of the credit union shall provide for the terms of office of the credit committee, where the credit committee has been provided for in the bylaws, which shall not exceed three years, and which may be staggered.

(Amended by Stats. 1984, Ch. 789, Sec. 3.)

14601. No member of the credit committee or the credit manager or any loan officer shall serve as a member of the supervisory committee.

(Amended by Stats. 1998, Ch. 539, Sec. 24. Effective January 1, 1999.)

14602. (a) (1) No credit union shall create any obligation with a credit union member, without the written approval of a majority of all the members of the credit committee, the credit manager, or a loan officer appointed as provided in this section.

(2) Paragraph (1) does not apply to the creation of an obligation in accordance with a credit scoring program, preapproval credit program, or similar program, if the program was adopted by the board of directors, credit committee, or credit manager and complies with a written lending policy on programs of that type established by the board of directors in accordance with Section 15100.

(b) The credit committee or the credit manager may, with the approval of the board of directors, appoint one or more loan officers who shall be authorized to approve obligations with credit union members.

(c) Neither the credit committee, a credit manager, or any loan officer shall have the power to approve membership applications.

(d) No loan officers shall be permitted to approve any extension agreement of any obligation or the refinancing of any obligation except as prescribed in regulations promulgated by the commissioner.

(e) The credit committee, or in the alternative, the credit manager shall be provided with a record of each obligation approved or not approved by any loan officer, within 30 days of the approval or disapproval.

(Amended by Stats. 1998, Ch. 539, Sec. 25. Effective January 1, 1999.)

14603. The credit committee, the credit manager, or a loan officer may approve in advance, upon their own motion or upon the application of any member, the extension of credit to any member and loans may be granted to such member within the limit of such extension of credit authorized by the board of directors pursuant to Section 15100. Where an extension of credit has been approved, applications for any extension of credit need not be approved by the credit committee, the credit manager, or loan officer as long as the aggregate amount of such obligations does not exceed the limit of such extension of credit authorized by the board of directors pursuant to Section 15100. The credit committee, the credit manager, or loan officer shall review, from time to time, all extensions of credit approved by them and any extension of credit approved for any member shall expire if such member becomes ineligible for a loan or becomes more than 90 days delinquent in his obligations to the credit union.

(Amended by Stats. 1984, Ch. 209, Sec. 2.)

14604. A credit union member whose written application to enter into any obligation is denied, may appeal from the denial of the credit committee, the credit manager, or loan officer to the board of directors.

(Amended by Stats. 1984, Ch. 789, Sec. 5.)

14605. A credit manager shall not disburse or have the authority to authorize any person to disburse the proceeds of any loan. A credit manager shall not authorize or make loans to other credit unions.

(Added by Stats. 1982, Ch. 691, Sec. 12.)

Article 6. Investments
(Article 6 added by Stats. 1979, Ch. 112.)

14650. Subject to the limitations of Sections 14402, 14403, and 14404, any credit union or credit unions may purchase, acquire and hold outstanding shares of a corporation engaged exclusively in holding property of the character described in Section 14402 and which property is or is to be used for the purposes set forth in Section 14402. The purchase or acquisition of stock of any such corporation shall be approved by two-thirds of all the directors of such credit union or credit unions.

(Added by Stats. 1979, Ch. 112.)

14651. (a) Every credit union may invest in the shares of stock of a corporation, or in membership or economic interests of a limited liability company, organized solely for the purpose of providing services to credit unions, provided the corporation or limited liability company is formed by a credit union or group of credit unions.

(b) Every credit union may invest in the securities of a corporation or in membership or economic interests of a limited liability company that is not a corporation or limited liability company of the type described in subdivision (a) and that provides services to credit unions, provided the investment is approved by the commissioner.

(Amended by Stats. 1998, Ch. 539, Sec. 25.3. Effective January 1, 1999.)

14652. Every credit union may invest in securities and other assets described in Chapter 9 (commencing with Section 1000) of the Banking Law as legal investments for savings banks.

(Amended by Stats. 1998, Ch. 539, Sec. 25.7. Effective January 1, 1999.)

14652.5. A credit union may organize, sponsor, operate, control, or render investment advice to, an investment company, or underwrite, distribute, or sell securities of any investment company which has qualified to sell its securities in this state pursuant to Part 2 (commencing with Section 25100) of Division 1 of Title 4 of the Corporations Code, if the officers and employees of the credit union who sell these securities meet such standards with respect to training, experience, and sales practices as established by the Secretary of the Business, Transportation and Housing Agency or the secretary's designee. For the purpose of this section, "investment company" means an investment company as defined in the Investment Company Act of 1940 (15 U.S.C., Sec. 80a-1 et seq.).

(Added by Stats. 1982, Ch. 1050, Sec. 4. Operative July 1, 1984, or earlier, as prescribed by Sec. 6 of Ch. 1050.)

14653. Credit unions may invest in a trust organized solely for the purpose of investing in United States government securities and United States government agency securities, provided the trust is formed by an organization composed of credit unions or an organization of credit union associations.
(Amended by Stats. 1998, Ch. 539, Sec. 26. Effective January 1, 1999.)

14653.5. Notwithstanding any other provision of law, a credit union may make any investment authorized by regulation or in writing by the commissioner.
(Added by Stats. 1985, Ch. 951, Sec. 10.)

14654. Credit unions may purchase from the vendor or lessor of any personal property, conditional sale contracts or vehicle lease agreements covering the sale or lease of that property or vehicle to its members. The credit union may hold and retain any such conditional sale contract or vehicle lease agreement as an investment.
(Amended by Stats. 1982, Ch. 1570, Sec. 4.5.)

14655. A credit union may purchase from the owner thereof a promissory note upon which a member is primary obligor provided the credit union could have made a loan to such member in the amount and upon the terms and conditions provided in such note under the provisions of this division.
(Added by Stats. 1979, Ch. 112.)

14656. A credit union may, in accordance with rules and regulations prescribed by the commissioner, purchase from any liquidating credit union notes made by individual members of such liquidating credit union, at such prices and under such terms as may be agreed upon by the board of directors of the purchasing credit union and the board of directors, or liquidating agent, of the liquidating credit union.
(Added by Stats. 1979, Ch. 112.)

Article 7. Reserves
(Article 7 added by Stats. 1979, Ch. 112.)

14700. Every credit union shall create and maintain a regular reserve as specified by the commissioner.
(Amended by Stats. 1998, Ch. 539, Sec. 27. Effective January 1, 1999.)

14701. Losses incurred by a credit union may be charged to its regular reserve as permitted by rule of the commissioner.
(Amended by Stats. 1981, Ch. 765, Sec. 3.)

14702. In addition to the regular reserve, special reserves shall be established when required by regulation or when found necessary by the board of directors of the credit union or by the commissioner.
(Amended by Stats. 1980, Ch. 1097, Sec. 6.)

14703. A credit union shall establish and maintain an allowance-for-loan-losses account in accordance with generally accepted accounting principles. The commissioner may order the credit union to increase the amount of its allowance-for-loan-losses account if the commissioner finds that the amount of the account is not adequate.
(Amended by Stats. 2004, Ch. 324, Sec. 2. Effective January 1, 2005.)

Article 8. Penalties
(Article 8 added by Stats. 1979, Ch. 112.)

14750. Any officer, director, member of a committee of a credit union, loan officer appointed pursuant to Section 14602, or employee who knowingly permits the creation of an obligation with, or participates in the creation of an obligation with, a nonmember of the credit union, or knowingly permits the creation of an obligation or participates in the creation of an obligation which is not made in conformity with the requirements of this division, is guilty of a misdemeanor.
(Amended by Stats. 1984, Ch. 789, Sec. 6.)

14751. Any officer, director, member of a committee, credit manager, or loan officer appointed pursuant to Section 14602 who violates Section 14750 is primarily liable to the credit union for the amount of any obligation that was created in violation of Section 14750. The illegality of the creation of the obligation is no defense in an action by the credit union to recover any amounts owing as a result of any obligation created in violation of Section 14750.
(Amended by Stats. 1984, Ch. 789, Sec. 7.)

14752. Except as provided for in Section 14051 and this article, any person who willfully violates any provision of this division, or who willfully violates any rule or order issued pursuant to this division, shall upon conviction be fined not more than ten thousand dollars ($10,000) or imprisoned in the state prison, or in a county jail for not more than one

year, or be punished by both such fine and imprisonment, but no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not bar the exercise of the administrative authority of the commissioner provided in Section 14208.
(Amended by Stats. 1986, Ch. 673, Sec. 1.)

14753. Any director, officer, or employee of a credit union who asks for, receives, or agrees to receive any money, property, or thing of value for his personal benefit or advantage for (a) procuring or attempting to procure for any person any loan from that credit union, (b) for the purchase or discount of any note, draft, check, bill of exchange, or other obligation by that credit union, or (c) for permitting any person to overdraw any account with that credit union, is guilty of a felony.
(Added by Stats. 1986, Ch. 673, Sec. 2.)

14754. Any director, officer, or employee of a credit union who knowingly overdraws his or her account with that credit union, except for any overdraft pursuant to an agreement which is approved in advance as provided in Section 14603 and which is in conformity with Section 15050, is guilty of a felony.
(Added by Stats. 1986, Ch. 673, Sec. 3.)

14755. Any director, officer, agent, or employee of any credit union who knowingly receives or possesses the credit union's property otherwise than in payment of a just demand with intent to defraud, omits to make or omits to cause to be made a full and true entry thereof in the credit union's books and accounts, or concurs in omitting to make any material entry thereof, is guilty of a felony.
(Added by Stats. 1986, Ch. 673, Sec. 4.)

14756. Any director, officer, agent, or employee of a credit union who (1) knowingly concurs in making or publishing any written report, exhibit, or statement of the credit union's affairs or financial condition containing any material statement which is false, or (2) having the custody of the credit union's books, willfully refuses or neglects to make any proper entry in those books as required by law, or (3) refuses to allow the books to be inspected or extracts to be taken therefrom by the commissioner or the commissioner's deputies or examiners, is guilty of a felony.
(Added by Stats. 1986, Ch. 673, Sec. 5.)

14758. Any director, officer, or employee of a credit union who makes or maintains, or attempts to make or maintain, a deposit of the credit union's funds with any other person on the condition or with the understanding, whether express or implied, that the person receiving that deposit will make a loan or advance, directly or indirectly, to any director, officer, or employee of the credit union is guilty of a felony.
(Added by Stats. 1986, Ch. 673, Sec. 7.)

14759. Any officer, director, employee, or agent of any credit union who willfully makes a false or untrue entry in any book, record, report, statement concerning the business or affairs of the credit union, or statement of condition or in connection with any transaction of the credit union with intent to deceive any officer or director thereof, or with intent to deceive any agent or examiner, whether private or public, employed or lawfully appointed to examine into the credit union's condition or to examine into any of the credit union's affairs or transactions, or with intent to deceive any public officer, office, or board to which the credit union is required by law to report or which has authority by law to examine into the credit union's affairs or transactions or to examine into any of the credit union's affairs or transactions or who, with like intent, willfully omits to make a new entry of any matter particularly pertaining to the business, property, condition, affairs, transactions, assets, or accounts of the credit union in any book, record, report, or statement of the credit union, or who with like intent alters, abstracts, conceals, or destroys any book, record, report, or statement of the credit union made, written, or kept, or required to be made, written, or kept by him or her or under his or her direction, is guilty of a felony.
(Added by Stats. 1986, Ch. 673, Sec. 8.)

14760. (a) Every director of a credit union is guilty of a misdemeanor who:

(1) In case of the fraudulent insolvency of that credit union, has participated in the fraud; or

(2) Willfully does any act in his or her capacity as director which is expressly forbidden by law or willfully omits to perform any duty imposed upon him or her as such a director by law.

(b) The insolvency of a credit union is deemed fraudulent for the purposes of this section, unless its affairs appear upon investigation to have been administered lawfully and with the same care and diligence that agents receiving a compensation for their services are bound to observe.
(Added by Stats. 1986, Ch. 673, Sec. 9.)

14761. Any officer or agent of any credit union who makes or delivers any guaranty or endorsement on behalf of the credit union whereby the credit union may become liable upon any of the credit union's discounted notes, bills, or obligations in a sum beyond the amount of loans and discounts which the credit union may lawfully make, is guilty of a misdemeanor.
(Added by Stats. 1986, Ch. 673, Sec. 10.)

14762. A director of a credit union who concurs in any vote or act of the directors of the credit union by which it is intended to make a loan or discount to any director of the credit union exceeding the amount allowed by law, is guilty of a misdemeanor.
(Added by Stats. 1986, Ch. 673, Sec. 11.)

14763. Any officer or employee of any credit union who intentionally conceals from the directors of the credit union any discounts or loans made by the credit union between the regular meetings of its board of directors, or intentionally conceals the purchase of any securities or the sale of the credit union's securities during that period, or who knowingly fails to report to the board of directors when required to do so by law all discounts or loans made by the credit union and all securities purchased or sold by the credit union between the regular meetings of its board of directors, is guilty of a misdemeanor.
(Added by Stats. 1986, Ch. 673, Sec. 12.)

14764. No credit union shall purchase any real or personal property or any interest in real or personal property, including, but not limited to, a leasehold, or any contract arising from the sale of real or personal property or any note or bond in which any officer, director, or employee of the credit union is personally or financially interested, directly or indirectly, for that person's own account or as the partner or agent of others, without first obtaining the written consent of the commissioner.
(Added by Stats. 1986, Ch. 673, Sec. 13.)

14765. No officer, director, or employee of a credit union shall purchase, directly or indirectly, or be interested in the purchase of, any of the credit union's assets for an amount less than the then current market value thereof. Every person violating this section shall be liable to the people of this state for each offense in the amount of twice the market value of the assets so purchased.
(Added by Stats. 1986, Ch. 673, Sec. 14.)

14766. No officer, director, or employee of a credit union, directly or indirectly, shall purchase or be interested in the purchase of, any of the credit union's obligations or assets for an amount less than the book value thereof, unless all the directors of the credit union previously approve the purchase by resolution and a copy of the resolution is delivered to the commissioner immediately after adoption. Every person violating this section shall be liable to the people of this state for each offense in the amount of twice the book value of the assets so purchased.
(Amended by Stats. 1998, Ch. 539, Sec. 29. Effective January 1, 1999.)

14767. It is unlawful for any person willfully to make any untrue statement of a material fact in any document filed with the commissioner under this division, or willfully to omit to state in any document any material fact which is required to be stated therein.
(Added by Stats. 1988, Ch. 651, Sec. 5.)

14768. Any officer, director, employee, or agent of any credit union who abstracts or willfully misapplies any of the money, funds, or property of the credit union, or willfully misapplies its credit, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the credit union. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.
(Added by Stats. 1990, Ch. 947, Sec. 4.)

CHAPTER 5. MEMBERS

(Chapter 5 added by Stats. 1979, Ch. 112.)

14800. (a) Every credit union may admit to membership those persons qualified for membership upon the occurrence of any of the following:

(1) Upon the purchase of a membership in the credit union as provided in the credit union's bylaws.

(2) Upon the payment of an entrance fee established from time to time by the board of directors.

(3) Upon the purchase of one or more shares in the credit union as provided in the credit union's bylaws.

(b) No officer, director, committee member, or employee of any credit union shall approve a person for admission to membership or admit an applicant for membership in the credit union or extend any benefit or service of the credit union to any person, unless that person is admitted to membership in the credit union pursuant to subdivision (a).

(c) Nothing in subdivisions (a) and (b) shall be construed to limit the powers of a credit union to engage in joint service programs or business relationships for the benefit of their members where some incidental benefit may flow to third parties to the transaction or the authority for a credit union to engage in joint loan programs pursuant to Section 14959.

(d) Nothing in this section prohibits a credit union from admitting to membership a corporation in which the credit union holds shares pursuant to Section 14650 or a corporation formed to provide services to credit unions or to credit union members in which the credit union holds shares or a limited liability company formed to provide services to credit unions or to credit union members in which the credit union holds membership or economic interests pursuant to Section 14651.

(Amended by Stats. 2000, Ch. 411, Sec. 3. Effective September 12, 2000.)

14801. Every credit union may expel members as provided in Section 14456 of this division and Section 7341 of the Corporations Code.

(Amended by Stats. 1984, Ch. 209, Sec. 4.)

14802. Each member shall keep the credit union informed of his current address. In the event a member fails to do this, a charge may be made to the member's share account for the actual cost of necessary locator service incurred in determining such an address; provided, however, that such charge shall not exceed five dollars ($5). Such charge shall be made only for amounts paid to a person or concern normally engaged in providing such service and shall be made against the account or accounts of any one member no more than once in any 12-month period.

(Repealed and added by Stats. 1979, Ch. 112.)

14803. (a) No credit union shall pay any commission or compensation to any person for securing a new member or for getting an existing member to make an additional deposit.

(b) Notwithstanding subdivision (a), a credit union may, pursuant to an incentive policy approved by the board of directors, offer and pay a reasonable incentive or inducement to (1) a nonmember for becoming a member of the credit union, (2) an existing member for depositing additional funds, and (3) an employee or member who assists in getting a nonmember to become a new member of the credit union or who assists in getting an existing member to make an additional deposit.

(c) Nothing in subdivision (a) limits a credit union from using growth in the number of members in the credit union as part of its compensation program for its employees.

(Amended by Stats. 1998, Ch. 539, Sec. 31. Effective January 1, 1999.)

14804. The members of a credit union shall hold an annual meeting for the election of directors and a supervisory committee and, if provided for in its bylaws, the election of a credit committee, upon such notice and at such time and place as the bylaws provide.

(Amended by Stats. 1982, Ch. 180, Sec. 3.)

14805. Special meetings of members may be held upon order of the board of directors. Special meetings of members shall be held upon the written request of 10 members or 3 percent of the membership, whichever is greater. Notice of special meetings shall be given to all members specifying the date, time, place, and purpose of the meeting.

(Amended by Stats. 1998, Ch. 539, Sec. 31.5. Effective January 1, 1999.)

14806. In credit unions formed on or after September 15, 1945, no member shall have more than one vote irrespective of the number of shares held by the member.

(Amended by Stats. 1998, Ch. 539, Sec. 32. Effective January 1, 1999.)

14807. Any member may withdraw from membership in the credit union at any time. A withdrawing member shall give 60 days' notice of intention to withdraw shares and 30 days' notice of intention to withdraw certificates for funds

unless a different period of notice is required by the commissioner for the withdrawal of shares or share certificates that may be established by the board of directors pursuant to Section 14862.
(Amended by Stats. 1984, Ch. 209, Sec. 5.)

14808. All amounts paid on shares or on certificates for funds of an expelled or withdrawn member, with any dividends or interest credited thereto to the date of withdrawal or expulsion, shall be paid to such members as funds become available, and after deducting all amounts due from the member to the credit union. Withdrawing or expelled members have no further rights in the credit union, but are not by expulsion or withdrawal released from any liability to the credit union or its creditors.
(Amended by Stats. 1983, Ch. 89, Sec. 7.)

14809. Members who leave the field of membership may be permitted to retain their membership in the credit union unless otherwise provided in the credit union's bylaws.
(Added by Stats. 1979, Ch. 112.)

14811. (a) A member who has no outstanding obligations with the credit union and whose share account is below the amount established by the bylaws may be transferred to inactive member status.

(b) An inactive member has no voting rights, has no right to notice of meetings of members, shall not be considered a member for purposes of determination of a quorum or a required vote and need not be sent the annual report or financial statements except upon request.

(c) When one or more of the conditions in subdivision (a) cease to be applicable, an inactive member may be transferred back to regular member status.
(Amended by Stats. 1984, Ch. 789, Sec. 8.)

14812. Unless otherwise provided in the bylaws, a quorum for a meeting of members shall be 10 percent of the members or 50 members, whichever is less.
(Added by Stats. 1980, Ch. 321, Sec. 11.)

14820. (a) Any member of a credit union may authorize another person or persons to act by proxy with respect to such membership, subject to subdivision (e). Any proxy purported to be executed in accordance with Section 14821 shall be presumptively valid.

(b) No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three years from the date of execution. Every proxy continues in full force and effect until revoked by the person executing it prior to the vote pursuant thereto, except as otherwise provided in this section. Such revocation may be effected by a writing delivered to the corporation stating that the proxy is revoked or by a subsequent proxy executed by the person executing the prior proxy and presented to the meeting, or as to any meeting by attendance at such meeting and voting in person by the person executing the proxy. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed.

(c) A proxy is not revoked by the death or incapacity of the maker or the termination of a membership as a result thereof unless, before the vote is counted, written notice of such death or incapacity is received by the corporation.

(d) Notwithstanding subdivisions (b) and (c), whenever any credit union which is subject to the provisions of this division is insolvent or its capital is impaired, or, when the commissioner determines that a credit union is in danger of insolvency or an impairment of its capital and the board of the directors of the credit union presents a reorganization plan to the commissioner and such plan is approved, the board of directors may, subject to the provisions of this division, solicit irrevocable proxies for a proxyholder who qualifies pursuant to this section. Unless otherwise provided in the articles or bylaws, the proxy of a member which states that it is irrevocable is irrevocable for the period specified therein when it is held by any of the following or a nominee of any of the following:

(1) A person who has purchased or who has agreed to purchase the membership.

(2) A creditor or creditors of the credit union who extended or continued credit or contracted to perform services to the corporation in consideration of the proxy if the proxy states that it was given in consideration of the extension or continuation of credit or services and the name of the person extending or continuing the credit or performing the service.

(3) A person who has contracted to perform services as an employee of the credit union, if the proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment for which the employee has contracted.

Notwithstanding the period of irrevocability specified, the proxy becomes revocable when the agreement to purchase is terminated, the debt of the credit union or the member is paid, or the period of employment provided for in the contract

of employment or the contract to perform services has terminated. In addition to paragraphs (1) through (3), a proxy of a member may be made irrevocable notwithstanding subdivision (c) if it is given to secure the performance of a duty or to protect a title, either legal or equitable, until the happening of events which by its terms, discharge the obligations secured by it.

(e) Subdivision (a) notwithstanding:

(1) No amendment of the articles or bylaws repealing, restricting, creating or expanding proxy rights may be adopted without approval by the members.

(2) No amendment of the articles or bylaws restricting or limiting the use of proxies may affect the validity of a previously issued irrevocable proxy during the term of its irrevocability, so long as it complied with applicable provisions, if any, of the articles or bylaws at the time of issuance, and is otherwise valid under this section.

(f) Anything to the contrary notwithstanding, any revocable proxy covering matters requiring a vote of the members pursuant to Section 7222, Section 7224, Section 7233, Section 7812, paragraph (2) of subdivision (a) of Section 7911, Section 8012, subdivision (a) of Section 8015, Section 8610, or subdivision (a) of Section 8719 of the Nonprofit Mutual Benefit Corporation Law, Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code, or subdivision (e) is not valid as to such matters unless it sets forth the general nature of the matter to be voted on.

(Amended by Stats. 1985, Ch. 951, Sec. 10.5.)

14821. (a) Except for solicited proxies which on their face provide for a period of validity of three years from the date of execution of the proxy, any form of proxy or written ballot distributed to 10 or more members of a credit union shall afford an opportunity on the proxy or form of written ballot to specify at the time the written ballot or proxy is distributed, a choice between approval and disapproval of each matter or group of related matters intended to be acted upon at the meeting for which the proxy is solicited or by such written ballot, and shall provide, subject to reasonable specified conditions, that where the person solicited specifies a choice with respect to any such matter the vote shall be cast in accordance therewith.

(b) In any election of directors, any form of proxy or written ballot in which the directors to be voted upon are named therein as candidates and which is marked by a member "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of directors is withheld, shall not be voted either for or against the election of a director.

(c) In the case of any solicited proxy which on its face provides for a period of validity of three years from the date of execution of the proxy, the credit union shall provide to the person executing the proxy a written notice at the time of solicitation and in each succeeding year of validity thereof, which shall advise the member of the nature of each matter or group of related matters on which the proxy may be voted. Notice pursuant to this subdivision may be sent with notice to the members of the date, time, and place of the annual meeting.

(d) Failure to comply with this section shall not invalidate any corporate action taken, but may be the basis for challenging any proxy at a meeting or written ballot and the superior court may compel compliance therewith at the suit of any member.

(Amended by Stats. 1987, Ch. 1045, Sec. 2.)

14822. Notwithstanding any other provision to the contrary, no member shall vote by proxy on any matter submitted by mail to all members of a credit union in a written ballot pursuant to Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code, and the powers of any previously issued or outstanding valid, revocable proxy are suspended when any matter is submitted by mail to all members in a written ballot pursuant to Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code.

(Added by Stats. 1984, Ch. 209, Sec. 7.)

CHAPTER 6. SHARE ACCOUNTS AND CERTIFICATES FOR FUNDS

(Chapter 6 added by Stats. 1979, Ch. 112.)

Article 1. General

(Article 1 added by Stats. 1979, Ch. 112.)

14850. The Corporate Securities Law relating to the necessity of qualification of the sale of securities does not apply to the sale and issue of membership shares, certificates for funds, and other securities, by credit unions organized under this division or lawfully doing business in this state. No credit union lawfully doing business in this state shall be required to file a certificate for determination of preference with the office of the Secretary of State in connection with any share offering so long as it complies with all applicable provisions of this division and the rules of the commissioner.
(Amended by Stats. 1980, Ch. 321, Sec. 12.)

14851. (a) Every credit union may issue shares (1) to any member qualified pursuant to the credit union's bylaws; (2) to an officer, employee, or agent of nonmember units of federal, Indian tribal, state, or local governments, and political subdivisions thereof when acting in his or her official capacity; and (3) in coownership to a member and any person designated by the member. Coownership, as used herein, includes, but is not limited to, joint tenancy, tenancy in common, or community property forms of ownership. No membership privilege, including voting and obtaining a loan, may be made available to any nonmember as a result of ownership of shares solely as coowner of shares with a member, and any certificate or other evidence of shares which may be issued, shall contain the words "No transfer of voting rights or other membership privilege is permitted by virtue of transfer of shares." Shares may be transferred to a public agency lawfully entitled to receive the shares when designated by a member as assignee of an account pledged as a surety deposit to the public agency by the member.

(b) A credit union that has a low-income designation pursuant to Section 701.34 of the regulations of the National Credit Union Administration (12 C.F.R. Sec. 701.34) may issue shares to nonmembers. Except with the written approval of the commissioner, the total number of shares issued by the credit union to nonmembers pursuant to this subdivision shall not exceed 20 percent of the unimpaired capital and surplus of the credit union.
(Amended by Stats. 1998, Ch. 539, Sec. 32.5. Effective January 1, 1999.)

14852. Every credit union may charge a reasonable fee for the transfer of its shares.
(Repealed and added by Stats. 1979, Ch. 112.)

14853. A credit union may issue shares or certificates for funds to a minor of any age or maintain any other account authorized for credit union members for a minor, and receive payments thereon by or for the minor. The minor is entitled to withdraw, transfer, or pledge any shares or certificates or other moneys owned by him or her and to receive from the credit union all dividends, interest, or other money due thereon in the same manner and subject to the same conditions as an adult. The receipt or acquittance of a minor constitutes a valid release and discharge of the credit union for the payment of dividends, interest, or other money due to the minor.
(Amended by Stats. 1983, Ch. 6, Sec. 4.)

14854. Subject to Section 14860, a credit union share account that is a multiple-party account, as defined in Section 5132 of the Probate Code, is governed by Part 2 (commencing with Section 5100) of Division 5 of the Probate Code.
(Amended by Stats. 1990, Ch. 79, Sec. 9. Operative July 1, 1991, pursuant to Stats. 1990, Ch. 710, Sec. 46.)

14855. Every credit union may receive money and accumulate funds to be loaned and execute certificates for funds for the money received. The certificates for funds shall specify the date, amount, rate of interest, and when the principal and interest are payable.
(Added by Stats. 1979, Ch. 112.)

14856. Every credit union may impress a lien upon the shares and dividends of any member to the extent of any obligations entered into with that member and for any dues or charges payable by that member.
(Amended by Stats. 1984, Ch. 789, Sec. 9.)

14857. Every credit union may cancel the shares of any member who withdraws or is expelled, and apply the value of the shares to the liquidation of the member's indebtedness to the credit union.
(Added by Stats. 1979, Ch. 112.)

14858. Every credit union shall apply for and obtain insurance as provided for by Title II of the Federal Credit Union Act (12 U.S.C. Sec. 1781 and following), or other insurance or guaranty of shares that is not unsatisfactory to the

commissioner. In seeking and retaining this insurance or guaranty, a credit union may do all things and assume and discharge all obligations required of it when not in conflict with the laws of this state.
(Amended by Stats. 1998, Ch. 539, Sec. 33. Effective January 1, 1999.)

14860. Except as provided in this section and Part 2 (commencing with Section 5100) of Division 5 of the Probate Code, no credit union shall exercise trust powers except upon qualifying as a trust company pursuant to Division 1 (commencing with Section 99).

(a) Notwithstanding any other provisions of law relating to trusts and trust authority, subject to the regulations of the commissioner, a credit union may act as a trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States which is a part of a pension plan for its members or groups or organizations of its members, which qualifies or has qualified for specific tax treatment under Section 401, 408, 408A, 457, or 530 of the Internal Revenue Code, Title 26 of the United States Code, or any deferred compensation plan for the benefit of the credit union's employees, provided the funds received pursuant to these plans are invested as provided in Section 16040 of the Probate Code. All funds held by a credit union as trustee or in a custodial capacity shall be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over the trust or custodial accounts. The credit union shall maintain individual records for each participant or beneficiary that show in detail all transactions relating to the funds of each participant or beneficiary.

The trust instrument or agreement shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation, or organization other than the credit union or any person acting in his or her capacity as a director, employee, or agent of the credit union, upon notice from the credit union or the commissioner that the credit union is unwilling or unable to continue to act as trustee or custodian.

(b) Shares may be issued in a revocable or irrevocable trust subject to the following:

(1) When shares are issued in a revocable trust, the settlor shall be a member of the credit union issuing the shares in his or her own right. If the trust has joint settlers, who are husband and wife, then only one settlor need be a member of the credit union.

(2) When shares are issued in an irrevocable trust, the settlor or the beneficiary shall be a member of this credit union in his or her own right. For purposes of this section, shares issued pursuant to a pension plan authorized by this section shall be treated as an irrevocable trust unless otherwise indicated in rules and regulations issued by the commissioner.

(3) This subdivision does not apply to trust accounts established prior to the effective date of this subdivision.
(Amended by Stats. 2000, Ch. 411, Sec. 4. Effective September 12, 2000.)

14861. No credit union shall issue shares to anyone not qualified for membership under its bylaws, except shares issued in coownership as provided in Section 14851.
(Amended by Stats. 1980, Ch. 52, Sec. 9.)

14862. The board of directors shall establish from time to time a written savings capital structure policy which shall set out the various terms and conditions upon which credit union shares may be issued, paid for, transferred, and withdrawn. The savings capital structure policy may provide for different rates, maturities and minimum share account balances, subject to the rules of the commissioner for the credit union's savings capital and the terms and conditions on which dividends may be calculated and paid to member's purchasing credit union shares. The savings capital structure policy shall have as its goal avoiding instability in the credit union's savings capital and thereby providing that credit union members have an adequate source of funds for loans and receive a fair return on member savings capital.
(Amended by Stats. 1998, Ch. 539, Sec. 34.5. Effective January 1, 1999.)

14863. (a) A credit union shall not impose any charge on a member or depositor holding a periodic certificate for funds for the failure of such member or depositor to invest, or for the late investment of, any agreed periodic installment investment in such a periodic certificate for funds. A credit union shall pay interest on periodic certificates for funds at the same rate of interest per annum as is paid on certificates for funds as to which a member or depositor has not agreed to make periodic installment investments.

(b) As used in this section "periodic certificate for funds" means a certificate for funds under which a member or depositor undertakes to make periodic investments of a specified amount into one account, except, however, a periodic certificate for funds shall not mean an impound account established for the purpose of payment of taxes or other expenses and obligations in connection with a loan secured by real property.
(Added by Stats. 1979, Ch. 112.)

14865. Shares issued by a credit union to a member shall be evidenced in monetary amounts rather than by numbers of shares. The shares owned by a member also may be referred to as a "share account". There shall be no limit to the amount of shares which a credit union may issue.
(Added by Stats. 1980, Ch. 321, Sec. 14.)

14866. The evidence of credit union shares issued shall be a certificate, a passbook, a statement or other evidence approved by regulation of the commissioner. The evidence of any credit union shares shall not constitute an "investment security" under Division 8 (commencing with Section 8101) of the Commercial Code.
(Amended by Stats. 1983, Ch. 89, Sec. 8.)

14867. (a) Shares, including special shares, and certificates for funds may be withdrawn for payment to the owner or for any third party, in the manner and in accordance with written procedures which shall be established by the board of directors.

(b) The board of directors may waive any requirement of notice of intent to withdraw or provide that there is no requirement of notice of intent to withdraw or to transfer funds, except when requirement of the notice is imposed by applicable law.

(c) Unless otherwise provided by written agreement of the parties, the rights, responsibilities, and liabilities of a person regarding an item withdrawn from a credit union, or transferred to a credit union or otherwise handled by a credit union are defined in and determined by the provisions of Division 3 (commencing with Section 3101) and Division 4 (commencing with Section 4101) of the Commercial Code, as if the credit union were a bank.
(Amended by Stats. 1984, Ch. 452, Sec. 4.)

14868. (a) As used in this section:

(1) "Beneficiary" has the meaning given that term in Section 5126 of the Probate Code.

(2) "Totten trust account" has the meaning given that term in Section 80 of the Probate Code.

(b) In the case of a Totten trust account, the deposit agreement shall indicate the current address of each beneficiary.
(Added by Stats. 1989, Ch. 397, Sec. 18. Operative July 1, 1990, by Sec. 42 of Ch. 397.)

Article 2. Dividends
(Article 2 added by Stats. 1979, Ch. 112.)

14900. (a) The board of directors of any credit union may declare dividends at such intervals, in accordance with such formula, and for such periods as provided in the written savings capital structure policy.

(b) Dividends need not be paid on a share account having less than the minimum balance prescribed in the bylaws.
(Amended by Stats. 1984, Ch. 303, Sec. 8.)

14901. The rates of dividends and terms of payment may be established in advance by action of the board of directors. However, nothing in this section shall be construed to permit any credit union to pay a dividend except as provided in Section 14902.
(Amended by Stats. 1998, Ch. 539, Sec. 34.7. Effective January 1, 1999.)

14902. The directors of any credit union may, for the dividend period, declare dividends from its undivided profits as provided by law, but no credit union shall credit or pay any dividends or pay loan interest refunds to its members until it has transferred to its regular reserve such part of its gross income as is required by Section 14700. However, nothing in this division shall be construed to permit the credit union to credit or pay a dividend from its undivided profits account when the credit or payment would result in a deficit in the undivided profits account.
(Amended by Stats. 1983, Ch. 263, Sec. 4.)

14905. Amounts paid or credited by a credit union to its members or depositors on or before the 30th day after the close of its income year shall be deemed for all purposes as paid or credited by the credit union upon the last day of the income year. This section is applicable only to credit unions as entities and does not apply to the members or depositors thereof.
(Added by renumbering Section 14907 by Stats. 1984, Ch. 303, Sec. 9.)

CHAPTER 7. LOANS

(Chapter 7 added by Stats. 1979, Ch. 112.)

Article 1. General

(Article 1 added by Stats. 1979, Ch. 112.)

14950. (a) Every credit union may enter into obligations with its members upon the approval of the credit committee or, in the alternative, the credit manager, subject to the terms and conditions established by the board of directors pursuant to Section 15100.

(b) (1) The board of directors of a credit union shall adopt a policy governing the acceptance by the credit union of notes receivable from nonmembers as consideration for the sale of assets owned by the credit union through bona fide transactions.

(2) No credit union may accept notes receivable from nonmembers as consideration for the sale of assets owned by the credit union except in accordance with a policy adopted by the board of directors pursuant to paragraph (1).

(3) Transactions subject to this subdivision shall not be deemed to be loans to nonmembers for purposes of Section 14750.

(Amended by Stats. 1998, Ch. 539, Sec. 35.7. Effective January 1, 1999.)

14951. Any application for any loan or extension or guarantee of credit, except an application for an extension of a loan, shall be in writing, shall state the purpose for which the loan or extension or guarantee of credit is desired, and, if applicable, shall describe the property that is proposed to secure the loan or extension or guarantee of credit.

(Amended by Stats. 1998, Ch. 539, Sec. 36. Effective January 1, 1999.)

14952. (a) The board of directors of a credit union shall establish the maximum amount that the credit union may lend to a member under 18 years of age in any case other than a case (1) where the member is an emancipated minor or (2) where the loan is secured in the manner provided for in Section 14955.

(b) No credit union shall make a loan to a member under 18 years of age that will result in the member being obligated to the credit union in excess of the maximum amount established by the board of directors pursuant to subdivision (a) unless the member is an emancipated minor or the loan is secured in the manner provided for in Section 14955.

(Amended by Stats. 1998, Ch. 539, Sec. 36.5. Effective January 1, 1999.)

14953. (a) Any extension of credit in excess of the unsecured loan limit set by the board of directors pursuant to Section 15100 shall be secured either (1) by real or personal property to the extent that the extension of credit exceeds such limit, or (2) in the manner provided in Section 14955.

(b) If the security offered is an endorsed note as provided in subdivision (a) of Section 14955, a signed and dated financial statement shall be taken from each person who endorses the note and the sufficiency of the financial responsibility of every such endorser shall be verified by a majority of the credit committee. Obligations secured by the signatures of a borrower and endorser or endorsers shall not exceed the amount that may be extended to the borrower without security pursuant to Section 15100, plus an equivalent amount for each endorser; plus the amount of shares or certificates for funds pledged to secure the obligation.

(Amended by Stats. 1984, Ch. 209, Sec. 12.)

14954. For the purposes of this chapter, a person who is not an applicant for an extension of credit or the creation of an obligation with the credit union but guarantees performance of the underlying obligation is a surety. A surety may act as security pursuant to subdivision (a) of Section 14955.

(Amended by Stats. 1985, Ch. 951, Sec. 14.)

14955. "Security" includes, but is not limited to, the following:

(a) A note endorsed by any member of the credit union or by any other person.

(b) Any obligation wherein the payment of interest and principal is guaranteed by any municipal government, state government, the government of the United States, or by any instrumentality of the United States.

(c) The amounts which a member has invested in the credit union, either in the form of shares or in funds received. If the amount invested by a member is equal to the loan made to that member, he shall not be required to give further security.

(Added by Stats. 1979, Ch. 112.)

14957. Whenever the directors, the credit committee, or if applicable, the credit manager, deem any loan unsafe, they may require additional security to be given by the borrower, and if such security is not furnished as required, they may declare the loan due and take action to collect the same.

(Amended by Stats. 1983, Ch. 89, Sec. 10.)

14958. A credit union may participate in guaranteed loan programs of the federal or state governments, subject to the limitations on loans set forth in this division.
(Added by Stats. 1980, Ch. 52, Sec. 10.)

14959. (a) A credit union may participate in loans made to its members jointly with other credit unions, corporations or financial organizations.

(b) A credit union may participate in a loan originated by another credit union which is made to a member of the originating credit union even though the member is not also a member of the credit union participating in the loan. A loan participation that is authorized by this subdivision shall not be deemed to be an obligation or a participation in an obligation with a nonmember within the meaning of Section 14750.
(Amended by Stats. 1998, Ch. 539, Sec. 37. Effective January 1, 1999.)

Article 2. Maximum Charges and Fees
(Article 2 added by Stats. 1979, Ch. 112.)

15001. Every credit union may assess charges as approved by the board of directors for failure to meet punctually obligations to the credit union. Any late charge shall be made only once for each delinquent payment and shall be subject to Section 2954.5 of the Civil Code, Division 1.1 (commencing with Section 4000) of this code, and any other applicable law.
(Amended by Stats. 1998, Ch. 539, Sec. 39. Effective January 1, 1999.)

Article 3. Loans to Directors, Officers and Committee Members
(Article 3 added by Stats. 1979, Ch. 112.)

15050. (a) For purposes of this section, "official" means a director, officer, or member of the supervisory committee or the credit committee of a credit union.

(b) No credit union shall enter into any obligation with any official, directly or indirectly, unless the obligation complies with all lawful requirements of this division with respect to obligations permitted for other members of the credit union and is not on terms more favorable than those extended to other members of the credit union, and the obligation is entered into in accordance with a written policy adopted by the directors establishing that all officials shall have an equal opportunity to enter into obligations with the credit union.

(c) No credit union shall enter into any obligation with any official, directly or indirectly, not fully secured by shares or certificates for funds unless all of the following requirements are satisfied:

(1) Upon the making of the obligation, the aggregate amount of obligations outstanding, except obligations fully secured by shares, to all officials and alternate members of the credit committee will not exceed 10 percent of the aggregate dollar amount of all savings capital of the credit union, except that in credit unions whose aggregate savings capital is five million dollars ($5,000,000) or more but less than ten million dollars ($10,000,000), the aggregate amount of obligations outstanding, except obligations fully secured by shares, to all officials and alternate members of the credit committee shall not exceed 15 percent of the aggregate dollar amount of all savings capital of the credit union, and in credit unions whose aggregate savings capital is less than five million dollars ($5,000,000), the aggregate amount of obligations outstanding, except obligations fully secured by shares, to all officials and alternate members of the credit committee shall not exceed 20 percent of the aggregate dollar amount of all savings capital of the credit union.

(2) The obligation, except any portion of an obligation fully secured by shares, does not exceed 1 percent of the aggregate dollar amount of all savings capital of the credit union, or the maximum obligation to the credit union prescribed by subdivisions (b) and (c) of Section 15100, whichever is less, except that in credit unions whose aggregate savings capital is five million dollars ($5,000,000) or more but less than ten million dollars ($10,000,000), the obligation, except any portion of an obligation fully secured by shares, shall not exceed 3 percent of the aggregate dollar amount of all savings capital of the credit union, or the maximum obligation to the credit union prescribed by subdivisions (b) and (c) of Section 15100, whichever is less, and in credit unions whose aggregate savings capital is less than five million dollars ($5,000,000), the obligation, except any portion of an obligation fully secured by shares, shall not exceed 5 percent of the aggregate dollar amount of all savings capital of the credit union, or the maximum obligation to the credit union prescribed by subdivisions (b) and (c) of Section 15100, whichever is less.

(3) (A) The obligation is approved by the credit committee, or in the alternative the credit manager, and by the board of directors, except that the credit manager shall not take part in any credit decision directly or indirectly for his or her

benefit. The board of directors may select a loan officer to prepare a report and recommendation as to any extension of credit or other obligation requested by the credit manager.

(B) Subparagraph (A) does not apply to the creation of an obligation on which an official is a direct obligor or an endorser, cosigner, or guarantor, if the aggregate of all of the following does not exceed fifty thousand dollars ($50,000) plus the amount of shares, if any, that are pledged or will be pledged as collateral by the official:

(i) The amount of the proposed obligation.

(ii) The outstanding balances of obligations, including the used portion of any approved line of credit, extended to, or endorsed, cosigned, or guaranteed by, the official.

(iii) The total unused portion of approved lines of credit extended to, or endorsed, cosigned, or guaranteed by, the official.

(4) The credit union member entering into the obligation takes no part in the consideration of his or her application and does not attend any committee or board meeting while his or her application is under consideration.

(5) The names of members of the credit committee, or in the alternative, the credit manager, and board of directors who voted to authorize or ratify the obligation shall be entered in their respective minutes.

(d) No credit union shall permit an official or the credit manager to become surety for any obligation created by the credit union for anyone other than a member of their immediate family.

(e) No credit union shall enter into any obligation with any credit manager or any officer employed by the credit union, directly or indirectly, unless the obligation is in compliance with all requirements of this division with respect to obligations permitted for other members, and not on terms more favorable than those extended to other employees, and approved by the board of directors.

(Amended by Stats. 1998, Ch. 539, Sec. 40. Effective January 1, 1999.)

15051. The board of directors shall declare the office of any director, officer, committee member, or the credit manager vacant if the person fails to reduce any obligation to the credit union for which he or she is liable in a timely manner according to the terms of the obligation.

(Amended by Stats. 1984, Ch. 789, Sec. 16.)

Article 4. Limitations

(Article 4 added by Stats. 1979, Ch. 112.)

15100. (a) The board of directors shall establish written policies which shall set forth the policies of the credit union with respect to any obligation that is offered to the members of the credit union. The written policies shall set forth the maximum amounts and terms for any obligation offered to the members, including, but not limited to, the following information:

(1) For loans, the written policies shall set out the terms for unsecured loans, the maximum amount and terms for secured loans, the schedule of interest rates established pursuant to Section 15000 for each type or class of unsecured and secured loan offered to members, the maximum maturity for any loan, or, in the case of an open-end loan, the rate of repayment for any type or class of open-end loan, the limitations, if any, which shall be placed on the authority of any loan officer appointed pursuant to Sections 14602 and 14603, and, subject to the provisions of subdivisions (b) and (c), the individual limits on obligations that are applicable to all members of the credit union. Any policy developed pursuant to this section by the board of directors shall, insofar as possible, and, subject to individual creditworthiness, ensure equal access to funds available for obligations with credit union members.

(2) For obligations other than those set out in paragraph (1), the board of directors shall set out the interest rates and essential terms of the obligations offered to the members and any other information as may be required pursuant to regulations that may be adopted by the commissioner.

(b) Notwithstanding subdivision (a), no credit union policy shall permit a credit union to enter into obligations with an individual credit union member whereby the total obligations of that member, exclusive of amounts secured by shares or certificates for funds, exceed 10 percent of the aggregate dollar amount of the credit union's savings capital.

(c) Notwithstanding subdivision (b), no credit union policy shall permit a credit union to enter into obligations with any one family whereby the total obligations of the family would be greater than the amount permitted by subdivision (b). For purposes of this article, "family" means the marital couple or any head of household together with those dependents residing with the marital couple or the head of household and those dependents attending school away from the principal residence of the marital couple or head of household.

(d) Notwithstanding subdivisions (a), (b) and (c), any obligation with a member which is not a natural person shall not result in liability to the credit union in excess of that member's investment in the credit union unless an exception is authorized in the credit union's bylaws and approved by the commissioner. Any lending activity permitted pursuant to this subdivision may be terminated by an order issued by the commissioner pursuant to Sections 14200 and 14204.
(Amended by Stats. 1998, Ch. 539, Sec. 40.5. Effective January 1, 1999.)

15101. Notwithstanding the provisions of Section 15100, if a loan is made for educational purposes and such loan would cause the aggregate of loans to an individual or to any one family to exceed the limitations imposed by subdivision (b) or (c) of Section 15100, such educational loan shall not be included in computing the aggregate of loans pursuant to Section 15100, provided (1) that such educational loan is secured in accordance with subdivision (b) or (c) of Section 14955, and (2) that the aggregate amount of such educational loan exempted by this subdivision from subdivision (c) of Section 15100 shall not exceed ten thousand dollars ($10,000).
(Amended by Stats. 1984, Ch. 209, Sec. 13.)

15102. (a) Notwithstanding Section 726 of the Code of Civil Procedure or any other provision of law to the contrary, a credit union, an affiliate of a credit union, a credit union service organization, or any successor in interest thereto, that originates, acquires, or purchases, in whole or in part, any loan secured directly or collaterally, in whole or in part, by a mortgage or deed of trust on real property, or any interest therein, may bring an action for recovery of damages, including exemplary damages not to exceed 50 percent of the actual damages, against a borrower where the action is based on fraud under Section 1572 of the Civil Code and the fraudulent conduct by the borrower induced the original lender to make that loan.

(b) The provisions of this section shall not apply to loans secured by single-family, owner-occupied residential real property, when the property is actually occupied by the borrower as represented to the lender in order to obtain the loan and the loan is for an amount of one hundred fifty thousand dollars ($150,000) or less, as adjusted annually, commencing on January 1, 1987, to the Consumer Price Index as published by the United States Department of Labor.

(c) Any action maintained under this section for damages shall not constitute a money judgment for deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d of the Code of Civil Procedure.
(Added by Stats. 1986, Ch. 173, Sec. 3.)

CHAPTER 9. MERGER, DISSOLUTION AND CONVERSION

(Chapter 9 added by Stats. 1979, Ch. 112.)

Article 1. Merger

(Article 1 added by Stats. 1979, Ch. 112.)

15200. Any credit union may, with the approval of the commissioner, merge with another credit union or with a central credit union.

(Amended by Stats. 1984, Ch. 452, Sec. 5.)

15201. (a) The merger shall be made pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the affirmative vote of at least a majority of the members of the disappearing credit union, in person or by proxy, at a meeting of the members called for that purpose or by written consent of a majority of the members of the disappearing credit union. Notice of the meeting shall be given to the members, either personally or by first-class mail, not less than 30 nor more than 90 days prior to the date of the meeting.

(b) The commissioner may approve a merger according to the plan agreed upon by the majority of the board of directors of each credit union, as set forth in subdivision (a), if the plan of merger is approved by less than a majority of the membership as provided in subdivision (a) if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the merger or the ballot for written vote on the merger was mailed to each member entitled to vote upon the question, (2) the notice or ballot disclosed the purpose of the meeting or the written vote, (3) the notice or ballot informed the membership that approval of the merger might be sought pursuant to this section, and (4) a majority of the votes cast upon the question were in favor of the merger.

(c) Notwithstanding subdivisions (a) and (b), the commissioner may approve a merger without a vote of the membership of the disappearing credit union if a majority of the members of the board of directors of the surviving credit union approves the merger, the disappearing credit union is in danger of insolvency and the merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund or other form of share guaranty or insurance that is acceptable to the commissioner. For purposes of this chapter, a credit union is insolvent when, from the most recent available financial statements, it can be shown that the total amount of its shares exceeds the present cash value of its assets after providing for liabilities unless the commissioner finds all of the following:

(1) The facts that caused the deficient share-asset ratio no longer exist.

(2) Further decline in the share-asset ratio is not probable.

(3) The return of the share-asset ratio to its normal limits within a reasonable time for the credit union concerned is probable.

(4) The probability of a further potential loss is negligible to the National Credit Union Share Insurance Fund or other form of share guaranty or insurance that is acceptable to the commissioner.

(Amended by Stats. 1998, Ch. 539, Sec. 41. Effective January 1, 1999.)

15202. (a) After the requirement of approval as provided in Section 15201 is satisfied, each credit union shall execute a certificate of merger as an officers' certificate pursuant to Section 5062 of the Corporations Code that shall set forth:

(1) That the plan of merger has been approved by the board of directors.

(2) That the plan of merger has been duly approved by any required vote of the members pursuant to Section 15201.

(3) The total number of members of the credit union.

(b) A copy of the plan of merger and of the written approval thereof by the commissioner shall be annexed to the certificate of merger.

(c) Nothing in this section requires a federal credit union to execute or file the certificate of merger called for in subdivision (a).

(Amended by Stats. 1998, Ch. 539, Sec. 41.3. Effective January 1, 1999.)

15203. Each certificate of merger called for in Section 15202 shall be filed in the office of the Secretary of State. After the filing in the office of the Secretary of State, a copy of each certificate of merger, certified by the Secretary of State, shall be filed with the commissioner, and at that time the merger shall become effective for all purposes.

(Amended by Stats. 1998, Ch. 539, Sec. 42. Effective January 1, 1999.)

15204. (a) Upon any merger effectuated as provided in this article, all property, property rights, and interests of the merged credit union shall vest in the surviving credit union, without deed, endorsement or other instruments of transfer, and all debts, obligations and liabilities of the merged credit union are assumed by the surviving credit union under whose charter the merger has been effected. Thereafter the charter of the merged credit union is void, and the existence of the merged credit union as a legal entity separate from the surviving credit union terminates.

(b) Whenever a credit union having any real property in this state merges with another credit union and vests that real property in the surviving credit union, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing credit union is located of the certificates of merger and requisite attachments, as required by Section 15202, shall evidence record ownership in the surviving credit union of all interest of the disappearing credit union in and to the real property located in that county.
(Amended by Stats. 1997, Ch. 187, Sec. 13. Effective January 1, 1998.)

Article 2. Dissolution
(Article 2 added by Stats. 1979, Ch. 112.)

15250. (a) Whenever the board of directors of a credit union recommends by a vote of a majority of all its members the dissolution of the credit union, the members of the credit union, at any meeting specially called to consider the subject, may elect to dissolve the credit union, by the vote or written consent of a majority of all members of the credit union.

(b) The commissioner may approve the dissolution of a credit union which is recommended by the vote of a majority of the board members of the credit union, even if the dissolution is approved by less than a majority of all members of the credit union, if the commissioner finds, upon the written and verified application filed by the board of directors, that (1) notice of the meeting called to consider the dissolution or the written ballot for written vote on the dissolution was mailed to each member entitled to vote upon the question, (2) the notice or the written ballot disclosed the purpose of the meeting or the written vote and informed the membership that approval of the dissolution might be sought pursuant to this section, and (3) a majority of the votes cast upon the question were in favor of the dissolution.

(c) Whenever the members of the board of directors vote to recommend the dissolution of any credit union, the credit union shall not make any loans, withdrawal of shares, or withdrawal of certificates for funds until the members approve or disapprove the recommendation of the board of directors.
(Amended by Stats. 1998, Ch. 539, Sec. 43. Effective January 1, 1999.)

15251. If the dissolution of the credit union is approved pursuant to subdivision (a) or (b) of Section 15250, the board of directors of the credit union shall elect a committee of three members or may by resolution appoint a liquidating agent to liquidate the assets of the credit union. If the commissioner is appointed liquidating agent, the commissioner may act as liquidating agent or appoint the National Credit Union Administration or other person to act as liquidating agent. Whenever the commissioner is appointed liquidating agent, the credit union shall surrender its certificate to act as a credit union.
(Amended by Stats. 1998, Ch. 539, Sec. 44. Effective January 1, 1999.)

15252. Promptly thereafter the president or vice president and secretary or assistant secretary, or a majority of the committee or the liquidating agent in charge of liquidation, shall sign and verify a certificate stating that the credit union has elected to wind up and dissolve and showing by what vote or consent such election was made. The certificate shall be filed in the office of the Secretary of State, and copies of the certificate certified by the Secretary of State shall be filed with the commissioner.
(Amended by Stats. 1981, Ch. 862, Sec. 4.)

15253. After a vote to dissolve a credit union no business may be carried on by the credit union except in the proper course of liquidation.
(Added by Stats. 1979, Ch. 112.)

15254. The committee or the liquidating agent in charge of liquidation may sue in the name and on behalf of the credit union, and may sell or otherwise dispose of the assets of the credit union, in whole or in part, at public or private sale.
(Added by Stats. 1979, Ch. 112.)

15255. After determining that all known debts and liabilities of the credit union have been paid or adequately provided for, the committee or the liquidating agent in charge of liquidation shall distribute all the remaining assets of the credit union among the members or shareholders. Each share is entitled to its proportionate amount of the assets according to the amount paid on that share.
(Added by Stats. 1979, Ch. 112.)

15257. When a credit union has completely wound up, all of its known debts and liabilities actually paid or adequately provided for or paid as far as its assets permit, and its known assets distributed, a majority of the committee or the liquidating agent in charge of liquidation shall sign and acknowledge a certificate stating that the credit union has been completely wound up, its known assets distributed, any tax or penalty due under the Bank and Corporation Franchise Tax Law paid, and its other known debts and liabilities actually paid or adequately provided for or paid as far as its assets permit and that the credit union is dissolved.
(Added by Stats. 1979, Ch. 112.)

15258. The certificate of dissolution shall be filed in the office of the Secretary of State and copies, certified by him, shall be filed in the office of the commissioner.
(Added by Stats. 1979, Ch. 112.)

15259. At any time during the liquidation process, the committee or the liquidating agent in charge of liquidation may be relieved of their duties at the discretion of the commissioner and the commissioner shall thereafter act as the liquidating agent or appoint a liquidating agent to complete the dissolution of the credit union.
(Added by Stats. 1979, Ch. 112.)

15260. Where the commissioner finds that on the date of filing with the Secretary of State of the certificate of election to wind up and dissolve, the credit union does not have sufficient assets to return to its shareholders their investment in full, the credit union shall not be liable for the costs of administration assessed under Article 4 (commencing with Section 14350) of Chapter 3.
(Added by Stats. 1979, Ch. 112.)

Article 3. Conversion Into Federal Credit Unions
(Article 3 added by Stats. 1979, Ch. 112.)

15300. A credit union may convert itself into a federal credit union by following the procedure contained in this article.
(Repealed and added by Stats. 1979, Ch. 112.)

15301. Upon recommendation of the board of directors the members of any credit union may by an affirmative majority vote of such members resolve to convert such credit union into a federal credit union. For the purposes of this article, an "affirmative majority vote of such members" means that the vote by the members to convert the credit union into a federal credit union is approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or written ballot in conformity with Section 7513 of the Corporations Code or by the affirmative vote or written ballot as may be provided in the bylaws pursuant to subdivision (e) of Section 7151 of the Corporations Code.
(Amended by Stats. 1993, Ch. 399, Sec. 2. Effective January 1, 1994.)

15302. Within 10 days after the meeting or written vote at which the members determine to convert into a federal credit union, the credit union shall file with the commissioner a certificate verified by the board of directors of such credit union. The certificate shall contain a copy of the minutes of the meeting or a copy of the written ballot and the results of the written vote and a statement that the members have approved the determination to convert such credit union into a federal credit union. A copy of such certificate shall be filed with the Secretary of State.
(Amended by Stats. 1980, Ch. 413, Sec. 6.)

15303. A certified copy of the certificate required by Section 15302 filed in the office of the Secretary of State is presumptive evidence of the holding of the meeting or written vote and the action taken thereat.
(Amended by Stats. 1980, Ch. 413, Sec. 7.)

15304. After the meeting or the written vote of the members, the credit union shall take such action as is necessary to make it a federal credit union, and within 10 days after receipt of the federal charter, the credit union shall file with the commissioner and with the Secretary of State, a copy of the charter issued to such credit union by the National Credit Union Administration or a certificate showing the organization of such credit union as a federal credit union certified by or on behalf of the National Credit Union Administration. Upon the filing of such instrument with the Secretary of State the credit union ceases to be a state credit union and is a federal credit union.
(Amended by Stats. 1980, Ch. 413, Sec. 8.)

15305. At the time the conversion into a federal credit union becomes effective, the credit union ceases to be supervised by this state and all of the property of the credit union, including all of its right, title, and interest in and to all property of every kind and character immediately, by operation of law and without any conveyance, or transfer and without any further act or deed, is vested in the credit union under its new name and style as a federal credit union and under its new jurisdiction.
(Repealed and added by Stats. 1979, Ch. 112.)

15306. The converted federal credit union shall have, hold, and enjoy the property mentioned in Section 15305 in its own right as fully and to the same extent as the property was possessed, held, and enjoyed by it as a state credit union and the federal credit union shall continue responsible for all of the obligations of the state credit union to the same extent as

though the conversion had not taken place. The federal credit union shall be merely a continuation of the state credit union under a new name and new jurisdiction and such revision of its corporate structure as is considered necessary for its proper operation under the new jurisdiction.
(Added by Stats. 1979, Ch. 112.)

Article 4. Conversion of Federal Credit Union
(Article 4 added by Stats. 1979, Ch. 112.)

15350. Upon recommendation of its board of directors, any federal credit union may convert into a credit union under the laws of this state by complying with the requirements of the Federal Credit Union Act (12 U.S.C. Sec. 1771) and on obtaining a certificate pursuant to Chapter 2 (commencing with Section 14100) of this division.
(Amended by Stats. 1981, Ch. 765, Sec. 4.)

15351. The officers and directors of the federal credit union shall be the officers and directors of the credit union after conversion takes effect, to hold office until their successors are elected and qualified.
(Added by Stats. 1979, Ch. 112.)

15352. The commissioner may conduct a joint audit of the federal credit union with federal auditors. Upon completion of such audit, he shall issue a certificate to the National Credit Union Administration showing the results of such audit. The commissioner may also certify that the transfer of the assets and liabilities from the federal credit union to a credit union subject to the laws of this state has been effected in compliance with the applicable laws of this state. The costs of the audit mentioned in this section shall constitute a charge against the credit union.
(Added by Stats. 1979, Ch. 112.)

15353. Copies of the minutes of the proceedings of the meeting of the members or the written ballot and the record of written vote of the members in which they voted to convert into a state credit union, verified by the board of directors of the credit union, shall be filed within 10 days after the meeting or written vote with the commissioner, and, in duplicate, with the National Credit Union Administration.
(Amended by Stats. 1980, Ch. 413, Sec. 9.)

15354. The verified copies of the minutes of the meeting or the record of written vote, when filed as required by Section 15353, are presumptive evidence of the holding of, and the action taken at, the meeting or the written vote.
(Amended by Stats. 1980, Ch. 413, Sec. 10.)

15355. After an affirmative vote as provided in Section 15350, the federal credit union shall take or cause to be taken such action in the manner prescribed and authorized by this division as shall make it a credit union of this state. The directors shall file the documents and take such proceedings as are required by this division in the case of the original incorporation of a credit union.
(Amended by Stats. 1979, Ch. 811.)

15356. The directors of a credit union converted from a federal credit union may insert in the articles of incorporation the following statement: “This credit union is incorporated by conversion from a federal credit union.”
(Added by Stats. 1979, Ch. 112.)

15357. Within 10 days after the filing of the articles of incorporation with the Secretary of State, there shall be filed, with the National Credit Union Administration, two copies of the articles of incorporation, certified by the Secretary of State.
(Added by Stats. 1979, Ch. 112.)

15358. Upon the filing of the articles of incorporation with the Secretary of State and the issuance of a certificate by the commissioner authorizing the federal credit union to act as a credit union under the laws of this state, the credit union ceases to be a federal credit union and is a credit union under the laws of this state. All of the property of the credit union immediately, by operation of law and without any further act, is vested in the credit union under its new name and existence as a credit union under the laws of this state.
(Amended by Stats. 1981, Ch. 765, Sec. 5.)

15359. The converted credit union shall have, hold, and enjoy the property mentioned in Section 15358 in its own right as fully and to the same extent as the property was possessed, held, and enjoyed by it as a federal credit union and the converted credit union continues responsible for all of the obligations of the federal credit union to the same extent as though conversion had not taken place. The converted credit union is merely a continuation of the federal credit union under a new name and new jurisdiction and such revision of its corporate structure as is considered necessary for its proper operation under the new jurisdiction.
(Added by Stats. 1979, Ch. 112.)

CHAPTER 10. CENTRAL CREDIT UNION

(Chapter 10 added by Stats. 1979, Ch. 112.)

Article 1. Definition

(Article 1 added by Stats. 1979, Ch. 112.)

15400. "Central credit union" means a credit union whose membership includes, but is not limited to, other credit unions, members of credit unions, credit union employees, employees of organizations serving credit unions, and the families of such members and any common bond set out in subdivision (a) of Section 14155.
(Amended by Stats. 1984, Ch. 452, Sec. 6.)

Article 2. General

(Article 2 added by Stats. 1979, Ch. 112.)

15450. Central credit unions may be organized and operated under this division. Each such credit union shall use the word "central" in its official name.
(Added by Stats. 1979, Ch. 112.)

15451. (a) A central credit union may, with the approval of the commissioner and under such regulations as he shall prescribe, admit to membership groups of employees of a common employer, including the employer, whose place of employment is located within 25 miles of the principal office of the central credit union, or is located within the boundaries of a greater or lesser geographic area prescribed by the commissioner, upon application made by the employer and approval of the board of directors of the central credit union.

(b) In the event the employee group qualifies under the provisions of Section 14154, these employees may organize a separate credit union. The central credit union may, upon a plan approved by the commissioner, transfer the member accounts of these employees to any credit union formed by them.
(Amended by Stats. 1982, Ch. 691, Sec. 17.)

CHAPTER 11. FOREIGN (OTHER STATE) CREDIT UNIONS

(Heading of Chapter 11 renumbered from Chapter 10
(as added by Stats. 2000, Ch. 612) by Stats. 2002, Ch. 734, Sec. 42. Effective September 20, 2002.)

Article 1. General Provisions

(Article 1 added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16000. This chapter may be cited as the "Foreign (Other State) Credit Union Law."
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16001. In this chapter:

(a) "Branch business" means the business of issuing share accounts, certificates for funds, and share drafts, receiving deposits, paying checks, making loans and other obligations, and other activities that the commissioner may specify by order or regulation.

(b) "California branch office," when used with respect to a foreign (other state) credit union, means an office in this state at which the foreign (other state) credit union engages in branch business.

(c) (1) "California facility," when used with respect to a foreign (other state) credit union, means an office in this state at which the foreign (other state) credit union engages in business other than branch business.

(2) In the case of an employer-supported foreign (other state) credit union, a "California facility" does not include a table, counter, or booth on the premises of the employer's place of business at which a volunteer of the foreign (other state) credit union provides information or services to members but does not engage in branch business.

(d) "Foreign nation" means any nation other than the United States, including, without limitation, any subdivision, territory, trust territory, dependency, colony, or possession of any nation other than the United States.

(e) "Foreign (other nation) credit union" means any credit union or similar institution that is organized under the laws of a foreign nation.

(f) "Foreign (other state) credit union" means a credit union that is organized under the laws of any state of the United States other than this state.

(g) "Home state," when used with respect to a foreign (other state) credit union, means the state of the United States under which the foreign (other state) credit union is organized.

(h) "Home state regulator," when used with respect to a foreign (other state) credit union, means the state regulatory agency in the home state of the foreign (other state) credit union which has primary regulatory authority over the foreign (other state) credit union.

(i) "State of the United States" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16002. Nothing in this chapter shall be deemed to authorize a foreign (other nation) credit union to transact business in this state.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16003. No foreign (other state) credit union may establish or maintain a California branch office or California facility unless it is qualified to transact intrastate business under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code, except as provided in Section 8910 of the Corporations Code.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16004. No foreign (other state) credit union may establish a California branch office or California facility unless its deposit or share accounts are insured by the National Credit Union Administration or other insurer that is not unsatisfactory to the commissioner.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16005. Each application filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner requires by regulation or order) be verified in the manner that the commissioner may by regulation or order require.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16006. Fees shall be paid to and collected by the commissioner as follows:

(a) The fee for an application by a foreign (other state) credit union that is not licensed to transact business in this state for approval to establish a branch office is one thousand dollars ($1,000).

(b) The fee for an application by a foreign (other state) credit union that is licensed to transact business in this state for approval to establish a California branch office is five hundred dollars ($500).

(c) The fee for issuing a license to establish and maintain a California branch office or California facility is twenty-five dollars ($25).

(d) Each foreign (other state) credit union that on June 1 of any year maintains one or more California branch offices or California facilities shall pay, on or before the following July 1, a fee of two hundred fifty dollars ($250) per California branch office and one hundred dollars ($100) per California facility. However, the maximum fee shall be not more than one thousand dollars ($1,000).

(e) If the commissioner makes an examination in connection with a pending application, the foreign (other state) credit union making the application shall pay a fee for the examination at the rate of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(f) If the commissioner makes an examination of a foreign (other state) credit union that maintains a California branch office or California facility, the foreign (other state) credit union shall pay a fee for the examination at the rate of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16007. (a) Not less than 30 days before a foreign (other state) credit union establishes a California branch office or a California facility, the foreign (other state) credit union shall file with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the foreign (other state) credit union's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the foreign (other state) credit union or any of its successors that arises out of the activities of the California branch office or California facility after the appointment has been filed, with the same force and validity as if served personally on the foreign (other state) credit union or its successors, as the case may be.

(b) Any foreign (other state) credit union that maintains a California branch office or California facility that has not filed with the commissioner an appointment pursuant to subdivision (a) is deemed by the maintenance of the branch office or facility to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the foreign (other state) credit union or any of its successors that arises out of the activities of the California branch office or California facility, with the same force and validity as if served personally on the credit union or its successor, as the case may be.

(c) Service may be made on a foreign (other state) credit union that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at any office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the foreign (other state) credit union served at the last address on file with the commissioner for any of the foreign (other state) credit union's offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making the service is filed in the case on or before the return date if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16008. In administering the provisions of this chapter, the commissioner may share information with federal and home state regulators of foreign (other state) credit unions.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16009. A foreign (other state) credit union that is licensed to establish an office shall post at a conspicuous place at the office a notice to the public which states the name of the foreign (other state) credit union, the type of office it is, and the state of the United States under whose laws it was organized or chartered.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16010. No license shall be transferable or assignable.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16011. Whenever a foreign (other state) credit union is licensed to establish more than one office, it shall designate one of its offices as its primary office.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16012. Each foreign (other state) credit union that is licensed to establish an office shall conduct all of the business of the office in a single building or in adjoining buildings. However, with prior to notice to the commissioner, the foreign (other state) credit union may conduct part of the business of the office elsewhere in the same vicinity.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16013. Whenever any provision of this chapter or of any regulation or order issued under this chapter which is applicable to or with respect to a foreign (other state) credit union that maintains a California branch office or California facility is inconsistent with any provision of any other chapter of this division, the provision of the other chapter applies, and the latter provision does not apply.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

Article 2. Establishment of a California Branch Office or California Facility
(Article 2 added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16020. (a) Except for the activities described in paragraph (2) of subdivision (c) of Section 16001, no foreign (other state) credit union shall transact business in this state except at a branch office or facility that it is licensed to maintain and at which it is permitted by this chapter to transact the business transacted.

(b) Subdivision (a) shall not be deemed to prohibit any of the following:

(1) Any foreign (other state) credit union from carrying on the activities described in subdivision (d) of Section 191 of the Corporations Code.

(2) The advertising or solicitation of shares or deposits in this state by a foreign (other state) credit union made through the media of the mail, radio, television, magazines, newspapers, the Internet, or similar media, provided that shares or deposits are not accepted or received in this state.

(3) The acceptance of loan applications through agents in this state, provided the loan applications are approved or rejected, and the loans are funded, outside of this state.

(c) For the purposes of subdivision (a), no foreign (other state) credit union shall be deemed to be transacting business in this state merely because a majority-owned subsidiary transacts business in this state.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16021. (a) No foreign (other state) credit union shall establish or maintain a California branch office unless the commissioner shall have first approved its establishment and issued a license authorizing the foreign (other state) credit union to maintain the California branch office.

(b) Notwithstanding subdivision (a), this article does not apply to any branch office or other office in this state of a foreign (other state) credit union that was established prior to January 1, 2001, in compliance with existing law.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16022. (a) If the commissioner finds all of the following with respect to an application by a foreign (other state) credit union for approval to establish a California branch office, the commissioner shall approve the application:

(1) That the foreign (other state) credit union, the directors and officers of the foreign (other state) credit union, and the proposed management of the branch office are each of good character and sound financial standing.

(2) That the financial history and condition of the foreign (other state) credit union are satisfactory.

(3) That the management of the foreign (other state) credit union and the proposed management of the branch office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the branch office, the foreign (other state) credit union will operate the branch office in a safe and sound manner and in compliance with all applicable laws, regulations, and orders.

(5) That the foreign (other state) credit union's plan to establish and to maintain the branch office affords reasonable promise of successful operation.

(6) That the foreign (other state) credit union's establishment and maintenance of the branch office will promote the convenience and advantage of its members, and is necessary or convenient to meet the needs of the foreign (other state) credit union's members.

(7) Not more than 50 percent of the members of the foreign (other state) credit union are or will be residents of this state.

If the commissioner finds otherwise, the commissioner shall deny the application.

(b) Whenever an application by a foreign (other state) credit union for approval to establish a California branch office has been approved and all conditions precedent to the issuance of a license authorizing the foreign (other state) credit union to maintain the California branch office have been fulfilled, the commissioner shall issue the license.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16023. The approval of an application for approval to establish a California branch office shall be revoked by operation of law if the applicant foreign (other state) credit union does not establish and maintain the California branch office within one year after the date of the approval, unless prior to the expiration of the one-year period the commissioner extends the time within which the foreign (other state) credit union may establish the California branch office.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16024. (a) Within 30 days of establishing a California facility, a foreign (other state) credit union shall notify the commissioner in writing of its intent to establish a California facility. The notice shall identify the proposed location of the facility, describe its proposed activities, and contain any other information which the commissioner may by regulation or order specify.

(b) A foreign (other state) credit union shall not commence business at a proposed facility without a license having been issued by the commissioner.
(Amended by Stats. 2001, Ch. 159, Sec. 93. Effective January 1, 2002.)

Article 5. Relocation or Discontinuance of California Branch Office or California Facility
(Article 5 added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16075. Within 10 days of relocating a California branch office or California facility, a foreign (other state) credit union shall file a report with the commissioner which contains the information specified by the commissioner by regulation or order. The foreign (other state) credit union shall not conduct business at the new location of the California branch office or California facility without a license issued by the commissioner for the new location.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16076. Not less than 30 days before a foreign (other state) credit union discontinues a California branch office or California facility, it shall file a report with the commissioner which contains the information specified by the commissioner by regulation or order.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16077. Promptly after a foreign (other state) credit union relocates or discontinues a California branch office or California facility pursuant to this article, the foreign (other state) credit union shall surrender to the commissioner the license which authorized the foreign (other state) credit union to maintain the California branch office or California facility at the old or discontinued site.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

Article 6. Conduct of Credit Union Business
(Article 6 added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16100. (a) A foreign (other state) credit union that has a license to establish and maintain an office in this state may engage in activities at such office as may be authorized under the laws of its home state and the laws of this state that are applicable to credit unions.

(b) Nothing in subdivision (a) authorizes a foreign (other state) credit union to engage in any activity at a California branch office or California facility that it is not authorized to transact or is prohibited from transacting under the law of its home state or that credit unions organized under the laws of this state are not authorized to transact or are prohibited from transacting.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16101. (a) The following provisions of this division apply to a foreign (other state) credit union that maintains a California branch office or California facility with respect to its business in this state as if the foreign (other state) credit union were a credit union organized under the laws of this state:

(1) Section 14203.
(2) Section 14204.
(3) Section 14208.
(4) Section 14210.
(5) Section 14256.
(6) Section 14409.
(7) Section 14409.2.
(8) Section 14602.

(9) Section 14652.5.

(10) Section 14655, to the extent promissory notes of the type described in this section are carried on the books of a branch office of a foreign (other state) credit union.

(11) Section 14656, to the extent promissory notes of the type described in this section are carried on the books of a branch office of a foreign (other state) credit union.

(12) Article 8 (commencing with Section 14750) of Chapter 4.

(13) Article 1 (commencing with Section 14850) of Chapter 6.

(14) Article 1 (commencing with Section 14950) of Chapter 7.

(15) Article 2 (commencing with Section 15001) of Chapter 7.

(16) Article 3 (commencing with Section 15050) of Chapter 7, to the extent loans of the type described in that article are carried on the books of a branch office of a foreign (other state) credit union.

(17) Section 15102.

(b) The laws of this state that are applicable to the activities, operations, and transactions of credit unions organized under the laws of this state, other than the laws in this division, similarly shall apply to the activities, operations, and transactions of a foreign (other state) credit union in this state. Those laws include, but are not limited to, consumer protection laws and laws relating to creditor rights and remedies, mortgages and deeds of trust, bank deposits and collections, and negotiable instruments.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16102. (a) Any foreign (other state) credit union that is authorized to and does maintain a California branch office or California facility is exempted from the restrictions of Section 1 of Article XV of the California Constitution relating to rates of interest upon the loan or forbearance of any money, goods, or things in action or on accounts after demand.

(b) This section does not exempt a foreign (other state) credit union or any subsidiary from complying with all other laws and regulations governing the business in which the foreign (other state) credit union or subsidiary is engaged.

(c) This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution.

(d) This section does not authorize a foreign (other state) credit union or any subsidiary to charge an interest rate on a loan or forbearance in excess of any limitation that exists under the laws of its home state.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16103. (a) A foreign (other state) credit union that is licensed to establish and maintain an office or offices in this state shall keep the assets of the offices separate and apart from the assets of its business outside this state, if required by written order of the commissioner.

(b) Persons who are creditors of a foreign (other state) credit union as a result of the business of an office of the foreign (other state) credit union in this state shall be entitled to priority over other creditors with respect to the assets of the business in this state of the foreign (other state) credit union.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

Article 7. Examination, Reports, and Records

(Article 7 added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16150. (a) The commissioner may at any time investigate into the affairs and examine the books, accounts, and other records of a foreign (other state) credit union and of any subsidiary thereof.

(b) The commissioner and any person designated by him or her shall have free access to any office of the foreign (other state) credit union and to its books, accounts, and other records.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16151. The commissioner may make any examination of a foreign (other state) credit union at any office of the commissioner. The commissioner may make an examination of any office, within or outside of this state, of a foreign (other state) credit union that maintains an office in this state.

(Amended by Stats. 2003, Ch. 404, Sec. 18. Effective January 1, 2004.)

16152. (a) Each foreign (other state) credit union shall, within 10 days after receipt or within any extended time that the commissioner may specify, file with the commissioner a copy of any audit report obtained by, and of any examination report prepared for or of, the foreign (other state) credit union.

(b) Each foreign (other state) credit union shall file with the commissioner a copy of any response made by the foreign (other state) credit union to an audit or examination report referred to in subdivision (a) within 10 days after making the response or within any extended time that the commissioner may specify.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16153. A foreign (other state) credit union shall file with the commissioner any other report as the commissioner may from time to time require. Each report shall be in the form, contain the information, and be filed on the date, as may be prescribed by the commissioner.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16154. A foreign (other state) credit union that maintains a California branch office or California facility, if required by the commissioner, shall make, keep, and preserve, at the branch office, facility, or at any other place that the commissioner may by regulation or order approve, the books, accounts, and other records relating to the business of the California branch office or California facility, in the form, in the manner, and for the time that the commissioner may by regulation or order require.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

Article 9. Enforcement
(Article 9 added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16200. (a) The commissioner may bring an action in the name of the people of this state in the superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under this division or any regulation or order issued under this chapter. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be granted as appropriate.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the court.

(c) If the commissioner finds that it is in the public interest, the commissioner may include in a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award ancillary relief.

(d) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect any right that any other person may have to bring the same or similar actions or to seek the same or similar relief.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16200.5. (a) If the commissioner finds that any person has violated, or that there is reasonable cause to believe that any person is about to violate, Section 16020, the commissioner may order the person to cease and desist from the violation unless and until the person is issued a license.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed with him or her (or within such longer period to which the person consents), the order shall be deemed rescinded. At the hearing the commissioner shall affirm, modify, or rescind the order.

(2) The right of any person, to whom an order is issued under subdivision (a), to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16201. If, after notice and hearing, the commissioner finds that any person has violated any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may order the person to pay to the commissioner a civil penalty imposed pursuant to Section 216.3.
(Amended by Stats. 2003, Ch. 445, Sec. 16. Effective January 1, 2004.)

16202. If, after notice and hearing, the commissioner finds any of the following with respect to a foreign (other state) credit union that is licensed to maintain an office in this state, the commissioner may issue an order suspending or revoking the license of the foreign (other state) credit union:

(a) That the foreign (other state) credit union has violated a provision of this division or of any regulation or order issued under this division or a provision of any other applicable law, regulation, or order.

(b) That the foreign (other state) credit union is transacting the business in this state or elsewhere in an unsafe or unsound manner.

(c) That the foreign (other state) credit union is in unsafe or unsound condition.

(d) That the foreign (other state) credit union has ceased to operate its office.

(e) That the foreign (other state) credit union is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities, including share accounts and certificates for funds, exceed its assets.

(f) That the foreign (other state) credit union has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) That the foreign (other state) credit union has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for such relief under any such law against the foreign (other state) credit union, and the foreign (other state) credit union has by any affirmative act approved of or consented to the action or the relief has been granted.

(h) That a receiver, liquidator, or conservator has been appointed for the foreign (other state) credit union or that any proceeding for an appointment or any similar proceeding has been initiated in the home state of the foreign (other state) credit union.

(i) That the existence of the foreign (other state) credit union or the authority of the foreign (other state) credit union to transact banking business under the laws of the home state of the foreign (other state) credit union has been suspended or terminated.

(j) That any fact or condition exists that, if it had existed at the time when the foreign (other state) credit union applied for approval to transact business in this state, would have been grounds for denying the application.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16203. (a) If the commissioner finds that any of the factors set forth in Section 16202 is true with respect to any foreign (other state) credit union that is licensed to maintain an office in this state and that it is necessary for the protection of the interests of creditors of the foreign (other state) credit union's business in this state or, in any case, for the protection of the public interest that the commissioner immediately suspend or revoke the license of the foreign (other state) credit union, the commissioner may issue an order suspending or revoking the license of the foreign (other state) credit union.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the foreign (other state) credit union to which the order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner (or within any longer period to which the foreign (other state) credit union consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any foreign (other state) credit union to which an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the foreign (other state) credit union to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16204. Any foreign (other state) credit union whose license to maintain an office is suspended or revoked shall immediately surrender the license to the commissioner.

(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16205. (a) Any foreign (other state) credit union to which an order is issued under Section 16202 or 16203 may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the foreign (other state) credit union will, if and when it is again authorized to maintain an office, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any foreign (other state) credit union to which an order is issued under Section 16202 or 16203 to petition for judicial review of the order shall not be affected by the failure of the foreign (other state) credit union to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

16206. (a) If the commissioner finds that any of the factors set forth in Section 16202 is true with respect to any foreign (other state) credit union which is authorized to transact business in this state and that it is necessary for the protection of the interests of the creditors of the business of the foreign (other state) credit union in this state or for the protection of the public interest that he or she take immediate possession of the property and business of the foreign (other state) credit union, the commissioner may by order forthwith take possession of the property and business of the foreign (other state) credit union and retain possession until the foreign (other state) credit union resumes business in this state or is finally liquidated. The foreign (other state) credit union may, with the consent of the commissioner, resume business in this state under the conditions as the commissioner may prescribe.

(b) (1) Whenever the commissioner takes possession of the property and business of a foreign (other state) credit union pursuant to subdivision (a), the foreign (other state) credit union may, within 10 days, apply to the superior court in the county in which the primary office in this state of the foreign (other state) credit union is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order him or her to surrender the property and business of the foreign (other state) credit union to the foreign (other state) credit union or make any further order as may be just.

(2) The judgment of the court may be appealed by the commissioner or by the foreign (other state) credit union in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. In case the commissioner appeals the judgment of the court, the appeal shall operate as a stay of the judgment, and the commissioner shall not be required to post any bond.

(c) Whenever the commissioner takes possession of the property and business of a foreign (other state) credit union pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the foreign (other state) credit union in accordance with Sections 14301 to 14304, inclusive.

(d) When the commissioner has completed the liquidation of the property and business of a foreign (other state) credit union in this state, the commissioner shall transfer any remaining assets to the foreign (other state) credit union in accordance with any order the court may issue. However, in case the foreign (other state) credit union has an office in another state of the United States which is in liquidation and the assets of that office appear to be insufficient to pay in full the creditors of that office, the court shall order the commissioner to transfer to the liquidator of that office the amount of any remaining assets as appears to be necessary to cover the insufficiency. If there are two or more offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to those offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of the offices in the manner as the court determines.
(Added by Stats. 2000, Ch. 612, Sec. 3. Effective January 1, 2001.)

CHAPTER 12. FOREIGN (OTHER NATION) CREDIT UNIONS

(Heading of Chapter 12 renumbered from Chapter 11 by Stats. 2002, Ch. 734, Sec. Effective September 20, 2002.)

Article 1. General Provisions

(Article 1 added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16500. This chapter may be cited as the "Foreign (Other Nation) Credit Union Law."
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16501. In this chapter:

(a) "Agency," when used with respect to a foreign (other nation) credit union, means an office in this state at which the foreign (other nation) credit union transacts credit union business, other than branch business.

(b) "Branch business" means the business of issuing shares or certificates, receiving deposits, paying checks, making loans, and other activities that the commissioner may specify by order or regulation.

(c) "Branch office," when used with respect to a foreign (other nation) credit union, means an office in this state at which the foreign (other nation) credit union engages in branch business.

(d) "Business in this state," when used with respect to a foreign (other nation) credit union that is licensed to maintain one or more offices, includes the aggregate business of all of the offices.

(e) "Foreign nation" means any nation other than the United States, including, without limitation, any subdivision, territory, trust territory, dependency, colony, or possession of any nation other than the United States.

(f) "Foreign (other nation) credit union" means any credit union or similar institution that is organized under the laws of a foreign nation.

(g) "Foreign (other state) state credit union" means a credit union that is organized under the laws of a state of the United States other than California.

(h) "Home country," when used with respect to a foreign (other nation) credit union, means the foreign nation under whose laws the foreign (other nation) credit union is organized.

(i) "Home country regulator," when used with respect to a foreign (other nation) credit union, means the regulatory agency in the home country of the foreign (other nation) credit union that has primary regulatory authority over the foreign (other nation) credit union.

(j) (1) "License" means a license issued under this chapter, authorizing a foreign (other nation) credit union to maintain an office.

(2) To be "licensed" means to be issued or to hold a license.

(3) To be "licensed to transact business in this state," when used with respect to a foreign (other nation) credit union, means that the foreign (other nation) credit union is licensed to maintain an agency or branch office.

(k) "Office," when used with respect to a foreign (other nation) credit union, means a branch office, an agency, or a representative office maintained by the foreign (other nation) credit union.

(l) "Representative office," when used with respect to a foreign (other nation) credit union, means an office in this state at which the foreign (other nation) credit union engages in representational functions but at which it does not transact business.

(m) "State of the United States" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.
(Amended by Stats. 2001, Ch. 159, Sec. 94. Effective January 1, 2002.)

16502. Nothing in this chapter shall apply to a foreign (other state) state credit union or be deemed to authorize a foreign (other state) state credit union to transact business in this state.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16503. No foreign (other nation) credit union may establish a branch office unless its deposit or share accounts are insured by the National Credit Union Administration or other insurer that is not unsatisfactory to the commissioner.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16504. Each application filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner requires by regulation or order) be verified in the manner that the commissioner may by regulation or order require.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16505. Fees shall be paid to and collected by the commissioner as follows:

(a) The fee for filing with the commissioner an application by a foreign (other nation) credit union that is not licensed to transact business in this state for approval to establish a branch office shall be one thousand dollars ($1,000).

(b) The fee for filing with the commissioner an application by a foreign (other nation) credit union that is not licensed to transact business in this state for approval to establish an agency shall be five hundred dollars ($500).

(c) The fee for filing with the commissioner an application by a foreign (other nation) credit union that is licensed to transact business in this state for approval to establish a branch office shall be five hundred dollars ($500).

(d) The fee for filing with the commissioner an application by a foreign (other nation) credit union that is licensed to transact business in this state for approval to establish an agency shall be two hundred fifty dollars ($250).

(e) The fee for filing with the commissioner an application by a foreign (other nation) credit union for approval to establish a representative office shall be two hundred fifty dollars ($250).

(f) The fee for filing with the commissioner an application by a foreign (other nation) credit union for approval to relocate or to close an office shall be one hundred fifty dollars ($150).

(g) The fee for issuing a license shall be twenty-five dollars ($25).

(h) Each foreign (other nation) credit union that on June 1 of any year maintains one or more offices shall pay, on or before the following July 1, a fee of two hundred fifty dollars ($250) per branch office, one hundred dollars ($100) per agency, and fifty dollars ($50) per representative office.

(i) If the commissioner makes an examination in connection with a pending application, the foreign (other nation) credit union making the application shall pay a fee for the examination at the rate of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(j) If the commissioner makes an examination of a foreign (other nation) credit union that is licensed to maintain an office, the foreign (other nation) credit union shall pay a fee for the examination at the rate of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16506. (a) (1) No foreign (other nation) credit union shall be issued a license to maintain an office unless it shall have first filed with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the foreign (other nation) credit union's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the foreign (other nation) credit union or any of its successors that arises out of the activities in this state after the appointment has been filed, with the same force and validity as if served personally on the foreign (other nation) credit union or its successor, as the case may be.

(2) Any foreign (other nation) credit union that maintains an office in this state and that has not filed with the commissioner an appointment pursuant to paragraph (1) shall be deemed by the maintenance of that office to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the foreign (other nation) credit union or any of its successors that arises out of the activities in this state with the same force and validity as if served personally on the foreign (other nation) credit union or its successor, as the case may be.

(b) Service may be made on a foreign (other nation) credit union that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at any office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the foreign (other nation) credit union served at its last address on file with the commissioner at any of its offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16507. In administering the provisions of this chapter, the commissioner may share information with federal and home country regulators of foreign (other nation) credit unions.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16508. No license shall be transferable or assignable.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16509. A foreign (other nation) credit union that is licensed to establish an office shall post at a conspicuous place at the office a notice to the public which states the name of the foreign (other nation) credit union, the type of office it is, and the foreign country under whose laws it was organized or chartered.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16510. Whenever a foreign (other nation) credit union is licensed to establish more than one office, it shall designate one of its offices as its primary office.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16511. Each foreign (other nation) credit union that is licensed to establish an office shall conduct all of the business of the office in a single building or in adjoining buildings. However, with the approval of the commissioner, the foreign (other nation) credit union may conduct part of the business of the office elsewhere in the same vicinity.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16512. Whenever any provision of this chapter or of any regulation or order issued under this chapter that is applicable to or with respect to a foreign (other nation) credit union that maintains a branch office or facility is inconsistent with any provision of any other chapter of this division, the former provision applies, and the latter provision does not apply.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

Article 2. Representative Offices
(Article 2 added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16525. (a) No foreign (other nation) credit union shall establish or maintain an office in this state at which it engages in representational functions unless it is licensed to maintain a representative office, agency, or branch office at that place.

(b) (1) No person shall establish or maintain an office in this state as representative of a foreign (other nation) credit union unless the foreign (other nation) credit union is licensed to maintain the office as a representative office.

(2) For purposes of this chapter, if any person establishes or maintains an office in this state as representative of a foreign (other nation) credit union, the foreign (other nation) credit union shall be deemed to establish and maintain the office as a representative office.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16526. (a) No foreign (other nation) credit union shall establish or maintain a representative office unless the commissioner shall have first approved the establishment of the office and issued a license authorizing the foreign (other nation) credit union to maintain the office.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) credit union for approval to establish a representative office, the commissioner shall approve the application:

(1) That the foreign (other nation) credit union, the directors and executive officers of the foreign (other nation) credit union, and the proposed management of the office are each of good character and sound financial standing.

(2) That the financial history and condition of the foreign (other nation) credit union are satisfactory.

(3) That the management of the foreign (other nation) credit union and the proposed management of the office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the office, the foreign (other nation) credit union will operate the office in compliance with all applicable laws, regulations, and orders.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) credit union for approval to establish a representative office has been approved and all conditions precedent to the issuance of a license authorizing the foreign (other nation) credit union to maintain the office have been fulfilled, the commissioner shall issue the license.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16527. (a) No foreign (other nation) credit union that is licensed to maintain a representative office shall relocate the office unless the commissioner shall have first approved the relocation and issued a license authorizing the credit union to maintain the office at the new site.

(b) (1) In case the new site of a representative office is in the same vicinity as the old site, the commissioner shall approve an application by a foreign (other nation) credit union for approval to relocate the representative office if the commissioner finds that the relocation of the office will not be substantially detrimental to the public convenience and advantage.

(2) In case the new site of a representative office is not in the same vicinity as the old site, the commissioner shall approve an application by a foreign (other nation) credit union for approval to relocate the representative office if the commissioner finds both of the following:

(i) The relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area that is primarily served by the office at the old site.

(ii) The relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner does not make the findings required under either paragraph (1) or (2), the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) credit union for approval to relocate a representative office has been approved and all conditions precedent to the issuance of a license authorizing the foreign (other nation) credit union to maintain the office at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after a foreign (other nation) credit union that is licensed to maintain a representative office relocates the office, the foreign (other nation) credit union shall surrender to the commissioner the license that authorized it to maintain the office at the old site.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16528. A foreign (other nation) credit union that is licensed to maintain a representative office may, subject to any regulations that the commissioner may prescribe, engage in representational functions at the office but shall not solicit or accept share accounts or deposits or otherwise transact business at the office.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16529. (a) (1) No foreign (other nation) credit union that is licensed to maintain a representative office shall close the office unless the commissioner shall have first approved the closing.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) credit union that is licensed to maintain a representative office from closing the office in accordance with Article 8 (commencing with Section 16800).

(b) If the commissioner finds, with respect to an application by a foreign (other nation) credit union for approval to close a representative office, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) credit union for approval to close a representative office has been approved and all conditions precedent to the closing have been fulfilled, the foreign (other nation) credit union may close the office and shall promptly thereafter surrender to the commissioner the license that authorized it to maintain the office.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16530. The approval of an application for approval to establish a representative office shall be revoked by operation of law if the applicant foreign (other nation) credit union does not establish and maintain the office within one year after the date of the approval, unless prior to the expiration of the one-year period the commissioner extends the time within which the foreign (other nation) credit union may establish the representative office.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

Article 3. Branch Offices and Agencies

(Article 3 added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16550. (a) No foreign (other nation) credit union shall transact business in this state except at a branch office or agency that it is licensed to maintain and at which it is permitted by this chapter to transact the business transacted.

(b) Subdivision (a) shall not be deemed to prohibit any of the following:

(1) Any foreign (other nation) credit union from carrying on the activities described in subdivision (d) of Section 191 of the Corporations Code.

(2) The advertising or solicitation of shares or deposits in this state by a foreign (other nation) credit union made through the media of the mail, radio, television, magazines, newspapers, the Internet, or similar media, provided that shares or deposits are not accepted or received in this state.

(3) The acceptance of loan applications through agents in this state, provided the loan applications are approved or rejected, and the loans are funded, outside of this state.

(c) For the purposes of subdivision (a), no foreign (other nation) credit union shall be deemed to be transacting business in this state merely because a majority-owned subsidiary transacts business in this state.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16551. No foreign (other nation) credit union shall be licensed to maintain a branch office or agency unless it is qualified to transact intrastate business in this state under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code, except as provided in Section 8910 of the Corporations Code.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16552. (a) No foreign (other nation) credit union shall establish or maintain a branch office or agency unless the commissioner shall have first approved its establishment and issued a license authorizing the foreign (other nation) credit union to maintain the branch office or agency.

(b) If the commissioner finds all of the following with respect to an application by a foreign (other nation) credit union for approval to establish a branch office or agency, the commissioner shall approve the application:

(1) That the foreign (other nation) credit union, the directors and officers of the foreign (other nation) credit union, and the proposed management of the office are each of good character and sound financial standing.

(2) That the financial history and condition of the foreign (other nation) credit union are satisfactory.

(3) That the management of the foreign (other nation) credit union and the proposed management of the office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the office, the foreign (other nation) credit union will operate the office in a safe and sound manner and in compliance with all applicable laws, regulations, and orders.

(5) That the foreign (other nation) credit union's plan to establish and to maintain the office affords reasonable promise of successful operation.

(6) That the foreign (other nation) credit union's establishment and maintenance of the office will promote the public convenience and advantage, and is necessary or convenient to meet the needs of the foreign (other nation) credit union's members.

(7) Not more than 50 percent of the members of the foreign (other nation) credit union are or will be residents of this state.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) credit union for approval to establish a branch office or agency has been approved and all conditions precedent to the issuance of a license authorizing the foreign (other nation) credit union to maintain the branch office or agency have been fulfilled, the commissioner shall issue the license.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16553. The approval of an application for approval to establish a branch office or agency shall be revoked by operation of law if the applicant foreign (other nation) credit union does not establish and maintain the office within one year after the date of the approval, unless prior to the expiration of the one-year period the commissioner extends the time within which the foreign (other nation) credit union may establish the branch office or agency.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16554. (a) No foreign (other nation) credit union which is licensed to maintain a branch office or agency shall relocate the office unless the commissioner shall have first approved the relocation and issued a license authorizing the foreign (other nation) credit union to maintain the office at the new site.

(b) (1) In case the new site of the office is in the same vicinity as the old site, the commissioner shall approve an application by a foreign (other nation) credit union for approval to relocate a branch office or agency if the commissioner finds all of the following:

(A) That it will not be unsafe or unsound for the foreign (other nation) credit union to relocate the office.

(B) That the relocation of the office will not be substantially detrimental to the public convenience and advantage, or that the relocation is necessary in the interests of the safety and soundness of the foreign (other nation) credit union.

(2) In case the new site of the office is not in the same vicinity as the old site, the commissioner shall approve an application by a foreign (other nation) credit union for approval to relocate a branch office or agency if the commissioner finds all of the following:

(A) That the foreign (other nation) credit union's plan to relocate the office and to maintain the office at the new site affords reasonable promise of successful operation.

(B) That the relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area which is primarily served by the office at the old site, or that the relocation is necessary in the interests of the safety and soundness of the foreign (other nation) credit union.

(C) That the relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) credit union for approval to relocate a branch office or agency has been approved and all conditions precedent to the issuance of a license authorizing the foreign (other nation) credit union to maintain the office at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after a foreign (other nation) credit union that is licensed to maintain a branch office or agency relocates the office, the foreign (other nation) credit union shall surrender to the commissioner the license which authorized it to maintain the office at the old site.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16555. (a) (1) No foreign (other nation) credit union that is licensed to maintain a branch office or agency shall close the office unless the commissioner shall have first approved the closing.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) credit union that is licensed to maintain a branch office or agency from closing an office in accordance with Article 8 (commencing with Section 16800).

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) credit union for approval to close a branch office or agency, the commissioner shall approve the application:

(1) That it will not be unsafe or unsound for the foreign (other nation) credit union to close the office.

(2) That the closing of the office will not be substantially detrimental to the public convenience and advantage or that the closing of the office is necessary in the interests of the safety and soundness of the foreign (other nation) credit union.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) credit union for approval to close a branch office or agency has been approved and all conditions precedent to the closing have been fulfilled, the foreign (other nation) credit union may close the office and shall promptly thereafter surrender to the commissioner the license which authorized it to maintain the office.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

Article 6. Conduct of Credit Union Business

(Article 6 added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16600. (a) A foreign (other nation) credit union that has a license to establish and maintain an office may engage in activities at the office as may be authorized under applicable laws of its home country and the laws of this state.

(b) Nothing in subdivision (a) authorizes a foreign (other nation) credit union to engage in any activity at an office that it is not authorized to engage in or is prohibited from engaging in under the law of its home country, or that credit unions organized under the laws of this state are not authorized to engage in or are prohibited from engaging in under the laws of this state.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16601. (a) A foreign (other nation) credit union may not expand its field of membership in this state without first obtaining the commissioner's approval.

(b) An application for the commissioner's approval of an expansion of the field of membership in this state by a foreign (other nation) credit union shall be in the form and contain the information as may be specified, by order or regulation, by the commissioner.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16602. (a) The following provisions of this code apply to a foreign (other nation) credit union that maintains a branch office or agency with respect to its business in this state as if the foreign (other nation) credit union were a credit union organized under the laws of this state:

(1) Section 14203.

(2) Section 14204.

(3) Section 14208.

(4) Section 14210.

(5) Section 14256.

(6) Section 14409.

(7) Section 14409.2.

(8) Section 14602.

(9) Section 14652.5.

(10) Section 14655, to the extent promissory notes of the type described in this section are carried on the books of a branch office of a foreign (other nation) credit union.

(11) Section 14656, to the extent promissory notes of the type described in this section are carried on the books of a branch office of a foreign (other nation) credit union.

(12) Article 8 (commencing with Section 14750) of Chapter 4.

(13) Section 14800.

(14) Section 14802.

(15) Section 14803.

(16) Section 14807.

(17) Section 14808.

(18) Section 14809.

(19) Article 1 (commencing with Section 14850) of Chapter 6.

(20) Article 1 (commencing with Section 14950) of Chapter 7.

(21) Article 2 (commencing with Section 15001) of Chapter 7.

(22) Article 3 (commencing with Section 15050) of Chapter 7, to the extent loans of the type described in that article are carried on the books of a branch office of a foreign (other nation) credit union.

(23) Section 15102.

(b) In addition to the laws specified in subdivision (a), the laws of this state applicable to transactions between a credit union organized under the laws of this state and its members and creditors shall similarly apply to the transactions of a foreign (other nation) credit union in this state. These laws include, but are not limited to, consumer protection laws and laws relating to creditor rights and remedies, commercial transactions, mortgages and deeds of trust, bank deposits and collections, and negotiable instruments.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16603. (a) Any foreign (other nation) credit union that is authorized to and does maintain a branch office or agency is exempted from the restrictions of Section 1 of Article XV of the California Constitution relating to rates of interest upon the loan or forbearance of any money, goods, or things in action or on accounts after demand.

(b) This section does not exempt a foreign (other nation) credit union or any subsidiary from complying with all other laws and regulations governing the business in which the foreign (other nation) credit union or subsidiary is engaged.

(c) This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16604. (a) A foreign (other nation) credit union which is licensed to establish and maintain an office or offices shall keep the assets of the offices separate and apart from the assets of its business outside this state.

(b) Persons who are creditors of a foreign (other nation) credit union as a result of the business of an office of the foreign (other nation) credit union in this state shall be entitled to priority over other creditors with respect to the assets of the business in this state of the foreign (other nation) credit union.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16605. (a) In this section:

(1) "Adjusted liabilities," when used with respect to a foreign (other nation) credit union, means the liabilities of the foreign (other nation) credit union's business in this state, determined in accordance with generally accepted accounting principles, but excluding (A) accrued expenses, (B) any liability to an office (whether in or outside of this state) or majority-owned subsidiary of the foreign (other nation) credit union, and (c) other liabilities as the commissioner may by regulation or order exclude.

(2) "Applicable minimum," when used with respect to eligible assets deposited or to be deposited with an approved depository by a foreign (other nation) credit union, means the amount as the commissioner may from time to time by regulation or order determine to be necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the foreign (other nation) credit union's business in this state, or for the protection of the public interest. However, in the case of a foreign (other nation) credit union which is licensed to maintain a branch office, the applicable minimum shall not be less than 5 percent of the adjusted liabilities of the foreign (other nation) credit union.

(3) "Approved depository," when used with respect to a foreign (other nation) credit union, means a bank or credit union organized under the laws of this state or a national bank headquartered in this state that has been selected by the foreign (other nation) credit union and approved by the commissioner for the purpose of acting as the approved depository of the foreign (other nation) credit union and that has filed with the commissioner, in the form as the commissioner may by regulation or order prescribe, an agreement to comply with all applicable provisions of this section and of any regulation or order issued under this section.

(4) "Eligible assets" when used with respect to a foreign (other nation) credit union, means any of the following:

(A) Cash.

(B) Any negotiable certificate of deposit that (i) has a maturity of not more than one year, (ii) is payable in the United States, and (iii) is issued by a bank organized under the laws of a state of the United States, by a national bank, or by a branch office of a foreign (other nation) bank that is located in the United States.

(C) Any banker's acceptance that is payable in the United States and that is eligible for discount with a federal reserve bank.

(D) Any other asset that the commissioner by regulation or order determines to be eligible.

Notwithstanding the foregoing provisions of this paragraph, "eligible asset," when used with respect to a foreign (other nation) credit union, does not include any instrument the issuer of which (i) is, or is affiliated with, the foreign (other nation) credit union, (ii) is domiciled in, or controlled by a person domiciled in, the same foreign nation as the foreign (other nation) credit union, or (iii) is, or is controlled by, the foreign nation. For purposes of the foregoing provision, to be "affiliated" means to control, to be controlled by, or to be under common control with; and to "control" has the meaning set forth in subdivision (b) of Section 700.

(b) For purposes of this section:

(1) The amount of adjusted liabilities of a foreign (other nation) credit union's business in this state shall be computed for the period of time and in the manner as the commissioner may by regulation or order prescribe.

(2) An eligible asset shall be valued at the lesser of market or par.

(c) (1) Before a foreign (other nation) credit union is authorized to transact business in this state, the foreign (other nation) credit union shall deposit, and each foreign (other nation) credit union that is licensed to transact business in this state shall maintain on deposit, with an approved depository eligible assets having a value in an amount not less than the applicable minimum.

(2) Whenever a foreign (other nation) credit union that is licensed to transact business in this state ceases to be so licensed, the foreign (other nation) credit union shall thereafter maintain on deposit with an approved depository eligible assets having a value in an amount not less than the applicable minimum for the period of time as the commissioner may determine to be necessary for the protection of creditors of the foreign (other nation) credit union's business in this state or for the protection of the public interest.

(d) (1) No foreign (other nation) credit union that maintains eligible assets on deposit with an approved depository pursuant to this section shall withdraw any eligible asset except with the prior approval of the commissioner.

(2) No approved depository that holds eligible assets on deposit from a foreign (other nation) credit union pursuant to this section shall release any eligible asset except with the prior approval of the commissioner or as otherwise provided in subdivision (h).

(e) Any foreign (other nation) credit union that maintains eligible assets on deposit with an approved depository pursuant to this section shall, unless the commissioner shall have suspended or revoked its authorization to transact business in this state or taken possession of its property and business in this state, be entitled to receive any income paid on eligible assets.

(f) (1) Whenever a foreign (other nation) credit union deposits eligible assets with, or withdraws eligible assets from, an approved depository pursuant to this section, the foreign (other nation) credit union shall do so in accordance with the procedures and requirements as the commissioner may by regulation or order prescribe.

(2) Whenever an approved depository receives, holds, or releases eligible assets pursuant to this section, the approved depository shall do so in accordance with the procedures and requirements as the commissioner may by regulation or order prescribe and shall file with the commissioner reports as and when the commissioner may by regulation or order require.

(g) Whenever a foreign (other nation) credit union maintains eligible assets on deposit with an approved depository pursuant to this section:

(1) The eligible assets shall be deemed to be pledged to the commissioner for the benefit of the creditors of the foreign (other nation) credit union's business in the state; and, notwithstanding any provision of the Uniform Commercial Code to the contrary, the commissioner, for the benefit of these creditors, shall be deemed to have a security interest in the eligible assets.

(2) The eligible assets shall be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the approved depository against the foreign (other nation) credit union.

(h) (1) In case the commissioner takes possession of the property and business of a foreign (other nation) credit union that maintains eligible assets on deposit with an approved depository pursuant to this section, the approved depository

shall, upon order of the commissioner, release the eligible assets to the commissioner, as liquidator of the property and business of the foreign (other nation) credit union.

(2) In case a foreign (other nation) credit union that maintains eligible assets on deposit with an approved depository pursuant to this section fails to pay any judgment creditor of its business in this state and the commissioner has not taken possession of the property and business of the foreign (other nation) credit union, the approved depository shall release the eligible assets to the commissioner, and the commissioner shall dispose of the eligible assets, as a court of competent jurisdiction of this state or of the United States may order for the benefit of the judgment creditor. For purposes of this paragraph, "judgment creditor of its business in this state" means a person to whom the foreign (other nation) credit union is required to pay money under a judgment that (A) arose out of the foreign (other nation) credit union's business in this state, (B) has been entered by a court of this state or of the United States, (c) has become final, in that all possibility of direct attack on the judgment by way of appeal, motion for new trial, motion to vacate, or petition for extraordinary writ has been exhausted, and (D) has remained unpaid for a period of not less than 60 days after becoming final.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16607. (a) In this section:

(1) "Adjusted liabilities," when used with respect to a

foreign (other nation) credit union that is licensed to maintain a branch office, means the liabilities of the foreign (other nation) credit union's business in this state, excluding (A) accrued expenses, (B) any liability to an office (whether in or outside of this state) or majority-owned subsidiary of the foreign (other nation) credit union, and (c) other liabilities as the commissioner may by regulation or order exclude.

(2) "Eligible assets" means any asset which the commissioner by regulation or order determines to be eligible for purposes of this section. However, "eligible asset," when used with respect to a foreign (other nation) credit union that is licensed to maintain a branch office, includes any asset which the foreign (other nation) credit union maintains on deposit pursuant to Section 16606.

(b) For purposes of this section, the amount of eligible assets and the amount of adjusted liabilities of a foreign (other nation) credit union that is licensed to maintain a branch office each be computed for the period of time and in the manner as the commissioner may by regulation or order prescribe.

(c) A foreign (other nation) credit union licensed to maintain a branch office shall hold at its branch offices in this state or at any other place as the commissioner may approve, eligible assets in the amount, if any, as the commissioner may from time to time by regulation or order determine to be necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the foreign (other nation) credit union's business in this state, or for the protection of the public interest. However, in no event shall the amount exceed 108 percent of the adjusted liabilities of the foreign (other nation) credit union's business in this state.

(d) If the commissioner finds, with respect to a foreign (other nation) credit union licensed to maintain a branch office in this state, that the action is necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the foreign (other nation) credit union's business in this state, or for the protection of the public interest, the commissioner may order the foreign (other nation) credit union to place all or part of the eligible assets which the foreign (other nation) credit union is required to hold under subdivision (c) in the custody of a bank organized under the laws of this state or a national bank headquartered in this state as the commissioner may designate, and such assets shall be subject to the order of the commissioner.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

Article 7. Examination, Reports, and Records

(Article 7 added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16700. (a) The commissioner may at any time investigate into the affairs and examine the books, accounts, and other records of a foreign (other nation) credit union and of any subsidiary thereof.

(b) The commissioner and any person designated by the commissioner shall have free access to any office of the foreign (other nation) credit union and to its books, accounts, and other records.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16701. The commissioner may make an examination of a foreign (other nation) credit union at any office of the commissioner. The commissioner may make an examination of any office, within or outside of this state, of a foreign (other nation) credit union that maintains an office in this state.

(Amended by Stats. 2003, Ch. 404, Sec. 19. Effective January 1, 2004.)

16702. (a) Each foreign (other nation) credit union shall, within 10 days after receipt or within any extended time that the commissioner may specify, file with the commissioner a copy of any audit report obtained by, and of any examination report prepared for, the foreign (other nation) credit union.

(b) Each foreign (other nation) credit union shall file with the commissioner a copy of any response made by the foreign (other nation) credit union to an audit or examination report referred to in subdivision (a) within 10 days after making the response or within any extended time that the commissioner may specify.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16703. A foreign (other nation) credit union shall file with the commissioner any other report as the commissioner may from time to time require. Each report shall be in the form, contain the information, and be filed on the date, as may be prescribed by the commissioner.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16704. Each foreign (other nation) credit union that maintains an office shall make, keep, and preserve at that office, or at any other place that the commissioner may by regulation or order approve, the books, accounts, and other records relating to the business of the office, in the form, in the manner, and for the time that the commissioner may, by regulation or order, require.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

Article 8. Voluntary Surrender of License

(Article 8 added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16800. (a) A foreign (other nation) credit union that is licensed to maintain an office may voluntarily surrender the license for the office by filing the license and a report with the commissioner. However, a foreign (other nation) credit union that holds licenses to maintain two or more offices may not voluntarily surrender less than all of its licenses.

(b) (1) Except as otherwise provided in paragraph (2), a voluntary surrender of a license shall be effective on the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner or on an earlier date as the commissioner may by order specify.

(2) If a proceeding to revoke or suspend a license is pending at the time when the license and the report called for in subdivision (a) are filed with the commissioner or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner, the voluntary surrender of the license shall become effective at the time and upon the conditions that the commissioner may by order specify.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

Article 9. Enforcement

(Article 9 added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16900. (a) The commissioner may bring an action in the name of the people of this state in the superior court to enjoin any violation of, to enforce compliance with, or to collect any penalty or other liability imposed under this division or any regulation or order issued under this chapter. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and a monitor, receiver, conservator, or other designated fiduciary or officer of the court may be granted as appropriate.

(b) A receiver, monitor, conservator, or other designated fiduciary officer of the court appointed by the court pursuant to this section may, with the approval of the court, exercise all of the powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the court.

(c) If the commissioner finds that it is in the public interest, the commissioner may include in a claim for restitution, disgorgement, or damages on behalf of the person injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award ancillary relief.

(d) The provisions of this section that authorize the commissioner to bring actions and seek relief are not intended to, and do not, affect any right that any other person may have to bring the same or similar actions or to seek the same or similar relief.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16900.5. (a) If the commissioner finds that any person has violated, or that there is reasonable cause to believe that any person is about to violate, Section 16020, the commissioner may order the person to cease and desist from the violation unless and until the person is issued a license.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed with him or her (or within such longer period to which the person consents), the order shall be deemed rescinded. At the hearing the commissioner shall affirm, modify, or rescind the order.

(2) The right of any person, to whom an order is issued under subdivision (a), to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16901. If, after notice and hearing, the commissioner finds that any person has violated any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may order the person to pay to the commissioner a civil penalty imposed pursuant to Section 216.3.

(Amended by Stats. 2003, Ch. 445, Sec. 17. Effective January 1, 2004.)

16902. If, after notice and hearing, the commissioner finds any of the following with respect to a foreign (other nation) credit union that is licensed to maintain an office, the commissioner may issue an order suspending or revoking the license of the foreign (other nation) credit union.

(a) That the foreign (other nation) credit union has violated a provision of this division or of any regulation or order issued under this division or a provision of any other applicable law, regulation, or order.

(b) That the foreign (other nation) credit union is transacting the business in this state or elsewhere in an unsafe or unsound manner.

(c) That the foreign (other nation) credit union is in unsafe or unsound condition.

(d) That the foreign (other nation) credit union has ceased to operate its office.

(e) That the foreign (other nation) credit union is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities exceed its assets.

(f) That the foreign (other nation) credit union has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) That the foreign (other nation) credit union has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for such relief under any such law against the foreign (other nation) credit union, and the foreign (other nation) credit union has by any affirmative act approved of or consented to the action or the relief has been granted.

(h) That a receiver, liquidator, or conservator has been appointed for the foreign (other nation) credit union or that any proceeding for an appointment or any similar proceeding has been initiated in the home country of the foreign (other nation) credit union.

(i) That the existence of the foreign (other nation) credit union or the authority of the foreign (other nation) credit union to transact banking business under the laws of the home country of the foreign (other nation) credit union has been suspended or terminated.

(j) That any fact or condition exists that, if it had existed at the time when the foreign (other nation) credit union applied for approval to transact business in this state, would have been grounds for denying the application.

(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16903. (a) If the commissioner finds that any of the factors set forth in Section 16902 is true with respect to any foreign (other nation) credit union that is licensed to maintain an office and that it is necessary for the protection of the interests of creditors of the foreign (other nation) credit union's business in this state or, in any case, for the protection of the public interest that the commissioner immediately suspend or revoke the license of the foreign (other nation) credit union, the commissioner may issue an order suspending or revoking the license of the foreign (other nation) credit union.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the foreign (other nation) credit union to which the order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner (or within any longer period to which the foreign (other nation) credit union consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any foreign (other nation) credit union to which an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the foreign (other nation) credit union to apply to the commissioner for a hearing on the order pursuant to paragraph (1).
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16904. Any foreign (other nation) credit union whose license to maintain an office is suspended or revoked shall immediately surrender the license to the commissioner.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16905. (a) Any foreign (other nation) credit union to which an order is issued under Section 16902 and 16903 may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the foreign (other nation) credit union will, if and when it is again authorized to maintain an office, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any foreign (other nation) credit union to which an order is issued under Section 16902 or 16903 to petition for judicial review of the order shall not be affected by the failure of the foreign (other nation) credit union to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

16906. (a) If the commissioner finds that any of the factors set forth in Section 16902 is true with respect to any foreign (other nation) credit union which is authorized to transact business in this state and that it is necessary for the protection of the interests of the creditors of the business of the foreign (other nation) credit union in this state or for the protection of the public interest that he or she take immediate possession of the property and business of the foreign (other nation) credit union, the commissioner may by order forthwith take possession of the property and business of the foreign (other nation) credit union and retain possession until the foreign (other nation) credit union resumes business in this state or is finally liquidated. The foreign (other nation) credit union may, with the consent of the commissioner, resume business in this state under the conditions as the commissioner may prescribe.

(b) (1) Whenever the commissioner takes possession of the property and business of a foreign (other nation) credit union pursuant to subdivision (a), the foreign (other nation) credit union may, within 10 days, apply to the superior court in the county in which the primary office in this state of the foreign (other nation) credit union is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order him or her to surrender the property and business of the foreign (other nation) credit union to the foreign (other nation) credit union or make any further order as may be just.

(2) The judgment of the court may be appealed by the commissioner or by the foreign (other nation) credit union in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. In case the commissioner appeals the judgment of the court, the appeal shall operate as a stay of the judgment, and the commissioner shall not be required to post any bond.

(c) Whenever the commissioner takes possession of the property and business of a foreign (other nation) credit union pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the foreign (other nation) credit union in accordance with Sections 14301 to 14304, inclusive.

(d) When the commissioner has completed the liquidation of the property and business of a foreign (other nation) credit union in this state, the commissioner shall transfer any remaining assets to the foreign (other nation) credit union in accordance with any order the court may issue. However, in case the foreign (other nation) credit union has an office in another state of the United States which is in liquidation and the assets of that office appear to be insufficient to pay in full the creditors of that office, the court shall order the commissioner to transfer to the liquidator of that office the amount of any remaining assets as appears to be necessary to cover the insufficiency. If there are two or more offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to those offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of the offices in the manner as the court determines is equitable.
(Added by Stats. 2000, Ch. 612, Sec. 4. Effective January 1, 2001.)

DIVISION 7. INDUSTRIAL LOAN COMPANIES

(Division 7 repealed and added by Stats. 1976, Ch. 964.)

CHAPTER 1. GENERAL PROVISIONS

(Chapter 1 added by Stats. 1976, Ch. 964.)

Article 1. Definitions

(Article 1 added by Stats. 1976, Ch. 964.)

18000. This division shall be known and may be cited as the "Industrial Loan Law," the "Industrial Banking Law," or the "Thrift and Loan Law."

(Amended by Stats. 1998, Ch. 827, Sec. 2. Effective January 1, 1999.)

18001. The definitions given in this article govern the construction of this division unless the context otherwise requires.

(Repealed and added by Stats. 1976, Ch. 964.)

18002. "Commissioner" means the Commissioner of Financial Institutions of the State of California.

(Amended by Stats. 1996, Ch. 1064, Sec. 582. Effective January 1, 1997. Operative July 1, 1997.)

18002.5. "Department" means the Department of Financial Institutions.

(Added by Stats. 1996, Ch. 1064, Sec. 582.5. Effective January 1, 1997. Operative July 1, 1997.)

18003. "Industrial loan company," "thrift and loan company," or "company" as used in this division means a premium finance agency as defined in Section 18560. Notwithstanding any other provision of this chapter, these terms and this division do not apply to an industrial bank subject to and governed by Chapter 11 (commencing with Section 1400) of Division 1.

(Amended by Stats. 2000, Ch. 1015, Sec. 51. Effective September 30, 2000.)

18003.1. "Investment and loan" means an industrial loan company.

(Added by Stats. 1990, Ch. 623, Sec. 2.)

18003.2. (a) Any reference in a provision of any statute or regulation of this state to an industrial loan company or a thrift and loan company means an insurance premium finance agency as defined in Section 18560.

(b) Subdivision (a) does not apply in any of the following cases:

(1) In case the provision or a related provision expressly provides otherwise.

(2) In the case of any provision of Division 1 (commencing with Section 99) or Division 1.5 (commencing with Section 4800).

(Added by Stats. 2000, Ch. 1015, Sec. 52. Effective September 30, 2000.)

18003.5. (a) When used with respect to an industrial loan company, "insured" means an industrial loan company that is insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(b) When used with respect to an investment certificate, "insured" means an investment certificate that is insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(Repealed and added by Stats. 1998, Ch. 827, Sec. 4. Effective January 1, 1999.)

18003.6. "Certificate of deposit" as that term is used by an industrial loan company licensed under this division means an investment certificate representing the obligation of an industrial loan company to repay a nondemand deposit as deposit is defined in Section 3(1) of the Federal Deposit Insurance Act.

(Added by Stats. 1994, Ch. 129, Sec. 1. Effective January 1, 1995.)

18003.7. "Demand deposit" means investment or thrift certificates in account, passbook, or certificate form which are redeemable and payable upon demand to the owner.

(Added by Stats. 1999, Ch. 345, Sec. 1. Effective January 1, 2000.)

18004. "Borrower" means the person receiving the proceeds or benefits of a loan.

(Repealed and added by Stats. 1976, Ch. 964.)

18005. "Consumer loan or consumer obligation" means a loan made to, or an obligation incurred by, a natural person in which the money loaned, or the property delivered or service rendered under the obligation is primarily for personal, family, or household purposes.

(Added by Stats. 1976, Ch. 964.)

18006. "Primarily secured by real property", as used in this division, means the fair market value of the real property

less prior encumbrances, at the time the loan is made or other obligation is acquired, is more than 50 percent of the principal amount owing on the loan or obligation.
(Added by Stats. 1976, Ch. 964.)

18007. "Charges", as used in this division, include the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by an industrial loan company or any other person in connection with the investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, or enforcing of a loan, or for forbearance of money, credit, goods, things in action, or any other service or services rendered.
(Added by Stats. 1976, Ch. 964.)

18008. "Charges" also include any profit or advantage of any kind that any person may contract for, collect, receive, or in any manner obtain by a collateral sale, purchase, or agreement, in connection with the negotiating, arranging, making, or otherwise in connection with any loan, except commissions received on insurance sold as provided in this division.
(Added by Stats. 1976, Ch. 964.)

18009. "Principal amount", as used in this division, means the net amount of money, credit, goods, or things in action received by the debtor or borrower or disbursed on the borrower's instructions at the time of entering into the transaction.
(Added by Stats. 1976, Ch. 964.)

18010. "Principal balance", and "face amount" as used in this division, means the unpaid balance of a loan or other obligation.
(Amended by Stats. 1979, Ch. 270.)

18011. "Affiliated company", as used in this division, is a company under substantially the same management or control, directly or indirectly, as the industrial loan company.
(Added by Stats. 1976, Ch. 964.)

18011.1. "Affiliate" means an affiliated company or a person who, directly or indirectly, controls over 10 percent of the voting stock of an industrial loan company.
(Added by Stats. 1996, Ch. 467, Sec. 1. Effective January 1, 1997.)

18012. "Corporate Securities Law" means the Corporate Securities Law of 1968, Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code.
(Added by Stats. 1976, Ch. 964.)

18013. "Outstanding loans and obligations," as used in this division, means total outstanding loans and obligations, including lease obligations, less unearned interest or charges, unearned discount, reserve or allowance for losses, and other applicable allowances or deductions as determined by regulation of the commissioner.
(Amended by Stats. 1979, Ch. 911.)

18014. "Obligation" as used in Sections 18265, 18271, 18272, and 18343 includes lease obligations as authorized by Section 18310.
(Added by Stats. 1979, Ch. 911.)

18015. "Lease obligation" as used in this division, means a lease contract entered into by an industrial loan company as lessor.
(Added by Stats. 1979, Ch. 911.)

18016. "Investment certificates ratio", as used in this division, means the ratio of the aggregate sum of all of the outstanding investment certificates, exclusive of those hypothecated with the company issuing them, of a company to the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus declared not available for dividends pursuant to Section 18319.
(Added by renumbering Section 18373 by Stats. 1985, Ch. 142, Sec. 7. Effective July 1, 1985.)

18016.5. "Premium finance agency" has the meaning set forth in Section 18560.
(Added by Stats. 1998, Ch. 827, Sec. 5. Effective January 1, 1999.)

18017. "Assets," as used in this division, means all assets excluding intangibles.
(Added by Stats. 1986, Ch. 680, Sec. 1.)

18018. "Capital," as used in this division, consists of all of the following:
(a) Capital stock.
(b) Primary capital to the extent not included in capital stock.
(c) Secondary capital.
(Added by Stats. 1989, Ch. 663, Sec. 1. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18018.1. "Primary capital," as used in this division, means the sum of common stock, perpetual preferred stock, capital surplus, undivided profits, capital reserves, and mandatory convertible debt (to the extent of 20 percent of primary capital exclusive of that debt).
(Added by Stats. 1989, Ch. 663, Sec. 1.1. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18018.2. "Secondary capital," as used in this division, means the sum of mandatory convertible debt that is not included in primary capital, limited life preferred stock, and subordinated notes and debentures, all in an amount up to 50 percent of primary capital. Issues of limited life preferred stock and subordinated notes and debentures, except mandatory convertible debt, shall have original weighted average maturities of at least seven years to be included within capital surplus under primary capital.
(Added by Stats. 1989, Ch. 663, Sec. 1.2. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18018.3. "Perpetual preferred stock," as used in this division, means a preferred stock that does not have a stated maturity date or that can not be redeemed at the option of the holder. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.
(Added by Stats. 1989, Ch. 663, Sec. 1.3. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18018.4. "Mandatory convertible debt," as used in this division, means a subordinated debt instrument which requires the issuer to convert that instrument into common or perpetual preferred stock by a date at or before the maturity of the debt instrument. The maturity of those instruments shall be 12 years or less.
(Added by Stats. 1989, Ch. 663, Sec. 1.4. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18018.5. "Limited life preferred," as used in this division, means preferred stock which has a maturity or which may be redeemed at the option of the holder.
(Added by Stats. 1989, Ch. 663, Sec. 1.5. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18018.6. "Subordinated notes and debentures," as used in this division, means an obligation other than an investment certificate obligation that:

(a) Bears on its face, in boldface type no smaller than the largest size type used in the obligation, the following: "this obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation."

(b) (1) Has a maturity of at least seven years, or (2) in the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least seven years; however, the commissioner may permit the issuance of an obligation or issue with a shorter maturity or average maturity if the commissioner has determined that exigent circumstances require the issuance of that obligation or issue. This subdivision shall not apply to mandatory convertible obligations or issues.

(c) States expressly that the obligation is subordinated and junior in right of payment to the issuing industrial loan company's obligations to its investment certificate holders and to the industrial loan company's other obligations to its general and secured creditors, and is ineligible as collateral for a loan by the issuing industrial loan company.

(d) Is unsecured.

(e) States expressly that the issuing industrial loan company may not retire any part of its obligation without the prior written consent of the commissioner.

(f) Includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.
(Added by Stats. 1989, Ch. 663, Sec. 1.6. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18019. "Capital Stock," as used in this division, means one-class voting common stock.
(Added by Stats. 1989, Ch. 663, Sec. 2. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

Article 2. General Provisions
(Article 2 added by Stats. 1976, Ch. 964.)

18020. An industrial loan company shall not appoint or continue in office any officer, director or management personnel who do not have the qualifications required by Section 18117 (d).
(Added by Stats. 1976, Ch. 964.)

18021. (a) An industrial loan company shall not deposit its funds except with a bank, trust company, or savings association authorized to do business in this state, except as provided in subdivision (b).

(b) An industrial loan company which is insured, as that term is defined in Section 18003.5, may also deposit its funds in an out-of-state financial institution, the accounts of which are insured by the Federal Deposit Insurance Corporation.

(c) Funds deposited in an out-of-state financial institution shall not in any case exceed the applicable amount of federal deposit insurance.

(d) The depository shall be approved by a majority vote of the board of directors or the executive committee, exclusive of the vote of any director who is an officer, director, trustee, or shareholder of the depository so designated. An out-of-state savings association subject to the Management Consignment Program of the Office of Thrift Supervision shall not be used as a depository.

(e) An industrial loan company shall furnish an authorization for disclosure to the commissioner of the financial records of deposits pursuant to Section 7473 of the Government Code. No deposit shall be made in an out-of-state financial institution unless that institution agrees in writing to disclose financial records of the industrial loan company to the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 583. Effective January 1, 1997. Operative July 1, 1997.)

18022. No industrial loan company shall invest any of its funds, except as authorized in this division. Industrial loan companies may invest their funds in investments that are legal investments for commercial banks, including the capital stock, obligations, or other securities of one or more corporations, subject to rules and orders prescribed by the commissioner. Companies may also invest their funds in the choses in action issued by any other industrial loan company.

(Amended by Stats. 1996, Ch. 223, Sec. 1. Effective January 1, 1997.)

18022.5. An industrial loan company may organize, sponsor, operate, control, or render investment advice to, an investment company, or underwrite, distribute, or sell securities of any investment company which has qualified to sell its securities in this state pursuant to Part 2 (commencing with Section 25100) of Division 1, Title 4 of the Corporations Code, if the officers and employees of the industrial loan company who sell these securities meet such standards with respect to training experience, and sales practices as established by the Secretary of the Business, Transportation and Housing Agency or the secretary's designee. For the purpose of this section, "investment company" means an investment company as defined in the Investment Company Act of 1940 (15 U.S.C., Sec. 80a-1 et seq.).

(Added by Stats. 1982, Ch. 1050, Sec. 5. Operative July 1, 1984, or earlier, as prescribed by Sec. 6 of Ch. 1050.)

18023. If an industrial loan company has investment or thrift certificates outstanding, then such company shall not borrow, except by the sale of investment or thrift certificates, in an amount in excess of 300 percent of the amount represented by its outstanding capital stock, surplus and undivided profits, without the written consent of the commissioner. All sums so borrowed in excess of 150 percent of outstanding capital stock, surplus and undivided profits shall be unsecured borrowings or, if secured, approved in writing by the commissioner in advance of the borrowings, and be included as investment or thrift certificates for purposes of computing the ratio allowed under Sections 18319 and 18320.

(Amended by Stats. 1985, Ch. 142, Sec. 1. Effective July 1, 1985.)

18023.1. In addition to the borrowings under Section 18023, an industrial loan company may borrow funds from the Federal Home Loan Bank, the Federal Deposit Insurance Corporation, or a Federal Reserve Bank, which borrowed funds shall not be included in the borrowing limitations contained in Section 18023.

(Amended by Stats. 1998, Ch. 827, Sec. 6. Effective January 1, 1999.)

18024. An industrial loan company shall not transact business or make any loan provided for by this division under any other name than that set forth in the articles of incorporation as filed with the commissioner.

(Added by Stats. 1976, Ch. 964.)

18025. No person shall use a holding company or any other device for the purpose of evading or avoiding any of the provisions of this division. This section shall not affect the right of a holding company to issue preferred stock or debentures when permitted to do so under the Corporate Securities Law of 1968. "Holding company" means any company which directly or through one or more intervening subsidiaries, whether or not wholly owned, controls or has the power to control a majority of the shares of an industrial loan company.

(Amended by Stats. 1980, Ch. 418, Sec. 1.)

18027. Corporations subject to this division are not subject to the provisions or regulations of the Personal Property Brokers Law, Division 9 (commencing with Section 22000), the Consumer Finance Lenders Law, Division 10 (commencing with Section 24000), or the Commercial Finance Lenders Law, Division 11 (commencing with Section 26000).

(Amended by Stats. 1982, Ch. 1082, Sec. 6.)

18028. All corporations formed under the provisions of this division are taxed in the same manner and at the same rates as other corporations are taxed pursuant to Section 27 of Article XIII of the Constitution of this state.

(Amended by Stats. 1983, Ch. 725, Sec. 1.)

18029. Each industrial loan company shall keep and use in its business, books, accounts, and records which will enable the commissioner to determine if the company is complying with the provisions of this division and with the rules and regulations made by the commissioner.
(Added by Stats. 1976, Ch. 964.)

18030. Each industrial loan company shall preserve the books, accounts, and records, including cards used in the card system, if any, for a least two years after making the final entry on any loan or purchased obligation recorded therein.
(Added by Stats. 1976, Ch. 964.)

Article 3. Real Property Held
(Article 3 added by Stats. 1976, Ch. 964.)

18040. An industrial loan company may purchase, hold and convey real property for the following purposes only:

(a) Real property conveyed to it in satisfaction of debts previously contracted in the course of its business.

(b) Real property purchased at sale under judgments, decrees or mortgage foreclosures or foreclosures of or trustees' sales under deeds of trust under securities held by it. No company shall bid at any such sale a larger amount than is necessary to satisfy its debt and costs.

(c) Real property necessary as premises for the transaction of its business. No company shall invest directly or indirectly an amount exceeding one-third of its paid-up capital stock and surplus not available for dividends as provided in Section 18319 in the lot and building in which the business of the company is carried on, leasehold improvements, furniture, fixtures, vaults, automobiles, and other personal property, necessary and proper to carry on its business.

(d) The provisions of this section shall not apply to property acquired and held for lease pursuant to Section 18310.
(Amended by Stats. 1989, Ch. 663, Sec. 3. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18041. (a) The commissioner may establish rules and regulations regarding the sale of any real property acquired pursuant to subdivision (a) or (b) of Section 18040, consistent with what constitutes sound business practices for industrial loan companies.

(b) Real property acquired pursuant to subdivision (a) or (b) of Section 18040 shall not be held for a longer period than five years without the written consent of the commissioner.
(Amended by Stats. 1984, Ch. 873, Sec. 1.)

18042. The authority of a three-fourths vote of all the directors is necessary to authorize the purchase of a lot and building necessary as premises for the transaction of business as an industrial loan company or to authorize the construction of such building.
(Added by Stats. 1976, Ch. 964.)

18043. Real property held by an industrial loan company shall be conveyed by an instrument under the corporate seal of the corporation, signed by the president or vice president, and the secretary or assistant secretary.
(Added by Stats. 1976, Ch. 964.)

Article 4. Advertising
(Article 4 added by Stats. 1976, Ch. 964.)

18055. No person shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner in connection with the business of an industrial loan company any statement or representation with regard to the rates, terms, or conditions for making or negotiating loans, or with regard to investment certificates, which is false, misleading, or deceptive.
(Added by Stats. 1976, Ch. 964.)

18056. An industrial loan company shall not use any advertising which refers to the supervision of such company by the state or any department or official thereof.
(Added by Stats. 1976, Ch. 964.)

18057. An industrial loan company shall not use any advertising nor make any representations which indicate, imply or might lead a person to believe that the company is a savings association.
(Amended by Stats. 1996, Ch. 1064, Sec. 585. Effective January 1, 1997. Operative July 1, 1997.)

18058. An industrial loan company shall not use any advertising nor make any representations which indicate, infer or might lead a person to believe that investment certificates are insured unless such is the fact.
(Added by Stats. 1976, Ch. 964.)

18060. (a) Except as provided in subdivision (b), industrial loan company which issues thrift certificates shall not use any thrift advertisement which refers to the industrial loan company's ownership by, or affiliation with, any other entity unless the advertisement also discloses in as prominent a manner and as large a type size as the referenced ownership or affiliation was stated, whether or not the owner or affiliate so named guarantees thrift certificates issued by the industrial loan company.

(b) (1) Subdivision (a) applies to an insured company when the other entity guarantees the thrift certificates issued by the insured company.

(2) Subdivision (a) does not apply to an insured company when the other entity does not guarantee the thrift certificates issued by the insured company and the advertisement referring to the insured company's ownership by, or affiliation with, the other entity does not state or imply that the assets or reserves of the other entity may be used to guarantee thrift certificates of the insured company.

(Amended by Stats. 1986, Ch. 1011, Sec. 2. Effective September 23, 1986.)

18061. If an industrial loan company refers in any advertisement to rates of charge, discount, charges or costs of loans, those charges shall be stated fully and clearly in a manner as may be necessary to prevent misunderstanding thereof by prospective borrowers and to give adequate information to prospective borrowers. If the rates or costs advertised do not apply to loans of all classes, this fact shall be clearly indicated in the advertisement.

(Amended by Stats. 1998, Ch. 827, Sec. 8. Effective January 1, 1999.)

18062. An industrial loan company shall not use any advertisement after its use has been disapproved by the commissioner and the industrial loan company has been notified in writing of the disapproval. Commencing July 1, 1990, the commissioner may require a company to obtain written or oral approval of any advertisement for investment or thrift certificates prior to publication thereof in order to avoid false, misleading, or deceptive advertisting.

(Amended by Stats. 1989, Ch. 178, Sec. 1.)

18063. The commissioner may require an industrial loan company to maintain a file of all advertising copy for a period of 12 months from the date of its use. The file shall be available to the commissioner upon request.

(Added by Stats. 1976, Ch. 964.)

CHAPTER 2. FORMATION AND ORGANIZATION

(Chapter 2 added by Stats. 1976, Ch. 964.)

Article 1. General

(Article 1 added by Stats. 1976, Ch. 964.)

18100. When authorized by the commissioner as provided in this chapter, a corporation may be organized under the laws of this state, or an existing California corporation may amend its articles of incorporation, to engage in an industrial loan business. Except as otherwise provided in this division, an industrial loan company may be incorporated pursuant to Division 1 (commencing with Section 100), Title 1, of the Corporations Code.

(Added by Stats. 1976, Ch. 964.)

18100.5. Each industrial loan company, other than a premium finance agency, that has issued and has outstanding thrift obligations shall, as a condition to its authority to conduct business under this division, participate as a member of the Federal Deposit Insurance Corporation.

(Amended by Stats. 1998, Ch. 827, Sec. 9. Effective January 1, 1999.)

18101. If the commissioner approves an application to engage in business as an industrial loan company filed pursuant to Article 2 (commencing with Section 18115) of this chapter, he shall issue a certificate in duplicate authorizing the organization of the corporation, or the amendment of its articles of incorporation, and specifying the date on which, and the conditions under which, it may commence business as an industrial loan company, including the place where it will be located.

(Added by Stats. 1976, Ch. 964.)

18101.5. Upon filing an application for approval of proposed articles of incorporation with the commissioner, or upon filing an amendment to the articles of a proposed industrial loan company changing the name of an existing corporation, the incorporators shall file an application for a certificate of reservation of the name of the proposed company as set forth in the articles of incorporation with the Secretary of State pursuant to Section 201 of the Corporations Code. The application filed with the Secretary of State shall recite the fact of the pendency of the application and the Secretary of State shall issue a certificate of reservation upon such an application for a certificate and upon payment of any required fee. Notwithstanding the provisions of Section 201 of the Corporations Code, the name contained in the certificate of reservation shall be reserved to the applicant until the commissioner refuses to issue a certificate of approval or, if a certificate is issued, as long as a certificate continues in force or effect, or for a period of up to one year from the date when the application is filed in accordance with this article, pending the applicant's fulfillment of any requirements precedent to opening for business. The Secretary of State may, upon the request of the applicant and the approval of the commissioner, extend the reservation of the name for an additional six months.

(Added by Stats. 1980, Ch. 428, Sec. 1.)

18101.6. Companies authorized to engage in the industrial loan business after the effective date of the act which added this section shall have the words "industrial loan company," "investment and loan," "thrift company," "thrift and loan company," or "bank" as part of the company name included in the articles of incorporation.

(Amended by Stats. 1996, Ch. 1064, Sec. 586. Effective January 1, 1997. Operative July 1, 1997.)

18102. The articles of incorporation of an industrial loan company, in addition to the statement required by subdivision (b) of Section 202 of the Corporations Code, shall expressly state that its purpose is to engage in an industrial loan business pursuant to this division. The Secretary of State shall not file articles for the incorporation of an industrial loan company or an amendment to the articles of an existing corporation to engage in an industrial loan business unless there is filed with the Secretary of State a duplicate of the certificate issued by the commissioner pursuant to Section 18101.

(Amended by Stats. 1980, Ch. 478, Sec. 4.)

18103. An industrial loan company's certificate to engage in the industrial loan business is not transferable or assignable.

(Added by Stats. 1976, Ch. 964.)

18104. Except as otherwise authorized under existing law, no person, unless lawfully authorized to do business in this state under the provisions of this division and who is actually engaged in carrying on an industrial loan business, shall:

(a) Do business under any name or title that contains the following terms:

(1) "Industrial Loan Company."

(2) "Investment and Loan Company."

(3) "Thrift Company."

(4) "Thrift and Loan Company."

(b) Use any name or sign, or circulate or use anyletterhead, billhead, circular, or paper, whatever, or advertise or represent in any manner that indicates or reasonably implies that the business is the character or kind of business carried on or transacted by an industrial loan business or is likely to lead any person to believe that the business is that of an industrial loan company.

(Amended by Stats. 1992, Ch. 427, Sec. 35. Effective January 1, 1993.)

Article 2. Applications
(Article 2 added by Stats. 1976, Ch. 964.)

18115. An application for authority to engage in the industrial loan business shall be in such form and contain such information as the commissioner may require and shall be accompanied by a filing fee of four hundred dollars ($400).

(Amended by Stats. 1983, Ch. 725, Sec. 2.)

18116. Upon the filing of an application, the commissioner shall make or cause to be made a careful investigation and examination relative to the following:

(a) The background and experience of the organizers or incorporators, the proposed officers and managers, and the proposed stockholders and directors.

(b) The need for industrial loan facilities or additional industrial loan facilities, as the case may be, in the community where the proposed industrial loan company is to be located, giving particular consideration to the adequacy of existing industrial loan facilities in the community.

(c) The ability of the community to support the proposed industrial loan company, giving consideration to (1) the competition offered by existing industrial loan companies; (2) the previous industrial loan history of the community; and (3) the opportunities for profitable employment of industrial loan funds as indicated by the average demand for credit, the number of potential investors, the volume of industrial loan transactions and the business and industries of the community with particular regard to their stability, diversification and size.

(d) Such other facts and circumstances bearing on the proposed industrial loan company as in the opinion of the commissioner may be relevant.

(Amended by Stats. 1980, Ch. 974, Sec. 8.)

18117. The commissioner, upon reasonable notice and opportunity to be heard, may deny the application for any of the following reasons:

(a) The public convenience and advantage will not be promoted by the establishment of the proposed industrial loan company.

(b) The industrial loan company is being formed for a purpose other than the legitimate objectives contemplated by this division.

(c) The proposed capital structure is inadequate.

(d) Any proposed officer, director, or shareholder of the applicant has, within the last 10 years, (1) been convicted of or pleaded nolo contendere to a crime, or (2) committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with the provisions of this division.

(e) The applicant has not complied with all the applicable provisions of this division.

(f) The proposed officers and directors do not have sufficient banking, industrial loan, finance company, or other experience to afford reasonable promise of successful operation.

(g) A false statement of a material fact has been made in the application.

(h) The applicant or any officer, director, or incorporator of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(Amended by Stats. 1980, Ch. 974, Sec. 9.)

18119. Within 30 days after an application is filed for authorization to establish an industrial loan company which intends to sell and issue its investment certificates, the commissioner shall give written notice of the filing of the application to each industrial loan company subject to this division.

(Amended by Stats. 1986, Ch. 1011, Sec. 3. Effective September 23, 1986.)

18120. Before the commissioner issues a certificate of authorization to operate as an industrial loan company, there must be paid in cash for the benefit of the corporation, the minimum capital stock and minimum paid-in surplus or reserve required pursuant to Article 3 (commencing with Section 18130) of this chapter.

(Amended by Stats. 1977, Ch. 264.)

Article 3. Capitalization
(Article 3 added by Stats. 1976, Ch. 964.)

18130. The capital stock of an industrial loan company incorporated under this division shall not be less than:

(a) Five hundred thousand dollars ($500,000), if incorporated or commencing business on or before July 8, 1975.

(b) Seven hundred fifty thousand dollars ($750,000), and a paid-in surplus of five hundred thousand dollars ($500,000), at the time business is commenced, if incorporated or commencing business on or after July 9, 1975.

(c) Industrial loan companies which commenced business prior to July 9, 1975, and which do not meet the capital stock and paid-in surplus requirements of this section shall be governed until January 1, 1987, by Sections 18130, 18131, 18132, 18133, 18134, and 18135 of the Financial Code, as in effect on December 31, 1983.
(Amended by Stats. 1983, Ch. 858, Sec. 4.)

18131. In addition to the capital stock required by Section 18130, an industrial loan company which has branch offices or which opens an additional branch office or place of business shall have additional capital stock of fifty thousand dollars ($50,000) for each branch office.
(Repealed and added by Stats. 1983, Ch. 858, Sec. 6.)

18132. An industrial loan company may declare a dividend on its capital stock only if the company has minimum unimpaired capital of seven hundred fifty thousand dollars ($750,000) plus additional capital stock of fifty thousand dollars ($50,000) for each branch office.
(Repealed and added by Stats. 1983, Ch. 858, Sec. 8.)

18137. An industrial loan company shall not reduce its capital stock to an amount less than is required by this article to be maintained by such company or less than any indebtedness of such company other than its investment certificates.
(Added by Stats. 1976, Ch. 964.)

18138. (a) No person may acquire in the aggregate 10 percent or more of the capital stock of, or the capital of, an industrial loan company through purchase, foreclosure pursuant to a pledge or hypothecation, or other devices without the written consent of the commissioner. Prior to any person acquiring 10 percent or more of the capital stock of, or the capital of, an industrial loan company, or prior to any person acquiring additional capital stock or capital of an industrial loan company which would result in an aggregate acquisition of 10 percent or more of the capital stock or of the capital, that person seeking the acquisition shall make written application to the commissioner requesting written consent for the acquisition.

(b) No person may acquire in the aggregate 10 percent or more of the capital stock or other securities that have voting power or control over the management of a holding company as defined in Section 18025 through purchase, foreclosure pursuant to a pledge or hypothecation, or otherwise without the written consent of the commissioner. Prior to any person acquiring 10 percent or more of the capital stock or other securities that have voting power or control over the management of a holding company as described herein, or prior to any person acquiring additional capital stock or other securities that have voting power or control over the management of a holding company as described herein which would result in an aggregate acquisition of 10 percent or more of the capital stock or other securities, or prior to any person acquiring 10 percent or more of the capital stock or other securities that have voting power or control over the management of a holding company as described herein, through the conversion of a security into another security or through the exercise of a right to purchase or subscribe to another security, that person seeking the acquisition shall make written application to the commissioner requesting written consent for the acquisition notwithstanding subdivision (e) of Section 25017 of the Corporations Code.

(c) With respect to the application required to be filed under subdivisions (a) and (b), the commissioner shall consent in writing or decline to consent within 60 days of the filing of a completed application.

(d) An application for consent under subdivision (a) or (b) shall be in the form and contain information as the commissioner may by rule or order require and shall be accompanied by a fee of four hundred dollars ($400).
(Amended by Stats. 1995, Ch. 479, Sec. 1. Effective October 2, 1995.)

18139. A sale, merger, or conversion involving an industrial loan company and another industrial loan company, a bank, or a savings association is subject to Division 1.5 (commencing with Section 4800).
(Amended by Stats. 1996, Ch. 887, Sec. 51. Effective September 25, 1996.)

Article 4. Branch Offices
(Article 4 added by Stats. 1976, Ch. 964.)

18145. Subject to Section 18145.1, when authorized by the commissioner as provided in this division, an industrial loan company, pursuant to a resolution of its board of directors, may establish and maintain one or more branch offices within the state.
(Amended by Stats. 1997, Ch. 190, Sec. 1. Effective January 1, 1998.)

18145.1. (a) The commissioner may, by order or regulation, exempt from the requirement of authorization by the commissioner set forth in Section 18145 any establishment of an office or place of business that the commissioner finds not necessary or appropriate to regulate under that section.

(b) In granting an exemption under this section, the commissioner may impose any conditions that the commissioner finds necessary or appropriate.
(Added by Stats. 1997, Ch. 190, Sec. 2. Effective January 1, 1998.)

18146. The request for authority to establish a branch office shall be set forth in an application in such form and containing such information as the commissioner may require and shall be accompanied by an application fee of one hundred dollars ($100) for each new branch office.
(Added by Stats. 1976, Ch. 964.)

18147. The commissioner shall not approve an application for a branch office until the commissioner has ascertained to the commissioner's satisfaction that the facts set forth in the application are true and:

(a) That the public convenience and advantage will be promoted by the establishment of the proposed branch office.

(b) That the industrial loan company has the capital required by this division.

(c) That the industrial loan company has established branch operational controls.

(d) That the financial condition of the industrial loan company justifies the establishment of the proposed branch office.

(e) (1) As to an industrial loan company transacting business before October 1, 1985, that the industrial loan company is a member of the Federal Deposit Insurance Corporation, or (2) as to an industrial loan company commencing business on or after October 1, 1985, that the industrial loan company is a member of the Federal Deposit Insurance Corporation.
(Amended by Stats. 1987, Ch. 787, Sec. 2. Operative January 1, 1989, by Sec. 7 of Ch. 787.)

18148. The failure of an industrial loan company to open and operate a branch office within six months after the commissioner has issued an order approving the application for a branch office shall automatically terminate the right of the industrial loan company to open the branch office. However, the commissioner may for good cause on written application made before the expiration of the six months' period, extend for additional periods, not in excess of six months each, the time within which the branch office may be opened.
(Added by Stats. 1976, Ch. 964.)

18149. When the commissioner has approved an application for permission to establish a branch office and the applicant pays to the commissioner an additional fee of one hundred dollars ($100) for a certificate of authorization to transact business, the commissioner shall issue a certificate of authorization to transact business authorizing the opening and operation of the branch office and specifying the date on which and the conditions under which it may be opened and the place where it will be located.
(Added by Stats. 1976, Ch. 964.)

18150. An industrial loan company shall keep posted in a conspicuous place in each branch office the certificate of authorization to transact business issued by the commissioner permitting the operation of the branch office.
(Added by Stats. 1976, Ch. 964.)

18151. An industrial loan company which opens a branch office without first obtaining a certificate of authorization to transact business shall forfeit to the people of the state the sum of one hundred dollars ($100) for every day during which the branch office is maintained without authority.
(Added by Stats. 1976, Ch. 964.)

18152. The provisions of Sections 18146, 18147, 18148, 18149, 18150, and 18151 shall not affect branch offices which are opened and operating prior to September 18, 1959.
(Added by Stats. 1976, Ch. 964.)

18153. An industrial loan company which maintains a branch office or branch offices shall give to each branch office maintained by it a specified designation by name or number and include in the designation the word "branch" or the word "office" and shall prominently display the designation at the place of business of the branch.
(Added by Stats. 1976, Ch. 964.)

18154. With the prior written approval of the commissioner, an industrial loan company may close or discontinue the opertion of any branch office provided public notice thereof is given in such manner as the commissioner directs at least 30 days before the date of closing or discontinuance.

After a branch office has been closed or discontinued, it may not be reopened without the approval of the commissioner and compliance with the applicable provisions of this division.

(Added by Stats. 1976, Ch. 964.)

Article 5. Change of Location
(Article 5 added by Stats. 1976, Ch. 964.)

18165. (a) Except as otherwise provided for in this division, an industrial loan company shall not transact business or make any loan provided for by this division at any other place of business than that designated in its certificate of authorization issued pursuant to Section 18101 or 18149, without having obtained the prior written approval of the commissioner.

(b) An industrial loan company may solicit and make loans and acquire obligations at a place of business other than designated in its certificate of authorization upon written request to and written approval of the commissioner, except as set forth in Section 18165.1, without obtaining a certificate of authorization to conduct business at a branch office pursuant to Article 4 (commencing with Section 18145), subject to the provisions of subdivision (d). The written request for approval to conduct business shall be accompanied by a processing fee of two hundred dollars ($200) for each place of business and shall include the following:

(1) The proposed location of the place of business.

(2) A description of the industrial loan company's proposed plan of business, including a description of the manner and extent to which the industrial loan company proposes to direct and supervise the place of business.

(3) The character, business qualifications, and other experience of the proposed officers and managers directing the line of business for which authorization is requested.

(4) If the place of business is to be located outside of this state, a description of the regulation of the place of business by the state of the United States where the place of business is proposed to be located, including:

(A) A summary of the laws, administrative policies, and rules or regulations of the state relating to the proposed establishment and operation of the place of business.

(B) The name, address, and telephone number of the state agency having jurisdiction over the proposed establishment and operation of the place of business.

(C) A description of the extent and manner in which the establishment and operation of the place of business will be regulated by the state agency.

(D) Whether or not any law, administrative policy, or rule or regulation of the state of the United States where the place of business is proposed to be located would prohibit the commissioner from, or restrict the commissioner in, examining or regulating the place of business, and, if so, a citation to and summary of the law, administrative policy, rule, or regulation.

(5) Any other information bearing on the proposal that, in the opinion of the commissioner, may be relevant.

(c) The commissioner shall approve the request made pursuant to subdivision (b) within 30 days after filing unless the commissioner has ascertained that the company has failed to show any of the following:

(1) Compliance with all applicable requirements of subdivision (b).

(2) That the proposed plan of business would not violate any of the laws or the regulations of the state in which the office is proposed to conduct its business.

(3) That the company has adequate internal controls to manage the conduct of the business proposed to be conducted.

(4) That the company has a person with the necessary business qualifications, experience, or ability to direct and manage the operations of the proposed plan of business.

(d) An industrial loan company that has given notice or has been approved by the commissioner pursuant to subdivision (b) to solicit and make loans and acquire obligations at a place of business other than designated in its certificate of authorization shall comply with the following:

(1) No investment certificates shall be solicited, offered, or sold at the place of business.

(2) Loan files for loans originating at the place of business shall be retained at the main or licensed branch location of the industrial loan company, and all loans originating at the place of business shall be coded in a manner so as to easily identify that place of business.

(3) The place of business shall not be identified in any manner as a branch location or as a licensed location of the industrial loan company.

(4) If the place of business is outside of this state, the industrial loan company shall, not less than five business days before commencing business at that place of business, file with the commissioner a report stating that the industrial loan company has complied with all laws of that state applicable to the establishment and operation of the place of business, and which contains a copy of any document issued by the state agency having jurisdiction over the proposed establishment and operation of the place of business authorizing the industrial loan company to establish the place of business.

(5) All books, accounts, papers, records, and files of the place of business shall, upon request, be made available to the commissioner or the commissioner's representatives in this state within the time specified in the request.

(6) Any other conditions and limitations the commissioner may require.

(e) An industrial loan company that opens a place of business for which approval is required under subdivision (b) without first obtaining the commissioner's written approval shall be liable for a civil penalty of one hundred dollars ($100) for every day during which the place of business is maintained without approval.

(f) The commissioner may by rule, order, or regulation permit loans to be made or entered into and loans and obligations solicited and acquired at places other than designated by an industrial loan company in its certificate of authorization if those loans can be so made consistent with the purposes of the Industrial Loan Law.

(Amended by Stats. 1997, Ch. 190, Sec. 3. Effective January 1, 1998.)

18165.1. (a) The commissioner may, by order or regulation, exempt from the requirement of authorization by the commissioner set forth in Section 18165 any establishment of an office or place of business that the commissioner finds not necessary or appropriate to regulate under that section.

(b) In granting an exemption under this section, the commissioner may impose any conditions that the commissioner finds necessary or appropriate.

(Added by Stats. 1997, Ch. 190, Sec. 4. Effective January 1, 1998.)

18166. (a) If an industrial loan company desires to change its place of business to a street address other than that designated in its authorization, it shall give written notice to the commissioner who shall issue his or her written authorization of the change, provided the commissioner finds the change would not justify a negative finding with respect to any matters set forth in Section 18117 or 18147.

(b) The commissioner may, by order or regulation, exempt from the requirement of authorization by the commissioner set forth in subdivision (a) any change of location of a place of business that the commissioner finds not necessary or appropriate to regulate under that section.

(Amended by Stats. 1997, Ch. 190, Sec. 5. Effective January 1, 1998.)

CHAPTER 3. LOANS AND PURCHASED OBLIGATIONS

(Chapter 3 added by Stats. 1976, Ch. 964.)

Article 1. General

(Article 1 added by Stats. 1976, Ch. 964.)

18190. An industrial loan company may:

(a) Loan money, secured or unsecured, with or without the pledge of its installment investment certificates.

(b) Collect and receive charges for loans in advance or otherwise.

(c) Purchase, sell, or discount the following obligations: bona fide trust receipts, secured or unsecured choses in action, conditional sales contracts, or security agreements.

(d) Purchase, sell, discount, or originate lease obligations.

(Amended by Stats. 1998, Ch. 827, Sec. 10. Effective January 1, 1999.)

18191. Sections 18008, 18009, 18010, 18212, 18212.1, 18214, 18219, 18220, 18222, 18230 through 18234, 18290 through 18295, and 18439 do not apply to:

(a) Any bona fide loan of a principal amount of ten thousand dollars ($10,000) or more or to an industrial loan company in connection with any such loan if the provisions of the section are not used for the purpose of evading this division.

(b) An amount due from a contingent guarantor on his or her obligations purchased under the provisions of this division.

(c) A loan to a primary borrower who has pledged accounts receivable or installment accounts to secure loans which taken in the aggregate amount to ten thousand dollars ($10,000) or more.

(Amended by Stats. 1983, Ch. 858, Sec. 13.)

18191.5. Sections 18008, 18009, 18010, 18212, 18212.1, and 18214 do not apply to:

(a) Any bona fide loan of a principal amount of five thousand dollars ($5,000) or more, or to an industrial loan company in connection with any bona fide loan of a principal amount of five thousand dollars ($5,000) or more if the provisions of the section are not used for the purpose of evading this division.

(b) An amount due from a contingent guarantor on his or her obligations purchased under the provisions of this division.

(c) A loan to a primary borrower who has pledged accounts receivable or installment accounts to secure loans which taken in the aggregate amount to five thousand dollars ($5,000) or more.

(Amended by Stats. 1984, Ch. 68, Sec. 1. Effective April 5, 1984.)

18192. The payment of money, credit, goods, or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, is, for the purposes of regulation under this division, a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of consideration actually paid is interest and charges upon or for such loan from the date of payment to the date the compensation is payable. This section does not modify or affect existing statutes governing wage assignments in this state, or authorize such assignments.

(Added by Stats. 1976, Ch. 964.)

Article 2. Terms and Maximum Charges

(Article 2 added by Stats. 1976, Ch. 964.)

18205. Except as otherwise provided for in this division, an industrial loan company shall not make any loan or purchase or discount any other obligation that provides for a repayment of principal over more than 120 months and 30 days.

(Amended by Stats. 1988, Ch. 427, Sec. 1.)

18205.5. Notwithstanding any other provision of this division, an industrial loan company may make a loan or acquire an obligation that is repayable in unequal periodic payments during its term and that is secured by either real property or personal property. In order to ensure the safety and soundness of industrial loan companies and to avoid an unreasonable concentration of loans and obligations that could result in balloon payments, all these loans and obligations with a term in excess of 10 years shall be repaid in substantially equal weekly, semimonthly, monthly, or quarterly installments during the term. For purposes of this section, "real property" means real property other than home loans and other residential real property loans subject to Title VIII (Alternative Mortgage Transaction Parity Act of 1982) of the Garn-St. Germain Depository Institutions Act of 1982, as those terms are defined in Part 541 of Title 12 of the

Code of Federal Regulations, as amended. For purposes of this section, the term of a nonconsumer loan or a nonconsumer obligation secured solely or primarily by personal property shall not exceed 15 years and 30 days from the date the loan is made or obligation is acquired by the industrial loan company. For purposes of this section, the term of a nonconsumer loan or a nonconsumer obligation secured primarily by real property shall be as set forth in subdivision (a) of Section 18210.
(Amended by Stats. 1997, Ch. 201, Sec. 1. Effective January 1, 1998.)

18206. Consumer loans made and obligations acquired that are secured by a motor vehicle and repayable other than in equal periodic payments during its term shall not exceed 50 percent of all consumer loans and obligations that are secured by motor vehicles or 20 percent of assets, whichever is less. This section shall not apply to a loan made to a graduate student while attending an accredited college or university and for the purpose of actively pursuing a study program leading to a postbaccalaureate degree.
(Amended by Stats. 1997, Ch. 201, Sec. 2. Effective January 1, 1998.)

18207. An industrial loan company may make a consumer loan that is not secured primarily by real property or other type of loan which is repayable at maturity by a single payment which includes principal and charges. In no event shall such loans have a term in excess of one year or be made for the purpose of evading or avoiding this division.
(Repealed and added by Stats. 1976, Ch. 964.)

18208. An industrial loan company may make a consumer loan in which the principal and charges are payable at any time during the loan, provided that the loan is secured at all times at least 100 percent by either investment certificates of an industrial loan company authorized to conduct business in the State of California under this division or traded securities.
(Repealed and added by Stats. 1976, Ch. 964.)

18209. An industrial loan company may make loans, purchase or discount notes, mortgages, contracts or other commercial paper insured by the Federal Housing Administrator, Veterans Administration, other federal agency or an agency of the state. Loans so insured may be made for a term up to but not to exceed the maximum permitted by such agencies.
(Repealed and added by Stats. 1976, Ch. 964.)

18210. (a) Except as provided in Sections 18205.5 and 18209 and subject to subdivisions (b) and (c), an industrial loan company shall not make any loan or purchase or discount any note secured primarily by real property unless the loan or other obligation is repayable in substantially equal weekly, semimonthly, monthly, or quarterly installments during its term, which shall not exceed 30 years and 30 days from the date the loan or other obligation is made or acquired by the company. Equal installment requirements shall not apply to adjustable or variable rate loans or obligations made or purchased by the industrial loan company in accordance with Title VIII of the Garn-St. Germaine Depository Institutions Act of 1982 and any applicable regulations, guidelines, and policies adopted thereunder. However, an industrial loan company may make loans secured by first trust deeds on real property containing single family, or one to four residential, units provided that the repayment period for each loan does not exceed 40 years and 30 days from the date the loan is made by the company. All loans with repayment periods in excess of 30 years and 30 days shall not exceed in the aggregate 5 percent of all outstanding loans and obligations of the company.

(b) Any consumer loan or any purchase or discount of any consumer obligation having a term in excess of three years from the date the loan or other obligation is made or acquired by the company shall be secured solely by real property or solely by personal property. However, if the original principal amount of the consumer loan or obligation is twenty thousand dollars ($20,000) or more, then the loan or obligation shall be secured solely by real property or solely by personal property, or by both real property and personal property. All loans and obligations made and purchased pursuant to this subdivision shall be repayable in installments and within a term not to exceed the limitations set forth in subdivision (a), except that consumer loans or obligations secured solely by personal property shall have a term not to exceed the term provided for in Section 18205 and except as otherwise may be provided for in Sections 18207, 18208, and 18209. The equal installment requirements set forth in subdivision (a) shall not apply to loans or obligations made or purchased by the industrial loan company in accordance with Title VIII of the Garn-St. Germaine Depository Institutions Act of 1982 and any applicable regulations, guidelines, and policies adopted thereunder.

(c) In order to ensure the safety and soundness of industrial loan companies and to avoid an unreasonable concentration of loans and obligations that could result in balloon payments, all loans and obligations with a term in excess of 15 years and 30 days shall be repaid in substantially equal weekly, semimonthly, monthly, or quarterly installments during their term.
(Amended by Stats. 2000, Ch. 135, Sec. 61. Effective January 1, 2001.)

18211. No charge shall be collected unless a loan is made, except that an industrial loan company may charge, contract for, and receive a fee in connection with making a written commitment to make a loan, secured by real property having a face amount in excess of five thousand dollars ($5,000) whether or not the loan is consummated, or in connection with the purchase, sale, or origination of a lease as lessor and may charge, contract for, and receive an application fee for a loan having an original principal balance in excess of five thousand dollars ($5,000) or for a lease which payments are in excess of five thousand dollars ($5,000), provided, however, that a disclosure statement setting forth the amount of the fee, which may be reviewed by the commissioner as to form and content, shall be provided to each person to whom an application fee is charged. The commitment fee or the loan application fee with respect to a consumer loan shall be limited to the actual expenses incurred.
(Amended by Stats. 1987, Ch. 790, Sec. 2.)

18212. (a) The charges by an industrial loan company, broker, and all other persons on any loan, forbearance of money, credit, goods, or things in action under this division, shall not exceed in the aggregate:

(1) Two percent per month on that part of the unpaid principal balance of any loan up to, including, but not in excess of, one thousand dollars ($1,000).

(2) One percent per month on any remainder of such unpaid principal balance in excess of one thousand dollars ($1,000).

(b) As an alternative to the charges authorized by subdivision (a), a company may contract for and receive charges at a rate not exceeding 1.6 percent per month on the unpaid principal balance.
(Amended by Stats. 1979, Ch. 270.)

18212.1. As an alternative to the charges authorized by Section 18212 a licensee may contract for and receive charges at a rate not exceeding five-sixths of 1 percent per month plus a percentage per month equal to one-twelfth of the annual rate prevailing on the 25th day of the second month of the quarter preceding the quarter in which the loan is made as established by the Federal Reserve Bank of San Francisco on advances to member banks under Section 13 and 13a of the Federal Reserve Act as now in effect or hereafter from time to time amended, or if there is no such single determinable rate for advances, the closest counterpart of such rate as shall be designated by the commissioner. Charges shall be calculated on the unpaid principal balance.
(Amended by Stats. 1996, Ch. 1064, Sec. 588. Effective January 1, 1997. Operative July 1, 1997.)

18212.2. In addition to the charges authorized by Section 18212 or 18212.1 an industrial loan company may contract for and receive an administrative fee, which shall be fully earned immediately upon making the loan, with respect to a loan of a principal amount of not more than two thousand five hundred dollars ($2,500) at a rate not in excess of 5 percent of the principal amount or fifty dollars ($50), whichever is lesser. No administrative fee may be contracted for or received in connection with refinancing a loan unless at least one year has elapsed since receipt of a previous administrative fee paid by the borrower.
(Amended by Stats. 1984, Ch. 890, Sec. 4.)

18213. Notwithstanding any other provision of law not within this division, industrial loan companies making loans pursuant to this division may not precompute interest on such loans.
(Repealed and added by Stats. 1979, Ch. 270.)

18214. For the purpose of computing the charges set forth in this article, a month is any period of 30 consecutive days.
(Added by Stats. 1976, Ch. 964.)

18215. An industrial loan company may contract for, collect, and receive at the time of making the loan or at any time thereafter, any of the following:

(a) Any cost of publication as required by law.

(b) The statutory fee paid by it to any public officer for acknowledging, filing, recording, or releasing in any public office any instrument securing the loan or executed in connection with a loan.

(c) Premiums of the kind and to the extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226.1 et seq.).

These amounts are not included in computing the maximum charges which may be made under this division.
(Amended by Stats. 1984, Ch. 199, Sec. 2.)

18216. (a) Notwithstanding Section 18211, an appraisal fee may be charged to an applicant or borrower by an industrial loan company in connection with an application or request for any loan having a face amount in excess of five thousand dollars ($5,000) that is secured primarily by real property whether or not the loan is made. That fee shall not exceed the actual cost of the appraisal. The appraisal shall be rendered to the industrial loan company in writing by a qualified appraiser approved pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and any applicable regulations, guidelines, and policies adopted thereunder. Only one fee

for appraising the same real property made in connection with the same applicant or borrower may be collected unless the applicant or borrower has obtained a new or additional loan and more than one year has elapsed since the prior appraisal. The fee is not included in charges as defined in this division or in computing the maximum charges that may be made under this division.

(b) If an appraisal fee is charged, a copy of the appraisal report shall be provided by the industrial loan company upon the request of the borrower or applicant at or before the closing of a loan transaction.

(Amended by Stats. 1995, Ch. 272, Sec. 1. Effective January 1, 1996.)

18217. An escrow fee of a reasonable amount may be charged for any loan made which is secured primarily by real property when such services are actually performed. Such fee shall be considered reasonable when paid to a company licensed to do business under the Escrow Law, Division 6 (commencing with Section 17000), or any person exempted by the Escrow Law, provided that such fees are comparable to fees being charged by escrow companies so authorized to do business in this state. Such fee is not included in computing the maximum charges which may be made under this division.

(Added by Stats. 1976, Ch. 964.)

18218. Notwithstanding any other provision of this division, an industrial loan company, in the collection of a delinquent loan of an unpaid principal balance, may do any of the following:

(a) Collect and receive the court costs and reasonable attorney's fees allowed by a court in a judgment against a defaulting debtor.

(b) Contract for, collect, and receive the bona fide expenses actually incurred and paid by the industrial loan company, not exceeding 10 percent of the unpaid principal balance of the loan where no judgment at law is sought.

(c) Contract for, collect, and receive the bona fide expenses actually incurred and paid by the industrial loan company in obtaining a certificate of compliance or certificate of noncompliance issued for a motor vehicle pursuant to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code and the rules and regulations of the State Air Resources Board prior to the consignment of the vehicle for sale at public auction, pursuant to Sections 24007 and 24007.5 of the Vehicle Code.

(Amended by Stats. 1991, Ch. 1054, Sec. 1.3.)

18218.5. With respect to a loan under this division, a fee not to exceed fifteen dollars ($15) for return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft may be charged and collected by the licensee. The fee is not included in charges as defined in this division or in determining the applicable maximum charges which may be made under this article.

(Amended by Stats. 1993, Ch. 101, Sec. 4. Effective January 1, 1994.)

18219. An industrial loan company shall not induce or permit any borrower to split up or divide any loan and thereby contract for or receive a higher rate of charge than would otherwise be permitted by this division.

(Added by Stats. 1976, Ch. 964.)

18220. An industrial loan company shall not induce any husband and wife jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, with the result of obtaining a higher rate of charge than would otherwise be permitted by this division.

(Added by Stats. 1976, Ch. 964.)

18221. Nothing in this division shall prevent an industrial loan company from transacting loan contracts with different borrowers and from contracting for and receiving, up to and including the highest rate of charge permitted by this division at the time of making said loans; provided, however, that if any person is obligated to and does pay more than one loan contract outstanding at the same time, the entire amount of charges paid by such person and received by the industrial loan company on such loan contracts, shall not exceed the maximum that would be permitted by this division if all such loan contracts so paid were combined into one loan transaction.

(Added by Stats. 1976, Ch. 964.)

18222. An industrial loan company shall permit payment to be made in advance in any amount on any contract of loan at any time. The industrial loan company shall apply such payment first to all charges due up to the date of such payment and the remainder to the loan balance.

(Added by Stats. 1976, Ch. 964.)

Article 3. Disclosure and Loan Documents
(Article 3 added by Stats. 1976, Ch. 964.)

18230. Each industrial loan company shall display prominently in each place of business a full and accurate schedule of the maximum charges to be made and the method of computing the same. The schedule is subject to the approval of the commissioner.
(Added by Stats. 1976, Ch. 964.)

18231. Each industrial loan company shall:

(a) Deliver or cause to be delivered to the borrowers, or any one thereof, at the time the loan is made, a written statement showing in clear and distinct terms the name and address of such company and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security, if any, for the loan, and the agreed rate of charge.

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If such statement discloses a broker or other person has participated, the company shall obtain a full statement of all sums paid or payable to the broker or other person.

(c) Keep the statements required by this section for a period of two years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.
(Added by Stats. 1976, Ch. 964.)

18233. An industrial loan company shall deliver or cause to be delivered to the person making any payment in person in cash at any office of the company, at the time such payment is made on account of any loan, a plain and complete receipt showing the total amount received and identifying the loan contract upon which such payment is applied, and showing the unpaid balance of the loan.
(Added by Stats. 1976, Ch. 964.)

18234. An industrial loan company shall upon repayment of any loan in full, cancel or plainly mark "paid" and return to the borrower or person making final payment, the note evidencing the loan. If such borrower is not otherwise obligated to such company, the company shall release all security for such loan, endorse and return any certificate of ownership, and return to the borrower any security agreement, assignment, or order signed by the borrower, except such as are a part of the court record in any action, or such as have been delivered to a third person for the purpose of carrying out the terms thereof.
(Added by Stats. 1976, Ch. 964.)

18235. An industrial loan company shall not take any note, promise to pay, or security agreement that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge, nor any instrument in which blanks are left to be filled in after execution.
(Added by Stats. 1976, Ch. 964.)

Article 4. Credit Cards
(Article 4 added by Stats. 1998, Ch. 827, Sec. 11. Effective January 1, 1999.)

18245. (a) Subject to any regulations that the commissioner may issue, an industrial loan company may issue credit cards and may acquire or hold obligations resulting from the use of credit cards.

(b) Except as the commissioner may otherwise provide by regulation or order, the acquiring and holding of obligations pursuant to subdivision (a) are not subject to Article 2 (commencing with Section 18205) or Article 6.5 (commencing with Section 18300).
(Added by Stats. 1998, Ch. 827, Sec. 11. Effective January 1, 1999.)

Article 5. Limitations and Regulations of Loans and Purchased Obligations
(Article 5 added by Stats. 1976, Ch. 964.)

18265. An industrial loan company that has investment certificates outstanding shall not make any loan or purchase or discount any other obligation with a maturity of more than 60 months and 15 days unless all of the following conditions are met:

(a) The loan or other obligation is secured.

(b) The property, or collateral securing the loan or other obligation, is of a kind or class that has been declared eligible by regulation of the commissioner.

(c) The aggregate principal balance of such loans and other obligations outstanding with a remaining maturity of more than 60 months and 15 days at any time shall not exceed a percentage of the aggregate principal balance due on all loans and other obligations owing to the industrial loan company by rule of the commissioner.
(Amended by Stats. 1983, Ch. 858, Sec. 21.)

18266. (a) Except as set forth in subdivisions (b) and (c), any loan or obligation made or acquired by an industrial loan company that has investment certificates outstanding that is secured primarily by real property and has an outstanding principal balance of ten thousand dollars ($10,000) or more shall be secured by real property having a fair market value, or real property and personal property combined having a fair market value, at the time the loan or other obligation is made or acquired, of at least 110 percent of the principal amount owing on the loan or obligation and on prior encumbrances, except nondelinquent tax liens, secured by the same real property with regard to loans secured solely by real property, or by both real property and personal property. Fair market value of the real property for purposes of this section shall be determined by a real property appraiser who meets the qualifications established pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and any applicable regulations, guidelines, or policies thereunder.

(b) Subdivision (a) does not apply to:

(1) Any loan guaranteed in whole or in part by the Administrator of Veterans Affairs pursuant to the Servicemen's Readjustment Act of 1944 or any act of Congress supplementary or amendatory thereof.

(2) Any loan insured by the Federal Housing Administration pursuant to the National Housing Act or any act of Congress supplementary or amendatory thereof.

(c) Subject to all other provisions of subdivision (a) and any requirements the commissioner may impose by rule or order, the following loans may be secured by real property having a fair market value of less than 110 percent of the principal amount of the loan and prior encumbrances:

(1) Any loan made by an industrial loan company to facilitate the sale of real property owned by the industrial loan company resulting from foreclosure or receipt of a deed in lieu of foreclosure.

(2) Any loan renewed or modified by an industrial loan company pursuant to a clearly defined and well-documented program adopted by the board of directors of the industrial loan company to achieve orderly repayment of the loan or to maximize recovery of the loan.

(3) Any loan or obligation saleable in the secondary market. For purposes of this paragraph, "saleable in the secondary market" means saleable to a qualified institutional buyer, as evidenced by irrevocable commitments to buy by those qualified institutional buyers.

(4) Any loan or obligation owned for less than 90 days.

(d) In complying with the requirement of subdivision (a), an industrial loan company may include the principal amount of private mortgage insurance.

(e) Any loan or obligation made or acquired by an industrial loan company that has investment certificates outstanding that is secured solely by motor vehicles or other personal property shall be secured by that property having a fair market value at the time the loan or other obligation is made or acquired of at least 100 percent of the principal amount owing on the loan or obligation. The personal property held as security shall be of a class or kind that has been declared eligible by regulation of the commissioner.
(Amended by Stats. 1996, Ch. 227, Sec. 1. Effective January 1, 1997.)

18266.1. An industrial loan company may make loans and acquire obligations, the proceeds of which are used for home improvements that are secured by real property having a market value of at least 100 percent of the principal amount owing on the loan being made by the industrial loan company or obligation being acquired by the industrial loan company and on prior encumbrances, except nondelinquent tax liens, secured by the same real property. Home improvements means additions, alterations, or modifications to owner-occupied property consisting of one to four dwelling units and appurtenant buildings thereto or to the real property containing same.
(Amended by Stats. 1998, Ch. 827, Sec. 12. Effective January 1, 1999.)

18266.2. An industrial loan company shall file a written request for authorization to conduct business under Section 18266.1.

The request shall include the following information:

(a) A description of the company's proposed plan of business.

(b) The character, business qualifications, and other experience of the proposed officers and managers directing the line of business for which authorization is requested.

(c) Any other facts and circumstances bearing on the proposal that, in the opinion of the commissioner, may be relevant.
(Added by Stats. 1989, Ch. 889, Sec. 2.)

18266.3. The commissioner shall approve the request made pursuant to Section 18266.2 within 30 days after filing unless the commissioner has ascertained that the company has failed to show either of the following:

(a) That the proposed plan of business has a reasonable promise of a successful operation.

(b) That the company has a person with the necessary business qualifications, experience or ability to direct and manage the operations of the plan of business.
(Added by Stats. 1989, Ch. 889, Sec. 3.)

18268. An industrial loan company that has investment certificates outstanding shall not lend in the aggregate more than 5 percent of its capital stock and surplus not available for dividends as provided in Section 18319 upon the security of the stock of any one corporation and that stock may not exceed 10 percent of the outstanding stock of the corporation, or upon the security of the bonds of any one obligor except bonds of the United States or for the payment of which the credit of the United States is pledged, bonds of the State of California, or for the payment of which the credit of the State of California is pledged, and any security authorized in writing by the commissioner or any security authorized by rule of the commissioner.
(Amended by Stats. 1989, Ch. 663, Sec. 6. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18269. An industrial loan company that has investment certificates outstanding shall not make any loan secured primarily by improved real property in a principal amount in excess of 20 percent of the company's unimpaired capital stock and surplus not available for dividends as provided in Section 18319. An industrial loan company that has investment certificates outstanding shall not make any loan secured primarily by unimproved real property in a principal amount in excess of 10 percent of the company's unimpaired capital stock and surplus not available for dividends as provided in Section 18319.
(Amended by Stats. 1989, Ch. 663, Sec. 7. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18270. An industrial loan company may require the borrower to sign a contract of pledge, assignment, mortgage, security agreement, deed of trust, or trust receipt relating to real or personal property given by the borrower as security for the repayment of the loan and interest and charges thereon.
(Added by Stats. 1976, Ch. 964.)

18271. An industrial loan company that has investment certificates outstanding shall not make loans to, or hold the obligations of, any one person as primary obligor in an aggregate principal amount in excess of 20 percent of the unimpaired capital stock and surplus of the company not available for dividends as provided in Section 18319. Unsecured loans or obligations of any person as primary obligor made or held by a company may not, in any event, exceed in the aggregate principal amount 5 percent of the unimpaired capital stock and surplus of the company not available for dividends as provided in Section 18319.
(Amended by Stats. 1989, Ch. 663, Sec. 8. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18272. An industrial loan company shall diversify the loans and lease obligations it makes and other obligations it acquires, both as to the types of debtors and obligors, types of collateral, and as to terms and types of repayment schedules. The requirement for diversification notwithstanding, an industrial loan company may specialize in its lending, leasing, and other authorized practices under this division. The commissioner may promulgate rules and regulations pursuant to this section.
(Amended by Stats. 1984, Ch. 873, Sec. 4.)

18274. The principal balances of loans made, or obligations purchased, by an industrial loan company that has investment certificates outstanding, which loans or obligations are secured by unimproved real property, shall not in the aggregate exceed 5 percent of the company's assets unless the commissioner consents to the taking of collateral to protect an existing jeopardized obligation.
(Amended by Stats. 1986, Ch. 296, Sec. 4.)

Article 6. Insurance Sold With Loans
(Article 6 added by Stats. 1976, Ch. 964.)

18290. (a) As used in this division:

(1) "Credit life insurance" and "credit disability insurance" have the same meanings as defined in Section 779.2 of the Insurance Code.

(2) "Credit loss-of-income insurance" means insurance issued to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed, as defined in the policy.

(b) An industrial loan company may provide and collect the costs for credit life insurance on the life of one or more of the borrowers, or credit disability, or loss-of-income insurance, or any combination of these coverages, to provide indemnity for payments becoming due on the indebtedness, with his or her consent, the form to be approved by the Insurance Commissioner, and a copy, together with evidence of its approval by the Insurance Commissioner, to be filed with the commissioner, and in an amount not in excess of the amount of the indebtedness. The amount charged to the borrower for credit life or disability insurance shall not exceed, in the case of credit life insurance, fifty cents ($0.50) per year per one hundred dollars ($100) of indebtedness (and in the same proportion for longer or shorter maturities and larger or smaller amounts) or the amount established by or pursuant to Section 779.35 of the Insurance Code, whichever is less, or, in the case of credit disability insurance, the amount established by or pursuant to Section 779.35 of the Insurance Code.

(Amended by Stats. 1987, Ch. 1314, Sec. 1.)

18291. (a) If credit life or disability insurance is provided pursuant to this division, and if the insured borrower dies or becomes disabled during the term of the loan contract, the insurance shall be sufficient to pay the total amount due on the loan (excluding unearned charges) outstanding on the date of death, or all amounts which become due on the loan thereafter during the period of disability, as the case may be, without any exception, reservation, or limitation, subject, however, to the provisions of Section 18292.

(b) Any credit life, disability, or loss-of-income insurance as provided shall be in force as soon as the loan is made. An industrial loan company shall not require any of these coverages as a condition of making a loan.

(Amended by Stats. 1986, Ch. 813, Sec. 2.)

18292. (a) If credit disability insurance is provided pursuant to this division, it shall not provide indemnity against the risk of a borrower becoming disabled for a period of less than 14 days. The insurance may provide indemnity for any single period of continuous disability of 14 days or longer, after which the risk may become compensable. The insurance may be offered with retroactive coverage to an earlier date based upon the disability having continued for a period stated in the policy, but if insurance with retroactive coverage is offered, it shall also be offered without retroactive coverage, and the premium rate for each coverage shall be separately stated in writing to the borrower.

(b) If insurance with retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is disabled, provided that the insured is continuously disabled during the waiting period set forth in the policy. If insurance without retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is disabled, after first excluding the elimination period set forth in the policy. For the purpose of this subdivision, a month is any period of 30 consecutive days.

(c) Credit disability insurance, if made available by an industrial loan company, shall be available on a monthly or annual premium basis, and the premium by the month shall not exceed a pro rata relationship to the annual premium. Credit disability insurance need not be offered for a period less than the term of the loan to which it is applicable and no credit disability insurance shall be written for a period in excess of the term of the loan to which it is applicable.

(d) The monthly disability benefit payable with respect to an open end loan shall not exceed the monthly payment computed pursuant to Section 18300 on the outstanding balance at the time the disability is incurred.

(Amended by Stats. 1984, Ch. 199, Sec. 3.)

18292.5. If credit loss-of-income insurance is provided pursuant to this division, it shall be subject to the following conditions:

(a) The insurance shall provide indemnity in accordance with the terms of the policy after any single period of continuous unemployment of 45 days or less as determined by the policy, after which benefits shall commence. The insurance may be offered with retroactive coverage to an earlier date based upon unemployment having continued for the period stated in the policy.

(b) The statement required by Section 18293 shall include disclosure of the term of the coverage, the conditions of coverage, the benefits to be paid, and the exclusions from coverage.

(c) The borrower shall sign a certificate of voluntary acceptance of any credit loss-of-income insurance purchased. The certificate shall state in boldface type which is larger than the type used in the loan contract that purchase of the insurance is not a necessary condition to receiving the loan and that the insurance may be canceled by the borrower at any time within 15 days after it goes into force, in which event a full refund shall be made of the premium paid.

(d) The minimum benefit shall be payment up to the agreed amount on not less than four benefit payments, as stated in the policy, which accrue during a covered period of unemployment, except that during the first 60 days after inception of the policy, the minimum benefit may be payment up to the agreed amount of one-half the number of benefit payments, as stated in the policy, which accrue during a covered period of unemployment. The maximum benefits shall be established in the contract of insurance.

(e) If combination credit disability and loss-of-income coverage is offered, credit disability and credit loss-of-income coverages shall also be offered separately.

(f) Benefits may not be denied because the insured cannot establish a valid claim for unemployment compensation benefits under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code solely because the former employer was not required to contribute to the State Unemployment Fund.

(g) If insurance with retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is unemployed, provided that the insured is continuously unemployed during the waiting period set forth in the policy. If insurance without retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is unemployed, after first excluding the elimination period set forth in the policy. For the purpose of this subdivision, a month is any period of 30 consecutive days.

(h) When unemployment continues for a number of months equal to or greater than the maximum number of benefit payments stated in the policy, the final payment shall be equal to the difference between a benefit payment and the initial prorated payment.

(i) As used in this section, "benefit payment" means payment of an amount equal to a loan repayment installment or a maximum amount established in the contract of insurance, whichever is less.

(j) The minimum benefit payment offered may not be less than the amount of a loan repayment installment unless the borrower or borrowers have two or more sources of income. If the maximum benefit payment offered is less than the amount of a loan repayment installment, the borrower shall also be offered coverage in which the maximum benefit payment is equal to the amount of a loan repayment installment.

(Amended by Stats. 1987, Ch. 1314, Sec. 2.)

18293. If credit disability or loss-of-income insurance is provided pursuant to this division, the industrial loan company shall also deliver an understandable written statement to the borrower detailing the conditions when the borrower will be entitled to make a claim under the insurance policy and the procedure to be followed in making the claim.

(Amended by Stats. 1998, Ch. 827, Sec. 13. Effective January 1, 1999.)

18294. An industrial loan company may collect the costs for insurance of tangible personal or real property offered as security for a loan, reasonably insured against loss for a reasonable term considering the circumstances of the loan, when the policy of insurance is made payable to the borrower or any member of his family, even though the customary mortgagee clause is attached, and if the insurance is sold at standard rates through duly licensed insurance agents.

(Added by Stats. 1976, Ch. 964.)

18295. An industrial loan company may collect the costs of title insurance for loans secured primarily by real property. The costs for such insurance may be collected if:

(1) The principal amount of the loan is at least one thousand dollars ($1,000);

(2) The loan is secured by a lien of a deed of trust or mortgage on real property which is the subject of such policy of title insurance;

(3) The policy of title insurance is made payable to the lender or jointly to such lender and the borrower as their interests may appear;

(4) The coverage of such insurance may not exceed the lesser of the principal amount of the loan or the fair market value of the real property less prior encumbrances;

(5) The insurance is placed at standard rates through a title insurance company authorized to do business in the State of California;

(6) In connection with the renewal or extension of a loan, the additional cash advance is at least one thousand dollars ($1,000).

Such costs as herein authorized are not included in the maximum charges which may be made under this division.
(Amended by Stats. 1983, Ch. 858, Sec. 24.)

18296. An industrial loan company may collect the costs of insurance of the type defined by subdivision (a) of Section 12640.02 of the Insurance Code. Costs authorized by this section are not included in the maximum charges which may be made under this division.
(Added by Stats. 1984, Ch. 199, Sec. 4.)

Article 6.5. Open-End Loans
(Article 6.5 added by Stats. 1977, Ch. 939.)

18300. (a) As used in this article, "open-end loan" means a loan or loans made by an industrial loan company pursuant to a loan agreement which expressly states that it is made pursuant to this section and pursuant to which:

(1) The industrial loan company may permit the borrower to obtain advances of money from the industrial loan company from time to time or the industrial loan company may advance money on behalf of the borrower from time to time as directed by the borrower.

(2) The amount of each advance and the charges and other permitted costs are debited to an account.

(3) The charges are computed from time to time on the unpaid balances of the borrower's account, excluding from the computation any unpaid charges other than permitted fees, costs and expenses.

(4) The borrower has the privilege of paying the account in full at any time or in monthly installments.

(b) Subject to the written approval of the commissioner of the industrial loan company's plan of business for making open-end loans as not being misleading or deceptive and subject to regulations the commissioner may promulgate with respect to open-end loans under Section 18347, an industrial loan company may make open-end loans pursuant to this section and may contract for and receive thereon charges as set forth in Section 18212. Such charges may be calculated on an amount not exceeding the greater of:

(1) The actual daily unpaid balances of the open-end account in the billing cycle for which the charge is made, in which case one-thirtieth of the monthly rate may be charged for each day the unpaid balance is outstanding.

(2) The average daily unpaid balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance unpaid as of the beginning of that day all advances and other debits and deducting all payments and other credits made or received as of that day.

The billing cycle shall be monthly. A billing cycle is monthly if the closing date of that cycle is the same date each month or does not vary by more than four days from the regular date.

(c) No industrial loan company shall enter into any agreement for an open-end loan that provides for a minimum payment that would result in the full repayment of principal over more than the maximum periods set forth below opposite the respective size of loans.

Principal amount of loan	Maximum period
Less than $1,500	24 months and 15 days
$1,500 but less than $ 2,500	36 months and 15 days
$2,500 but less than $ 4,000	48 months and 15 days
$4,000 but less than $ 6,000	60 months and 15 days
$6,000 but less than $10,000	84 months and 15 days

The minimum payment shall be determined by the amount of the initial loan advance and shall continue at that amount until a subsequent loan advance is made, at which time the minimum payment shall be determined by the amount of the unpaid balance of the loan after the advance and including the advance. Minimum payments after each advance shall be determined in the same manner.

(d) On open-end loans the industrial loan company may contract for and receive the fees, costs and expenses permitted on other loans, including those permitted by Sections 18215, 18218, 18290, 18294, and 18412, subject to all of the conditions and restrictions set forth in those sections with the following variations:

(1) The charge for credit life insurance shall be on a monthly basis. No credit life insurance written in connection with an open-end loan shall be cancelled by the lender because of delinquency of the borrower in the making of the

minimum payments thereon unless one or more of such payments is past due for a period of 90 days or more, and the lender shall advance to the insurer the amounts required to keep the insurance in force during such period, which amounts may be debited to the borrower's account.

(e) An industrial loan company shall not make an open-end loan in excess of ten thousand dollars ($10,000) principal amount.

(f) The loan contract shall provide for payment of minimum payments complying with subdivision (c). All loans made pursuant to this section shall be repayable by equal or substantially equal monthly payments during the term of the loan.

(g) In lieu of applying the provisions of Section 18290, the provisions contained herein shall apply to open-end loans.

An industrial loan company may provide insurance on the life of one or more borrowers with the borrower's consent. The form of the insurance shall be approved by the Insurance Commissioner and shall be in an amount not in excess of the indebtedness. The amount charged to the borrower for such insurance shall not exceed the amount provided in paragraph (1) or (2) following, whichever is less:

(1) The premium rate filed with the Insurance Commissioner for the coverage provided pursuant to Article 5.9 (commencing with Section 779.1) of Chapter 1 of Part 2 of Division 1 of the Insurance Code and which has not been disapproved by the Insurance Commissioner.

(2) Fifty cents ($0.50) per year per one hundred dollars ($100) of indebtedness (and in the same proportion for longer or shorter maturities and larger or smaller amounts) or such different maximum as is fixed by the Insurance Commissioner by a valid and effective regulation hereafter adopted.

Notwithstanding Section 18291, any such life insurance shall be in force as soon as the loan is made or coverage is agreed upon, whichever is later.

(h) The open-end loan agreement shall contain the name and address of the industrial loan company and shall disclose the nature of the security taken, if any, the method of determining the minimum payments which will be required to repay the initial advance, and any subsequent advances on the loan, and the agreed rate of charge.

(i) At the time the open-end loan agreement is made the industrial loan company shall obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If such statement discloses a broker or other person has participated, the company shall obtain a full statement of all sums paid or payable to the broker or other person. The open-end loan agreement and the statement required by this subdivision shall be kept for a period of two years after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(j) Except in the case of an account which the industrial loan company deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the company shall deliver or cause to be delivered to the borrower, or any one thereof, for each billing cycle at the end of which there is an outstanding balance in the account or with respect to which a finance charge is imposed, a statement setting forth the outstanding balance in the account at the beginning of the billing cycle, the date and amount of any subsequent loan advance during the period, the amounts and dates of crediting to the account during the billing cycle for payments, the amount of any finance charge debited to the account during the billing cycle, the annual percentage rate of finance charged determined under Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226), the balance on which the finance charge was computed, the closing date of the billing cycle, the outstanding balance on that date, and the minimum monthly payment required in the absence of any additional advance. If there has been any change in the nature of the security for the loan since the next preceding advance, the statement shall contain or be accompanied by a statement of the nature of the security for the loan after such change.

(k) An industrial loan company shall not take any instrument in connection with an open-end loan in which blanks are left to be filled in after execution.

(l) Subdivision (a) of Section 18205, and Sections 18206, 18214, 18222, 18231, and 18235 shall not apply to open-end loans.

(m) An industrial loan company shall not make an open-end loan secured by real property in whole or in part.

(n) An industrial loan company shall not charge for, offer or provide credit disability insurance in connection with an open-end loan.

(o) This section shall not apply to loans other than open-end loans.

(Amended by Stats. 1985, Ch. 297, Sec. 2.)

18301. (a) Whenever authorized by the commissioner, an industrial loan company whose thrift obligations are insured by the Federal Deposit Insurance Corporation may make a secured line of credit loan. Security for line of credit loans shall be of a kind and class that has been declared eligible by the commissioner.

(b) Line of credit loans authorized under Title VIII (Alternative Mortgage Transaction Party Act of 1982) of the Garn-St. Germain Depository Institutions Act of 1982 are not subject to subdivision (a).

(c) As used in this article, "line of credit loan" means a loan whereby a borrower requests and a company disburses loan proceeds in an installment or installments during the term of the loan by an advance or series of advances, whether or not the timing of the advance or advances is known on the date the loan is approved by the company.

(d) This section does not apply to secured line of credit lending activities engaged in on or before May 1, 1989, unless, after that date there is a change in the secured line of credit plan of business by the company.
(Added by Stats. 1989, Ch. 889, Sec. 4.)

18302. An industrial loan company shall file a written request for authorization to conduct business under subdivision (a) of Section 18301. The request shall include all of the following information:

(a) A description of the company's proposed plan of business.

(b) The character, business qualifications, and other experience of the proposed officers and managers directing the line of business for which authorization is requested.

(c) Any other facts and circumstances bearing on the proposal that, in the opinion of the commissioner, may be relevant.
(Added by Stats. 1989, Ch. 889, Sec. 5.)

18303. The commissioner shall approve the request made pursuant to Section 18302 within 30 days after filing unless the commissioner has ascertained that the company has failed to show either of the following:

(a) That the proposed plan of business has a reasonable promise of a successful operation.

(b) That the company has a person with the necessary business qualifications, experience, or ability to direct and manage the operations of the plan of business.
(Added by Stats. 1989, Ch. 889, Sec. 6.)

CHAPTER 4. INVESTMENT CERTIFICATES

(Chapter 4 added by Stats. 1976, Ch. 964.)

18315. (a) When authorized to conduct business pursuant to this division, an industrial loan company may sell and issue its investment certificates subject to the provisions of this division. The commissioner may, by written order directed to a company or by rule or regulation, impose terms and conditions upon investment certificates and the sale or redemption thereof or the payment of interest thereon, as he or she deems reasonable and necessary or advisable for the protection of the company or the public, and he or she may from time to time in his or her discretion amend, alter or revoke any such order or regulation or any condition or provision thereof.

(b) Any change in the form, terms, or provisions of outstanding investment certificates or in the rights, privileges, or restrictions upon the holder or issuer thereof is deemed a sale and issuance of investment certificates.

(c) The company named in any order issued pursuant to subdivision (a) of this section may, within 15 days after receipt thereof, file with the commissioner its written request for hearing. The filing of the request shall not operate to postpone or suspend the effectiveness of any order issued by the commissioner unless otherwise directed by the commissioner. The commissioner shall, within 15 days after the receipt of the written request or at such later time as may be mutually agreed with the company, cause the matter to be heard and shall thereafter issue his final decision. The decision may be amended or set aside by the commissioner at any time.

(d) Every order or decision of the commissioner made pursuant to this section is subject to judicial review in accordance with law.

(Amended by Stats. 1998, Ch. 827, Sec. 14. Effective January 1, 1999.)

18316. An industrial loan company may, in addition to the sale of installment investment certificates with loans, sell or negotiate investment certificates either in certificates, or in receipt book form. The certificates may provide for the payment of money at any time, either fixed or uncertain. The company may receive payments therefor in installments or otherwise, with or without an allowance of interest upon such installments.

(Added by Stats. 1976, Ch. 964.)

18317. No company may have investment certificates outstanding with a person or related persons in an aggregate amount in excess of 20 percent of the unimpaired capital stock and surplus of the company not available for dividends as provided in Section 18319.

(Amended by Stats. 1989, Ch. 663, Sec. 10. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18318. Investment or thrift certificates may be issued to or in the name of a minor and as such shall be for the exclusive right and benefit of such minor and may be redeemed in whole or part by said minor or his order and payment so made is a valid release and discharge to the company for such payment.

(Added by Stats. 1976, Ch. 964.)

18318.5. An investment or thrift certificate that is a multiple-party account as defined in Section 5132 of the Probate Code is governed by Part 2 (commencing with Section 5100) of Division 5 of the Probate Code.

(Amended by Stats. 1990, Ch. 79, Sec. 11. Operative July 1, 1991, pursuant to Stats. 1990, Ch. 710, Sec. 46.)

18319. In no event shall an industrial loan company have outstanding at any time its investment certificates (exclusive of those hypothecated with the company issuing them) in an aggregate sum in excess of 20 times the aggregate amount of its paid-up and unimpaired capital and such of its unimpaired surplus as is declared by a bylaw of the company to be not available for cash dividends. The commissioner by rule or by order issued pursuant to Section 18315, may limit the amount of outstanding investment certificates of an industrial loan company.

(Amended by Stats. 1983, Ch. 858, Sec. 29.)

18320. Notwithstanding Section 18319, an industrial loan company shall in no event:

(a) Have outstanding at any time during its first 12 months of operation as an industrial loan company under this division, its investment certificates (exclusive of those hypothecated with the company issuing them) in an aggregate sum in excess of six times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319.

(b) After 12 months of operation as an industrial loan company under this division and during the next 12 months of operation the industrial loan company may file an application with the commissioner seeking authority to increase the aggregate sum of its investment certificates which (exclusive of those investment certificates hypothecated with the company issuing them) in no event shall exceed eight times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319.

(c) After 24 months of operation as an industrial loan company under this division and during the next 24 months of operation the company may file an application with the commissioner seeking authority to increase the aggregate sum of its investment certificates which (exclusive of those investment certificates hypothecated with the company issuing them) in no event shall exceed 12 times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319.

(d) If after 36 months of operation as an industrial loan company under this division the outstanding investment certificates of a company are insured by the Federal Deposit Insurance Corporation, the company may file an application with the commissioner seeking authority to increase the aggregate sum of its investment certificates which it may have outstanding to the extent authorized by the capital-adequacy requirements of the federal Deposit Insurance Corporation. An industrial loan company that is authorized to increase the aggregate sum of its investment certificates to the extent authorized by the capital-adequacy requirements of the Federal Deposit Insurance Corporation also shall meet the requirements of subdivisions (e) and (f).

(e) After 48 months of operation as an industrial loan company under this division and during the next 12 months of operation the company may file an application with the commissioner seeking authority to increase the aggregate sum of its investment certificates which, exclusive of those investment certificates hypothecated with the company issuing them, in no event shall exceed 15 times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319, only if both of the following requirements are met:

(1) A company shall maintain a liquidity reserve in cash, or cash equivalent, equal to 1 ½ percent of its total investment certificates outstanding. "Cash equivalent" means investments legal for commercial banks under the laws of this state, with a maturity of not more than 12 months.

(2) In addition to the reserve for losses required by the commissioner pursuant to Section 18343, a company shall establish and maintain such special reserves for losses as the commissioner, by rule or order, may require.

(f) After 60 months of operation as an industrial loan company under this division, the company may file an application with the commissioner seeking authority to increase the aggregate sum of its investment certificates which it may have outstanding, which, exclusive of those investment certificates hypothecated with the company issuing them, in no event shall exceed 20 times the aggregate amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319, and which may exceed 15 times the amount of its paid-up and unimpaired capital and unimpaired surplus not available for dividends pursuant to Section 18319 only if the requirements of subdivision (e) are met and the capital stock is not less than one million two hundred fifty thousand dollars ($1,250,000) and the unimpaired paid-in surplus is not less than seven hundred fifty thousand dollars ($750,000).

(g) Whenever the commissioner deems it reasonable and necessary or advisable for the protection of the public (including the fact that an industrial loan company is not a member of the Federal Deposit Insurance Corporation), the commissioner may at any time by order authorize said industrial loan company to have its investment certificates outstanding in either a lesser aggregate sum than the maximum aggregate amounts permitted by subdivision (a), (b), (c), (d), (e), or (f), or none at all.

(h) The request for authority filed with the commissioner pursuant to subdivisions (b), (c), (d), (e), and (f) shall be set forth in an application in such form and containing such information as the commissioner may require.

(i) The commissioner shall by rule or regulation set forth the criteria that must be met before an industrial loan company can be granted authority to increase the aggregate sum of its outstanding investment certificates.

(j) If the commissioner does not within 60 days of the filing of an application grant a request by an industrial loan company operating under this division, for authority to increase the aggregate sum of its outstanding investment certificates to the requested amount, or issues an order pursuant to subdivision (g), the company may file with the commissioner its written request for hearing in accordance with subdivisions (c) and (d) of Section 18315.

(Amended by Stats. 1987, Ch. 787, Sec. 3.)

18321. (a) Nothing in this division authorizes an industrial loan company to receive demand deposits.

(b) Subject to Section 18315, an industrial loan company that is a member of the Federal Deposit Insurance Corporation pursuant to Section 18521.5 may use the term "certificate of deposit" as defined in Section 18003.6 with respect to an investment certificate that does not authorize either of the following:

(1) Redemption prior to its maturity.

(2) Reduction of the interest rate payable thereon other than a variable interest rate.

(Amended by Stats. 1999, Ch. 345, Sec. 3. Effective January 1, 2000.)

18322. An industrial loan company shall obtain the written consent of the commissioner prior to accepting any moneys pursuant to Section 17409. The commissioner may, by regulation or order, impose or revise limitations and

requirements, including, but not limited to, liquidity and reserve requirements, as, in the opinion of the commissioner, are necessary for safety and soundness. The commissioner shall rescind that consent if, at any time, the industrial loan company exceeds the limitations or fails to adhere to the requirements imposed or, if in the opinion of the commissioner, the continued acceptance of those moneys would pose a threat to the safety and soundness of the company.
(Added by Stats. 1990, Ch. 1306, Sec. 3.)

18325. (a) An industrial loan company shall not impose any charge on a periodic investment or thrift certificate, or on an investor in an account evidenced by such certificate, for the failure of an investor to invest, or for the late investment of, any agreed periodic installment investment into such an account. An industrial loan company shall pay interest on periodic investment or thrift certificates at the same rate of interest per annum as is paid on investment or thrift certificates as to which an investor has not agreed to make periodic installment investments.

(b) As used in this section "periodic investment or thrift certificate" means an investment arrangement under which an investor undertakes to make periodic investments of a specified amount into one account, except, however, a periodic investment or thrift certificate shall not mean an impound account established for the purposes of the payment of taxes or other expenses and obligations in connection with a loan secured by real property, or a certificate of investment issued in connection with a loan pursuant to Section 18322.
(Added by Stats. 1976, Ch. 964.)

CHAPTER 5. ADMINISTRATION AND POWERS OF THE COMMISSIONER

(Chapter 5 added by Stats. 1976, Ch. 964.)

Article 1. General

(Article 1 added by Stats. 1976, Ch. 964.)

18339. As of the operative date of this section:

(a) There is established an Industrial Loan Account in the Financial Institutions Fund in the State Treasury.

(b) All money on deposit with the Treasurer in the State Corporations Fund that has been received or collected by the Commissioner of Corporations under this division or any other law relating to industrial loan companies or the industrial loan business, all other assets of the State Corporations Fund that have been acquired by the Commissioner of Corporations under this division or any other law relating to industrial loan companies or the industrial loan business, and all liabilities of the State Corporations Fund that have been incurred under this division or any other law relating to industrial loan companies or the industrial loan business shall be transferred to the Industrial Loan Account.

(Added by Stats. 1996, Ch. 1064, Sec. 588.5. Effective January 1, 1997. Operative July 1, 1997.)

18340. All money received or collected by the commissioner under this division or any other law relating to industrial loan companies or the industrial loan business shall be deposited in the State Treasury to the credit of the Industrial Loan Account of the Financial Institutions Fund.

(Amended by Stats. 1996, Ch. 1064, Sec. 589. Effective January 1, 1997. Operative July 1, 1997.)

18340.5. All expenses of the department in administering this division and other laws relating to industrial loan companies or the industrial loan business shall be paid out of the Industrial Loan Account; and, except as otherwise provided in Section 276 or 277, the Industrial Loan Account shall be used only for such purposes.

(Added by Stats. 1996, Ch. 1064, Sec. 590. Effective January 1, 1997. Operative July 1, 1997.)

18342. Industrial loan companies have the powers specified in this division. In addition, industrial loan companies have the general powers conferred upon corporations by the General Corporation Law. The powers granted, including those granted by the General Corporation Law, are subject to the supervision and control of, and the conditions imposed by, the commissioner.

(Amended by Stats. 1989, Ch. 663, Sec. 11. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18343. The commissioner may require an industrial loan company to establish and maintain reasonable reserves for loans made, and contracts or other obligations purchased or discounted in accordance with sound business practices. The commissioner may by rule or order:

(a) Establish reasonable standards for the classification of loans and contracts or other obligations as to their delinquency or currency.

(b) Prescribe the conditions requiring the writing off of delinquent loans and contracts or other obligations and the conditions under which they may be restored as part of corporate assets.

(c) Establish the basis upon which reasonable and adequate reserves shall be created and maintained.

(Amended by Stats. 1989, Ch. 663, Sec. 12. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18344. An industrial loan company shall not conduct the business of making loans under this division, within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division.

(Added by Stats. 1976, Ch. 964.)

18345. An industrial loan company shall notify the commissioner of every change in the officers, directors and management personnel of the company and of each branch of the company within 15 days of such change. Such report shall include a complete identification of each person assuming any such office or duties and such other information as the commissioner shall prescribe. The commissioner may by rule or order prescribe the positions or duties which will be deemed to be management personnel within the meaning of this section.

(Amended by Stats. 1989, Ch. 663, Sec. 13. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18346. The commissioner may require each industrial loan company to file with the commissioner a fidelity bond indemnifying the industrial loan company against loss of money or property by act of any officer, director or employee of such company, having access to assets owned by or pledged with the company. The fidelity bond shall contain a rider which provides that the coverage of the bond extends to all officers, directors and employees of the insured who are

compensated by the insured. The commissioner may require that the fidelity bond contain a rider which provides that coverage of the bond extends to all officers and directors who are not compensated by the insured. The fidelity bond may be either a primary commercial blanket bond, a blanket position bond, or a banker's blanket bond, but shall be written by an admitted surety insurer. The commissioner shall by regulation prescribe the amount of fidelity coverage to be required. The sufficiency of the sureties on the bond are at all times subject to the approval of the commissioner.
(Amended by Stats. 1982, Ch. 517, Sec. 226.)

18346.1. (a) In lieu of providing a bond required pursuant to Section 18346, a licensee may deposit with the commissioner security in an amount as the commissioner may determine, for the protection of the public against loss suffered through theft or mysterious disappearance. Such security may only be in the form of cash, lawful money of the United States, bearer bonds issued by the United States or the State of California or evidence of deposit in banks or investment certificates issued by insured savings and loan associations authorized or licensed to do business in the State of California.

(b) Security deposited with the commissioner pursuant to subdivision (a) shall not be deemed an asset of the licensee for the purpose of complying with Article 3 of Chapter 2 of this division.
(Added by Stats. 1980, Ch. 427, Sec. 4.)

18347. The commissioner may establish rules and regulations which are reasonable and necessary to carry out the purposes and provisions of this division, including rules and regulations concerning the terms, form, offer, and sale of investment certificates.
(Added by Stats. 1976, Ch. 964.)

18349. The commissioner may, upon reasonable notice and opportunity to be heard, suspend or revoke the license of an industrial loan company if the commissioner finds that the industrial loan company has violated any provision of this division or any rule or regulation of the commissioner made pursuant to this division, or if any factor or condition exists which, if it had existed at the time of the original application for a license, reasonably would have warranted the commissioner in refusing originally to issue such license.
(Repealed and added by Stats. 1980, Ch. 974, Sec. 11.)

18349.5. (a) For the purposes of this section, the following definitions are applicable:

(1) "Account holder" includes, in the case of an investment certificate account, an investment certificate holder; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position which is similar to the position that a trustor or beneficiary occupies with respect to a trust account.

(2) "Industrial loan company" means any corporation which falls within the definitions of Sections 18003 and 18003.5.

(3) "Order" means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including without limitation, any condition thereof. "Order" does not include any certificate of authority or license issued by the commissioner, but does include any condition of a license and any written agreement made by any person with the commissioner under this division.

(4) "Subject person of an industrial loan company" means any director, officer, or employee of the industrial loan company, or any person who participates in the conduct of the business of the industrial loan company. However, "subject person of an industrial loan company" does not include an individual who is a director, officer, or employee of a controlling person of an industrial loan company unless the individual is a director, officer, or employee of the industrial loan company or participates in the conduct of the industrial loan company.

(5) "Controlling person" means a person who, directly or indirectly, controls an industrial loan company.

(6) "Violation" includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participation in, counseling, aiding or abetting a violation.

(b) If, after notice and opportunity for hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the industrial loan company; or

(B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the industrial loan company; or

(C) That the subject person has committed or engaged in any act which constitutes a breach of his or her fiduciary duty as a subject person; and

(2) (A) That the industrial loan company has suffered or will probably suffer substantial financial loss or other damage by reason of that violation, act, or breach of fiduciary duty; or

(B) That the interests of the industrial loan company's accountholders have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or

(c) That the subject person has received financial gain by reason of that violation, act, or breach of fiduciary duty; and

(3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one which demonstrates a willful or continuing disregard for the safety or soundness of the industrial loan company.

(c) If, after notice and opportunity for hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) That the subject person's conduct or practice with respect to another industrial loan company or business institution has resulted in substantial financial loss or other damage; and

(2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other industrial loan company or business institution; and

(3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the industrial loan company.

(d) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) That it is necessary for the protection of the industrial loan company or the interests of the industrial loan company's account holders that the commissioner issue the order immediately, and

(2) (A) That any of the factors set forth in paragraphs (1) and (2) of subdivision (b) and any of the factors set forth paragraph (3) of subdivision (c) are true with respect to the subject person; or

(B) That any of the factors set forth in paragraphs (1), (2), and (3) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.

(e) (1) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner.

(A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve as a subject person of the industrial loan company may pose a material threat to the interest of the industrial loan company's account holders or may threaten to materially impair public confidence in the industrial loan company. In case the criminal proceedings are terminated other than by a judgment of conviction the order shall be deemed rescinded.

(2) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company or a former subject of an industrial loan company, from his or her office, if any, with the industrial loan company and prohibiting the person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the industrial loan company:

(A) That the person has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve or resumption of service as a subject person of the industrial loan company may pose a material threat to the interests of the industrial loan company's account holders or may threaten to materially impair public confidence in the industrial loan company.

(3) The fact that any subject person of an industrial loan company charged with a crime involving dishonesty or breach of trust is not finally convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this division.

(f) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file an application for a hearing.

(g) Any person to whom an order is issued under subdivision (b), (c), (d), or (e) may apply to the commissioner to modify or rescind that order. The commissioner shall not grant that application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of an industrial loan company, comply with all applicable provisions of this division and of any regulation or order issued thereunder.

(h) A hearing held pursuant to this section shall be private unless the commissioner, in his or her discretion, after fully considering the views of the parties, determines that a public hearing is necessary to protect the public interest.

(i) (1) It is unlawful for any subject person of an industrial loan company or former subject person of an industrial loan company to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the commissioner, so long as the order is effective:

(A) To serve or act as a director, officer, employee, or agent of any industrial loan company.

(B) To vote any shares or other securities of an industrial loan company having voting rights, for the election of any person as a director of an industrial loan company.

(c) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any industrial loan company having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any industrial loan company.

(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both such fine and imprisonment.

(3) If the commissioner believes that any person has violated paragraph (1), the commissioner may bring an action in a court of competent jurisdiction petitioning the court to assess that person a civil penalty in an amount as the commissioner may specify; provided, however, that the amount of the civil penalty shall not exceed two thousand five hundred dollars ($2,500) for each violation or, in the case of a continuing violation, two thousand five hundred dollars ($2,500) for each day for which the violation continues.

In determining the amount of a civil penalty to be assessed under this paragraph, the court shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and such other factors as in the opinion of the court may be relevant.

(Amended by Stats. 1996, Ch. 1064, Sec. 592. Effective January 1, 1997. Operative July 1, 1997.)

18350. Each industrial loan company shall pay to the commissioner its pro rata share of all costs and expenses of the department in administering this division and other laws relating to industrial loan companies or the industrial loan business, as estimated by the commissioner for the ensuing year and of any deficit actually incurred or anticipated in the year in which the assessment is made. The pro rata share shall be the proportion which a company's assets bear to the aggregate assets of all companies as shown by the latest annual reports of the companies to the commissioner. The pro rata share shall not include the costs of any examinations provided for in Section 18392, unless they cannot be collected from the company examined.

(Amended by Stats. 1996, Ch. 1064, Sec. 592.5. Effective January 1, 1997. Operative July 1, 1997.)

18351. On or before the 30th day of November in each year, the commissioner shall notify each industrial loan company by mail of the amount assessed and levied against it and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(Added by Stats. 1976, Ch. 964.)

18352. In the levying and collection of an assessment pursuant to Section 18350, an industrial loan company shall not be assessed for nor be permitted to pay less than two hundred fifty dollars ($250) per year, or not less than twenty-five dollars ($25) per month or fraction of a month for the unexpired year ending December 31st following its incorporation.

(Added by Stats. 1976, Ch. 964.)

18353. If an industrial loan company fails to pay the assessment provided in Section 18350 on or before the 30th day of December following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to that company. If, after such an order is made, a request for hearing is filed in writing within 15 days from the date of service of the order and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not issue thrift certificates or make loans or otherwise conduct business pursuant to this division except as may be permitted by order of the commissioner; provided, however, that neither the revocation, suspension or surrender of a certificate shall affect the powers of the commissioner as provided in this division.

This section shall become operative January 1, 1969. For the purpose of making its provisions operative, the commissioner shall issue to all industrial loan companies authorized to conduct business under this division on said date a certificate of authorization to conduct business pursuant to this division in such form as the commissioner may prescribe and as provided in Section 18101 and thereafter all such companies shall be conclusively presumed to be conducting business under this division pursuant to such certificate of authorization.
(Amended by Stats. 1989, Ch. 172, Sec. 1.)

18354. The commissioner may require the attendance of witnesses and examine under oath all persons whose testimony he requires relative to the affairs of an industrial loan company or to the subject matter of any examination, investigation, or hearing.
(Added by Stats. 1976, Ch. 964.)

18355. Whenever, after an examination, investigation or hearing under this division, the commissioner deems it of public interest or advantage, he may certify a record to the proper prosecuting official of the county or city in which the act complained of, examined, or investigated, occurred.
(Added by Stats. 1976, Ch. 964.)

18356. The commissioner may order any industrial loan company to desist from any conduct which the commissioner finds in violation of this division or any rule or order of the commissioner made pursuant to this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 593. Effective January 1, 1997. Operative July 1, 1997.)

18357. (a) If it appears to the commissioner that an industrial loan company has violated or failed to comply with the provisions of its articles of incorporation, or with any law of this state, the commissioner may by written order addressed to the company, direct that company to discontinue the violation and to comply with the law.

(b) Whenever it appears from the report of an industrial loan company or the commissioner has reason to conclude, that the capital stock of an industrial loan company is impaired or reduced below the amount required by this division, the commissioner shall by written order addressed to the company, direct that company to make good the alleged deficiency or impairment of capital. If the company fails to make good the alleged deficiency or impairment of capital, the commissioner may forthwith take possession of the property and business of the industrial loan company pursuant to Section 18415. If the company fails to make good the alleged deficiency or impairment of capital within 60 days of the date of the order, the commissioner shall take possession of the industrial loan company pursuant to Section 18415. The capital of an industrial loan company is impaired when the minimum amount of capital required by Sections 18130 and 18131 is reduced by a net deficit balance in the company's surplus account.
(Amended by Stats. 1989, Ch. 172, Sec. 2.)

18358. If it appears to the commissioner that an industrial loan company is conducting business in an unsafe, unsound, or injurious manner, the commissioner may, by written order, direct the discontinuance of any such unsafe or injurious practices.
(Amended by Stats. 1989, Ch. 663, Sec. 15. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18359. Whenever the commissioner is authorized to issue an order pursuant to Section 18357 or Section 18358 of this division, the commissioner may issue an order directing an industrial loan company to discontinue or limit the sale of its investment certificates or to impound the proceeds from the sale of its investment certificates in such manner as the commissioner may specify in such order.
(Amended by Stats. 1989, Ch. 663, Sec. 16. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18360. The company named in any order issued pursuant to this division for which no express hearing right is provided, including Sections 18356, 18357, 18358, 18359, 18363, and 18415.3 may, within 15 days after receipt thereof, file with the commissioner its written request for hearing. The filing of that request shall not operate to postpone or suspend the effectiveness of any order issued by the commissioner unless otherwise directed by the commissioner. The order may be amended or set aside by the commissioner at any time. The commissioner shall, within 30 business days after the receipt of that written request or at a later time as may be mutually agreed with the company, cause that matter to be heard.
(Amended by Stats. 1996, Ch. 1064, Sec. 594. Effective January 1, 1997. Operative July 1, 1997.)

18361. After any order is made final, the industrial loan company shall have 10 days in which suit may be commenced to restrain enforcement of such order and unless such action is commenced and enforcement of the final order is enjoined within 10 days by the court in which such suit is brought, the company shall comply with the final order.
(Added by Stats. 1976, Ch. 964.)

18362. (a) If the commissioner believes that an industrial loan company or its directors, officers, agents, or employees have violated or are about to violate any of the provisions of this division, or any provision of an order, license,

permit, decision, demand, or requirement of the commissioner, the commissioner may bring an action against such persons to enjoin those persons from continuing the violation or the attempt to violate this division, or doing any act in furtherance thereof. The commissioner shall bring such action in the name of the people in the superior court, and the court may enter an order or judgment awarding a preliminary or final injunction as is proper.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award the additional relief.

(c) Any person who violates any provision of this division, or who violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(d) As applied to civil and criminal penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

(Amended by Stats. 1990, Ch. 1202, Sec. 5.)

18363. The commissioner may order an industrial loan company to suspend the redemption of investment certificates or the payment of the liabilities of the company or limit the payment of the liabilities in such manner as he prescribes, if it appears to the commissioner that such action is necessary for the protection of the company, its investors or creditors, or in the public interest. The order is effective upon receipt of notice by the company and continues in effect until rescinded or modified by the commissioner in a writing delivered to the manager or executive officer of the company. Nothing in this section shall affect the right of any company to pay its current operating expenses and liabilities incurred during the period of suspension or limitation.

(Added by Stats. 1976, Ch. 964.)

18364. After an order of suspending or limiting the payment of liabilities is effective and until that order is rescinded, the industrial loan company shall make no assignment or hypothecation of any indebtedness due to it from an investor without first crediting thereon the investment liability of the company to such investor-borrower.

(Added by Stats. 1976, Ch. 964.)

18365. The authority granted to the commissioner by Section 18363, may be exercised by him in conjunction with all other powers granted by this chapter, or independently from them.

(Added by Stats. 1976, Ch. 964.)

18366. Every order, decision, license, or other official act of the commissioner is subject to review in accordance with law. Upon review, the burden of proof lies upon the appellant, and the court shall receive and consider any pertinent evidence which was introduced in the formal hearing before the commissioner, whether oral or documentary, concerning the action of the commissioner under review. The review is limited to a consideration and determination of the question of whether there has been an abuse of discretion on the part of the commissioner in making such order, decision, finding, requirement, or rule.

(Added by Stats. 1976, Ch. 964.)

18367. (a) If at any time the commissioner is of the opinion that the further sale of investment certificates by an industrial loan company would be unfair, unjust or inequitable to the purchasers of its investment certificates, the commissioner may, notwithstanding any other provision of this division, order the company to desist and refrain from the further sale of its investment certificates.

(b) The company named in any order issued pursuant to subdivision (a) of this section may, within 15 days after receipt thereof, file with the commissioner its written request for hearing. The filing of such request shall not operate to postpone or suspend the effectiveness of any order issued by the commissioner unless otherwise directed by the commissioner. The commissioner shall, within 15 days after the receipt of such written request or at such later time as may be mutually agreed with the company, cause such matter to be heard and shall thereafter issue his final decision. Such decision may be amended or set aside by the commissioner at any time.

(c) Every order or decision of the commissioner made pursuant to this section is subject to judicial review in accordance with law.

(Added by Stats. 1976, Ch. 964.)

18368. (a) The commissioner may make the agreements that he or she deems necessary or appropriate in exercising his or her powers.

(b) (1) The agreements authorized under subdivision (a) may include, but are not limited to, agreements with agencies of this state, of other states of the United States, or of the United States that regulate financial institutions, relating to examinations of industrial loan companies and other matters.

(2) Any agreement with a government agency that regulates financial institutions is exempt from the advertising and competitive bidding requirements of the Public Contract Code.

(Amended by Stats. 1996, Ch. 887, Sec. 52. Effective September 25, 1996.)

Article 2. Examinations
(Article 2 added by Stats. 1976, Ch. 964.)

18390. For the purpose of discovering violations of this division or securing information required, the commissioner may at any time investigate the affairs and examine the books, accounts, records, and files of every corporation engaged in the business of an industrial loan company or broker, or its holding company or affiliates, whether such corporation acts or claims to act as principal or agent, or under or without the authority of this division. For the purposes of examination and investigation, the commissioner and the commissioner's duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of all such corporations and their holding companies or affiliates.

(Amended by Stats. 1980, Ch. 418, Sec. 3.)

18391. Whenever in the judgment of the commissioner the condition of any industrial loan company renders it necessary or expedient to devote any extraordinary attention to its affairs, the commissioner may make any extra examination or investigation and perform any necessary services in connection with its affairs.

(Added by Stats. 1976, Ch. 964.)

18392. The industrial loan company examined shall pay to the commissioner the cost of any examination, investigation or services, including the salary or other compensation paid to the persons making the examination or investigation or rendering services, and overhead costs in connection therewith as fixed by the commissioner. In determining the cost of examination, investigation, or services, the commissioner may use the estimated average hourly cost for all persons performing examinations, investigations, or services for industrial loan companies for the fiscal year.

(Amended by Stats. 1981, Ch. 946, Sec. 4.)

18393. The commissioner shall, upon receipt of written notification by an industrial loan company that it intends to engage in or is engaging in transactions permitted under Section 18209, make an examination of the affairs and records of each such industrial loan company at least once each year. Such examination shall be made or performed unless such company notifies the commissioner of its election to discontinue such activity and gives evidence that it has disposed of all evidences of indebtedness arising from any such transactions.

(Added by Stats. 1976, Ch. 964.)

18394. Investigation and examination reports prepared by the commissioner's duly designated representatives shall not be public records. Those reports may be disclosed to the officers and directors of a company which is the subject of a report for the purpose of corrective action by those officers or directors. Any such disclosure shall not operate as a waiver of the exemption specified in subdivision (d) of Section 6254 of the Government Code.

(Added by Stats. 1988, Ch. 537, Sec. 1.)

18396. (a) In this section, "governmental agency" includes, without limitation, any agency of this state, of any other state of the United States, of the United States, or of any foreign nation.

(b) The commissioner may furnish information to a governmental agency that regulates financial institutions.

(c) The commissioner may furnish to a governmental agency that administers a loan guarantee or similar program, information relating to a person who participates in the program.

(d) The commissioner may furnish to a governmental agency that regulates business activities, other than the type described in subdivision (b), information relating to:

(1) A suspected violation of a law administered by the agency.

(2) A person involved in an application to the agency for a license, approval, or other authorization.

(e) The commissioner may furnish to a governmental agency that is a law enforcement agency, information relating to a suspected crime.

(f) This section does not prescribe the only circumstances under which the commissioner may furnish information.

(Added by Stats. 1995, Ch. 479, Sec. 5. Effective October 2, 1995.)

Article 3. Reports and Financial Statements
(Article 3 added by Stats. 1976, Ch. 964.)

18405. (a) On or before the 15th day of March of every year, each industrial loan company shall file with the commissioner an audit report containing audited financial statements together with such other relevant information as the commissioner may require relating to the company and to each place of business of the company. The audited financial statements shall include a balance sheet of the company prepared as of the last day of the preceding calendar year and statements of income and of surplus for such calendar year.

(b) An industrial loan company whose certificate has been surrendered or revoked shall, on or before 105 days after the effective date of such surrender or revocation, submit to the commissioner a closing audit report containing audited financial statements as of such effective date for the 12 months ending with such effective date, or for such other period as the commissioner may specify. Such report shall include the information required by subdivision (a) of this section and other relevant information specified by the commissioner. A company which has complied with this subdivision is exempted from the provisions of subdivision (a).

(c) The reports and financial statements referred to in subdivisions (a) and (b) shall be prepared in accordance with generally accepted accounting principles and shall be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant, and shall contain such relevant information as the commissioner may require. The audits shall be conducted in accordance with generally accepted auditing standards and the rules and regulations of the commissioner.

(d) For good cause and upon written request, the commissioner may extend the time for compliance with subdivisions (a) and (b).

(e) If the report, certificate or opinion of the independent accountant referred to in subdivision (c) hereof is in any way qualified, the commissioner may require the company to take such action as he deems appropriate to permit an independent accountant to remove such qualification from the report, certificate or opinion.

(f) The commissioner may reject any financial statement, report, certificate or opinion filed pursuant to this section by notifying the company required to make such filing of its rejection and the cause thereof. Within 30 days after the receipt of such notice, the company shall correct such deficiency, and the failure so to do shall be deemed a violation of this division. The commissioner shall retain a copy of all filings so rejected.
(Repealed and added by Stats. 1976, Ch. 964.)

18406. Each industrial loan company which has issued and which has outstanding investment certificates shall:

(a) Post in a conspicuous and prominent place in each business location a condensed statement of its financial condition, and

(b) Furnish to a person prior to such person's investment in an investment certificate a copy of its latest condensed statement of its financial condition. Each year a copy of the condensed statement shall be furnished by mail or hand-delivered to each investment certificate holder.

(c) Maintain and have available for public inspection a copy of its latest audited financial statement required by subdivision (a) of Section 18405 in each of its business locations. Any person shall, upon request, be permitted to inspect the statement during regular business hours.

(d) The statement required by subdivisions (a) and (b) shall set forth such information and be in such form as may be required by the commissioner.
(Repealed and added by Stats. 1976, Ch. 964.)

18407. An industrial loan company shall, when requested by the commissioner, submit its unaudited financial statements, prepared in accordance with generally accepted accounting principles and consisting of at least a balance sheet and a statement of income as of the date and for the period specified by the commissioner. The commissioner may require the submission of such reports on a monthly or other periodic basis.
(Repealed and added by Stats. 1976, Ch. 964.)

18408. An industrial loan company shall make other special reports to the commissioner as the commissioner may from time to time require.
(Repealed and added by Stats. 1976, Ch. 964.)

18409. The commissioner shall make and file annually with the department as a public record a composite of reports filed by industrial loan companies, and any comments thereon that he or she deems in the public interest.
(Amended by Stats. 1996, Ch. 1064, Sec. 596. Effective January 1, 1997. Operative July 1, 1997.)

18410. For the purposes of the composite report provided for by Section 18409, an industrial loan company shall furnish statistical information as is reasonably required by the commissioner, including information for each place of business of the company and as to any parent, subsidiary or affiliated company.
(Repealed and added by Stats. 1976, Ch. 964.)

18411. The commissioner may by rule or regulation specify the form and contents of the financial statements, reports, certificates and opinions required to be filed pursuant to this article, and may require that such reports and financial statements be verified in such manner as he may prescribe.
(Repealed and added by Stats. 1976, Ch. 964.)

18412. Each report required under this article shall be filed with the commissioner at the time that the commissioner by regulation or order may require. If any industrial loan company fails to make any report required by this article at the time specified by the commissioner, or fails to include in that report any matter required by this article or by the commissioner, the commissioner shall assess and collect a penalty of one hundred dollars ($100) for each day which that report is delayed or withheld by the failure or neglect of that industrial loan company.
(Added by Stats. 1990, Ch. 679, Sec. 1.)

Article 4. Possession, Conservatorship, and Liquidation by the Commissioner
(Article 4 added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415. The commissioner may take possession of the property and business of any industrial loan company and retain possession until the company resumes business or its affairs are liquidated if any of the following grounds exist:

(a) The capital of an industrial loan company is impaired.

(b) An industrial loan company has violated its articles of incorporation or any law of this state.

(c) An industrial loan company is conducting its business in an unsafe or unauthorized manner.

(d) An industrial loan company refuses to submit its books, papers and affairs to the inspection of any examiner.

(e) An officer of any industrial loan company refuses to be examined upon oath touching the concerns of such industrial loan company.

(f) An industrial loan company has suspended payment of its obligations.

(g) An industrial loan company is in such condition that it is unsound or unsafe for it to transact business.

(h) An industrial loan company neglects or refuses to observe any order of the commissioner made pursuant to this division, unless the enforcement of that order is restrained in a proceeding brought by the industrial loan company.

(i) An industrial loan company (1) fails to become and continue as either a member of the Federal Deposit Insurance Corporation or a member of the Thrift Guaranty Corporation of California in accordance with Chapter 7 (commencing with Section 18475), (2) has its right to participate in the Thrift Guaranty Corporation of California suspended or revoked pursuant to subdivision (a) of Section 18496 and it is not a member of the Federal Deposit Insurance Corporation, or (3) fails to pay any assessment levied pursuant thereto within the time specified.

(j) A member industrial loan company of Guaranty Corporation refuses to permit Guaranty Corporation, its appointed certified public accountant or public accountant, or specialized committees or employees to fulfill their duties under Section 18496.

(k) An industrial loan company has sold or issued investment certificates in violation of the provisions of this division.

(l) An industrial loan company has failed to maintain in effect a bond required under the provisions of this division.

(m) Any fact or condition exists which, if it had existed at the time of the original application for authority to organize and establish a corporation to engage in the industrial loan business reasonably would have warranted the commissioner in disapproving the application.

(n) An application for membership in the Federal Deposit Insurance Corporation has not been filed with and accepted by the Federal Deposit Insurance Corporation on or before January 15, 1990.

If the commissioner takes possession of the business and property of an industrial loan company, the company, with the consent of the commissioner, may resume business upon prescribed conditions.
(Amended by Stats. 1989, Ch. 583, Sec. 2.5.)

18415.1. Whenever the commissioner has taken possession of the property and business of an industrial loan company, that industrial loan company, within 10 days after the taking, if it deems itself aggrieved thereby, may apply to the superior court in the county in which the head office of the industrial loan company is located to enjoin further proceedings. The commissioner may exercise all powers granted by this article during the 10-day period after taking possession of the property and business of the industrial loan company. The court, after citing the commissioner to show cause why

further proceedings should not be enjoined and after a hearing and a determination of the facts upon the merits may dismiss the application or enjoin the commissioner from further proceedings and direct the commissioner to surrender the property and business to the industrial loan company, or make such further order as may be just.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.2. An appeal may be taken from the judgment of the court by the commissioner or by the industrial loan company in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.
(Amended by Stats. 1998, Ch. 931, Sec. 149. Effective September 28, 1998.)

18415.3. (a) Whenever the net worth of an industrial loan company, exclusive of its good will, is less than 90 percent of the aggregate sum of its outstanding investment certificates, exclusive of those hypothecated with the company issuing them, divided by the fraction which is its investment certificates ratio permitted by the commissioner, the commissioner shall by written order direct the company to make good the alleged deficiency of new worth. Pursuant to the commissioner's orders, the company's net worth shall be at least 100 percent of the aggregate sum of its outstanding investment certificates, exclusive of those hypothecated with the company issuing them, divided by the fraction which is its investment certificates ratio permitted by the commissioner.

(b) If the company fails to cure the alleged deficiency of net worth within the commissioner's specified time, not to exceed 120 days, the commissioner may take possession of the company's property and business. If the alleged deficiency is not cured within 120 days of the order, the commissioner shall take possession of the company's property and business.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.4. The commissioner may also, upon the request of the board of directors of a company, take possession of the property and business of a company and as conservator, take such action as the commissioner deems proper.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.5. Upon taking possession of the property and business of any industrial loan company, the commissioner shall give notice of that fact to all persons holding or having in their possession any assets of the company. The notice required by this section shall not be deemed to be a prerequisite to the taking of possession of the property and business of the industrial loan company. No person knowing of the taking, or who has been notified thereof, shall have a lien or charge upon any assets of the company for any payment, advance or clearance thereafter made, or for any liability thereafter incurred.

Notice is deemed given when the commissioner has either made personal service of the notice, or mailed the notice to the person by certified mail.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.6. Any officer, agent, employee, director, or stockholder of a company who refuses to comply with the demand for possession issued under Section 18415 shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment not exceeding one year or by both such fine and imprisonment.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.7. On demand of the commissioner, it shall be the duty of the sheriff of any county of the state, and of the police department of any municipal corporation therein, to furnish the commissioner with deputies, patrolmen, or officers as may be necessary to assist the commissioner in making and enforcing any seizure under Section 18415.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.8. Upon taking possession of the property and business of any company, the superior court for the county in which the head office of the company is located shall have exclusive original jurisdiction of all proceedings relating thereto and of any action or other proceedings brought under the provisions of this chapter. All papers relating to the taking of possession, including copies of the certificate of appointment of any special deputy, shall be filed and be made a part of the record of the proceeding within 45 days of the date of taking possession. All papers filed with the superior court, including inventories required to be filed, shall be made a part of the record of the proceeding without the payment of any additional fees therefor.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.9. At any time after the order taking possession issued under Section 18415 has been filed with the court, the commissioner may remove the principal office of the person proceeded against to the City and County of San Francisco or to the City of Los Angeles. In the event of removal, the court where the proceeding was commenced shall, upon the application of the commissioner, direct the superior court clerk to transmit all of the papers filed therein with that clerk to the Superior Court Clerk of the City and County of San Francisco or of the County of Los Angeles as the case may

require. The proceeding shall thereafter be conducted in the same manner as though it had been commenced in the county to which it had been transferred.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.10. The commissioner may, at any time, examine under oath any officer, director, agent, employee or stockholder of a company to determine whether or not all property and assets have been transferred or delivered to the commissioner's possession.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.11. Upon taking possession of the property and business of any company, the commissioner has authority and the duty to collect all moneys due to the company and to do such other acts as are necessary or expedient to collect, conserve, or protect its assets, property and business. The commissioner shall also proceed to conserve or liquidate the affairs thereof as provided in this chapter.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.12. The commissioner may file a petition with the court and the court shall issue such injunctions or orders, as may be deemed necessary, to prevent any of the following occurrences:

(a) Interference with the commissioner or the proceeding.

(b) The institution of any actions or proceedings, or the prosecution of any actions or proceedings already commenced.

(c) Waste of assets of the entity.

(d) The obtaining of preferences, judgments, attachments or other liens against the company or its assets.

(e) The making of any levy against the company or its assets.

(f) The sale or deed for nonpayment of taxes or assessments levied by any taxing agency of any of the following:

(1) Property owned by the company.

(2) Property upon which the company holds an encumbrance.

(3) Property upon which the company has prior thereto commenced an action to foreclose any deed of trust or mortgage or has exercised the power of sale under any trust deed or mortgage which sale or foreclosure proceedings have not yet been completed or upon which no trustee's deed or judgment of court or sheriff's certificate of sale has been issued.

"Taxing agency," as used in this section, has the same meaning as defined in Section 121 of the Revenue and Taxation Code. The injunctions or orders authorized by this subdivision may be modified, dissolved, or rescinded by the court on motion of the commissioner, the Controller, or the person charged with the collection of taxes or assessments on such property. The recording in the office of the county recorder of any county in the state of an order or injunction issued pursuant to this section, shall constitute service of the order or injunction upon any taxing agency with respect to property or interest therein located in such county.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.13. After the taking of possession of the property and business of any company, the commissioner may terminate or adopt any executory contract to which the company may be a party, including leases of real or personal property. The termination or adoption shall be made within six months after obtaining knowledge of the existence of the contract or lease. Any provision in the contract or lease which provides for damages or cancellation fees upon termination shall not be binding on the commissioner or the company seized. The commissioner and the company shall only be liable for actual damages and in no event in excess of one thousand dollars ($1,000). Any claim must be filed within 30 days of the date of the termination.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.14. The commissioner may proceed against any debtor or alleged debtor by way of summary procedure or by order to show cause issued by the court upon application by the commissioner.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.15. The commissioner may make examinations of the seized company and review the activities of any conservator or liquidator.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.16. The actual cost of any examination, investigation or services, including the actual amount of salary or other compensation paid to the persons making the examination, investigation or rendering services and the overhead costs in connection therewith, as fixed by the commissioner, shall be paid out of the assets of the company.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.17. The determination by the commissioner to liquidate a company, evidenced by filing written notice of the determination with the court, operates to stay or dissolve all actions or attachments instituted or levied within 90 days

next preceding the taking of possession of the company by the commissioner, and pending the process of liquidation, no attachment or execution shall be levied or lien created upon any of the property of the company.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.18. Upon taking possession of the property, and business of a company in any proceeding under this article, the commissioner shall have the power to do all of the following:

(a) Appoint one or more special deputy commissioners as his or her agent or agents with the powers specified in the certificate of appointment to assist in the duty of conservation or of liquidation and distribution.

(b) Employ the Attorney General as counsel or employ private counsel as may be deemed necessary to assist the commissioner in the performance of his or her duties under this chapter. Appointment of private counsel shall be made only with the consent of the Attorney General. The compensation of that counsel shall be fixed by the commissioner, subject to the approval of the court.

(c) Set the compensation of a special deputy commissioner.

(d) Require from each special deputy commissioner and from each assistant such security for the faithful performance of their duties as the commissioner may deem proper.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.19. All expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of any company under this article shall be paid out of the assets of that company. Those expenses shall include, among other things, the compensation of special deputy commissioners, clerks and assistants and the actual cost of any services attributable to the conservatorship or liquidation performed by the commissioner and staff, including the actual amount of salary or compensation paid to the person performing the services and overhead costs in connection therewith as fixed by the commissioner.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.21. Any transaction occurring within six months of the date of taking possession shall be voidable by the conservator or liquidator if the transaction has the effect of giving to, or enabling any creditor of, the company, any affiliate of the company, any officer, director, stockholder, employee or any relative thereof, to obtain a preference over any other creditor of the company.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.22. No obligation may be purchased or discounted under any agreement between the company and any person involving the purchase or discount of obligation from the person, with or without recourse, from the moment of taking possession pursuant to Section 18415. Any guarantees, recourse or repurchase agreements given at the time of purchase, or discount of any obligation prior to the date of taking possession, shall continue to be binding on the person. Any reserves, withholds or other security held by the company under the terms of the agreement shall be considered liabilities of the company in the general creditor classification and may not be used as offset against any obligation purchased or discounted under the agreement. No distribution of assets shall be made on these liabilities until the obligations purchased or discounted under the agreement have been satisfied.

In case of sale of the obligations by the liquidator, the reserves, withholds or other security shall remain as a liability to be paid off in the normal course of liquidation.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18415.23. No attachment or execution shall be issued against the property of any company before final judgment in any action or proceeding in any court.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18420. The commissioner, as conservator or liquidator, after taking possession of the company, shall, in his or her name, in the name of the company, in the name of both, or otherwise, have authority to do all of the following:

(a) Collect all obligations and money due the company.

(b) Exercise and possess all the rights, powers and privileges of the company, its officers and directors.

(c) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any and all actions, suits, or other legal proceedings by and against the conservator or liquidator or company, or in which the conservator, the company or its creditors or debtors, or any of them, have an interest, and in every way to represent the company, its creditors, and debtors.

(d) Execute, acknowledge, and deliver any and all deeds, contracts, leases, assignments, bills of sale, releases, extensions, satisfactions, and other instruments necessary or proper for any purposes.

(e) Be the custodian of all moneys collected by the commissioner or coming into his or her possession in the course of any proceeding under this chapter, but he or she may deposit those moneys, or any part thereof, in a bank insured by the Federal Deposit Insurance Corporation.

(f) Invest or reinvest such portions of funds and assets of the company, in a manner as he or she may deem suitable for the best interests of the creditors of the company.

(g) To revise, refinance, extend, or settle any loan or obligation upon those terms and conditions as he or she may deem to be most advantageous to the company.

(h) To sell, compound, compromise or assign for the purpose of collection upon those terms and conditions he or she deems best, any bad or doubtful debts due the company.

(i) To compound, compromise, or in any manner negotiate settlements of claims against the company upon those terms and conditions as he or she shall deem to be most advantageous to the company.

(j) To sell, acquire, hypothecate, encumber, lease, improve, abandon, or otherwise dispose of or deal with any real or personal property which has come into ownership of the company by way of repossession, foreclosure, execution, suit or by other such means on a basis of reasonable market value, without notice, for cash, on terms, or upon such other terms and conditions as he or she may deem proper.

(k) To settle, compromise, or obtain the release of, for cash or other consideration, claims and demands against the company or the conservator.

(l) To sell for cash or on terms, exchange, or otherwise dispose of, in whole or in part, any or all the assets and property of the company, real, personal, and mixed, tangible and intangible, of any nature.

(m) Execute, acknowledge, and deliver any and all deeds, contracts, leases, assignments, bills of sale, releases, extensions, satisfactions, and any other instruments necessary or proper for any purposes, including, but not limited to, the effectuation, termination, or modification of any sale, lease, or transfer of real, personal, or mixed property, or that shall be necessary or proper to liquidate or carry on the business of the company. Any deed or other instrument executed pursuant to the authority hereby given shall be as valid and effectual for all purposes as if it had been executed as the act and deed of the company.

(n) Pay out and expend such sums as the commissioner deems necessary or advisable including the following:

(1) To pay off or discharge any taxes, assessments, liens, claims, or charges of any nature against the company, the conservator or liquidator, any asset or property of any nature of the company, or upon any asset or property on which the company or conservator or liquidator has an interest of a value of any nature.

(2) For or in connection with the preservation, maintenance, conservation, protection, remodeling, repair, rehabilitation, or improvement of any asset or property of any nature of the company.

(3) To pay all costs and expenses of the conservatorship or liquidation and all costs of carrying out or exercising the commissioner's rights, powers, privileges, and duties as conservator.

(4) To pay valid creditor obligations, interest owed on debts, debts incurred during conservatorship or liquidation and all other debts of the company or conservatorship or liquidation of any nature.

(5) To pay all costs and expenses in the operation of the conservatorship or liquidation of the company.

(o) Do such things, and have such rights, powers, privileges, immunities and duties, whether or not otherwise granted in this chapter, as shall be authorized, directed, conferred, or imposed from time to time in specific cases by order of the court.

(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18420.1. No transaction involving real or personal property, investment or reinvestment of funds or assets, or settlement or compromise of pending lawsuits shall be made without first obtaining permission of the court, and then only in accordance with such terms as the court may prescribe, when either of the following exist:

(a) The principal sum of any obligation due the company or settlement or compromise of a pending lawsuit exceeds the sum of fifteen thousand dollars ($15,000).

(b) The market value of any real or personal property, except obligations due the company, exceeds the sum of ten thousand dollars ($10,000).

(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18420.2. The commissioner may, with ex parte approval of the court, sell all or any part of the company's assets to another industrial loan company, to a bank, to a savings and loan association, to Guaranty Corporation, or to an instrumentality of the United States government. In like manner, the commissioner may borrow from Guaranty Corporation, an instrumentality of the United States government, or a private insurer which insures or guarantees the company's investment certificates, any amount necessary to facilitate the assumption of investment certificate liabilities by a newly chartered or existing industrial loan company, assigning any part or all of the assets of the company as security for that loan.

(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18420.5. The commissioner may appoint a person to act as conservator or liquidator of the company. The person appointed may be Thrift Guaranty Corporation of California. If the company's outstanding thrift obligations are insured by an instrumentality of the United States government, the commissioner may appoint that instrumentality to act as conservator or liquidator of the company. Subject to the other provisions of this division, a conservator or liquidator, while in possession of the property and business of a company, has the same powers and rights and is subject to the same duties and obligations as the commissioner while in possession of the property and business of a company. During such time, the rights of the company and of all persons with respect thereto, subject to the other provisions of this chapter, are the same as if the commissioner had taken possession of such properties and business, except that the commissioner may limit those powers and rights as he or she may deem necessary.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18420.6. The commissioner shall have the authority to terminate the appointment of a conservator or liquidator whenever the commissioner deems it in the best interest of the company, its creditors, and investors. The commissioner shall file a copy of the notice of termination with the court.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18420.7. The commissioner may require a conservator or liquidator to provide such bond as the commissioner deems proper. The conservator or liquidator shall receive a salary, fixed by the commissioner, in an amount no greater than that which would be paid by the commissioner to a special deputy commissioner in charge of the liquidation of the company.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425. If at any time after taking possession of the property and business of a company it shall appear to the commissioner that it would be futile to proceed as conservator with the conduct of the business of the company, the commissioner may order the company to be liquidated. A copy of the liquidation order shall be filed with the clerk of the superior court.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.1. The liquidator shall cause notice to be given by publication for four successive weeks in a newspaper of general circulation at or near the principal place of business in the state of the company, to all persons having claims against the company, other than investment certificate holders, whether or not an action is pending to enforce any claim for demand, requiring them to present and file their claims and make legal proof thereof at a place and within a time designated in the notice. The time shall not be less than 90 days after the first publication of the notice. The notice shall also state that all claims other than those of investment certificate holders appearing upon the books or records of the company and any claims, whether or not an action is pending to enforce any such claim or demand, shall be forever barred if not filed within the time designated. The liquidator shall also mail a similar notice to all persons whose names appear as creditors upon the books of the company and any person who has an action pending to enforce a claim or demand whose address appears upon the books or records of the company and shall enclose therewith a printed form or notice of claim.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.2. All claims, demands, or causes of action of creditors, and persons other than investors against any property owned or held by it in trust, or otherwise, must be presented to the liquidator in writing, verified by the claimant, or someone on his or her behalf, within the period specified in the notice for the presentation of claims, whether or not an action is pending to enforce any such claim or demand. The liquidator shall not approve any claim not so presented, and any such claim, demand, or cause of action not so presented is forever barred.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.3. If the liquidator doubts the validity of any claim, the liquidator may reject the claim and serve notice of rejection upon the claimant either by certified mail or personally. A notice of rejection given by mail, addressed to the claimant at the address set forth in the claim, shall constitute sufficient notice of the rejection. Any action upon a claim so rejected must be brought within 30 days after the mailing of the notice or personal service of the notice in the court in which the liquidation proceeding is pending for an order to show cause why the claim should not be allowed. Failure to bring such action within 30 days to enforce the payment of or establish any rejected claim shall forever bar any such action.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.4. A claim shall set forth, under oath, on the form prescribed by the commissioner, all of the following:

(a) The particulars of the claim, and the consideration for the claim.

(b) Whether the claim is secured or unsecured, and, if secured, the nature and amount of the security.

(c) The payments, if any, made thereon.

(d) That the sum claimed is justly owing from such person to the claimant.

(e) That there is no offset to the claim.

(f) Such other data or supporting documents as the liquidator requires.

(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.5. When an investment certificate holder is also a debtor, the liquidator may offset any balance due the investment certificate holder against the debt and the interest due on that debt up to the date of offset, in an amount not to exceed the amount of the debt or the amount of the thrift obligation guaranteed by the Thrift Guaranty Corporation of California, whichever is less.

(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.6. The amount of a claim of an investment certificate holder shall be the amount which the investment certificate holder would have been entitled to withdraw as of the date of taking possession, pursuant to Section 18415, plus interest thereon accrued to that date, without regard to whether the account is subject to any pledge. In the case of an account with a fixed or minimum term or a qualifying or notice period that has not expired as of the date of taking possession, interest shall be computed as if the account had been withdrawn on that date without penalty or reduction in interest.

The liquidator shall give notice to each investment certificate holder of the amount of his or her claim and the investment certificate holder shall not be required to file a claim unless he or she disputes the amount of the liquidator's determination.

(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.7. When the time fixed for the presentation of claims has expired, the liquidator shall make in duplicate a full and complete list of all claims presented, including and specifying those claims that have been rejected by the liquidator, and a list of all claims of investment certificate holders as shown by the books or records of the company, and shall file one copy of the list in the commissioner's office and one with the clerk of the superior court in which the liquidation proceedings are being held. Before each application to the court for leave to declare a dividend, the liquidator shall file a supplemental list of claims presented since the last preceding list was filed, including and specifying the claims as have been rejected by the liquidator. The list of claims and of claims of investment certificate holders as shown by the books or records of the company shall be open for inspection at all reasonable times.

(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.8. Objections to any claim not rejected by the liquidator may be made by any person interested by filing his or her objections, in writing, with the liquidator, who shall present the objections to the court. The court shall dispose of the objections or may order reference for that purpose, and should the objections to any claim be sustained by the court or by the referee, that claim shall not be allowed by the liquidator until the claimant has established his or her claim by judgment. Any objections to a claim shall be filed within 60 days from the date of filing of the schedule of claims as required by this article with the court or be forever barred.

(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.9. The liquidator, with the approval of the court, may pay one or more dividends to investment certificate holders prior to the expiration of the time for filing claims. After the time for filing of claims has elapsed, the liquidator, after obtaining approval of the court, may pay one or more dividends upon all approved claims out of the funds remaining in the liquidator's possession after the payment of expenses and after setting aside an amount to pay creditors whose claims have been rejected and whose time for filing an application to show cause under this article has not yet elapsed or whose application is still pending. At any time after the expiration of one year from the date of the first publication of notice of creditors, and with court approval, the liquidator may pay a final distribution which shall consist of the remaining funds available for distribution, being distributed pro rata to all approved creditor claims.

(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.10. (a) Claims allowed in a proceeding under this article shall be given preference in the following order:

(1) All costs and expenses of administration of conservatorship and liquidation.

(2) Taxes due to the State of California.

(3) Claims having preference by the laws of the United States and by laws of this state.

(4) All claims of creditors, including contractual claims for interest to the date of payment, whose claims are fully secured.

(5) Claims of investment certificate holders.

(6) Claims of general creditors.

(7) Claims on obligations subordinated to the claims of investment certificate holders and general creditors.

Paragraphs (5) and (6) apply only in liquidation proceedings, where the commissioner has taken possession of the property and business of the company on or after the effective date of this section, and paragraph (6) shall apply only with respect to persons who become general creditors on or after that date. It is the intent of the Legislature that no change in the law contained in this section shall be construed to affect the rights and obligations of parties with regard to transactions occurring prior to the effective date of this section. It is the intent of the Legislature that the rights and obligations of parties existing prior to the effective date of this section shall be determined by the law in effect prior to the effective date of this section and without application of changes in the law effected by this section.

(b) All approved claims shall bear interest at the rate provided by law or judgments from the date that the commissioner takes possession of the property and business of the company, to the extent funds are available to pay such interest, otherwise interest shall be prorated.

Interest shall be given the same preference as the claim on which it is based, but no interest on any claim shall be paid until all claims within the same class have received the full principal amount of the claim.

(c) Any funds remaining shall be returned to the stockholders of the company pursuant to the provisions of this article.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.11. Whenever the commissioner determines to liquidate a company, the commissioner shall cause an inventory of all the assets of the company to be made in duplicate, file the original with the court, and file the duplicate in the commissioner's office.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.12. If it appears improbable that anything can be realized from any property of the company and that the cost of maintaining, preserving, or protecting the property would probably be lost, the court may direct the liquidator to abandon the property.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.13. If a purchaser of any property or any bad or doubtful debt or claim of a company cannot be obtained and it appears improbable that recovery thereon can be had, and that the cost of action to enforce collection of the same would probably be lost, the superior court may direct that suit on the debt or claim need not be brought.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.14. When the liquidator has fully liquidated all claims other than claims of stockholders, made due provision for any and all known but unclaimed liabilities, excepting claims of stockholders, and paid all expenses of liquidation, the liquidator may file an application for an order for the liquidation of a domestic corporation, or at any time thereafter, the commissioner may apply for, and the court shall make, an order dissolving the corporation.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.15. Upon the payment of a final dividend in liquidation, the commissioner shall prepare and file with the court a full and final statement of the liquidation, including a summary of the receipts and disbursements, and a duplicate of the statement shall be filed in the office of the commissioner. After hearing and approval by the court, the liquidation shall be closed.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.16. In making its order approving the commissioner's final statement of the liquidation of the company, the court shall determine the amounts of the liquidating dividends to which claimants are entitled but which then remain unpaid or unclaimed in the hands of the commissioner. The order of the court shall direct the commissioner to deposit those amounts with the Treasurer. All amounts so deposited shall be deemed to be deposited in the State Treasury under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and shall be subject to claim or disposition as provided in that chapter.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

18425.17. The order of the court approving the final statement on liquidation shall provide for the destruction or other disposition of the books and records of the company or pertaining to the liquidation of the company, and the court may declare the company dissolved as a corporation. The liquidator shall file a copy of the order of dissolution with the Secretary of State.
(Added by Stats. 1985, Ch. 140, Sec. 1. Effective July 1, 1985.)

Article 5. Securities Transactions
(Article 5 added by Stats. 1989, Ch. 663, Sec. 17. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18427. Unless the context otherwise requires, in this article:

(a) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security for value.

(b) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security for value. "Sale" or "sell" includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(c) "Security" means any stock or debenture, or any warrant, right, or option to subscribe to or purchase any of the foregoing.

(d) The terms defined in subdivisions (a) and (b) of this section do not include any stock dividend payable with respect to common stock of an industrial loan company solely (except for any cash or script paid for fractional shares) in shares of such common stock, if such industrial loan company has no other class of voting stock outstanding; provided, that shares issued in any such dividend shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

(Repealed (by Sec. 597) and added by Stats. 1996, Ch. 1064, Sec. 598. Effective January 1, 1997. Operative July 1, 1997.)

18427.1. No industrial loan company organized under the laws of this state shall offer or sell any security issued by it unless the commissioner has issued a permit authorizing such sale.

(Repealed (by Sec. 599) and added by Stats. 1996, Ch. 1064, Sec. 600. Effective January 1, 1997. Operative July 1, 1997.)

18427.2. An application for a permit shall be in such form and contain such information as the commissioner may prescribe.

(Repealed (by Sec. 601) and added by Stats. 1996, Ch. 1064, Sec. 602. Effective January 1, 1997. Operative July 1, 1997.)

18427.3. The commissioner shall charge and collect fees for applications filed under this article as fixed in this section.

(a) The fee for a negotiating permit shall be fifty dollars ($50).

(b) The fee for a permit to exchange a security or to make any change in the rights, preferences, privileges, or restrictions of or on outstanding securities shall be fifty dollars ($50).

(c) The fee for any permit to sell securities other than as specified in subdivision (b) shall be one hundred dollars ($100) plus one-tenth of one percent of the aggregate value of the securities sought to be sold, up to a maximum aggregate fee of one thousand seven hundred fifty dollars ($1,750).

(Repealed (by Sec. 603) and added by Stats. 1996, Ch. 1064, Sec. 604. Effective January 1, 1997. Operative July 1, 1997.)

18427.4. If the commissioner finds that the proposed sale of securities is fair, just, and equitable, he or she shall issue to the applicant a permit authorizing it to offer and sell the securities in such amount and upon such terms and conditions as he or she may provide in the permit. If the commissioner finds otherwise, he or she shall deny the application.

(Repealed (by Sec. 605) and added by Stats. 1996, Ch. 1064, Sec. 606. Effective January 1, 1997. Operative July 1, 1997.)

18427.5. The commissioner may impose conditions in any permit issued under Section 18427.4, requiring the deposit in escrow of securities, imposing a legend condition restricting the transferability thereof, impounding the proceeds from the sale thereof, limiting the expense in connection with the sale thereof, or such other conditions as he or she deems reasonable and necessary or advisable in the public interest.

(Added by Stats. 1996, Ch. 1064, Sec. 607. Effective January 1, 1997. Operative July 1, 1997.)

18427.6. Every permit issued pursuant to Section 18427.4 shall recite that it is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be sold.

(Added by Stats. 1996, Ch. 1064, Sec. 608. Effective January 1, 1997. Operative July 1, 1997.)

18427.7. The commissioner may amend, alter, suspend, or revoke any permit issued pursuant to Section 18427.4.

(Added by Stats. 1996, Ch. 1064, Sec. 609. Effective January 1, 1997. Operative July 1, 1997.)

18427.8. Whenever an industrial loan company applies for a permit to issue any security or to deliver any other consideration (whether or not such security or such transaction is exempt from, or not subject to, the provisions of Section 18427.1) in exchange for one or more bona fide outstanding securities (as defined in Section 25019 of the Corporations Code), claims, or property interests, or partly in such exchange and partly for cash, the commissioner is authorized to approve the terms and conditions of such issuance and exchange or such delivery and exchange and the fairness of such terms and conditions and is authorized to hold a hearing on the fairness of such terms and conditions, at which all persons to whom it is proposed to issue any security or to deliver any other consideration in such exchange shall have the right to appear.

(Added by Stats. 1996, Ch. 1064, Sec. 610. Effective January 1, 1997. Operative July 1, 1997.)

18427.9. There shall be exempted from the provisions of Section 18427.1 all of the following:

(a) (1) Any offer, not involving a public offering, to an affiliate or to a person of the type described in subdivision (i) of Section 25102 of the Corporations Code or in the regulations of the Commissioner of Corporations adopted thereunder.

(2) The execution and delivery of an agreement for the sale of securities to any person of the type described in paragraph (1), subject to all of the following:

(A) The agreement shall contain substantially the following provision: "The sale of the securities which are the subject of this agreement has not been authorized by a permit issued by the Commissioner of Financial Institutions of the State of California. The issuance of the securities or the payment or receipt of any part of the consideration therefor prior to the issuance of a permit is unlawful, unless the sale of securities is exempt from Section 18427.1 of the California Financial Code. The rights of all parties to this agreement are expressly conditioned upon the issuance of a permit, unless the sale is so exempt."

(B) No part of the purchase price may be paid or received, and none of the securities may be issued, until a permit authorizing the sale of the securities is issued, unless the sale is exempt from Section 18427.1.

(b) Any transaction or security which the commissioner by regulation or order exempts as not being comprehended within the purposes of this article and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of investors.

(Added by Stats. 1996, Ch. 1064, Sec. 611. Effective January 1, 1997. Operative July 1, 1997.)

18427.10. Nothing contained in this article shall affect the Corporate Securities Law of 1968, Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code.

(Added by Stats. 1996, Ch. 1064, Sec. 612. Effective January 1, 1997. Operative July 1, 1997.)

18427.11. The commissioner may by regulation or order restrict, limit, prohibit or otherwise condition the uses of the proceeds from the sale of securities, the extent to which a security may be included within the definition of capital, or the extent to which the proceeds from the sale of securities may be included in the investment certificate ratio as defined by Section 18016, or used to increase outstanding investment certificates.

(Added by Stats. 1996, Ch. 1064, Sec. 613. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 6. PROHIBITED PRACTICES AND PENALTIES

(Chapter 6 added by Stats. 1976, Ch. 964.)

18435. Except as otherwise provided in this division, any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year or in the state prison, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 18349.5.
(Repealed and added by Stats. 1990, Ch. 1202, Sec. 7.)

18436. An industrial loan company shall not, directly or indirectly, make any loan of money or property to or guarantee the obligation of any of its directors or officers, or officers and directors of its holding company, or officers and directors of its affiliates.
(Amended by Stats. 1980, Ch. 418, Sec. 4.)

18437. (a) Except as provided in subdivision (b), an industrial loan company shall not make loans to, or purchase any obligations from, persons who do not reside or have a place of business in the State of California, unless those loans or obligations comply with all of the following conditions:

(1) If the loan or obligation is unsecured, then only if the loan or obligation bears the unqualified written guaranty of a financially responsible person, considering the amount of the obligation, who resides or has a place of business in the State of California.

(2) If the documents and security for the loan or obligation and all records relating to the transaction are in California at the time the loan or obligation is made or acquired and are thereafter kept in California while the loan or obligation remains unsatisfied, except that where the security is aircraft, the security need not be in California at the time the loan or obligation is made or acquired, nor need it thereafter be held in California while the loan or obligation remains unsatisfied.

(b) Notwithstanding subdivision (a), an industrial loan company may make loans to, or purchase any obligations from, persons who do not reside or have a place of business in the State of California not to exceed 25 percent, in the aggregate, of an industrial loan company's total assets. Upon application to and approval by the commissioner, an industrial loan company may increase its loans to, or purchases of obligations from, persons who do not reside or have a place of business in this state not to exceed 50 percent, in the aggregate, of an industrial loan company's total assets. The application shall include all of the following information:

(1) A description of the company's proposed plan of business.

(2) The character, business qualifications, and other experience of the proposed officers and managers directing the line of business for which authorization is requested.

(3) Any other facts and circumstances bearing on the proposal that, as determined by the commissioner, may be relevant.

(c) This section does not apply to loans made to, or acquired from, persons who do not reside or have a place of business in this state if all of the following conditions are met:

(1) The loans are for the purchase or refinance of single-or multi-family residential property or nonresidential property.

(2) The loans are salable in the secondary market as evidenced by commitments to buy by a buyer in the secondary market.

(3) The loans are owned by the industrial loan company for 90 days or less.
(Amended by Stats. 1999, Ch. 345, Sec. 4. Effective January 1, 2000.)

18438. If a loan is made or other thing is purchased or discounted in violation of Section 18271, 18272, 18273, 18274, or 18437, the officers, directors and shareholders of the industrial loan company, its holding company, or its affiliates participating therein or knowingly approving the same shall be personally liable for any loss suffered by the industrial loan company by reason thereof.
(Amended by Stats. 1980, Ch. 418, Sec. 5.)

18439. If any amount in excess of the charges permitted by this division, including interest, is charged, contracted for, or received in the making or collection of a contract of loan, except as a result of an accidental and bona fide error in computation, such contract is void and no person has any right to collect or receive the principal, interest, or charges.
(Added by Stats. 1976, Ch. 964.)

18440. An industrial loan company shall not take any confession of judgment or any power of attorney at the time of making the loan except a power of attorney taken to effectuate the transfer of the ownership of any motor vehicle,

the transfer of the ownership of securities, or the cancellation of an insurance policy and the receipt and distribution of any unearned premiums in the event of default in the payment of a loan made to finance the purchase of any such insurance policy.
(Added by Stats. 1976, Ch. 964.)

18441. No person in connection with or incidental to the making of any loan under this division, shall require the borrower to contract for, purchase, or agree to purchase anything in connection with the loan. A policy of insurance of the type specified in Article 6 (commencing with Section 18290) of Chapter 3 of this division is not prohibited by this section.

No person shall require a borrower to enter into any collateral sales agreement or contract except as expressly permitted by this division.
(Added by Stats. 1976, Ch. 964.)

18442. An industrial loan company shall not make any loan of money or property to or guarantee the obligation of any person upon the security of its capital (including the shares of capital stock) of the company, its holding company, or its affiliates.
(Amended by Stats. 1989, Ch. 663, Sec. 18. Operative January 1, 1991, by Sec. 20 of Ch. 663.)

18443. If any loan or guaranty is made in violation of Section 18436 or 18442, the directors and officers who authorize it or assent thereto are jointly and severally liable to the company as guarantors for the repayment or return of the sum or value so loaned with interest thereon at the rate of 6 percent per year until paid.
(Added by Stats. 1976, Ch. 964.)

18444. Any officer or director held liable under Section 18443, who satisfies such liability is entitled to contribution from any other officer or director who participates in authorizing, making or allowing any such loan or guaranty, and is subrogated to all rights of the corporation against the borrower or principal obligor.
(Added by Stats. 1976, Ch. 964.)

18445. Any director, officer, or employee of an industrial loan company, its holding company, or its affiliates who asks for or receives, or consents or agrees to receive any commission, emolument, or gratuity or any money, property, or thing of value for procuring or endeavoring to procure for any person any loan from such company, or the purchase or discount of any note, contract, or other obligation or property by such company, is guilty of a felony.
(Amended by Stats. 1980, Ch. 418, Sec. 7.)

18446. Any director, officer, or employee of an industrial loan company, its holding company, or its affiliates who knowingly receives or possesses himself of any of its property otherwise than in payment of a just demand, or with intent to defraud, omits to make or causes to be made a full and true entry thereof in its books and accounts or concurs in omitting to make any material entry thereof, is guilty of a felony.
(Amended by Stats. 1980, Ch. 418, Sec. 8.)

18447. Any director, officer, or employee of an industrial loan company, its holding company, or its affiliates who knowingly makes or concurs in making or publishing any false entry in its books or records, any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books, willfully refuses or neglects to make any proper entry in such books as required by law, or to exhibit or allow the same to be inspected or extracts to be taken therefrom by the commissioner or his deputies or investigators, is guilty of a felony.
(Amended by Stats. 1980, Ch. 418, Sec. 9.)

18448. No director, officer, stockholder, or employee of an industrial loan company, its holding company, or its affiliates shall purchase, directly or indirectly, or be interested in the purchase of, any of the company's assets for an amount less than the then current market value thereof and any such purchase may not be made without the express approval of the board of directors of the company. Title and possession of assets shall not be transferred to the purchaser until full consideration in cash has been received by the industrial loan company. Every person violating this section shall be liable to the company for twice the market value of the assets so purchased.
(Amended by Stats. 1980, Ch. 418, Sec. 10.)

18449. Every director of an industrial loan company who:

(a) In the case of the fraudulent insolvency of such company, shall have participated in such fraud; or

(b) Willfully does any act as such director which is expressly forbidden by law or willfully omits to perform any duty imposed upon him as such director by law, is guilty of a misdemeanor.

The insolvency of a company is deemed fraudulent for the purposes of this section, unless its affairs appear upon investigation to have been administered clearly, legally, and with the same care and diligence that agents receiving a compensation for their services are bound by law, to observe.
(Added by Stats. 1976, Ch. 964.)

18450. A director, officer, or employee of an industrial loan company, its holding company, or its affiliates who concurs in any vote or act by which it is intended to make a loan or purchase a contract in violation of this division, is guilty of a misdemeanor.
(Amended by Stats. 1980, Ch. 418, Sec. 11.)

18451. A director, officer, or employee of an industrial loan company, its holding company, or its affiliates who makes or maintains, or attempts to make or maintain, a deposit of such company's funds with any other person on condition, or with the understanding, express or implied, that the person receiving such deposit make a loan or advance, directly or indirectly, to any director, officer, or employee of the company so making or maintaining or attempting to make or maintain such deposit, is guilty of a misdemeanor.
(Amended by Stats. 1980, Ch. 418, Sec. 12.)

18452. Every officer or employee of an industrial loan company, its holding company, or its affiliates who sells investment or thrift certificates knowing that the company is insolvent, is guilty of a misdemeanor.
(Amended by Stats. 1980, Ch. 418, Sec. 13.)

18453. Any person who knowingly sells investment certificates in violation of any provision of this division or any order or regulation of the commissioner, is guilty of a felony.
(Added by Stats. 1976, Ch. 964.)

18454. Any director, officer, agent or employee of an industrial loan company, its holding company, or its affiliates who willfully makes a false or untrue entry in any book or record or in any report, tag, or statement of the business, affairs, or condition, or in connection with any transaction of such company, with intent to deceive any officer, director, or employee thereof, or any agent or examiner, private or official, employed or lawfully appointed to examine into its condition or any of its affairs or transactions, or to any public officer who has authority to examine into its affairs or transactions, or who, with like intent, willfully omits to make a new entry of any matter particularly pertaining to the business property condition, affairs, transactions, assets or accounts of such company in any book, record, report, statement, or tag of such company, or who, with like intent, alters, abstracts, conceals, or destroys any book, record, report, statement, or tag of such company made, written, or kept, or required to be made, written, or kept by him or under his direction, is guilty of a felony.
(Amended by Stats. 1980, Ch. 418, Sec. 14.)

18454.5. It is unlawful for any person to willfully make any untrue statement of a material fact in any document filed with the commissioner under this division, or to willfully omit to state in any document any material fact which is required to be stated therein.
(Added by Stats. 1988, Ch. 537, Sec. 2.)

18455. An industrial loan company shall not, directly or indirectly, make any loan to, or purchase a contract, loan, or chose in action from, hold a lease obligation of, or purchase a lease contract from, any of the following:

(a) A person who is an officer or director of the industrial loan company or of its holding or affiliated company.

(b) A person who is a holder of record or beneficiary of the shares of the industrial loan company or of any holding or affiliated company. This restriction shall not apply to persons holding less than 10 percent of the shares of a holding company or affiliated company that is exempt from the qualification requirements of the Corporate Securities Law of 1968 contained in Section 25130 of the Corporations Code, pursuant to subdivision (a) or (b) of Section 25101 of the Corporations Code.

(c) A person in which an officer or director of the industrial loan company or of any holding or affiliated company directly or indirectly is financially interested, directly or indirectly.

(d) A person in which the holder of record or beneficiary of the shares of the industrial loan company or of any holding or affiliated company directly or indirectly is financially interested, directly or indirectly. This restriction shall not apply to persons holding less than 10 percent of the shares of a holding company or affiliated company that is exempt from the qualification requirements of the Corporate Securities Law of 1968 contained in Section 25130 of the Corporations Code, pursuant to subdivision (a) or (b) of Section 25101 of the Corporations Code.

(e) A person who acquired those contracts directly or indirectly or through intervening assignments from a person described in subdivision (a), (b), (c), or (d).

Any officer, director, or shareholder of an industrial loan company who directly or indirectly makes or procures, or participates in making or procuring, a loan or contract in violation of this section or knowingly approves the same is personally liable for any loss resulting to an industrial loan company from the loan or contract, in addition to any other penalties provided by law.

(f) The prohibition contained in this section shall not apply to the purchase by an industrial loan company of a contract, loan, or chose in action from a finance lender, as described in Section 22009, a mortgage broker, a mortgage banker, a real estate broker or other licensed lender, provided written authorization for the purchase is obtained from the commissioner.

(g) The prohibition contained in this section shall not apply to the purchase of life insurance by an industrial loan company on behalf of an officer or director as part of the officer's or director's employee benefit plan package.

(h) The prohibition contained in this section shall not apply to the following transactions:

(1) A transaction between an industrial loan company and a subsidiary corporation or other entity in which the industrial loan company is the owner of 50 percent or more of the common stock or equity interest, or directly controls the management of the corporation or other entity.

(2) The purchase of loans or other obligations by an industrial loan company from an affiliated company pursuant to a sale and repurchase agreement.

(Amended by Stats. 1997, Ch. 201, Sec. 6. Effective January 1, 1998.)

18456. The provisions of this chapter shall be applicable to lease obligations.

(Added by Stats. 1979, Ch. 911.)

18457. Any officer, director, employee, or agent of any company who abstracts or willfully misapplies any of the money, funds, or property of the industrial loan company, or willfully misapplies its credit, is guilty of a felony. Upon conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the industrial loan company. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

(Added by Stats. 1990, Ch. 947, Sec. 5.)

CHAPTER 7. GUARANTEE OF THRIFT ACCOUNTS

(Chapter 7 added by Stats. 1976, Ch. 964.)

Article 1. Definitions

(Article 1 added by Stats. 1976, Ch. 964.)

18475. "Guaranty corporation" means Thrift Guaranty Corporation of California which exists under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(Amended by Stats. 1978, Ch. 1305.)

18476. (a) "Member" means an industrial loan company required by Section 18100.5 to be a member of Guaranty Corporation. "Member" includes "special member" except where the term "special member" is used in the same section of this chapter.

(b) "Special member" means a member whose thrift obligations are insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation or, subject to any rules promulgated by the commissioner, by a private insurer, surety or guarantee corporation acceptable to and approved by the commissioner.

(Amended by Stats. 1985, Ch. 142, Sec. 8. Effective July 1, 1985.)

18477. "Thrift obligations" as used in this chapter include principal invested in investment or thrift certificates however evidenced, and unpaid interest thereon accrued as of the last interest accrual date prior to the date the commissioner takes possession of the property and business of a member or the date such member is declared bankrupt, whichever occurs sooner.

(Added by Stats. 1976, Ch. 964.)

18478. "Fund" means the Guaranty Corporation Fund established pursuant to Section 18535.

(Added by Stats. 1985, Ch. 142, Sec. 9. Effective July 1, 1985.)

18479. "Capital contribution" means the amount each member is required to maintain as an investment in the corporation pursuant to Section 18535.

(Added by Stats. 1985, Ch. 142, Sec. 10. Effective July 1, 1985.)

18480. "Member account" means the total of all amounts credited to a member for paid-in capital contributions, and other credits, net of any charges to that participating member.

(Added by Stats. 1985, Ch. 142, Sec. 11. Effective July 1, 1985.)

18481. "Guaranteed investment certificate" means a thrift obligation guaranteed by Guaranty Corporation pursuant to Section 18523.

(Added by Stats. 1985, Ch. 142, Sec. 12. Effective July 1, 1985.)

Article 2. General

(Article 2 added by Stats. 1976, Ch. 964.)

18490. When the property and business of a member, other than a special member, has been liquidated or is in the process of liquidation by the commissioner and the proceeds of liquidation distributed ratably are insufficient to pay up to fifty thousand dollars ($50,000) of each thrift obligation specified in Section 18523, the commissioner shall direct Guaranty Corporation to pay and Guaranty Corporation shall pay each such deficiency at the direction of and in amounts as directed by the commissioner within 10 days from the date the commissioner makes demand for payment. If the total funds available from Guaranty Corporation at that time are insufficient to pay in full the amounts provided by Section 18523, the amount paid to each thriftholder shall be ratably reduced in proportion to the amount by which the fund is deficient, and thereafter further payments shall be made ratably to such thriftholders in accordance with the directions of the commissioner as additional funds are paid into the fund from assessments or otherwise. If the thrift obligations are paid, each member's account and special member's account shall be reduced ratably based on the account balance for the total amount paid.

(Amended by Stats. 1985, Ch. 142, Sec. 13. Effective July 1, 1985.)

18491. (a) When the property and business of a member, other than a special member, is being liquidated, the commissioner may direct Guaranty Corporation to pay each thrift obligation of the member specified in Section 18523 up to fifty thousand dollars ($50,000). Guaranty Corporation shall pay the thrift obligations at the direction of, and in the amounts directed by, the commissioner within 10 days from the date the commissioner makes demand for payment under

this section. If the total funds available from Guaranty Corporation at that time are insufficient to pay in full the amounts provided by Section 18523, the amount paid to each thriftholder shall be ratably reduced in proportion to the amount by which the fund is deficient, and thereafter further payments shall be made ratably to those thriftholders in accordance with the directions of the commissioner as additional funds become available to Guaranty Corporation.

(b) When any thrift obligation is paid up to the guaranteed amount as provided in subdivision (a), Guaranty Corporation shall be assigned all rights, title, and interest to each individual thrift obligation up to the amount paid by Guaranty Corporation to each individual thriftholder.

(c) Guaranty Corporation shall first receive ratable liquidation proceeds up to the amount paid by Guaranty Corporation to a thriftholder prior to any payment of liquidation proceeds to a thriftholder whose account was in excess of fifty thousand dollars ($50,000).

(d) Each member's account and each special member's account shall be reduced ratably based on the account balance for the total amount paid pursuant to subdivision (a). Liquidation proceeds paid to Guaranty Corporation pursuant to subdivision (c) shall ratably increase each member and special member account based on the account balance for the total amount paid pursuant to subdivision (a).

(Amended by Stats. 1985, Ch. 142, Sec. 14. Effective July 1, 1985.)

18493. Whenever it appears to the commissioner that Guaranty Corporation has:

(a) Violated its articles of incorporation or any law of this state;

(b) Not paid amounts as directed by the commissioner pursuant to Section 18490;

(c) Invested its funds in violation of Section 18497;

(d) Not levied assessments as required by Sections 18535 and 18536;

(e) Has not brought and diligently prosecuted an action to enforce payment as required by Section 18538;

(f) Violated any section of this chapter; or

(g) Neglected or refused to submit its books, papers, and affairs to the inspection of any examiner; the commissioner may forthwith take possession of the property and business of Guaranty Corporation and retain possession until Guaranty Corporation satisfies the commissioner that it will operate in conformity with this chapter. During the time the commissioner has such possession he shall perform the duties and carry out the obligations of Guaranty Corporation.

(Added by Stats. 1976, Ch. 964.)

18494. Whenever the commissioner has taken possession of the property and business of Guaranty Corporation, Guaranty Corporation within 10 days after such taking, if it deems itself aggrieved thereby, may apply to the superior court in the county in which the head office of Guaranty Corporation is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined, and after a hearing and a determination of the facts upon the merits, may dismiss such application or enjoin the commissioner from further proceedings and direct him to surrender the property and business to Guaranty Corporation, or make such further order as may be just.

(Added by Stats. 1976, Ch. 964.)

18495. An appeal may be taken from the judgment of the court by the commissioner or by Guaranty Corporation in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. An appeal from the judgment of the court does not operate as a stay of the judgment unless the court, on good cause, so orders.

(Amended by Stats. 1998, Ch. 931, Sec. 150. Effective September 28, 1998.)

18496. (a) Guaranty Corporation shall have independent authority to approve membership, or suspend or revoke the right to participate in Guaranty Corporation by any member for cause and to submit reports and make recommendations to the commissioner regarding the financial condition of any member and shall also do so if requested by the commissioner. These reports and recommendations shall not be public documents. There shall be no liability on the part of, and no cause of action of any nature shall arise against, Guaranty Corporation or its members, directors, officers, employees or agents, or the commissioner or his or her authorized representatives, for any statements made by them in any reports or recommendations made hereunder.

(b) In order to permit Guaranty Corporation to fulfill its obligations under subdivision (a), upon the written request of Guaranty Corporation the commissioner may furnish to Guaranty Corporation a copy of financial statements or reports filed by a member or an industrial loan company making application to participate in Guaranty Corporation and a copy of the commissioner's analysis of an industrial loan company's receivables. Except for reports filed under Sections 18407 and 18410, such statements and reports shall not be public documents, and the information contained therein shall be privileged, and confidential to Guaranty Corporation for its sole use in carrying out its statutory functions. There shall

be no liability on the part of, and no cause of action of any nature shall arise against the State of California, the commissioner or members of the commissioner's staff or the commissioner's authorized representatives, for the release of any information furnished to Guaranty Corporation pursuant to this subdivision.

(c) By written consent of a majority of its directors, Guaranty Corporation, in order to fulfill its obligations under subdivision (a), may appoint an independent certified public accountant or public accountant to prepare an audit report containing audited financial statements, together with such other information as Guaranty Corporation, in good faith, requires regarding the financial condition of any member. For the purposes of examination and investigation the certified public accountant or public accountant appointed by Guaranty Corporation shall have free access to the offices and places of business, books, accounts, papers, records, files, safes and vaults of the member.

(d) By written consent of a majority of its directors, Guaranty Corporation, in order to fulfill its obligations under subdivision (a), may hire or appoint specialized committees or employees to investigate the operations of a member company. Guaranty Corporation may have its specialized employees or committees investigate the affairs and examine the books, accounts, records and files used in the business of the member. For the purposes of examination and investigation the specialized employees and committees of Guaranty Corporation shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of the member.

(e) Costs and expenses for such audit report or special investigation report shall be paid by Guaranty Corporation.

(f) Any person who uses any information obtained under subdivision (b), (c) or (d) for any purpose not authorized by subdivision (a) is guilty of a misdemeanor.

(g) The powers granted to the Guaranty Corporation by this section may not be exercised in connection with special members.

(Amended by Stats. 1985, Ch. 142, Sec. 16. Effective July 1, 1985.)

18496.1. (a) A director, officer, employee, or agent of Thrift Guaranty Corporation shall be subject to liability for acts of fraud, willful misconduct, or reckless or criminal acts arising out of, or in connection with, the performance of his or her duties on behalf of Thrift Guaranty Corporation, but shall not be subject to liability or causes of action for acts other than those set forth in this section.

(b) The board of directors shall exercise reasonable efforts to obtain directors, officers, employees, and agents, errors and omissions liability insurance coverage and shall within 30 days from the end of each fiscal year submit to the commissioner its reports, advising the commissioner of the terms and costs of such coverage, if available.

(Added by Stats. 1985, Ch. 1349, Sec. 1. Effective October 1, 1985.)

18497. Guaranty Corporation may invest its funds only in readily marketable securities as provided by rules of the commissioner.

Upon request of the commissioner, Guaranty Corporation shall furnish an authorization for disclosure to the commissioner of financial records of such funds pursuant to Section 7473 of the Government Code.

(Amended by Stats. 1985, Ch. 142, Sec. 17. Effective July 1, 1985.)

18498. Income from investments shall be recorded in an income account and be used to defray expenses of administration. Income from investments that exceeds an amount determined by the board of directors to be adequate to provide for current expenses may be credited to members' accounts. Each member's account shall receive credit ratably based on the account balance, for the amount of the excess. Income received by Guaranty Corporation, whether or not credited to members' accounts, shall be subject to a demand of the commissioner made pursuant to Section 18490 except as to that portion reserved by the board of directors for expenses of administration during the calendar year.

(Added by Stats. 1976, Ch. 964.)

18499. Expenses of administration that exceed income from investments at year end shall be charged to members' accounts. Each member's account shall be charged ratably based on the account balance for the amount of the excess.

(Added by Stats. 1976, Ch. 964.)

18500. Guaranty Corporation shall have authority to:

(a) Borrow funds when necessary to effectuate the provisions of this chapter.

(b) Make loans to, deposits in, purchase assets or securities of, assume liabilities of, or make contributions to any Guaranty Corporation member to minimize the deficiency payments that might be required under Article 2 (commencing with Section 18490).

(c) Organize a new thrift company to assume the thrift obligations and temporarily perform the functions of the closed company. The commissioner may waive any provision of the Industrial Loan Law necessary to enable Guaranty Corporation to organize a new thrift company.

(d) Act as a conservator or receiver of a member company that the commissioner has taken possession of.

(e) Guaranty Corporation may use the fund, or any portion of the fund, in exercising its authority.

(f) Employ consultants, advisors, and others to assist Guaranty Corporation in fulfilling its obligations and objectives.
(Amended by Stats. 1985, Ch. 142, Sec. 18. Effective July 1, 1985.)

18501. The commissioner shall give prompt notice to Guaranty Corporation when the commissioner takes possession of the property and business of a member and shall give further prompt notice when the commissioner determines to liquidate the property and business of a member.
(Added by Stats. 1976, Ch. 964.)

18502. Memberships issued by Guaranty Corporation shall be nontransferable and shall be exempt from the provisions of the Corporate Securities Law of 1968.
(Added by Stats. 1976, Ch. 964.)

18503. The commissioner and the commissioner's duly designated representatives may at any time investigate the affairs and examine the books, accounts, records and files used by Guaranty Corporation. The commissioner and the commissioner's duly designated representatives shall have free access to the offices, books, accounts, papers, records, files, safes, and vaults of Guaranty Corporation.
(Amended by Stats. 1985, Ch. 142, Sec. 19. Effective July 1, 1985.)

18504. Any member or industrial loan company making application to participate in Guaranty Corporation aggrieved by any action or decision of Guaranty Corporation may appeal to the commissioner within 30 days from the action or decision.
(Amended by Stats. 1985, Ch. 142, Sec. 20. Effective July 1, 1985.)

18505. (a) After consultation with, and approval by, the Thrift Guaranty Corporation, the commissioner shall adopt rules and regulations regarding information to be given to holders of investment certificates of industrial loan companies including, but not limited to, information containing any reference to a guarantee or insurance program of investment certificates, and the time and conditions for payments to the holders of investment certificates, in the event an industrial loan company is taken over by the commissioner. These regulations shall include the means for informing investment certificate holders of their rights.

(b) It is the intent of the Legislature that the commissioner authorize information which can be clearly understood by a typical investment certificate holder. In addition, the information may in no way imply that the State of California stands behind or is involved with any type of guarantee or insurance program for industrial loan companies investment certificate holders.

(c) These rules and regulations shall be adopted on an emergency basis within 60 days of the effective date of this section.
(Repealed and added by Stats. 1985, Ch. 142, Sec. 21.5. Effective July 1, 1985.)

18506. No person shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner any statement or representation with regard to its membership in Guaranty Corporation or that any of its thrift obligations are in any manner guaranteed.
(Amended by Stats. 1989, Ch. 583, Sec. 3.)

18507. In order to permit Guaranty Corporation to fulfill its obligations under this chapter, the commissioner shall furnish to Guaranty Corporation a list of all industrial loan companies that are not insured companies which have outstanding thrift obligations and one copy of the independent audit report on each such industrial loan company filed with him as of the preceding December 31 and not later than April 1 of each year.
(Amended by Stats. 1986, Ch. 1011, Sec. 5. Effective September 23, 1986.)

18508. An industrial loan company or its successor shall not be entitled to receive a refund, return, withdrawal, or distribution of the amount in its member's account or of any assessments paid by it except upon liquidation of Guaranty Corporation.
(Repealed and added by Stats. 1989, Ch. 583, Sec. 5.)

18509. (a) Guaranty Corporation may elect to wind up and dissolve upon approval of the commissioner, the board, and the members in accordance with Section 8610 of the Corporations Code, after (1) each industrial loan company has become a member of the Federal Deposit Insurance Corporation or redeemed all of its outstanding thrift obligations or (2) Guaranty Corporation has satisfied its guarantee of thrift obligations as provided in this chapter.

(b) Upon liquidation, after complying with the provisions of Section 8713 of the Corporations Code and notwithstanding Section 8717 of the Corporations Code, the assets of Guaranty Corporation shall be distributed to its members, past and present, including special members, ratably based on the balance of the members' accounts, as established by resolution of the Board of Directors of Guaranty Corporation in accordance with the following:

(1) The account of each member, past and present, including special members, shall be credited with all assessments paid by the member to Guaranty Corporation.

(2) For each fiscal year, all current and prior expenses of administration of Guaranty Corporation shall be charged to the accounts of all members, past and present, including special members, ratably based on the balance of each account.

(3) With respect to the account of each member to whom Guaranty Corporation has advanced funds or on whose behalf Guaranty Corporation has paid claims and expenses, the following adjustments shall be made:

(A) The member's account shall be charged in the amount of the funds advanced or paid as of the date of advance or payment.

(B) If the amount advanced or paid exceeds the balance of the member's account, then (i) the member's account shall be deemed to have been closed, and the excess shall be allocated and charged ratably to the accounts of all other members, past and present, including special members, and (ii) if the member continued to operate after the date of the advance or payment, whether under new ownership or management or under the management of Guaranty Corporation, then a new member account shall, for purposes of this section, be deemed to have been established for the member with a zero balance, which shall be credited with subsequent assessments paid.

(Repealed and added by Stats. 1989, Ch. 583, Sec. 7.)

18510. The Board of Directors of Guaranty Corporation shall be composed of five members, at least two of which shall be public members. The five members shall be appointed by the commissioner. The commissioner shall consult with the President of Thrift Guaranty Corporation before making an appointment. Public members shall not be affiliated with any company or affiliate of any company or employed by any state agency. A public member shall not be a relative of any officer or director of any company or its affiliates.

(Amended by Stats. 1996, Ch. 1064, Sec. 614. Effective January 1, 1997. Operative July 1, 1997.)

18511. Guaranty Corporation shall establish a permanent office in this state.

(Added by Stats. 1985, Ch. 142, Sec. 25. Effective July 1, 1985.)

18512. The commissioner may require Guaranty Corporation to obtain a bond, insurance, or reinsurance which provides additional protection against losses to its members' thriftholders. The type, amount, and form of this protection is subject to the commissioner's written approval.

(Added by Stats. 1985, Ch. 142, Sec. 26. Effective July 1, 1985.)

Article 3. Purpose and Scope of Guaranty Corporation

(Article 3 added by Stats. 1976, Ch. 964.)

18520. It shall be the purpose of Guaranty Corporation to guarantee full payment of guaranteed accounts of members, exclusive of special members, up to fifty thousand dollars ($50,000) for each account, subject to the express limitations provided in this chapter.

(Amended by Stats. 1985, Ch. 142, Sec. 27. Effective July 1, 1985.)

18521.5. (a) Notwithstanding Section 18521 or 18100.5, until July 1, 1990, each industrial loan company, other than a premium finance agency, which has issued and has outstanding thrift obligations shall, as a condition of its authority to continue to conduct business under this division, have its outstanding thrift obligations insured or guaranteed by Thrift Guaranty Corporation, or participate as a member of the Federal Deposit Insurance Corporation; however, each industrial loan company shall, as a condition of its authority to continue to conduct business under this division, continue to participate as a member or a special member as defined in Section 18476, in Thrift Guaranty Corporation in accordance with this chapter and rules established by the Board of Directors of Thrift Guaranty Corporation until it has paid assessments required by Section 18537.

(b) On and after July 1, 1990, each industrial loan company, other than a premium finance agency, which has issued and has outstanding thrift obligations, shall, as a condition of its authority to continue to conduct business under this division, participate as a member of the Federal Deposit Insurance Corporation.

(c) Any person not transacting the business of an industrial loan company prior to the effective date of this section, who thereafter commences business under the provisions of this division, shall, upon commencement of its business, participate as a member of the Federal Deposit Insurance Corporation.

(d) Thrift Guaranty Corporation shall have the power to seek insurance, guarantee, or surety, with an insurer or surety, or guarantor authorized to transact business in this state. The insurance shall be subject to the approval of the commissioner after consultation with the Insurance Commissioner. It is the intent of the Legislature to permit Thrift Guaranty Corporation to seek insurance and Thrift Guaranty Corporation's insurer to seek reinsurance. Thrift Guaranty

Corporation shall remain in existence after July 1, 1990, to assist in the winding up, liquidation, or merger of industrial loan companies unable to comply with the requirements of subdivision (b) by that date. Thrift Guaranty Corporation shall continue to guarantee outstanding thrift obligations sold and issued prior to July 1, 1990, by an industrial loan company which has not complied with the requirements of subdivision (b) by July 1, 1990, until all outstanding thrift obligations have been redeemed by the issuer, a successor to the issuer in compliance with the requirements of subdivision (b), or Thrift Guaranty Corporation.

(e) In addition to any other provision of this section, if during that period of time ending July 1, 1990, the United States Congress or the Board of Governors of the Federal Reserve System adopt or amend a law or regulations which pertain to an industrial loan company applying for and obtaining membership in the Federal Deposit Insurance Corporation, and the new federal law or regulations prevent an industrial loan company from obtaining Federal Deposit Insurance Corporation coverage solely because the company's holding company status prevents Federal Deposit Insurance Corporation membership, a successor to the Thrift Guaranty Corporation approved by the commissioner, or some other institutional mechanism approved by the commissioner, which obtains insurance in accordance with this subdivision, may continue to discharge its function so long as the insurance remains in effect.

(f) Within one year of the effective date of the act which adds this section, and annually thereafter until July 1, 1990, the commissioner shall report to the Legislature on the following:

(1) The progress of Thrift Guaranty Corporation in obtaining reinsurance.

(2) The progress of licensees in converting to coverage by an instrumentality of the United States government or by a private insurer, surety, or guarantor.

(3) Recommendations for additional legislation if, in the commissioner's opinion, additional legislation would be desirable to encourage industrial loan companies to seek coverage for investment certificates from sources other than Thrift Guaranty Corporation.

The commissioner shall submit special reports on these matters as may be required by the circumstances.
(Amended by Stats. 1987, Ch. 787, Sec. 5.)

18521.6. No industrial loan company which fails to comply with the requirements of subdivision (b) of Section 18521.5 by June 30, 1990, may continue to sell and issue investment certificates beyond that date.
(Added by Stats. 1987, Ch. 787, Sec. 6.)

18523. The following described thrift obligations will be guaranteed by Guaranty Corporation in the amounts hereinafter set forth below:

(a) Single ownership investment certificates. Funds owned by an individual and invested in the manner set forth below shall be added together and guaranteed up to fifty thousand dollars ($50,000) in the aggregate.

(1) Individual investment certificates (or investment certificates of the husband-wife community of which the individual is a member) and invested in one or more investment certificates in his or her own name shall be guaranteed up to fifty thousand dollars ($50,000) in the aggregate.

(2) Funds owned by a principal and invested in one or more investment certificates in the name or names of agents or nominees shall be added to any individual investment certificates of the principal and guaranteed up to fifty thousand dollars ($50,000) in the aggregate.

(3) Investment certificates held by guardians, custodians or conservators for the benefit of their wards or for the benefit of a minor under a Uniform Gifts to Minors Act and invested in one or more investment certificates in the name of the guardian, custodian or conservator shall be added to any individual investment certificates of the ward or minor and guaranteed up to fifty thousand dollars ($50,000) in the aggregate.

(b) Testamentary investment certificates.

(1) Funds owned by an individual and invested in a revocable trust investment certificate, tentative trust investment certificate, payable-on-death investment certificate, or similar investment certificate evidencing an intention that on his or her death the funds shall belong to his or her spouse, child or grandchild, shall be guaranteed up to fifty thousand dollars ($50,000) in the aggregate, as to each such named beneficiary, separately from any other investment certificates of the owner.

(2) If the named beneficiary of such an investment certificate is other than the owner's spouse, child or grandchild, the funds in the investment certificate shall be added to any individual investment certificates of such owner and guaranteed up to fifty thousand dollars ($50,000) in the aggregate, separately from the individual investment certificates of the beneficiaries of the estate or of the executor or administrator.

(c) Investment certificates held by executors or administrators. Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of his or her estate and invested in one or more investment certificates

shall be guaranteed up to fifty thousand dollars ($50,000) in the aggregate, separately from the individual investment certificates of the beneficiaries of the estate or of the executor or administrator.

(d) Corporation or partnership investment certificates. Investment certificates of a corporation or partnership engaged in any independent activity shall be guaranteed up to fifty thousand dollars ($50,000) in the aggregate. An investment certificate of a corporation or partnership not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership and, for guarantee purposes, the interest of each person in the investment certificate shall be added to any other investment certificates individually owned by such person and guaranteed up to fifty thousand dollars ($50,000) in the aggregate. The term "independent activity" means any activity other than one directed solely at increasing guarantee coverage under this chapter.

(e) Unincorporated associations. Investment certificates of an unincorporated association engaged in any independent activity shall be guaranteed up to fifty thousand dollars ($50,000) in the aggregate. An investment certificate of an unincorporated association not engaged in an independent activity shall be deemed to be owned by the persons comprising such association and, for guarantee purposes, the interest of each owner in the investment certificate shall be added to any other investment certificates individually owned by such person and guaranteed up to fifty thousand dollars ($50,000) in the aggregate.

(f) Joint investment certificates.

(1) Investment certificates owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be guaranteed separately from investment certificates individually owned by the co-owners.

(2) A joint investment certificate shall be deemed to exist, for purposes of guarantee of investment certificates, only if each co-owner has personally executed an investment certificate signature card and possesses redemption rights.

(3) An investment certificate owned jointly which does not qualify as a joint investment certificate for purposes of guarantee of investment certificates shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such investment certificate shall be added to any other investment certificates individually owned by such person and guaranteed up to fifty thousand dollars ($50,000) in the aggregate.

(4) All joint investment certificates owned by the same combination of individuals shall first be added together and guaranteed up to fifty thousand dollars ($50,000) in the aggregate.

(5) The interest of each co-owner in all joint investment certificates owned by different combinations of individuals shall then be added together and guaranteed up to fifty thousand dollars ($50,000) in the aggregate.

(g) Trust investment certificates. All trust interests for the same beneficiary invested in investment certificates established pursuant to valid trust arrangements created by the same settlor (grantor) shall be added together and guaranteed up to fifty thousand dollars ($50,000) in the aggregate, separately from other investment certificates of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

(h) Thrift obligations withdrawn by checks that have not cleared a member's bank account at the time the commissioner has taken possession of the property and business of a member. The owner of the funds represented by such a check shall be recognized for all purposes of a claim for guaranteed thrift obligations to the same extent as if his or her name and interest were disclosed on the records of the member.

(Amended by Stats. 1985, Ch. 142, Sec. 31. Effective July 1, 1985.)

18525. Notwithstanding any other provision of this division, Guaranty Corporation, with the written consent of the commissioner, shall have the power to assume obligations, enter into contracts, including contracts of guarantee or suretyship, incur liabilities, borrow money, lend money or otherwise use its credit, and secure any of its obligations, contracts, or liabilities by mortgage, pledge, security interest, or other encumbrances of all or any part of its property and assets, including, but not limited to, income from assessments of members or rights thereto, and income.

(Amended by Stats. 1985, Ch. 142, Sec. 34. Effective July 1, 1985.)

Article 4. Assessments

(Article 4 added by Stats. 1976, Ch. 964.)

18535. Guaranty Corporation shall establish and maintain a guarantee fund as follows:

(a) Each new member, other than a new special member, shall pay one hundred thousand dollars ($100,000) to the guarantee fund to become a member.

(b) Whenever the commissioner finds that the controlling interest or 50 percent or more of the stock of a member which paid less than one hundred thousand dollars ($100,000) to become a member has been transferred, the member

shall pay to the fund whatever sums are necessary to bring the member's total contribution pursuant to subdivision (a) to one hundred thousand dollars ($100,000) or 1 percent of the member's total outstanding thrift obligations on the date of transfer, whichever is less.

As used in this subdivision "controlling interest" means any percentage of stock which allows the stockholder to have control of management of the member company.

The provisions of this subdivision shall not be applicable (1) if the transfer of stock is between affiliated companies of a holding company and the holding company is exempt from the qualification requirement of Section 25130 of the Corporate Securities Law of 1968 by subdivision (a) or (b) of Section 25101 of the Corporations Code, or (2) if the actual or contemplated change of ownership is to the transferor's ancestors, descendants, or spouse, or any custodian or trustee for the account of the transferor or the transferor's ancestors, descendants, or spouse, or to a transferee by a trustee or custodian for the account of the transferee or the transferee's ancestors, descendants, or spouse.

This subdivision shall apply, commencing January 1, 1987, to any member in existence prior to January 1, 1982. All other members shall be subject to this subdivision on and after January 1, 1982.

(c) If the total amount in the fund (less any then unpaid demand made by the commissioner pursuant to Section 18492) on March 15 of any year is less than 1 ½ percent of the total outstanding thrift obligations of all members, other than special members, as shown on the most recent independent audit reports required by Section 18405, then on or before May 1 of that year Guaranty Corporation shall levy an assessment. Each member, other than a special member, shall be assessed an amount equal to fifteen-hundredths of 1 percent of its outstanding thrift obligations as shown on its most recent independent audit report required by Section 18405. Guaranty Corporation may levy this assessment quarterly, based on members' quarterly reports, at one quarter of the annual assessment rate authorized by this subdivision.

(d) If the total amount in the fund (less any then unpaid demand made by the commissioner pursuant to Section 18492) on March 15 of any year hereafter is equal to or in excess of 1 ½ percent of the total outstanding thrift obligations of all members, other than special members, as shown on the most recent independent audit reports required by Section 18405, then on or before May 1 of that year Guaranty Corporation shall levy an assessment on each member, other than a special member, that has not fulfilled both the following conditions as of March 15 of that year:

(1) Paid total cumulative assessment payments to Guaranty Corporation exceeding in the aggregate 1 ½ percent of the total outstanding thrift obligations of that member shown on its most recent independent audit report required by Section 18405;

(2) Has a member's account balance in Guaranty Corporation exceeding 1 ½ percent of the total outstanding thrift obligations of that member shown on its most recent independent audit report required by Section 18405.

Each member who has failed to fulfill both the preceding conditions as of March 15 of that year shall be assessed an amount equal to fifteen-hundredths of 1 percent of its outstanding thrift obligations as shown on its most recent independent audit report required by Section 18405.

(e) If two members merge prior to May 1 of any year, the surviving member shall be liable for the assessment of the disappearing member that would have been payable to Guaranty Corporation pursuant to subdivision (c) or (d) had the merger not occurred prior to May 1.

(Amended by Stats. 1985, Ch. 142, Sec. 34.5. Effective July 1, 1985.)

18536. Guaranty Corporation shall send a written notice of assessment to each member assessed within 10 days after the levy of any assessment. Amounts assessed shall be paid to Guaranty Corporation by each member assessed not later than 90 days following written notice of assessment.

(Added by Stats. 1976, Ch. 964.)

18538. In the event any member fails to pay an assessment when due, Guaranty Corporation shall report such default in writing to the commissioner and the defaulting member within 24 hours of such default and thereafter the rights and benefits of membership of such defaulting member in Guaranty Corporation shall be suspended and the defaulting member shall not be authorized to sell or issue its investment certificates in any form until all delinquent assessments are paid in full; provided, however, that the thrift obligations of the defaulting member shall continue to be protected as provided in this chapter. Within 30 days after default, Guaranty Corporation shall bring an action in law or in equity to enforce payment. If Guaranty Corporation does not bring such action within the time specified, the commissioner may bring an action in law or in equity to enforce such payment. Upon payment of all sums due, the member shall be reinstated and thereafter may sell and issue its investment certificates.

(Amended by Stats. 1983, Ch. 87, Sec. 2.)

CHAPTER 8. INSURANCE PREMIUM FINANCING

(Chapter 8 added by Stats. 1976, Ch. 964.)

Article 1. Definitions

(Article 1 added by Stats. 1976, Ch. 964.)

18560. "Premium finance agency" means any industrial loan company incorporated under this division which, by the terms of its authority to engage in the industrial loan business, is permitted to issue or sell investment certificates subject to the limitations set forth in Section 18596 and its business is limited to that set forth in this chapter.
(Added by Stats. 1976, Ch. 1296.)

18561. Such terms relating to insurance as are used in this chapter shall have the meaning ascribed to them in the Insurance Code and in the practices of the insurance business.
(Added by Stats. 1976, Ch. 964.)

18562. As used in this chapter, "insured" means the person who has purchased or arranged to purchase an insurance contract and who enters into a premium finance agreement with a premium finance agency.
(Added by Stats. 1976, Ch. 964.)

18563. As used in this chapter, "premium financing" means the activities of a company engaging in the business of advancing money directly or indirectly to an insurer or producer at the request of an insured pursuant to the terms of a premium finance agreement, wherein the insured has assigned the unearned premiums, accrued dividends or loss payments as security for such advancement in payment of premiums on insurance contracts only, and acquiring premium finance agreements, and does not include the financing of insurance contract premiums purchased in connection with the financing of goods and services. The amount of such advancement in payment of premiums must bear a reasonable relationship to the premium or premiums being financed.
(Amended by Stats. 1998, Ch. 827, Sec. 16. Effective January 1, 1999.)

18564. As used in this chapter, "premium finance agreement" means a loan contract, note, agreement or obligation by which an insured agrees to pay to a company in installments the principal amount advanced by the company to an insurer or producer in payment of premium on an insurance contract or contracts, plus charges, with the assignment as security therefor of the unearned premiums, accrued dividends or loss payments, the final installment due date of the agreement not to extend beyond the term of the insurance contract included in the agreement having the latest expiration date.
(Added by Stats. 1976, Ch. 964.)

18565. As used in this chapter, "company" means a premium finance agency.
(Added by Stats. 1976, Ch. 964.)

18566. As used in this chapter, "principal balance" means the difference between the amount of the premium and fees charged by the insurer or producer and the downpayment on the premium.
(Amended by Stats. 1985, Ch. 297, Sec. 3.)

18567. As used in this chapter, "finance charge" means any amount which the insured agrees to pay the company in excess of the premium and fees charged by the insurer or producer, and exclusive of the cost of credit life insurance and attorney fees.
(Added by Stats. 1976, Ch. 964.)

Article 2. General

(Article 2 added by Stats. 1976, Ch. 964.)

18580. A premium finance agency desiring the full authority which may be conferred by this division, shall, in respect to any lending operations other than insurance premium financing, be required to amend its articles of incorporation and meet the requirements of this division as if it were making an original application for authority to organize under this division.
(Added by Stats. 1976, Ch. 964.)

18581. The articles of incorporation of any corporation organized under this division as a premium finance agency shall include reference to that fact.
(Added by Stats. 1976, Ch. 964.)

18582. Capital stock of any premium finance agency shall not be less than seventy-five thousand dollars ($75,000) and need not exceed that sum regardless of the number of branch offices or business locations which may be authorized under the provisions of this division.
(Added by Stats. 1976, Ch. 964.)

18583. Before a premium finance agency commences business or opens a branch office or place of business, there must be paid in cash, for the benefit of the agency, 100 percent of the amount of the minimum capital stock required under this chapter.
(Added by Stats. 1976, Ch. 964.)

18584. An insurance premium finance agreement, as defined in Section 18564, may be prepared in the office of an insurance producer licensed by the Department of Insurance, and mailed or otherwise delivered to a premium finance agency for acceptance without the office of the producer thereby being constituted a place of business of the company. A producer at whose office a premium finance agreement is so prepared shall not be considered to be a broker of the company as that term is used in this division.
(Added by Stats. 1976, Ch. 964.)

18585. In the event of any conflict in the provisions of this chapter with the provisions of any other chapter in this division, the provisions of this chapter shall control with regard to a premium finance agency or to insurance premium financing.
(Added by Stats. 1976, Ch. 964.)

18586. The provisions of Sections 18023, 18024, 18120, 18205, 18268, 18269, 18271, 18272, 18274, and 18455 shall not apply to a premium finance agency.
(Amended by Stats. 2001, Ch. 159, Sec. 95. Effective January 1, 2002.)

18587. The provisions of Sections 18607, 18625, and 18626 shall not apply to any bona fide loan with a principal amount of two thousand five hundred dollars ($2,500) or more or to a premium finance agency in connection with such loans if the provisions of this section are not used for the purpose of evading this division.
(Amended by Stats. 1986, Ch. 598, Sec. 1.)

18588. Unless the insured has notice of the assignment of a premium finance agreement, payment thereunder by him to the last known assignee of the agreement shall be binding upon all subsequent assignees.

Assignment of the premium finance agreement shall not cut off any defenses which the insured would have against the company or an assignee of the agreement arising from obligations imposed by this division.

The obligations and rights of a premium finance agency, under this chapter, shall also apply to the assignee of a premium finance agreement.
(Added by Stats. 1976, Ch. 964.)

18589. At any time during the term of the premium finance agreement, but not later than one year after the last payment thereunder, the company shall upon written request of the insured, give or mail to him a written statement of the dates and amounts of payment, and the total amount, if any, unpaid thereunder. Such a statement shall be supplied once each year without charge; if any additional statement is requested, the company shall supply such statement at a charge not exceeding one dollar ($1) for each additional statement so supplied.
(Added by Stats. 1976, Ch. 964.)

18590. Upon payment of a loan in full the company upon request shall return the premium finance agreement marked "Paid" to the insured.
(Added by Stats. 1976, Ch. 964.)

18591. No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrances, successors or assigns of the insured.
(Added by Stats. 1976, Ch. 964.)

18592. Any downpayment which is made and which is received by the company from the insured, or from the insurance producer on behalf of the insured, shall be held by the company in trust for and in transit to the insurer, and shall be paid to the insurer, together with the balance of the premium payable pursuant to the terms of the premium finance agreement within 30 days from the effective date of the policy, or within 30 days after the receipt of a proper premium finance agreement by the company, or within 15 days after the company has mailed to the insured notice of a revised finance agreement pursuant to Section 18606, whichever is later. In the event that the premium is paid to the insurance agent or broker of record, such agent or broker of record shall not be deemed the agent of the company by reason of such payment.

Upon request of the commissioner, the company shall furnish an authorization for disclosure to the commissioner of financial records of such trust accounts pursuant to Section 7473 of the Government Code.
(Amended by Stats. 1977, Ch. 487.)

18593. The downpayments received by the company under the provisions of Section 18592, may be held by the company in trust in a separate bank account or depository, or in lieu thereof, the company may maintain a time deposit with a bank, savings and loan association, or comparable institution, or obtain a certificate or certificates of deposit or a clean and irrevocable letter or letters of credit from a bank, in an amount at least equal to the average amount of such downpayments being held at any given time by the company as ascertained by the commissioner, and which are payable to the insurer pursuant to the terms of the premium finance agreement. Such deposits, certificates, or a clean and irrevocable letter or letters of credit shall be held in trust for the benefit of the insureds, as their relative interests in such downpayments may exist at any given time, and in the event of the insolvency of a company, such funds on deposit under the provisions of this section or as represented by a certificate or certificates of deposit or a clean and irrevocable letter or letters of credit shall be first applied to remitting the amount of the downpayment to the insureds on all premium finance agreements upon which the company has not then forwarded in full the downpayments collected from and then being held for insureds, and, if insufficient to pay all such amounts in full, then such funds shall be applied for such purposes pro rata.
(Amended by Stats. 1983, Ch. 356, Sec. 1.)

18594. Any corporation organized as an industrial loan company other than a premium finance agency shall conduct any insurance premium financing business under the authority of this chapter and it shall be subject to all of the provisions of this chapter in respect to such business, as if it were a premium finance agency.
(Amended by Stats. 1998, Ch. 827, Sec. 17. Effective January 1, 1999.)

18595. A premium finance agency shall not incorporate the words "industrial loan company" in its corporate name, on its loan forms, or in its advertising.
(Added by Stats. 1976, Ch. 964.)

18596. A premium finance company may issue or sell investment certificates only (a) to its customers directly in connection with the financing of premiums for such customers, provided that the aggregate finance charges, including interest paid or not paid on such investment certificates, do not exceed those charges permitted under Section 18626 and (b) to any such institutional investors, governmental agency or instrumentality as the Commissioner of Corporations may designate by rule.
(Added by Stats. 1976, Ch. 1296.)

Article 3. Provisions of Premium Finance Agreements
(Article 3 added by Stats. 1976, Ch. 964.)

18605. A premium finance agreement shall be in writing and the printed portion thereof shall be in at least eight-point type.

The agreement shall set forth:

1. The names and addresses of the insured and the company, and the date of the agreement.
2. A description of the insurance contracts for which the premiums are advanced including the total amount of the premiums and fees and a specific breakdown thereof by policies and a general description of coverages.
3. The amount of the downpayment.
4. The cost, if any, for credit life insurance.
5. The principal balance.
6. The finance charges.
7. The unpaid balance.
8. The due date of the first installment.
9. The number, amount and frequency of payment of the installments.
10. A statement that the insured may prepay the full amount due and receive a refund credit of the unearned finance charge, in the manner provided by Section 18629.

(Repealed and added by Stats. 1976, Ch. 964.)

18606. A premium finance agreement shall not be executed by or on behalf of the insured when it contains any blank space to be filled in thereafter; however, if any insurance contract, premiums for which are advanced or to be advanced under the agreement, has not been issued at the time of execution and the premium finance agreement so provides, the

name of the insurer, the policy number and the due date of the first installment may be left blank and inserted later. In connection with the financing of an additional premium or policies, upon the completion of the computations necessary to determine the amount of the revised unpaid balance and the number and amount of future installment payments, the company shall mail notice of the changes to the insured at his address shown in the agreement. The notice of the revised finance agreement shall set forth:

(a) The unpaid balance, as adjusted.

(b) The number and frequency of each installment under the revised finance agreement.

(c) The amount of each installment.

(d) A statement to the insured that he may disaffirm the revised finance agreement by mailing, to the company's office, notice of his intention to do so within 10 days of the company's mailing of the notice of the revised finance agreement.

(e) A statement to the insured that the company may, in the event he disaffirms, cancel his insurance contract or contracts as provided in Section 18608, except that the 10-day period required by that section shall be deemed to commence with the mailing of the notice of the revised finance agreement.

(Repealed and added by Stats. 1976, Ch. 964.)

18607. Upon receipt of the loan form the company shall promptly mail to the insured at the address shown in the agreement, or deliver to the insured personally, either a notice to the effect that the application for a loan is rejected or a copy of the agreement, thereby signifying acceptance by the company, or if the agreement contained any blank space when it was executed by or on behalf of the insured and such blank space was subsequently filled in, a copy of the agreement as so filled in and the insured shall in such event have 10 days in which to disaffirm his obligation under the premium finance agreement by giving written notice thereof to the producer and the company. In the event the agreement is not disaffirmed by the insured, the agreement shall be as binding an obligation of the insured as if the agreement were complete on its face when it was executed.

(Repealed and added by Stats. 1976, Ch. 964.)

18608. (a) A premium finance agreement may contain a power of attorney or other authority enabling the company to cancel the insurance contract or contracts listed in the agreement in the event of default in the terms thereof.

(b) Upon the exercise of such a right to cancel, the company shall mail to the insured, to his or her last known address or to the address shown on the premium finance agreement at least 10 days prior to cancellation, a notice of its intent to cancel the insurance contract or contracts.

(c) The liability of a company to any person or corporation upon the exercise of such a right or authority of cancellation shall be limited to the amount of the principal balance, except in the event of willful failure by the company to mail the notice required by this section.

(Amended by Stats. 1999, Ch. 428, Sec. 2. Effective January 1, 2000.)

18609. All statutory, regulatory and contractual restrictions providing that the insured or the insurer shall not cancel the insurance contract unless the insured or the insurer first satisfies such restrictions by giving a prescribed notice of cancellation to a governmental agency, the insurer, the insured, the holder of a security interest in the subject of the insurance, or other prescribed party, shall not be affected by the provisions of this division. However, any cancellation notice period required by such statutory, regulatory or contractual restriction shall not be cumulative to the period required by Section 18606 or 18608. If cancellation of the insurance contract is initiated by the company under the terms of this division, the insurer shall (in accordance with the requirement for a prescribed notice), on behalf of itself or the insured, give such notice to the governmental agency, the holder of a security interest in the subject of the insurance or other prescribed party; and the insurer shall determine and calculate the effective date of cancellation (in accordance with the terms of that prescribed notice) from the date it receives the notice of request for cancellation from the company. In no instance shall the effective date of cancellation be prior to that established by the company.

(Repealed and added by Stats. 1976, Ch. 964.)

18610. The insurer within a reasonable time after the effective date of cancellation shall return whatever gross unearned premiums or accrued dividends are payable under the insurance contract to the company, which financed the insurance contract, for the benefit of the insured. Whenever any funds are received by the company which are in excess of the amount due to the company, such an excess shall be remitted promptly to the insured or to his order or to the insurance agent for the account of the insured.

(Amended by Stats. 1983, Ch. 356, Sec. 2.)

18611. At the time of mailing the notice required by Section 18606 or 18608, the employee of the company who is doing the mailing shall prepare and sign an affidavit setting forth the following:

(a) The name and address of the employee doing the mailing.
(b) That the employee is over 18 years of age.
(c) The date and place of deposit in the mail.
(d) The addressee's name and address as shown on the envelope mailed.
(e) That the envelope weas sealed and deposited in the mail with the postage thereon fully paid.
An affidavit of mailing, prepared as prescribed in this section, shall raise a rebuttable presumption that the notice was mailed to the addressee stated in the affidavit.
(Repealed and added by Stats. 1976, Ch. 964.)

Article 4. Limitation on Finance Charges
(Article 4 added by Stats. 1976, Ch. 964.)

18625. A premium finance agency shall not, except as otherwise provided by law, impose, take, receive, reserve or charge a finance charge which in the aggregate is greater than that which is permitted by this article.
(Repealed and added by Stats. 1976, Ch. 964.)

18626. A premium finance agency may, in a premium finance agreement, contract for, charge, receive, and collect a finance charge which shall not exceed in the aggregate:
(a) Two percent per month on that part of the unpaid principal balance of any loan up to, including, but not in excess of, one thousand dollars ($1,000).
(b) One percent per month on any remainder of such unpaid principal balance in excess of one thousand dollars ($1,000).
As used in this article "consumer insurance premium finance loan" shall mean an insurance premium finance loan where the insurance policies which are security for the loan are for personal, family or household use.
(c) As an alternative to the charges authorized by subdivisions (a) and (b), a premium finance agency may contract for and receive charges at a rate not exceeding 1.6 percent per month on the unpaid principal balance.
(Amended by Stats. 1983, Ch. 356, Sec. 3.)

18627. If the finance charge computed under Section 18626 is less than twenty-five dollars ($25), a minimum finance charge of twenty-five dollars ($25) may be imposed.
(Amended by Stats. 1979, Ch. 984.)

18628. The finance charge may be computed from the effective date of the insurance coverage, provided that the company shall pay the premium due the insurer, either:
(a) Within 30 days from the effective date of the insurance coverage; or
(b) Within 30 days after the receipt by the company of a proper premium finance agreement; or
(c) Within 15 days after the company has mailed to the insured, notice of a revised finance agreement pursuant to Section 18606 whichever is later.
If the conditions of subdivision (a), (b), or (c) are not met the finance charge shall be computed from the date the proceeds of the loan are forwarded to the insurer. In the event the company receives a proper premium finance agreement later than 60 days from the effective date of the policy financed, a proportioned adjustment of the finance charge shall be made after such 60-day period.
(Added by Stats. 1976, Ch. 964.)

18629. Notwithstanding the provisions of any premium finance agreement to the contrary, any insured may pay the obligation in full at any time before maturity of the final installment. If he does so, he shall receive a refund credit of the unearned finance charge computed in accordance with Section 18635 or 18637, except where the amount of the refund credit is less than one dollar ($1) no refund need be made, and except that where the earned finance charge amounts to less than the minimum finance charge permitted by Section 18627, the company may retain as an earned finance charge a sum equal to the minimum permitted by Section 18627 or the maximum prescribed by Section 18627, whichever is applicable.
(Amended by Stats. 1979, Ch. 270.)

18630. In the event that the insurance policy or policies which are the subject of a premium finance agreement are canceled by the insured or by the insurer, for any cause, the insured shall be entitled to receive a refund credit of the unearned finance charge. This refund credit shall be calculated in the same manner as prescribed in Section 18629, and shall be paid to the insured within a reasonable time.
(Added by Stats. 1976, Ch. 964.)

18631. (a) A premium finance agreement may provide for the payment of a default charge of one dollar ($1) to a maximum of 5 percent of the delinquent installment, in the event of a default for a period of not less than 10 days in the payment of any scheduled installment under the terms of a premium finance agreement. That charge may not be collected more than once for the same default and may be collected at the time of the default or at any time thereafter. If the default charge is deducted from any payment received after default occurs, and the deduction results in the default of a subsequent installment, no charge may be made for the resulting default.

(b) A premium finance agreement may provide for the payment of a dishonored check fee not to exceed fifteen dollars ($15) for actual expenses incurred in the processing of a dishonored check.

(Amended by Stats. 2000, Ch. 101, Sec. 1. Effective January 1, 2001.)

Article 5. Charges on Scheduled Balances
(Article 5 added by Stats. 1979, Ch. 270.)

18634. This article is applicable only to premium finance agencies.

(Added by Stats. 1979, Ch. 270.)

18635. Whenever the interest or charges, or interest and charges deducted in advance exceed the maximum provided by this division, by reason of subsequent repayment of the loan, a new loan, refinancing, or otherwise, or any portion thereof prior to maturity, such excess shall be rebated to the borrower or credited on any balance owing by the borrower to the company. The rebate shall be the difference between the total of the precomputed charge, any charge for extending the first due date, plus any default or deferment charges and the charges at the contract rate computed on unpaid principal balances for the number of days actually elapsed by applying each payment first to charges and the remainder to principal. The tender, by the borrower or at his request, of an amount equal to the unpaid balance less the required rebate must be accepted by the company in full payment of the loan contract.

(Added by Stats. 1979, Ch. 270.)

18636. (a) As an alternative to the provisions of Section 18635, if a loan is repayable in substantially equal and consecutive monthly installments of principal and charges combined, the first of which is due not less than 15 days nor more than one month and 15 days from the date the loan is made, a company may precompute charges and apply payments as provided in this article.

(b) The total charges which would be earned if the loan contract were repaid exactly according to its terms, at the monthly rate stated in the loan contract, may be precomputed when the loan is made and added to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the loan contract is fully paid.

(c) The portion of the precomputed charge applicable to any particular monthly installment period shall bear the same ratio to the total precomputed charge, excluding any adjustment made for a first period of more or less than one month, as the balance scheduled to be outstanding during that monthly period bears to the sum of all monthly balances scheduled originally by the loan contract.

(Added by Stats. 1979, Ch. 270.)

18637. If a loan contract made under Section 18636 is prepaid in full by cash, a new loan, refinancing or otherwise before the final installment date, the borrower shall receive a rebate of the portion of the precomputed charge applicable to the full installment periods following the installment date nearest the date of such prepayment; provided, however, that if prepayment in full occurs on or before the third installment date the rebate shall be the difference between the total precomputed charge and the charges at the contract rate computed on unpaid principal balances by applying each payment first to charges and the remainder to principal. After the third installment date, any prepayment made on or before the 15th day following an installment date shall be deemed to have been made on the installment date preceding such prepayment. The tender, by the borrower or at his request, of an amount equal to the unpaid balance less the required rebate must be accepted by the company in full payment of the loan contract.

(Added by Stats. 1979, Ch. 270.)

18638. A special rebate of precomputed charges shall be made if three or more, but not all, installments are prepaid in full at any one time either in one transaction or over a period of time on a loan made under Section 18636. The special rebate shall be equal to the portion of precomputed charge applicable to the last installment period multiplied by the total number of full installment periods such installments and any subsequent installments are prepaid. Such special rebate shall be computed and made at the termination of the loan contract and shall be an addition to any required rebate for prepayment in full.

(Added by Stats. 1979, Ch. 270.)

18640. A deferment charge may be charged and collected on a loan made under Section 18636 if the payment date of all wholly unpaid installments on which no default charge has been collected is deferred one or more full months and the loan contract so provides. Such deferment charge shall not exceed the portion of precomputed charge applicable, prior to deferment, to the first deferred monthly installment period multiplied by the number of months the maturity of the contract is deferred. Such number of months shall not exceed the number of full installments which are in default on the date of deferment or which may become due within 15 days of such date. When a deferment charge is made, no portion of the precomputed charge shall apply to the installment periods in which no installment payment is required by reason of the deferment. In computing any default charge or required rebate, the portion of the precomputed charge applicable to each deferred balance and installment period following the deferment period and prior to the deferred maturity shall remain the same as that applicable to such balances and periods under the original contract of loan. Such charge may be collected at the time of deferment or at any time thereafter. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the loan contract; provided, however, if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred nor subject to the deferment charge.
(Added by Stats. 1979, Ch. 270.)

18642. If the maturity of a loan made under Section 18636 is accelerated for any reason, the company shall make the same refund or credit as would be required if the loan contract was paid in full on the date of acceleration and the unpaid balance shall be treated as the unpaid principal balance and thereafter the unpaid balance of the loan contract shall bear charges at the agreed rate of charge if the loan contract so provides.
(Added by Stats. 1979, Ch. 270.)

18643. Notwithstanding any other provision of law not within this article, with respect to precomputed loans, premium finance agencies derive authority only from this article.
(Added by Stats. 1979, Ch. 270.)

CHAPTER 9. INTERSTATE ACQUISITIONS

(Chapter 9 added by Stats. 1995, Ch. 479, Sec. 6. Effective October 2, 1995.)

18650. This chapter does not apply to any of the following transactions:

(a) An acquisition of control of a California industrial loan company that requires the approval of the commissioner under Section 18138.

(b) A sale or merger that requires the approval of the commissioner under Division 1.5 (commencing with Section 4800).

(Added by Stats. 1995, Ch. 479, Sec. 6. Effective October 2, 1995.)

18651. Each application filed with the commissioner for an approval under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner requires by rule or order, be verified in the manner that the commissioner may by rule or order require.

(Added by Stats. 1995, Ch. 479, Sec. 6. Effective October 2, 1995.)

18652. The fee for filing with the commissioner an application for an approval under this chapter is four hundred dollars ($400).

(Added by Stats. 1995, Ch. 479, Sec. 6. Effective October 2, 1995.)

18653. (a) The definitions that are set forth in or are applicable to Section 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u) apply to this section.

(b) This section does not apply unless each bank involved in an interstate merger transaction (including each insured depository institution that is an affiliate of the surviving, resulting, or purchasing bank) that is organized under the laws of this state or maintains a branch office in this state, is an industrial loan company (as defined in Section 4805.10).

(c) The commissioner may approve an interstate merger transaction that is subject to Section 44(b)(2)(B) and (D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(b)(2)(B) and (D)(ii)) if the commissioner finds that the transaction is consistent with the public convenience and advantage in this state.

(Amended by Stats. 1996, Ch. 887, Sec. 53. Effective September 25, 1996.)

18654. The commissioner is authorized to adopt rules to implement this chapter similar to regulations adopted under similar provisions of law contained in Chapter 21.5 (commencing with Section 3750) of Division 1, and for the same or similar reasons. The authority granted to the commissioner by this section is in addition to the authority granted to the commissioner under Section 18347.

(Amended by Stats. 1996, Ch. 1064, Sec. 615. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 10. FOREIGN (OTHER STATE) INDUSTRIAL LOAN COMPANIES: AGENCY ACTIVITIES

(Chapter 10 added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

Article 1. General Provisions

(Article 1 added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18660. In this chapter, unless the context otherwise requires:

(a) "Authorized agency activities" means issuing investment certificates, renewing certificates of deposits, as defined in Section 18003.6, closing loans, servicing loans, and receiving payments on loans and other obligations. "Authorized agency activities" includes ministerial functions such as providing loan applications, assembling documents, providing a location for returning documents necessary for making a loan, providing loan account information, receiving payments, disbursing loan funds, evaluating loan applications, and other activities that the commissioner may specify by rule or order. However, "authorized agency activities" does not include any other activities that the commissioner may specify by rule or order.

(b) "Branch business unit" means all or substantially all of the business of a branch office of an industrial loan company.

(c) "California":

(1) When used with respect to an industrial loan company, means a corporation of the type described in Section 18003 organized and licensed under the laws of this state.

(2) When used with respect to an office of an industrial loan company, means an office which is located in this state.

(3) When used with respect to a bank or an office of a bank, has the meaning set forth in subdivision (a) or (b) of Section 126.5.

(d) "Core business" means the business of issuing investment certificates, making loans, and other activities that the commissioner may specify by rule or order.

(e) "Depository institution affiliate" means a depository institution affiliate within the meaning of Section 18® of the Federal Deposit Insurance Act (18 U.S.C. Sec. 1828®).

(f) "Facility," when used with respect to a foreign (other state) industrial loan company, means an office in this state at which the industrial loan company engages in noncore business but at which it does not engage in core business.

(g) "Foreign (other state) industrial loan company" means a corporation of the type described in Section 18003 organized under the laws of any state of the United States, as defined in Section 146.7, other than this state.

(h) "Insured":

(1) When used with respect to an industrial loan company, means an industrial loan company, the investment certificates of which are insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(2) When used with respect to an investment certificate or deposit, means an investment certificate or deposit that is insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et seq.).

(i) "Law of the domicile," when used with respect to an industrial loan company, means the law of the state of the United States, as defined in Section 146.7, under which the industrial loan company is organized.

(j) "Noncore business" means all activities permissible for an industrial loan company, except core business, and except those activities prohibited by law or determined by the commissioner by rule or order not to be noncore business.

(k) "Whole business unit" means all or substantially all of the business of an industrial loan company.

(Amended by Stats. 1996, Ch. 887, Sec. 54. Effective September 25, 1996.)

18661. Each application filed with the commissioner under this chapter or under any rule or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner requires by rule or order) be verified in the manner that the commissioner may by rule or order require.

(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18662. (a) Each foreign (other state) industrial loan company that maintains a facility or a California branch office shall file with the commissioner such reports as and when the commissioner may by rule or order require.

(b) Each report filed with the commissioner under this chapter or under any rule or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner so requires by rule or order) be verified in the manner that the commissioner may by rule or order require.

(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18663. Each foreign (other state) industrial loan company that maintains a facility or a California branch office shall make, keep, and preserve at the facility or branch office or at another place that the commissioner may by rule or order approve, the books, accounts, and other records relating to the business of the office, in the form, in the manner, and for the time that the commissioner may by rule or order provide.
(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18664. Fees shall be paid to, and collected by, the commissioner as follows:

(a) Each foreign (other state) industrial loan company that on July 1 of any year maintains a California branch office shall pay, on or before December 20 of that year, the assessment levied under Section 18351.

(b) Each foreign (other state) industrial loan company that on June 1 of any year maintains a facility but no California branch office shall pay, on or before the following July 1, a fee of two hundred fifty dollars ($250) for each facility.

(c) If the commissioner makes an examination of a foreign (other state) industrial loan company that maintains a California branch office, the industrial loan company shall pay a fee for the examination in the sum of fifty dollars ($50) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.
(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18665. (a) Any foreign (other state) industrial loan company is exempted from the restrictions of Section 1 of Article XV of the California Constitution relating to rates of interest upon the loan or forbearance of any money, goods, or things in action or on accounts after demand.

(b) This section does not exempt a foreign (other state) industrial loan company or any subsidiary, as defined in Section 189 of the Corporations Code, from complying with all other laws and regulations governing the business in which the industrial loan company or subsidiary is engaged.

(c) This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution.
(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18666. The commissioner is authorized to adopt rules to implement this chapter similar to regulations adopted by the Superintendent of Banks under similar provisions of law contained in Division 1 (commencing with Section 99), and for the same or similar reasons regulations are adopted by the Superintendent of Banks. The authority granted to the commissioner by this section is in addition to the authority granted to the commissioner under Section 18347.
(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

Article 2. Facilities of Insured Foreign (Other State) Industrial Loan Companies
(Article 2 added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18670. No provision of this article applies to an insured foreign (other state) industrial loan company that maintains a California branch office.
(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18671. (a) No foreign (other state) industrial loan company may establish or maintain an office in this state at which it engages in noncore industrial loan company business unless the industrial loan company complies with this article and applicable provisions of Article 1 (commencing with Section 18660).

(b) (1) No person may establish or maintain an office in this state as representative of an insured foreign (other state) industrial loan company unless the industrial loan company complies with this article and applicable provisions of Article 1 (commencing with Section 18660).

(2) For purposes of this article, if any person establishes or maintains an office in this state as representative of an insured foreign (other state) industrial loan company, the insured foreign (other state) industrial loan company is deemed to establish and maintain the office as a facility.
(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18672. Not less than 30 days before an insured foreign (other state) industrial loan company establishes a facility, it shall file with the commissioner a report and the appointment called for in Section 18673.
(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18673. (a) Not less than 30 days before establishing a facility, an insured foreign (other state) industrial loan company shall file with the commissioner, in the form that the commissioner may by rule or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the industrial loan company's attorney to receive service of any lawful process in any noncriminal judicial or administrative

proceeding against the industrial loan company or any of its successors that arises out of the activities in this state of the facility after the appointment has been filed, with the same force and validity as if served personally on the industrial loan company or its successors, as the case may be.

(b) Any insured foreign (other state) industrial loan company that maintains a facility and that has not filed with the commissioner an appointment pursuant to subdivision (a) is deemed by the maintenance of the facility to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the industrial loan company or any of its successors that arises out of the activities in this state of the facility, with the same force and validity as if served personally on the industrial loan company or its successor, as the case may be.

(c) Service may be made on an insured foreign (other state) industrial loan company that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at any office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the industrial loan company served at the last address on file with the commissioner for any of the industrial loan company's offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making the service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18674. Not less than 30 days before an insured foreign (other state) industrial loan company relocates a facility, it shall file a report with the commissioner.

(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18675. Not less than 30 days before an insured foreign (other state) industrial loan company closes a facility, it shall file a report with the commissioner.

(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

Article 3. California Branch Offices

(Article 3 added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18680. No foreign (other state) industrial loan company may transact core business in this state except at a branch office established in accordance with federal law and the law of the domicile of the industrial loan company.

(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18681. Section 18680 does not prohibit:

(a) Any foreign (other state) industrial loan company which does not maintain a California branch office from carrying on the activities described in subdivision (d) of Section 191 of the Corporations Code.

(b) Any foreign (other state) industrial loan company which does not maintain a California branch office from making in this state loans secured by liens on real property located in this state.

(c) Any foreign (other state) industrial loan company from having a California industrial loan company as its agent pursuant to Article 5 (commencing with Section 18700).

(Amended by Stats. 1996, Ch. 887, Sec. 55. Effective September 25, 1996.)

18682. No foreign (other state) industrial loan company may establish or maintain a California branch office unless it is qualified to transact intrastate business in this state under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18683. No foreign (other state) industrial loan company may establish or maintain a California branch office unless the industrial loan company is insured.

(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18684. (a) (1) No foreign (other state) industrial loan company may merge as the surviving corporation (Section 148) with a California industrial loan company or California bank except that an insured foreign (other state) industrial loan company may do so in accordance with federal law, the law of the domicile of the foreign (other state) industrial loan company, this chapter, and Division 1.5 (commencing with Section 4800).

(2) No foreign (other state) industrial loan company may purchase the whole business unit of a California industrial loan company or California bank except that an insured foreign (other state) industrial loan company may do so in accordance with federal law, the law of the domicile of the foreign (other state) industrial loan company, this chapter and Division 1.5 (commencing with Section 4800).

(3) No foreign (other state) industrial loan company that does not already maintain a California branch office may establish or maintain a California branch office except in the manner described in paragraph (1) or (2) and in accordance with federal law, the law of the domicile of the foreign (other state) industrial loan company and this chapter.

(b) This section constitutes:

(1) An election to permit early interstate merger transactions pursuant to Section 44(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(3)).

(2) An express prohibition against interstate branching through the acquisition of a branch business unit located in this state of a California industrial loan company or California bank (without acquisition of the whole business unit of the California industrial loan company or California bank) pursuant to Section 44(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(a)(4)).

(3) An express prohibition against interstate branching through de novo establishment of California branch offices pursuant to Section 5155 of the Revised Statutes (12 U.S.C. Sec. 36) or Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828(d)).

(Amended by Stats. 1996, Ch. 887, Sec. 56. Effective September 25, 1996.)

18685. (a) No foreign (other state) industrial loan company that does not already maintain a California branch office may:

(1) Merge as the surviving corporation (Section 148) with a California industrial loan company or California bank pursuant to paragraph (1) of subdivision (a) of Section 18684 unless the California industrial loan company or California bank has been in existence for at least five years.

(2) Purchase the whole business unit, of a California industrial loan company or California bank pursuant to paragraph (2) of subdivision (a) of Section 18684 unless the California industrial loan company or California bank has been in existence for at least five years.

(b) For purposes of this section, a California industrial loan company or California bank that is established solely for the purpose of, and does not open for business prior to, acquiring the whole business unit of a second California industrial loan company or California bank through a merger or purchase is deemed to have been in existence for the same period of time as the second California industrial loan company or California bank.

(Amended by Stats. 1996, Ch. 887, Sec. 57. Effective September 25, 1996.)

18687. (a) No foreign (other state) industrial loan company that maintains a California branch office may transact at the branch office any business that it is not authorized to transact or is prohibited from transacting under the law of its domicile or that industrial loan companies organized and licensed under the laws of this state are not authorized to transact or are prohibited from transacting.

(b) Whenever any provision of this chapter or of any rule or order issued under this chapter which is applicable to or with respect to a foreign (other state) industrial loan company that maintains a California branch office is inconsistent with any provision of any other chapter of this division, the former provision applies, and the latter provision does not apply.

(Added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

Article 4. California Industrial Loan Company as Principal

(Article 4 added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18690. Notwithstanding the provisions of Sections 18147 and 18165, a California industrial loan company may, with the prior approval of the commissioner and subject to any rules that the commissioner may prescribe, have an insured depository institution engage in authorized agency activities as its agent.

(Amended by Stats. 1996, Ch. 887, Sec. 59. Effective September 25, 1996.)

18691. An application by a California industrial loan company for approval to have an insured depository institution engage in authorized agency activities as its agent shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner requires by rule or order, be verified in the manner that the commissioner may, by rule or order, require.

(Amended by Stats. 1996, Ch. 887, Sec. 60. Effective September 25, 1996.)

18692. An application by a California industrial loan company for approval to have an insured depository institution engage in authorized agency activities as its agent shall be accompanied by a filing fee of two hundred fifty dollars ($250).

(Amended by Stats. 1996, Ch. 887, Sec. 61. Effective September 25, 1996.)

18693. In determining whether to approve or deny an application by a California industrial loan company for approval to have an insured depository institution engage in authorized agency activities as its agent, the commissioner shall consider both of the following:

(a) Whether the proposed agency arrangement is consistent with the safe and sound operation of the California industrial loan company.

(b) Any other factors that the commissioner deems relevant.

(Amended by Stats. 1996, Ch. 887, Sec. 62. Effective September 25, 1996.)

18694. No California industrial loan company may have an insured depository institution conduct as its agent any activity that the California industrial loan company is prohibited from conducting itself.

(Amended by Stats. 1996, Ch. 887, Sec. 63. Effective September 25, 1996.)

18695. No office of an insured depository institution that is performing authorized agency activities as agent for a California industrial loan company in accordance with this article shall, on that account, be deemed to be an office of the California industrial loan company.

(Amended by Stats. 1996, Ch. 887, Sec. 64. Effective September 25, 1996.)

18696. If the commissioner finds that any activity performed by an insured depository institution as agent for a California industrial loan company is not an authorized agency activity or that the agency arrangement is inconsistent with safe and sound practices, the commissioner may order the California industrial loan company to terminate the agency arrangement.

(Amended by Stats. 1996, Ch. 887, Sec. 65. Effective September 25, 1996.)

18697. This article does not apply to a California industrial loan company's having an insured depository institution engage in authorized agency activities as its agent in any case other than a case where, but for Section 18695, an office of the insured depository institution affiliate would for regulatory purposes be considered to be an office of the California industrial loan company.

(Amended by Stats. 1996, Ch. 887, Sec. 66. Effective September 25, 1996.)

Article 5. California Industrial Loan Company as Agent

(Article 5 added by Stats. 1995, Ch. 479, Sec. 7. Effective October 2, 1995.)

18700. Notwithstanding the provisions of Sections 18147 and 18165, a California industrial loan company may, with the prior approval of the commissioner and subject to any rules that the commissioner may prescribe, engage in authorized agency activities as agent for an insured depository institution.

(Amended by Stats. 1996, Ch. 887, Sec. 67. Effective September 25, 1996.)

18701. An application by a California industrial loan company for approval to engage in authorized agency activities as agent for an insured depository institution shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner requires by rule or order, be verified in the manner that the commissioner may, by rule or order, require.

(Amended by Stats. 1996, Ch. 887, Sec. 68. Effective September 25, 1996.)

18702. An application by a California industrial loan company for approval to engage in authorized agency activities as agent for an insured depository institution shall be accompanied by a filing fee of two hundred fifty dollars ($250).

(Amended by Stats. 1996, Ch. 887, Sec. 69. Effective September 25, 1996.)

18703. In determining whether to approve or deny an application by a California industrial loan company for approval to engage in authorized agency activities as agent for an insured depository institution, the commissioner shall consider both of the following factors:

(a) Whether the proposed agency arrangement is consistent with the safe and sound operation of the California industrial loan company.

(b) Any other factors that the commissioner deems relevant.

(Amended by Stats. 1996, Ch. 887, Sec. 70. Effective September 25, 1996.)

18704. No California industrial loan company may conduct any activity as an agent for an insured depository institution that the California industrial loan company would be prohibited from conducting as a principal.

(Amended by Stats. 1996, Ch. 887, Sec. 71. Effective September 25, 1996.)

18705. (a) No office of a California industrial loan company that conducts authorized agency activities as agent for an insured depository institution in accordance with this article shall, on that account, be deemed to be an office of the insured depository institution.

(b) For purposes of this division, no insured depository institution that has a California industrial loan company engaged in authorized agency activities as its agent shall on that account be deemed to be transacting business in this state.

(Amended by Stats. 1996, Ch. 887, Sec. 72. Effective September 25, 1996.)

18706. If the commissioner finds that any activities performed by a California industrial loan company as agent for an insured depository institution are not authorized agency activities or that the agency arrangement is inconsistent with safe and sound practices, the commissioner may order the California industrial loan company to terminate the agency arrangement.

(Amended by Stats. 1996, Ch. 887, Sec. 73. Effective September 25, 1996.)

18707. This article does not apply to a California industrial loan company's engaging in authorized agency activities as agent for an insured depository institution in any case other than a case where, but for Section 18705, an office of the California industrial loan company would for regulatory purposes be considered to be an office of the insured depository institution.

(Amended by Stats. 1996, Ch. 887, Sec. 74. Effective September 25, 1996.)

DIVISION 15. BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS

(Division 15 added by Stats. 1977, Ch. 1164.)

CHAPTER 1. GENERAL PROVISIONS

(Chapter 1 added by Stats. 1977, Ch. 1164.)

Article 1. Short Title, Construction, and Severability

(Article 1 added by Stats. 1977, Ch. 1164.)

31000. This division shall be known and may be cited as the "Business and Industrial Development Corporations Law".
(Added by Stats. 1977, Ch. 1164.)

31001. This division shall be liberally construed to accomplish its purposes.
(Added by Stats. 1977, Ch. 1164.)

31002. No provision of this division imposing any liability applies to any act committed in good faith in conformity with any regulation, order, or written interpretive opinion of the commissioner or any such opinion of the Attorney General, notwithstanding that such regulation, order, or written interpretive opinion may later be amended, rescinded, or repealed or be determined by judicial or other authority to be invalid for any reason.
(Amended by Stats. 1996, Ch. 1064, Sec. 623. Effective January 1, 1997. Operative July 1, 1997.)

31003. In this division, unless otherwise expressly provided:

(a) A reference to a statute or to a regulation includes such statute or regulation as amended, whether before or after the effective date of this division, as well as any new statute or regulation substituted for such statute or regulation after the effective date of this division.

(b) A reference to a governmental agency or to a public officer includes any governmental agency or public officer which succeeds after the effective date of this division to substantially the same functions as those performed by such governmental agency or public officer on the effective date of this division.
(Added by Stats. 1977, Ch. 1164.)

31004. Except as otherwise provided in Chapter 14 (commencing with Section 31950) of this division:

(a) The provisions of the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) shall apply to any licensee which is a California nonprofit corporation; provided, however, that, whenever any provision of the Nonprofit Corporation Law conflicts with any provision of this division or of any regulation or order issued under this division, such provision of the Nonprofit Corporation Law shall not apply and such provision of this division or of such regulation or order issued under this division shall apply.

(b) The provisions of the General Corporation Law (Division 1 (commencing with Section 100), Title 1 of the Corporations Code) shall apply to any licensee other than a licensee which is a California nonprofit corporation; provided, however, that, whenever any provision of the General Corporation Law conflicts with any provision of this division or of any regulation or order issued under this division, such provision of the General Corporation Law shall not apply and such provision of this division or of such regulation or order issued under this division shall apply.
(Amended by Stats. 1980, Ch. 1155, Sec. 32.)

31006. If any provision of this division or the application thereof to any person or circumstances is held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other provisions or applications of this division which can be given effect without the invalid, illegal, or unenforceable provision or application, and to this end, the provisions of this division are declared to be severable.
(Added by Stats. 1977, Ch. 1164.)

Article 2. Legislative Findings and Purposes

(Article 2 added by Stats. 1977, Ch. 1164.)

31020. The Legislature finds all of the following:

(a) That it is necessary to increase job opportunities in this state.

(b) That promoting the establishment, growth, and expansion of business firms in this state is an efficient way to increase job opportunities in this state.

(c) That it is appropriate to provide for the licensing and regulation of business and industrial development corporations which will provide financing assistance and management assistance primarily to business firms in this state.

(d) That the federal government, through the Small Business Administration and other federal agencies, offers programs for providing, through such intermediaries as business and industrial development corporations, financing assistance and management assistance to business firms in this state.

(e) That, in order that this state may obtain the full benefits of such programs, it is necessary that this state provide for the licensing and regulation of business and industrial development corporations.

(f) That only California corporations should be licensed to transact business as business and industrial development corporations because, compared with other types of persons, California corporations can be more effectively regulated and supervised, have greater permanency of existence, and can give better assurance of uninterrupted service.
(Amended by Stats. 1987, Ch. 867, Sec. 2.)

31021. (a) The purposes of this division are:

(1) To provide for the licensing and regulation of business and industrial development corporations which will provide financing assistance and management assistance primarily to business firms in this state.

(2) To provide for the licensing and regulation of business and industrial development corporations so that such corporations will constitute state development companies for purposes of Sections 501 and 502 of the Small Business Investment Act of 1958 and eligible lending institutions for purposes of Section 7(a) of the Small Business Act.

(3) To provide for the safe and sound conduct of the business of licensees.

(4) To maintain the confidence of the Small Business Administration and other governmental agencies in licensees.

(b) The purposes of this division, as set forth in subdivision (a), constitute standards which the commissioner shall observe in administering the provisions of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 624. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Definitions
(Article 3 added by Stats. 1977, Ch. 1164.)

31030. Subject to additional definitions contained in this division which are applicable to specific provisions of this division and unless the context otherwise requires, the definitions in this article apply throughout this division.
(Added by Stats. 1977, Ch. 1164.)

31031. "Act" includes omission.
(Added by Stats. 1977, Ch. 1164.)

31032. "Affiliate", when used with respect to a specified person, means any person (other than a natural person) controlling, controlled by, or under common control with, such specified person, directly or indirectly through one or more intermediaries.
(Added by Stats. 1977, Ch. 1164.)

31033. "Business day" means any day other than (a) Saturday, (b) Sunday, and(c) any other day which is specified or provided for as a holiday in the Government Code.
(Added by Stats. 1977, Ch. 1164.)

31034. "Business firm" means any person which transacts business on a regular and continual basis, with respect to the transacting of such business.
(Added by Stats. 1977, Ch. 1164.)

31034.5. "Business firm in another state" means both of the following:

(a) Any person which transacts business on a regular and continual basis at one or more places of business in another state of the United States or the District of Columbia, with respect to the transacting of that business at those places of business.

(b) Any person which proposes to establish one or more places of business in another state of the United States or in the District of Columbia and to transact business on a regular and continual basis at those places of business, with respect to the establishment of those places of business and the transacting of that business at those places of business.
(Added by Stats. 1987, Ch. 867, Sec. 4.)

31035. "Business firm in this state" means:

(a) Any person which transacts business on a regular and continual basis at one or more places of business in this state, with respect to the transacting of such business at such places of business; or

(b) Any person which proposes to establish one or more places of business in this state and to transact business on a regular and continual basis at such places of business, with respect to the establishment of such places of business and the transacting of such business at such places of business.
(Added by Stats. 1977, Ch. 1164.)

31036. "California corporation" means:

(a) Any corporation organized under the General Corporation Law (Division 1 (commencing with Section 100), Title 1 of the Corporations Code) or any predecessor statute; provided, however, that "California corporation" does not include any corporation which is a close corporation, as defined in Section 158 of the Corporations Code;or

(b) Any corporation organized under Part 6 (commencing with Section 14200), Division 3, Title 1 of the Corporations Code, as added by Chapter 985 of the Statutes of 1975; or

(c) Any California nonprofit corporation.

(Added by Stats. 1977, Ch. 1164.)

31037. "California nonprofit corporation" means any corporation organized under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code) or any predecessor statute.

(Amended by Stats. 1980, Ch. 1155, Sec. 33.)

31038. "Control", when used with respect to a specified person, means possession, direct or indirect, of the power to do either of the following:

(a) To vote 35 percent or more of any class of the voting securities issued by the specified person.

(b) To direct or cause the direction of the management and policies of such specified person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise; provided, however, that no natural person shall be deemed to control a person solely on account of being a director, officer, or employee of such person. For purposes of this subdivision, any person who, directly or indirectly, owns of record or beneficially, holds with power to vote, or holds proxies with discretionary authority to vote, 20 percent or more of any class of the then outstanding voting securities issued by a corporation shall be rebuttably presumed to control such corporation. This presumption is a presumption affecting the burden of proof.

(Amended by Stats. 1987, Ch. 867, Sec. 5.)

31039. "Controlling person", when used with respect to a specified person, means any person who controls such specified person, directly or indirectly through one or more intermediaries.

(Added by Stats. 1977, Ch. 1164.)

31040. "Corporate name" means the name of a corporation as set forth in the articles of incorporation of such corporation.

(Added by Stats. 1977, Ch. 1164.)

31041. "Financial institution" means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, insurance company, or person engaged in the business of lending money.

(Added by Stats. 1977, Ch. 1164.)

31042. "Insolvent", when used with respect to any person, means a person who has ceased to pay his debts in the ordinary course of business, who cannot pay his debts as they become due, or whose liabilities exceed his assets.

(Added by Stats. 1977, Ch. 1164.)

31043. To "issue", when used with respect to any regulation or order, includes to adopt, amend, repeal, or rescind.

(Added by Stats. 1977, Ch. 1164.)

31044. "License" means a license issued under this division authorizing a California corporation to transact business as a business and industrial development corporation.

(Added by Stats. 1977, Ch. 1164.)

31045. "Licensee" means a California corporation which is licensed under this division.

(Added by Stats. 1977, Ch. 1164.)

31046. "Officer" means:

(a) When used with respect to a corporation, any person appointed or designated as an officer of such corporation by or pursuant to applicable law or the articles of incorporation or bylaws of such corporation or any person who performs with respect to such corporation functions usually performed by an officer of a corporation; and

(b) When used with respect to a specified person other than a natural person or a corporation, any person who performs with respect to such specified person functions usually performed by an officer of a corporation with respect to such corporation.

(Added by Stats. 1977, Ch. 1164.)

31047. "Order" means any approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner. "Order" includes any condition of a license and any agreement made by any person with the commissioner under this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 625. Effective January 1, 1997. Operative July 1, 1997.)

31047.5. "Parent," when used with respect to a specified person other than a natural person, means any person other than a natural person which controls the specified person, directly or indirectly through one or more intermediaries.

(Added by Stats. 1987, Ch. 867, Sec. 6.)

31048. "Person" means any natural person, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, limited liability company, government, agency of any government, or any other organization; provided, however, that "person", when used with respect to acquiring control of or controlling a specified person, includes any combination of two or more persons acting in concert.
(Amended by Stats. 1994, Ch. 1010, Sec. 119. Effective January 1, 1995.)

31049. "Principal shareholder", when used with respect to a corporation, means any person who owns, directly or indirectly, of record or beneficially, securities representing 10 percent or more of the voting power of such corporation.
(Added by renumbering Section 31047 by Stats. 1982, Ch. 1570, Sec. 5.)

31050. To "provide financing assistance" to a person includes:
(a) To lend money or otherwise extend credit to such person;
(b) To purchase securities issued by such person, either directly or indirectly through an underwriter; and
(c) To lease property to such person.
(Added by renumbering Section 31048 by Stats. 1982, Ch. 1570, Sec. 6.)

31051. To "provide management assistance" to a person includes:
(a) To provide management or technical advice to such person; and
(b) To provide management or technical services to such person.
(Added by renumbering Section 31049 by Stats. 1982, Ch. 1570, Sec. 7.)

31052. "Regulation" means any published regulation, rule, or standard of general application issued by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 626. Effective January 1, 1997. Operative July 1, 1997.)

31053. "Security" has the meaning set forth in Section 25019 of the Corporations Code.
(Added by Stats. 1977, Ch. 1164.)

31054. "Subsidiary", when used with respect to a specified person other than a natural person, means any person other than a natural person controlled by such specified person, directly or indirectly through one or more intermediaries.
(Added by Stats. 1977, Ch. 1164.)

31055. "Commissioner" means the Commissioner of Financial Institutions or any person to whom the Commissioner of Financial Institutions delegates the authority to act for him or her in the particular matter.
(Amended by Stats. 1996, Ch. 1064, Sec. 627. Effective January 1, 1997. Operative July 1, 1997.)

31056. "Voting power" has the meaning set forth in Corporations Code Section 194.5.
(Added by Stats. 1977, Ch. 1164.)

CHAPTER 2. ADMINISTRATION

(Chapter 2 added by Stats. 1977, Ch. 1164.)

31100. The commissioner shall administer the provisions of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 628. Effective January 1, 1997. Operative July 1, 1997.)

31101. (a) The commissioner may from time to time issue such regulations and orders as are in his or her opinion necessary to carry out the provisions and purposes of this division.

(b) Regulations and orders issued under this division may, among other things, define any term used in this division, including (but not limited to) the term "unsafe or unsound act", as well as any term not used in this division.

(c) For purposes of regulations and orders issued under this division, the commissioner may classify persons, transactions, and other matters within his or her jurisdiction, and may prescribe different regulations or orders for different classes.

(d) The commissioner may waive any provision of any regulation or order issued under this division in any case where in his or her opinion such provision is not necessary in the public interest.
(Amended by Stats. 1996, Ch. 1064, Sec. 629. Effective January 1, 1997. Operative July 1, 1997.)

31102. Whenever the commissioner issues an order or license under this division, he or she may impose such conditions as are in his or her opinion necessary to carry out the provisions and purposes of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 630. Effective January 1, 1997. Operative July 1, 1997.)

31103. Every final order, decision, license, or other official act of the commissioner under this division is subject to judicial review in accordance with law.
(Amended by Stats. 1996, Ch. 1064, Sec. 631. Effective January 1, 1997. Operative July 1, 1997.)

31104. In any proceeding under this division:

(a) The burden of proving that an application should be approved is upon the applicant.

(b) The burden of proving an exemption or an exception from a definition is upon the person claiming such exemption or such exception from a definition.
(Added by Stats. 1977, Ch. 1164.)

31105. No provision of this division shall be construed to require by implication that the commissioner hold a hearing on any matter.
(Amended by Stats. 1996, Ch. 1064, Sec. 632. Effective January 1, 1997. Operative July 1, 1997.)

31106. No provision of this division shall be construed to require by implication that the commissioner make written findings on any matter.
(Amended by Stats. 1996, Ch. 1064, Sec. 633. Effective January 1, 1997. Operative July 1, 1997.)

31107. Any application filed with the commissioner under this division or under any regulation or order issued under this division shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.
(Amended by Stats. 1996, Ch. 1064, Sec. 634. Effective January 1, 1997. Operative July 1, 1997.)

31108. In determining whether to approve any application filed under this division or under any regulation or order issued under this division, the commissioner may consider proposals made by the applicant, including (but not limited to) proposals to appoint officers, sell securities, or obtain financing; and, if in the opinion of the commissioner it is probable that such applicant will be able to implement any such proposal, the commissioner may make findings on the basis of such proposal; provided, however, that, whenever the commissioner approves an application on the basis, in whole or in part, of a proposal made by the applicant, the commissioner shall impose upon such approval appropriate conditions requiring that such applicant implement such proposal within such period of time as the commissioner may specify.
(Amended by Stats. 1996, Ch. 1064, Sec. 635. Effective January 1, 1997. Operative July 1, 1997.)

31109. The commissioner may honor applications from interested persons for interpretive opinions regarding any provision of this division or of any regulation or order issued under this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 636. Effective January 1, 1997. Operative July 1, 1997.)

31110. (a) The commissioner may (1) make such public or private investigations within or outside this state as he or she deems necessary to determine whether to approve any application filed with him or her under this division or under any regulation or order issued under this division, to determine whether any person has violated or is about to violate any provision of this division or of any regulation or order issued under this division, to aid in the enforcement of any provision of this division or of any regulation or order issued under this division, or to aid in the issuing of regulations or orders under this division, and (2) publish information concerning any violation of any provision of this division or of any regulation or order issued under this division.

(b) For purposes of any investigation, examination, or other proceeding under this division, the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to such person an order requiring him to appear before the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as a contempt.

(Amended by Stats. 1996, Ch. 1064, Sec. 637. Effective January 1, 1997. Operative July 1, 1997.)

31110.5. The commissioner may provide information relating to a licensee to the Small Business Administration or to any governmental agency which licenses or regulates the licensee or any parent or subsidiary of the licensee.

(Amended by Stats. 1996, Ch. 1064, Sec. 638. Effective January 1, 1997. Operative July 1, 1997.)

31111. Notwithstanding the fact that the commissioner permits any licensee, any affiliate of such licensee, or any governmental agency to inspect or make copies of any record relating to such licensee or to any director, officer, employee, or affiliate of such licensee or that the commissioner provides any such record, or a copy thereof, to any such person, any provision of Section 6254 or 6255 of the Government Code which would, but for such fact, apply to such record, shall continue to apply to such record.

(Amended by Stats. 1996, Ch. 1064, Sec. 639. Effective January 1, 1997. Operative July 1, 1997.)

31112. The commissioner may refer such evidence as is available concerning any violation of this division or of any regulation or order issued under this division which constitutes a crime to the district attorney of the county in which such violation occurred, who may, with or without such a reference, institute appropriate criminal proceedings.

(Amended by Stats. 1996, Ch. 1064, Sec. 640. Effective January 1, 1997. Operative July 1, 1997.)

31113. Before any applicant for a license is issued a license, such applicant and each parent and subsidiary of such applicant shall file, and each person who becomes a parent or subsidiary of a licensee shall, not less than 30 days after becoming a parent or subsidiary of such licensee, file, with the commissioner, in such form as the commissioner may by regulation or order require, an irrevocable consent appointing the commissioner and his or her successor from time to time in office to be such person's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against such person, or his or her successor, executor, or administrator, which arises under this division or under any regulation or order issued under this division after such consent has been filed, with the same force and validity as if served personally on such person. Service may be made by leaving a copy of the process at any office of the commissioner, but such service is not effective unless (a) the party making such service, who may be the commissioner, forthwith sends notice of such service and a copy of the process by registered or certified mail to the party served at his or her last address on file with the commissioner, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding allows.

(Amended by Stats. 1996, Ch. 1064, Sec. 641. Effective January 1, 1997. Operative July 1, 1997.)

31114. Whenever any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this division or by any regulation or order issued under this division, whether or not the person has filed a consent to service of process under Section 31113, and if personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner and the commissioner's successor from time to time in office to be the person's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against him or her, or his or her successor, executor, or administrator, which grows out of that conduct and which is brought under this division or under any regulation or order issued under this division, with the same force and validity as if served on him or her personally. Service may be made by leaving a copy of the process in any office of the commissioner, but the service is not effective unless (a) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the party served at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(Amended by Stats. 1996, Ch. 1064, Sec. 642. Effective January 1, 1997. Operative July 1, 1997.)

31115. (a) Fees shall be paid to, and collected by, the commissioner, as follows:

(1) The fee for filing with the commissioner an application for a license shall be two thousand dollars ($2,000).

(2) The fee for filing with the commissioner an application for approval to acquire control of a licensee shall be one thousand dollars ($1,000).

(3) The fee for filing with the commissioner an application for approval for a licensee to merge with another corporation; an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee, shall be one thousand dollars ($1,000). However, whenever two or more applications relating to the same merger, purchase, or sale are filed with the commissioner, the fee for filing each application shall be the quotient determined by dividing one thousand dollars ($1,000) by the number of the applications.

(4) The fee for filing with the commissioner an application for approval to relocate the head office of a licensee shall be one hundred dollars ($100).

(5) The fee for issuing a license shall be twenty-five dollars ($25).

(6) Each person that is licensed under this division on June 1 of any year shall pay, on or before the following July 1, a fee of two thousand dollars ($2,000).

(7) Whenever the commissioner examines any licensee or any affiliate of a licensee, that licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, in case it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(b) (1) Each fee for filing an application with the commissioner shall be paid at the time when the application is filed with the commissioner.

(2) No fee for filing an application with the commissioner shall be refundable, regardless of whether the application is approved, denied, withdrawn, or abandoned.

(Amended by Stats. 1997, Ch. 375, Sec. 16. Effective January 1, 1998.)

CHAPTER 3. LICENSING

(Chapter 3 added by Stats. 1977, Ch. 1164.)

31150. (a) Except as otherwise provided in subdivision (b), no person transacting business in this state, other than a licensee, shall use any name or title which indicates that it is a business and industrial development corporation or otherwise represent that it is a business and industrial development corporation or that it is a licensee.

(b) Any California corporation which proposes to apply for a license or which has applied for a license, may, before being issued a license, use a name or title which indicates that it is a business and industrial development corporation if it meets all of the following requirements:

(1) The corporation shall append to the name the designation "proposed," "in organization," or "in formation," or any similar designation which the commissioner may approve. The designation shall be set forth at least as conspicuously as the name or title.

(2) The corporation may perform only such acts as may be necessary (A) to apply for and obtain such license and (B) otherwise to prepare to commence transacting business as a licensee.

(3) The corporation shall not represent that it is a licensee.

(Amended by Stats. 1996, Ch. 1064, Sec. 644. Effective January 1, 1997. Operative July 1, 1997.)

31151. No person other than a California corporation may apply for or be issued a license.

(Added by Stats. 1977, Ch. 1164.)

31152. If the commissioner finds all of the following with respect to an application for a license, the commissioner shall approve the application:

(a) That the applicant has net worth in an amount which is not less than one million five hundred thousand dollars ($1,500,000) and which is adequate for the applicant to transact business as a business and industrial development corporation.

(b) That the applicant has lendable funds in an amount which is not less than one million five hundred thousand dollars ($1,500,000) and which is adequate for the applicant to transact business as a business and industrial development corporation.

(c) That the applicant has, in addition to the requirements of subdivision (b), financial resources in an amount which is adequate for the applicant to pay its expenses in transacting business as a business and industrial development corporation for a period of not less than three years.

(d) That the directors, officers, and controlling persons of the applicant are each of good character and sound financial standing, that the directors and officers of the applicant are each competent to perform their functions with respect to the applicant, and that the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a business and industrial development corporation. For purposes of this subdivision, the commissioner shall accord weight to the prior or current successful operation of a commercial enterprise.

(e) That it is reasonable to believe that the applicant, if licensed, will comply with all applicable provisions of this division and of any regulation or order issued under this division.

(f) That the applicant has reasonable promise of successful operation as a business and industrial development corporation.

(g) That the licensing of the applicant will promote the public convenience and advantage.

If, after notice and a hearing, the commissioner finds otherwise, he or she shall deny the application.

(Amended by Stats. 1996, Ch. 1064, Sec. 645. Effective January 1, 1997. Operative July 1, 1997.)

31152.5. (a) For purposes of Section 31152, the commissioner may find:

(1) That a director, officer, or controlling person of an applicant is not of good character if the director, officer, or controlling person or any director or officer of the controlling person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(2) That it is not reasonable to believe that an applicant, if licensed, will comply with all applicable provisions of this division and of any regulation or order issued under this division if the applicant has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(b) Subdivision (a) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 31152, that a director, officer, or controlling person of an applicant is not of good character or that it is not reasonable to believe that an applicant, if licensed, will comply with all applicable provisions of this division and of any regulation or order issued under this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 646. Effective January 1, 1997. Operative July 1, 1997.)

31153. Before any applicant for a license is issued a license, each person which is a parent or subsidiary of such applicant shall file, and each person who becomes a parent or subsidiary of a licensee shall, not less than 30 days after becoming a parent or subsidiary of such licensee, file, with the commissioner, in such form as the commissioner may by regulation or order require, an agreement that such person shall comply with all applicable provisions of this division and of any regulation or order issued under this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 647. Effective January 1, 1997. Operative July 1, 1997.)

31154. Whenever any application for a license has been approved and all conditions precedent to the issuance of such license have been fulfilled, the commissioner shall issue a license to the applicant.
(Amended by Stats. 1996, Ch. 1064, Sec. 648. Effective January 1, 1997. Operative July 1, 1997.)

31155. No license shall be transferable or assignable.
(Added by Stats. 1977, Ch. 1164.)

31156. Each licensee shall post its license in a conspicuous place at its head office.
(Added by Stats. 1977, Ch. 1164.)

31157. No licensee shall represent that it is sponsored, recommended, or approved by, or that its abilities or qualifications have in any respect been passed upon by, the commissioner. Nothing in this section shall be deemed to prohibit a licensee from stating that it is licensed if the effect of such license is not misrepresented.
(Amended by Stats. 1996, Ch. 1064, Sec. 649. Effective January 1, 1997. Operative July 1, 1997.)

31158. (a) The fact that a California corporation is licensed under any law other than this division shall not preclude such corporation from applying for or being issued a license under this division unless the transaction of business by such corporation as a licensee under such other law would violate any provision of this division or of any regulation or order issued under this division or would be contrary to the purposes of this division.

(b) The fact that a California corporation is licensed under this division shall not preclude such corporation from applying for or being issued a license under any other law unless the transaction of business by such corporation as a licensee under such other law would violate any provision of this division or of any regulation or order issued under this division or would be contrary to the purposes of this division.
(Amended by Stats. 1987, Ch. 867, Sec. 13.)

CHAPTER 4. CORPORATE MATTERS
(Chapter 4 added by Stats. 1977, Ch. 1164.)

Article 1. Name
(Article 1 added by Stats. 1977, Ch. 1164.)

31200. The corporate name of each licensee shall include the phrase "California business and industrial development corporation".
(Added by Stats. 1977, Ch. 1164.)

31201. No licensee shall, except with the prior approval of the commissioner, transact business under any name other than its corporate name.
(Amended by Stats. 1996, Ch. 1064, Sec. 650. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Board of Directors
(Article 2 added by Stats. 1977, Ch. 1164.)

31210. The board of directors of each licensee shall consist of not less than five directors.
(Amended by Stats. 1987, Ch. 867, Sec. 14.)

31211. The board of directors of each licensee shall hold a meeting not less frequently than once each calendar quarter.
(Added by Stats. 1977, Ch. 1164.)

Article 3. Securities
(Article 3 added by Stats. 1977, Ch. 1164.)

31220. Notwithstanding any other law of this state, but subject to the provisions of Section 31550:

(a) Any commercial bank, industrial bank, or trust company organized under the laws of this state may, with the prior approval of the commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by the commercial bank, industrial bank, or trust company shall not at any time exceed 2 ½ percent of the shareholders' equity of the commercial bank, industrial bank, or trust company. This subdivision shall not apply to any loan or other extension of credit made by a commercial bank or industrial bank organized under the laws of this state to a licensee in accordance with the Banking Law (Division 1 (commencing with Section 99)).

(b) Any savings association organized under the laws of this state may, with the prior approval of the commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such savings association shall not at any time exceed ½ percent of the total outstanding loans of such savings association.

(c) Any insurance company admitted to transact insurance business in this state may, with the approval of the Insurance Commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such insurance company shall not at any time exceed 2 ½ percent of the unassigned surplus of such insurance company.

(d) Any public utility licensed or regulated by the Public Utilities Commission may, with the approval of the Public Utilities Commission, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such public utility company shall not at any time exceed ½ percent of the total assets of such public utility company.
(Amended by Stats. 2000, Ch. 1015, Sec. 55. Effective September 30, 2000.)

Article 4. Distributions to Shareholders
(Article 4 added by Stats. 1977, Ch. 1164.)

31230. In this article, "distribution to its shareholders" has the meaning set forth in Corporations Code Section 166.
(Added by Stats. 1977, Ch. 1164.)

31231. No licensee shall, except with the prior approval of the commissioner, make, or obligate itself to make, any distribution to its shareholders.
(Amended by Stats. 1996, Ch. 1064, Sec. 652. Effective January 1, 1997. Operative July 1, 1997.)

31232. If the commissioner finds, with respect to an application for approval for a licensee to make, or to obligate itself to make, a distribution to its shareholders:

(a) That for the applicant to make, or to obligate itself to make, the distribution will not endanger the applicant's ability to provide financing assistance and management assistance to business firms in this state; and

(b) That for the applicant to make, or to obligate itself to make, the distribution will not be unsafe or unsound; the commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, he or she shall deny the application.
(Amended by Stats. 1996, Ch. 1064, Sec. 653. Effective January 1, 1997. Operative July 1, 1997.)

31233. Notwithstanding the provisions of Section 31232, unless an application for approval for a licensee to make, or to obligate itself to make, a distribution to its shareholders is approved, denied, withdrawn, or abandoned within a period of 45 days after such application is filed with the commissioner or, if the applicant consents to an extension of the period, within such extended period, such application shall be deemed to be approved by the commissioner as of the first day after such period of 45 days or such extended period, as the case may be.

For purposes of this section, an application for approval for a licensee to make, or to obligate itself to make, a distribution to its shareholders shall be deemed to be filed with the commissioner when such application, containing all the information required by the commissioner and otherwise complying with Section 31107, is received by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 654. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 5. OFFICES

(Chapter 5 added by Stats. 1977, Ch. 1164.)

Article 1. General Provisions

(Article 1 added by Stats. 1977, Ch. 1164.)

31300. Each licensee shall maintain its head office in this state.
(Amended by Stats. 1987, Ch. 867, Sec. 16.)

31301. No licensee shall maintain an office at any place outside this state.
(Added by Stats. 1977, Ch. 1164.)

31302. Each office of a licensee shall be located in a place which is reasonably accessible to the public and shall, unless the commissioner approves otherwise, be open for the transaction of business during normal business hours on each business day.
(Amended by Stats. 1996, Ch. 1064, Sec. 655. Effective January 1, 1997. Operative July 1, 1997.)

31303. Each licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate name of such licensee.
(Added by Stats. 1977, Ch. 1164.)

31304. Each licensee shall maintain telephone service at each of its offices and shall maintain a telephone listing under its corporate name for each of its offices.
(Added by Stats. 1977, Ch. 1164.)

31305. Each licensee shall maintain at each of its offices personnel who are competent to conduct the business of such office.
(Added by Stats. 1977, Ch. 1164.)

Article 2. Establishing, Relocating, and Closing Offices

(Article 2 added by Stats. 1977, Ch. 1164.)

31320. (a) No licensee shall relocate its head office without the prior approval of the commissioner.

(b) No licensee shall establish, relocate, or close any office (other than its head office) unless it files a report on the action with the commissioner not less than 30 days (or such shorter period as the commissioner may approve) before taking the action.
(Amended by Stats. 1996, Ch. 1064, Sec. 656. Effective January 1, 1997. Operative July 1, 1997.)

31322. If the commissioner finds, with respect to an application by a licensee for approval to relocate its head office:

(a) That the office at its proposed location will be reasonably accessible to the public;

(b) That it is reasonable to believe that the applicant will operate the office at its proposed location in compliance with all applicable provisions of this division and of any regulation or order issued under this division;

(c) That it will not be unsafe or unsound for the applicant to relocate the office; and

(d) That the relocation of the office will not be detrimental to the public convenience and advantage, or, if the relocation of the office would be detrimental to the public convenience and advantage, that the relocation of the office is necessary in the interests of the safety and soundness of the applicant; the commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.
(Amended by Stats. 1996, Ch. 1064, Sec. 657. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 6. TRANSACTION OF BUSINESS

(Chapter 6 added by Stats. 1977, Ch. 1164.)

31400. (a) Each licensee shall transact its business in a safe and sound manner and shall maintain itself in a safe and sound condition.

(b) No licensee shall commit any unsafe or unsound act.

(Added by Stats. 1977, Ch. 1164.)

31401. No licensee shall engage in any business other than one or more of the following:

(a) The business of providing financing assistance and management assistance to business firms.

(b) The business of a state development company in accordance with all applicable provisions of the Small Business Investment Act of 1958 and of the regulations of the Small Business Administration.

(c) The business of a local development company in accordance with all applicable provisions of the Small Business Investment Act of 1958 and of the regulations of the Small Business Administration.

(d) The business of a small business investment company in accordance with all applicable provisions of the Small Business Investment Act of 1958 and of the regulations of the Small Business Administration.

(Amended by Stats. 1987, Ch. 867, Sec. 21.)

31402. Each licensee shall use its best efforts:

(a) To provide financing assistance to business firms in this state in cooperation with the Small Business Administration pursuant to Section 7(a) of the Small Business Act;

(b) To obtain loans from the Small Business Administration pursuant to Sections 501 and 502 of the Small Business Investment Act of 1958; and

(c) Otherwise to cooperate with, and meet the requirements of, the Small Business Administration for the purpose of providing financing assistance and management assistance to business firms in this state.

(Added by Stats. 1977, Ch. 1164.)

31403. (a) Except as provided in subdivision (b), no licensee shall provide financing assistance or management assistance to any person other than a business firm in this state.

(b) (1) If a licensee provides financing assistance to a business firm in this state, the licensee may also provide financing assistance and management assistance to the business firm with respect to business transacted in any other state of the United States or the District of Columbia.

(2) If a licensee provides financing assistance to a business firm in this state which is a franchisor, the licensee may also provide financing assistance and management assistance to any business firm in another state which is a franchisee of the franchisor.

(3) If a licensee provides financing assistance to a business firm in this state which is a franchisee of a franchisor, the licensee may also provide financing assistance and management assistance to any business firm in another state which is a franchisee of the franchisor.

(Amended by Stats. 1987, Ch. 867, Sec. 22.)

31404. Except as otherwise provided in subdivision (b) of Section 31403, no licensee shall provide financing assistance or management assistance for use outside this state.

(Amended by Stats. 1987, Ch. 867, Sec. 23.)

31405. Except as otherwise provided in subdivisions (b), (c), and (d) of Section 31406:

(a) No licensee shall provide financing assistance or management assistance to any business firm the primary business of which is to provide financing assistance or management assistance.

(b) No licensee shall provide financing assistance to any business firm for the purpose of providing financing assistance to other persons or discharging, in whole or in part, any obligation incurred for such purpose.

(Amended by Stats. 1987, Ch. 867, Sec. 24.)

31406. No licensee shall, either by itself or in concert with any of its directors, officers, principal shareholders, or affiliates, any other licensee, or any of the directors, officers, principal shareholders, or affiliates of any other licensee, acquire or hold control of any business firm, except as follows:

(a) Any licensee which has provided financing assistance to a business firm may, if and to the extent necessary to protect its interests as a creditor of, or investor in, such business firm, acquire and hold control of such business firm; provided, however, that such licensee shall divest itself of such control as soon as practicable and in any event within three years after acquiring such control or such longer period as the commissioner may approve.

(b) Any licensee may, with the prior approval of the commissioner, acquire and hold control of a corporation which is licensed as a small business investment company under the Small Business Investment Act of 1958.

(c) Any licensee may, with the prior approval of the commissioner, acquire and hold control of a corporation which is licensed as a personal property broker under Division 9 (commencing with Section 22000).

(d) Any licensee may, with the prior approval of the commissioner, acquire and hold control of a corporation which transacts business as a local development company in accordance with all applicable provisions of the Small Business Investment Act of 1958 and of the regulations of the Small Business Administration.

(Amended by Stats. 1996, Ch. 1064, Sec. 658. Effective January 1, 1997. Operative July 1, 1997.)

31408. No licensee shall, except with the prior approval of the commissioner, guarantee the debt of any other person or otherwise lend its credit to any other person; provided, however, that, whenever a licensee sells to another person an obligation to pay money, which obligation is owned by such licensee, such licensee may guarantee the payment of such obligation.

(Amended by Stats. 1996, Ch. 1064, Sec. 659. Effective January 1, 1997. Operative July 1, 1997.)

31409. No licensee shall, except with the prior approval of the commissioner, provide a lien or security interest in any of its property for the purpose of securing an obligation of, or an obligation incurred for the benefit of, any other person.

(Amended by Stats. 1996, Ch. 1064, Sec. 660. Effective January 1, 1997. Operative July 1, 1997.)

31410. This section creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the State Constitution. The restrictions upon rates of interest contained in Section 1 of Article XV of the State Constitution shall not apply to any loans made by, or forbearances of, any licensee. This section shall apply retroactively to any such loans or forbearances.

(Added by renumbering Section 31953 by Stats. 1987, Ch. 867, Sec. 31.)

CHAPTER 7. RECORDS, REPORTS, AND EXAMINATIONS

(Chapter 7 added by Stats. 1977, Ch. 1164.)

31500. Each licensee shall adopt as its fiscal year the period from July 1st to and including the following June 30th.
(Added by Stats. 1977, Ch. 1164.)

31501. Each licensee shall make and keep such books, accounts, and other records in such form and in such manner as the commissioner may by regulation or order require. All records so required shall be kept at such place and shall be preserved for such time as the commissioner may by regulation or order specify.
(Amended by Stats. 1996, Ch. 1064, Sec. 661. Effective January 1, 1997. Operative July 1, 1997.)

31502. No licensee shall, except with the prior approval of the commissioner, enter or carry on its books or records any asset at a valuation exceeding the actual cost of such asset to such licensee.
(Amended by Stats. 1996, Ch. 1064, Sec. 662. Effective January 1, 1997. Operative July 1, 1997.)

31503. The commissioner may by order require a licensee to write down any asset on its books and records to a valuation which represents its then value.
(Amended by Stats. 1996, Ch. 1064, Sec. 663. Effective January 1, 1997. Operative July 1, 1997.)

31504. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within such longer period as the commissioner may by regulation or order specify, file with the commissioner an audit report containing:

(a) Financial statements (including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, in the case of a licensee which is a California nonprofit corporation, comparable financial statements) for or as of the end of such fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles;

(b) Report, certificate, or opinion of such independent certified public accountant or independent public account, stating that such financial statements were prepared in accordance with generally accepted accounting principles; and

(c) Such other information as the commissioner may by regulation or order require.
(Amended by Stats. 1996, Ch. 1064, Sec. 664. Effective January 1, 1997. Operative July 1, 1997.)

31506. Each licensee, each director, officer, and employee of a licensee, and each parent and subsidiary of a licensee shall file with the commissioner such reports as and when the commissioner may by regulation or order require. In addition, each affiliate of a licensee (other than a parent or subsidiary of the licensee) shall file with the commissioner such reports regarding transactions between the affiliate and the licensee as and when the commissioner may require. Each report shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.
(Amended by Stats. 1996, Ch. 1064, Sec. 665. Effective January 1, 1997. Operative July 1, 1997.)

31507. (a) The commissioner shall examine each licensee not less frequently than once each calendar year.

(b) (1) The commissioner may at any time examine any licensee or any parent or subsidiary of a licensee.

(2) The commissioner may at any time examine any office of any licensee within or outside of this state.

(3) The commissioner may at any time examine any affiliate of a licensee (other than a parent or subsidiary of the licensee) but only with respect to matters relating to transactions between the affiliate and the licensee.

(c) The directors, officers, and employees of any licensee or of any affiliate of a licensee being examined by the commissioner and any other person having custody of any of the books, accounts, or records of the licensee or affiliate shall exhibit to the commissioner, on request, any or all of the books, accounts, and other records of the licensee or affiliate and shall otherwise facilitate the examination so far as it may be in their power to do so. However, in the case of an examination of an affiliate of a licensee other than a parent or subsidiary of the licensee, only books, accounts, and records of the affiliate that relate to transactions between the affiliate and the licensee shall be subject to this subdivision.

(d) The commissioner may, if in his or her opinion it is necessary in the examination of any licensee or of any affiliate of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist him or her, and the licensee shall pay, within 10 days after receipt of a statement from the commissioner, the fees of that person.
(Amended by Stats. 2003, Ch. 404, Sec. 20. Effective January 1, 2004.)

31508. (a) No licensee shall, except with the prior approval of the commissioner, cause or permit any other person to make or keep any of its books, accounts, or other records.

(b) In case any person other than a licensee makes or keeps any of the books, accounts, or other records of such licensee, the provisions of this division and of any regulation or order issued under this division shall apply to such person with respect to the performance of such services and with respect to such books, accounts, and other records to the same extent as if such person were such licensee.

(c) In case any person other than an affiliate of a licensee makes or keeps any of the books, accounts, or other records of such affiliate or, in the case of an affiliate other than a parent or subsidiary of the licensee, the books, accounts, and other records of the affiliate that relate to transactions between the affiliate and the licensee, the provisions of this division and of any regulation or order issued under this division shall apply to such person with respect to such books, accounts, and other records to the same extent as if such person were such affiliate.

(Amended by Stats. 1996, Ch. 1064, Sec. 667. Effective January 1, 1997. Operative July 1, 1997.)

31509. The commissioner may publish any report filed with him or her under this division or under any regulation or order issued under this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 668. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 8. ACQUISITION OF CONTROL

(Chapter 8 added by Stats. 1977, Ch. 1164.)

31550. No person shall, except with the prior approval of the commissioner, acquire control of a licensee.
(Amended by Stats. 1996, Ch. 1064, Sec. 669. Effective January 1, 1997. Operative July 1, 1997.)

31551. If the commissioner finds, with respect to an application for approval to acquire control of a licensee:

(a) That the applicant and the directors and officers of the applicant are of good character and sound financial standing;

(b) That it is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with all

applicable provisions of this division and of any regulation or order issued under this division; and

(c) That the applicant's plans, if any, to make any major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee or to the public convenience and advantage;

The commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, he or she shall deny the application.
(Amended by Stats. 1996, Ch. 1064, Sec. 670. Effective January 1, 1997. Operative July 1, 1997.)

31551.5. (a) For purposes of Section 31551, the commissioner may find:

(1) That an applicant or a director or officer of an applicant is not of good character if such person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(2) That an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee and to the public convenience and advantage if the plan provides for a person who has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty to become a director or officer of the licensee.

(b) Subdivision (a) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 31551, that an applicant or a director or officer of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of a licensee or to the public convenience and advantage.
(Amended by Stats. 1996, Ch. 1064, Sec. 671. Effective January 1, 1997. Operative July 1, 1997.)

31552. The commissioner may, by such regulations or orders as he or she deems necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from the provisions of this chapter any person or transaction or class of persons or transactions, if he or she finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 672. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 9. MERGER AND PURCHASE OR SALE OF BUSINESS

(Chapter 9 added by Stats. 1977, Ch. 1164.)

31600. In this chapter:

(a) "Acquiring licensee" means:

(1) In the case of a merger, the licensee which is the surviving corporation;

(2) In the case of a purchase or sale, the licensee which is the purchaser.

(b) "Disappearing corporation" has the meaning set forth in Section 165 of the Corporations Code.

(c) "Surviving corporation" has the meaning set forth in Section 190 of the Corporations Code.

(Added by Stats. 1977, Ch. 1164.)

31601. No licensee shall merge with any other corporation unless:

(a) In case such licensee is the surviving corporation, such merger shall have first been approved by the commissioner;

(b) In case such licensee is a disappearing corporation, the surviving corporation is a licensee and such merger shall have first been approved by the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 673. Effective January 1, 1997. Operative July 1, 1997.)

31602. No licensee shall purchase all or substantially all of the business of any other person unless such purchase shall have first been approved by the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 674. Effective January 1, 1997. Operative July 1, 1997.)

31603. No licensee shall sell all or substantially all of its business to any other person unless such other person is a licensee and such sale shall have first been approved by the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 675. Effective January 1, 1997. Operative July 1, 1997.)

31604. If the commissioner finds, with respect to an application for approval of a merger, purchase, or sale:

(a) That the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee;

(b) That it is reasonable to believe that, upon consummation of the merger, purchase, or sale, the acquiring licensee will comply with all applicable provisions of this division and of any regulation or order issued under this division; and

(c) That the merger, purchase, or sale will not be detrimental to the public convenience and advantage, or, if the merger, purchase, or sale would be detrimental to the public convenience and advantage, that it is necessary in the interests of the safety and soundness of any of the parties to it;

The commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, he or she shall deny the application.

(Amended by Stats. 1996, Ch. 1064, Sec. 676. Effective January 1, 1997. Operative July 1, 1997.)

31605. The commissioner may, by such regulations or orders as he or she deems necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from the provisions of this chapter any person or transaction or class of persons or transactions, if he or she finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 677. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 10. VOLUNTARY SURRENDER OF LICENSE

(Chapter 10 added by Stats. 1977, Ch. 1164.)

31650. Any licensee may surrender its license by filing with the commissioner such license and a report which shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

(Amended by Stats. 1996, Ch. 1064, Sec. 678. Effective January 1, 1997. Operative July 1, 1997.)

31651. (a) Except as otherwise provided in subdivision (b), a voluntary surrender of a license shall be effective on the 30th day after such license and the report called for in Section 31650 are filed with the commissioner or on such earlier date as the commissioner may by order specify.

(b) If a proceeding to revoke or suspend a license is pending at the time when such license and the report called for in Section 31650 are filed with the commissioner or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after such license and the report called for in Section 31650 are filed with the commissioner, the voluntary surrender of such license shall become effective at such time and upon such conditions as the commissioner may by order specify.

(Amended by Stats. 1996, Ch. 1064, Sec. 679. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 11. ENFORCEMENT

(Chapter 11 added by Stats. 1977, Ch. 1164.)

31700. In this chapter, unless the context otherwise requires:

(a) "Office with a licensee" means the position of director, officer, or employee of such licensee or of any subsidiary of such licensee.

(b) "Subject person", when used with respect to a licensee, means:

(1) Any controlling person or affiliate of such licensee;

(2) Any director, officer, or employee of such licensee or of any of the persons specified in paragraph (1) of this subdivision; or

(3) Any other person who participates in the conduct of the business of such licensee.

(Added by Stats. 1977, Ch. 1164.)

31701. Whenever it appears to the commissioner that any person has violated, or that there is reasonable cause to believe that any person is about to violate, any provision of this division or of any regulation or order issued under this division, the commissioner may bring an action in the name of the people of this state in the superior court to enjoin such violation or to enforce compliance with this division or with any regulation or order issued under this division. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandate shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

(Amended by Stats. 1996, Ch. 1064, Sec. 680. Effective January 1, 1997. Operative July 1, 1997.)

31702. (a) If the commissioner finds that any person has violated, or that there is reasonable cause to believe that any person is about to violate, Section 31150, the commissioner may order the person to cease and desist from such violation unless and until the person is issued a license.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after such application is filed with him (or within such longer period to which the person consents), the order shall be deemed rescinded. Upon such hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Amended by Stats. 1996, Ch. 1064, Sec. 681. Effective January 1, 1997. Operative July 1, 1997.)

31703. If, after notice and a hearing, the commissioner finds:

(a) That any licensee or any subject person of a licensee has violated, is violating, or that there is reasonable cause to believe that any licensee or any subject person of a licensee is about to violate, any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law; or

(b) That any licensee or any subject person of a licensee has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that any licensee or any subject person of a licensee is about to engage or participate, in any unsafe or unsound act with respect to the business of such licensee; the commissioner may order such licensee or such subject person to cease and desist from such action or violation. Such order may require such licensee or such subject person to take affirmative action to correct any condition resulting from such action or violation.

(Amended by Stats. 1996, Ch. 1064, Sec. 682. Effective January 1, 1997. Operative July 1, 1997.)

31704. (a) If the commissioner finds:

(1) That any of the factors set forth in Section 31703 is true with respect to any licensee or any subject person of a licensee; and

(2) That such action or violation is likely to cause the insolvency of, or substantial dissipation of the assets or earnings of, the licensee, or is likely to seriously weaken the condition of the licensee or otherwise to seriously prejudice the interests of the licensee, prior to the completion of proceedings conducted pursuant to Section 31703; the commissioner may order the licensee or the subject person to cease and desist from such action or violation. The order may require the licensee or the subject person to take affirmative action to correct any condition resulting from such action or violation.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee or subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the

commissioner fails to commence a hearing within 15 business days after the application is filed with him (or within such longer period to which the licensee or subject person consents), the order shall be deemed rescinded. Upon such hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any licensee or subject person of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the licensee or subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Amended by Stats. 1996, Ch. 1064, Sec. 683. Effective January 1, 1997. Operative July 1, 1997.)

31705. If, after notice and a hearing, the commissioner finds:

(a) (1) That any subject person of a licensee has violated a provision of this division or of any regulation or order issued under this division or any provision of any other applicable law;

(2) That any subject person of a licensee has engaged or participated in any unsafe or unsound act with respect to the business of such licensee; or

(3) That any subject person of a licensee has engaged or participated in any act which constitutes a breach of his fiduciary duty as a subject person; and

(b) (1) That such act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to such licensee; or

(2) That the act, violation, or breach of fiduciary duty has seriously prejudiced or is likely to seriously prejudice the interests of the licensee; or

(3) That the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty; and

(c) That such act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee; the commissioner may issue an order removing the subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee.

(Amended by Stats. 1996, Ch. 1064, Sec. 684. Effective January 1, 1997. Operative July 1, 1997.)

31706. If, after notice and a hearing, the commissioner finds that any subject person of a licensee has, by engaging or participating in any act with respect to any financial or other business institution which resulted in substantial financial loss or other damage, demonstrated:

(a) (1) Dishonesty; or

(2) Willful or continuing disregard for the safety and soundness of such financial institution; and

(b) Unfitness to continue as a subject person of the licensee or participate in the conduct of the business of the licensee; the commissioner may issue an order removing the subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 685. Effective January 1, 1997. Operative July 1, 1997.)

31706.5. (a) If the commissioner finds:

(1) That the factors set forth in subdivisions (a), (b), and (c) of Section 31705 or the factors set forth in subdivisions (a) and (b) of Section 31706 are true with respect to any subject person of a licensee; and

(2) That it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner immediately suspend the subject person from his or her office, if any, with the licensee and prohibit him or her from further participating in any manner in the conduct of the business of the licensee; the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to begin a hearing within 15 business days after the application is filed (or within such longer period to which the subject person consents), the order shall be deemed rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any subject person of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(Amended by Stats. 1996, Ch. 1064, Sec. 686. Effective January 1, 1997. Operative July 1, 1997.)

31707. (a) If the commissioner finds:

(1) That any subject person of a licensee has been indicted by a grand jury for, or held to answer by a magistrate for, a crime involving dishonesty or breach of trust; and

(2) That the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee; the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner.

(b) If the commissioner finds:

(1) That any subject person or former subject person of a licensee to whom an order was issued pursuant to subdivision (a) or any other subject person of a licensee has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee; the commissioner may issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(c) (1) Within 30 days after an order is issued pursuant to subdivision (a) or (b), any subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed with him (or within such longer period to which the subject person consents), the order shall be deemed rescinded. Upon such hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any subject person or former subject person of a licensee to whom an order is issued under subdivision (a) or (b) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(d) The fact that any subject person of a licensee charged with a crime involving dishonesty or breach of trust is not finally convicted of the crime shall not preclude the commissioner from issuing an order to the subject person pursuant to any other section of this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 687. Effective January 1, 1997. Operative July 1, 1997.)

31708. Any person to whom an order is issued under Section 31705, 31706, 31706.5, or 31707 may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 688. Effective January 1, 1997. Operative July 1, 1997.)

31709. If, after notice and a hearing, the commissioner finds:

(a) That any licensee or any controlling person or affiliate of a licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law;

(b) That any licensee is conducting its business in an unsafe and unsound manner;

(c) That any licensee is in such condition that it is unsafe or unsound for it to transact business;

(d) That any licensee has ceased to transact business as a business and industrial development corporation;

(e) That any licensee is insolvent;

(f) That any licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That any licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against any licensee and such licensee has by any affirmative act approved of or consented to such action or such relief has been granted; or

(h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying such application; the commissioner may issue an order suspending or revoking the license of such licensee.

(Amended by Stats. 1996, Ch. 1064, Sec. 689. Effective January 1, 1997. Operative July 1, 1997.)

31710. (a) If the commissioner finds that any of the factors set forth in Section 31709 is true with respect to any licensee and that it is necessary for the protection of the public interest that he or she immediately suspend or revoke the license of such licensee, the commissioner may issue an order suspending or revoking the license of such licensee.

(b) Within 30 days after an order is issued pursuant to subdivision (a), any licensee to whom such order is directed may file with the commissioner a request for a hearing on such order. If the commissioner fails to commence a hearing within 15 business days after such request is filed with him or her (or within such longer period to which such licensee consents), such order shall be deemed rescinded. Upon such hearing, the commissioner shall affirm, modify, or rescind such order.

(Amended by Stats. 1996, Ch. 1064, Sec. 690. Effective January 1, 1997. Operative July 1, 1997.)

31711. Any person whose license is suspended or revoked shall immediately deliver such license to the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 691. Effective January 1, 1997. Operative July 1, 1997.)

31712. Any person to whom an order is issued under Section 31709 or 31710 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when it becomes a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 692. Effective January 1, 1997. Operative July 1, 1997.)

31713. (a) If the commissioner finds that any of the factors set forth in Section 31709 is true with respect to any licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as he or she may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may apply within 10 days to the superior court in the county in which the head office of the licensee is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, may dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just.

(c) An appeal may be taken from the judgment of the superior court by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court to the court of appeal. An appeal from the judgment of the superior court shall operate as a stay of the judgment. No bond need be given if the appeal is taken by the commissioner, but if the appeal is taken by the licensee, a bond shall be given as required by the Code of Civil Procedure.

(d) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100), Chapter 17, Division 1, and the provisions of that article (except Sections 3100, 3101, and 3102) shall apply as if the licensee were a bank.

(Amended by Stats. 1998, Ch. 931, Sec. 151. Effective September 28, 1998.)

CHAPTER 12. CRIMES AND CRIMINAL PENALTIES

(Chapter 12 added by Stats. 1977, Ch. 1164.)

Article 1. General Provisions

(Article 1 added by Stats. 1977, Ch. 1164.)

31800. It shall be unlawful for any person willfully to make any untrue statement of a material fact in any application or report filed with the commissioner under this division or under any regulation or order issued under this division, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

(Amended by Stats. 1996, Ch. 1064, Sec. 694. Effective January 1, 1997. Operative July 1, 1997.)

31801. It shall be unlawful for any person having custody of any of the books, accounts, or other records of a licensee willfully to refuse to allow the commissioner, upon request, to inspect or make copies of any of such books, accounts, or other records.

(Amended by Stats. 1996, Ch. 1064, Sec. 695. Effective January 1, 1997. Operative July 1, 1997.)

31802. It shall be unlawful for any person, with intent to deceive any director, officer, employee, auditor, or attorney of a licensee, the commissioner, or any governmental agency, to make any false entry in any of the books, accounts, or other records of such licensee, to omit to make any entry in such books, accounts, or other records which such person is required to make, or to alter, conceal, or destroy any of such books, accounts, or other records.

(Amended by Stats. 1996, Ch. 1064, Sec. 696. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Conflicts of Interest

(Article 2 added by Stats. 1977, Ch. 1164.)

31820. In this article, unless the context otherwise requires:

(a) "Adviser," when used with respect to a licensee, means any person who regularly provides legal, accounting, or management services or advice to such licensee.

(b) "Associate," when used with respect to a licensee, means:

(1) Any principal shareholder, director, officer, manager, agent, or adviser of such licensee;

(2) Any director, officer, partner, general manager, agent, employer, or employee of any person referred to in paragraph (1) of this subdivision;

(3) Any person who controls, is controlled by, or is under common control with, any person referred to in paragraph (1) of this subdivision, directly or indirectly through one or more intermediaries;

(4) Any close relative of any person referred to in paragraph (1) of this subdivision;

(5) Any person of which any person referred to in paragraphs (1) to (4), inclusive, of this subdivision is a director or officer; or

(6) Any person in which any person referred to in paragraphs (1) to (4), inclusive, of this subdivision or any combination of such persons acting in concert owns or controls, directly or indirectly, a 10 percent or greater equity interest.

(7) For purposes of this subdivision, any person who is in any of the relationships referred to in paragraphs (1) to (6), inclusive, of this subdivision within six months before or after a licensee provides financing assistance shall be deemed to be in such relationship as of the date when such licensee provides such financing assistance.

(8) For purposes of this subdivision, in case a licensee, in order to protect its interests, designates any person to serve as a director of, officer of, or in any capacity in the management of, a business firm to which such licensee provides financing assistance, such person shall not, on that account, be deemed to have any relationship with such business firm; provided, however, that this paragraph shall not apply in any case where the person has, directly or indirectly, any other financial interest in the business firm or where the person, at any time before the licensee provides the financing assistance, served as a director of, officer of, or in any other capacity in the management of, the business firm for a period of 30 days or more.

(c) "Close relative" means ancestor, lineal descendant, brother or sister and lineal descendants of either, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, or sister-in-law.

(d) "Closing services" means services performed in connection with the providing of financing assistance. "Closing services" includes (but is not limited to) appraising property and preparing credit reports. "Closing services" does not include any services performed after the providing of financing assistance.

(e) "Short-term financing assistance" means any financing assistance with a term of not more than five years.
(Added by Stats. 1977, Ch. 1164.)

31821. (a) The commissioner may, by such regulations or orders as he or she deems necessary and appropriate, either unconditionally or upon specified terms and conditions and for specified periods, exempt from the provisions of this article any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division.

(b) In exempting from the provisions of this article any person or transaction or class of persons or transactions, the commissioner shall give due consideration to any conflict of interest provision of federal law or regulation applicable to such person or transaction governing participants in federal financing programs.
(Amended by Stats. 1996, Ch. 1064, Sec. 697. Effective January 1, 1997. Operative July 1, 1997.)

31822. It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to any of its associates.
(Added by Stats. 1977, Ch. 1164.)

31823. (a) It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to any associate of another licensee if any associate of the first licensee receives, has received, or is about to receive, directly or indirectly, financing assistance or a commitment for financing assistance from such other licensee.

(b) It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to any associate of another licensee if any associate of the first licensee receives, has received, or is about to receive, directly or indirectly financing assistance or a commitment for financing assistance from a third licensee pursuant to any contract, understanding, or arrangement among such licensees.
(Added by Stats. 1977, Ch. 1164.)

31824. It shall be unlawful for any licensee or for any associate of a licensee, directly or indirectly, to borrow money from:

(a) Any person to which such licensee has provided, or has committed to provide, financing assistance;

(b) Any director of, officer of, or person who owns a 10 percent or greater equity interest in, any person referred to in subdivision (a); or

(c) Any close relative of any person referred to in subdivision (b).
(Added by Stats. 1977, Ch. 1164.)

31825. It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to discharge, or to free other funds for use in discharging, in whole or in part, an obligation to any associate of such licensee; provided, however, that this section shall not apply to any transaction effected by an associate of a licensee in the normal course of such associate's business involving a line of credit or short-term financing assistance.
(Added by Stats. 1977, Ch. 1164.)

31826. It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance for the purchase of property from any associate of such licensee.
(Added by Stats. 1977, Ch. 1164.)

31827. It shall be unlawful for any licensee, directly or indirectly, to provide financing assistance to any person to whom any associate of such licensee provides financing assistance, either contemporaneously with, or within one year before or after, the providing of financing assistance by the licensee, if the terms on which the licensee provides financing assistance are less favorable to the licensee than the terms on which the associate provides financing assistance to the associate. In any case where the financing assistance provided by the associate of the licensee is of a different kind from the financing assistance provided by the licensee, the burden shall be on the licensee to prove that the terms on which it provided financing assistance were at least as favorable to it as the terms on which the associate provided financing assistance to the associate. This section shall not apply to any transaction effected by an associate of a licensee in the normal course of such associate's business involving a line of credit or short-term financing assistance.
(Added by Stats. 1977, Ch. 1164.)

31828. It shall be unlawful for any associate of a licensee, directly or indirectly, to receive from any person to whom such licensee provides financing assistance, any compensation in connection with the providing of such financing assistance or anything of value for procuring, influencing, or attempting to procure or influence, the licensee's action with respect to the providing of the financing assistance. This section shall not apply to the receipt by an associate of a licensee of fees for bona fide closing services performed by such associate; provided, however, that the

associate is, with the consent and knowledge of the person to whom the financing assistance is provided, designated by the licensee to perform such services, that the services are appropriate and necessary in the circumstances, that the fees for the services are approved as reasonable by the licensee, and that the fees for the services are collected by the licensee on behalf of the associate.
(Added by Stats. 1977, Ch. 1164.)

31829. It shall be unlawful for any licensee, directly or indirectly, to sell or otherwise transfer any of its assets to any of its associates.
(Added by Stats. 1977, Ch. 1164.)

Article 3. Criminal Penalties
(Article 3 added by Stats. 1977, Ch. 1164.)

31880. Any person who violates any provision of this chapter shall upon conviction be fined not more than ten thousand dollars ($10,000) or be imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment.
(Added by Stats. 1977, Ch. 1164.)

31881. Nothing in this division limits the power of the state to punish any person for any act which constitutes a crime under any statute.
(Added by Stats. 1977, Ch. 1164.)

CHAPTER 13. CIVIL PENALTIES

(Chapter 13 added by Stats. 1977, Ch. 1164.)

31900. If, after notice and a hearing, the commissioner finds that any person has violated any provision of this division or of any regulation or order issued under this division, the commissioner may order such person to pay to the commissioner a civil penalty in such amount as the commissioner may specify; provided, however, that the amount of such civil penalty shall not exceed one thousand dollars ($1,000) for each violation, or in the case of a continuing violation, one thousand dollars ($1,000) for each day for which such violation continues.
(Amended by Stats. 1996, Ch. 1064, Sec. 698. Effective January 1, 1997. Operative July 1, 1997.)

31901. The provisions of Section 31900 are additional to, and not alternative to, other provisions of this division which authorize the commissioner to issue orders or to take other action on account of a violation of any provision of this division or of any regulation or order issued under this division; provided, however, that no person who has been finally convicted under Chapter 12 (commencing with Section 31800) of this division on account of a violation of any provision of Chapter 12 shall be liable to pay a civil penalty under Section 31900 on account of such violation, nor shall any person who has paid a civil penalty under Section 31900 on account of a violation of any provision of Chapter 12 be liable to criminal prosecution under Chapter 12 on account of such violation.
(Amended by Stats. 1996, Ch. 1064, Sec. 699. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 14. TRANSITION PROVISIONS

(Chapter 14 added by Stats. 1977, Ch. 1164.)

31950. In this chapter:

(a) "Member" has the meaning set forth in the old law.

(b) "Old corporation" means a corporation organized under the old law.

(c) "Old law" means Part 6 (commencing with Section 14200), Division 3, Title 1 of the Corporations Code, as added by Chapter 985 of the Statutes of 1975.
(Added by Stats. 1977, Ch. 1164.)

31951. Except as otherwise provided in Sections 31004 and 31952, the provisions of the General Corporation Law (Division 1 (commencing with Section 100), Title 1 of the Corporations Code) shall, on and after the effective date of this division, apply to each old corporation; provided, however, that, for purposes of the provisions of Chapter 23 (commencing with Section 2300) of the General Corporation Law, with respect to each old corporation:

(a) The term "effective date" shall mean the effective date of this division.

(b) The term "prior law" shall mean the old law.

(c) Each old corporation shall be deemed to be a corporation referred to in Section 162 of the Corporations Code.
(Amended by Stats. 1978, Ch. 965.)

31952. In case any old corporation has, on the effective date of this division, any members:

(a) The old law shall continue to apply with respect to matters relating to the rights and obligations of such members with respect to such old corporation and to matters relating to the rights and obligations of such old corporation with respect to such members, so long as any of such members continues to be a member of such old corporation; provided, however, that, notwithstanding any provision of the old law to the contrary, any member of an old corporation may withdraw from membership in such old corporation by giving to such old corporation written notice of its intent to withdraw from membership in such old corporation not less than 10 days before the date on which it intends to withdraw from membership in such old corporation, which date shall be specified in such notice, and the withdrawal of such member from membership in such old corporation shall be effective on such date.

(b) No person shall, on or after the effective date of this division, become a member of such old corporation.
(Added by Stats. 1977, Ch. 1164.)

DIVISION 16. PAYMENT INSTRUMENTS

(Division 16 added by Stats. 1978, Ch. 1347.)

CHAPTER 1. GENERAL PROVISIONS

(Chapter 1 added by Stats. 1978, Ch. 1347.)

Article 1. Short Title, Construction, and Severability

(Article 1 added by Stats. 1978, Ch. 1347.)

33000. This division shall be known and may be cited as the "Payment Instruments Law".
(Added by Stats. 1978, Ch. 1347.)

33001. This division shall be liberally construed to accomplish its purposes.
(Added by Stats. 1978, Ch. 1347.)

33002. In this division, unless otherwise expressly provided:

(a) A reference to a statute or to a regulation includes such statute or regulation as amended, whether before or after the effective date of this division, as well as any new statute or regulation substituted for such statute or regulation after the effective date of this division.

(b) A reference to a governmental agency or to a public officer includes any governmental agency or public officer which succeeds after the effective date of this division to substantially the same functions as those performed by such governmental agency or public officer on the effective date of this division.
(Added by Stats. 1978, Ch. 1347.)

33003. In this division, unless otherwise expressly provided, references to financial statements and references to assets, liabilities, income, shareholders' equity, and similar accounting terms mean such financial statements and such accounting terms prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters which they purport to present, subject to any specific accounting treatment required by any provision of this division or of any regulation or order issued under this division.
(Added by Stats. 1978, Ch. 1347.)

33004. In this division, unless otherwise expressly provided, references to corporations or to aspects of corporations apply to all types of corporations, whether for profit, nonprofit, or of any other type. References in this division to corporations and to aspects of corporations are set forth in terms appropriate to profit corporations. However, whenever any reference in this division to a corporation or to an aspect of a corporation is applicable to a type of corporation other than a corporation for profit, if the term of such reference is not appropriate to such type of corporation, such term of reference shall be construed to be the closest equivalent term of reference appropriate to such type of corporation.
(Added by Stats. 1978, Ch. 1347.)

33005. Any condition, stipulation, or provision purporting to bind any purchaser or holder of a payment instrument issued by a licensee to waive compliance with any provision of this division or of any regulation or order issued under this division is void.
(Added by Stats. 1978, Ch. 1347.)

33006. No provision of this division imposing any liability or sanction applies to any act committed in good faith in conformity with any regulation, order, or written interpretive opinion of the commissioner or any such opinion of the Attorney General, notwithstanding that such regulation, order, or written interpretive opinion may later be amended, rescinded, or repealed or be determined by judicial or other authority to be invalid for any reason.
(Amended by Stats. 1996, Ch. 1064, Sec. 700. Effective January 1, 1997. Operative July 1, 1997.)

33007. If any provision of this division or the application thereof to any person or circumstances is held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other provisions or applications of this division which can be given effect without the invalid, illegal, or unenforceable provision or application, and to this end, the provisions of this division are declared to be severable.
(Added by Stats. 1978, Ch. 1347.)

Article 2. Legislative Findings and Purposes
(Article 2 added by Stats. 1978, Ch. 1347.)

33020. The Legislature finds:

(a) That large amounts of payment instruments are sold in this state.

(b) That persons who purchase payment instruments in this state use such payment instruments for, among other purposes, the purpose of paying for the necessities of life.

(c) That the failure of an issuer of payment instruments sold in this state to pay such payment instruments when presented for payment would cause loss to the purchasers or holders of such payment instruments, would disrupt the payments mechanism in this state, would undermine public confidence in financial institutions doing business in this state, and would adversely affect the health, safety, and general welfare of the people of this state.

(d) That the business of selling payment instruments in this state or in any other state of the United States is not regulated by the United States or by any agency of the United States.

(e) That, to protect the interests of purchasers and holders of payment instruments sold in this state, to maintain public confidence in financial institutions doing business in this state, and to preserve the health, safety, and general welfare of the people of this state, it is necessary to regulate the business of selling payment instruments in this state.

(f) That only corporations should be permitted to engage in the business of selling in this state payment instruments issued by them because, as compared with other types of persons, corporations are more easily regulated and supervised, have much greater permanency of existence, and can give better assurance of uninterrupted service.
(Added by Stats. 1978, Ch. 1347.)

33021. (a) The purposes of this division are:

(1) To protect the interests of purchasers and holders of payment instruments sold in this state.

(2) To provide for the safe and sound conduct of the business of licensees.

(3) To maintain public confidence in licensees.

(b) The purposes of this division, as set forth in subdivision (a), constitute standards which the commissioner shall observe in administering the provisions of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 701. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Definitions
(Article 3 added by Stats. 1978, Ch. 1347.)

33040. Subject to additional definitions contained in this division which are applicable to specific provisions of this division and unless the context otherwise requires, the definitions in this article apply throughout this division.
(Added by Stats. 1978, Ch. 1347.)

33041. "Act" includes omission.
(Added by Stats. 1978, Ch. 1347.)

33042. "Affiliate", when used with respect to a specified person, means any person controlling, controlled by, or under common control with, such specified person, directly or indirectly through one or more intermediaries.
(Added by Stats. 1978, Ch. 1347.)

33043. "Agent", when used with respect to an issuer of payment instruments, means any person whom such issuer has appointed as its agent with authority to sell on behalf of the issuer payment instruments issued by the issuer, provided that the issuer becomes liable for the payment of each payment instrument issued by the issuer which is sold by such person at the time when such payment instrument is sold by such person. However, "agent", when used with respect to an issuer of payment instruments, does not include any officer or employee of such issuer, when acting as such at an office of the issuer.
(Added by Stats. 1978, Ch. 1347.)

33044. "Business day" means:

(a) When used with respect to any act to be performed in this state, any day other than (1) Saturday, (2) Sunday, and (3) any other day which is provided for as a holiday in the Government Code.

(b) When used with respect to any act to be performed in any jurisdiction other than this state, any day other than a day which is a legal holiday under the laws of such jurisdiction.
(Added by Stats. 1978, Ch. 1347.)

33045. "California agent", when used with respect to an issuer of payment instruments, means an agent of such issuer which is authorized to sell or sells in this state payment instruments issued by the issuer.
(Added by Stats. 1978, Ch. 1347.)

33045.5. "Commissioner" means the Commissioner of Financial Institutions or any person to whom the Commissioner of Financial Institutions delegates the authority to act for the Commissioner of Financial Institutions in this matter.
(Added by Stats. 1996, Ch. 1064, Sec. 701.5. Effective January 1, 1997. Operative July 1, 1997.)

33046. "Control", when used with respect to a specified person, means possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such specified person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise; provided, however, that no natural person shall be deemed to control a person solely on account of being a director, officer, or employee of such person.
(Added by Stats. 1978, Ch. 1347.)

33047. "Controlling person", when used with respect to a specified person, means any person who controls such specified person, directly or indirectly through one or more intermediaries.
(Added by Stats. 1978, Ch. 1347.)

33048. (a) "Foreign currency" means any currency other than United States currency.

(b) "Foreign currency," when used with respect to any payment instrument, means a payment instrument which is denominated in a foreign currency.
(Added by Stats. 1978, Ch. 1347.)

33049. To "include" means by way of enlargement and not by way of limitation.
(Added by Stats. 1978, Ch. 1347.)

33050. "Insolvent", when used with respect to any person, means a person who has ceased to pay his debts in the ordinary course of business, who cannot pay his debts as they become due, or whose liabilities exceed his assets.
(Added by Stats. 1978, Ch. 1347.)

33051. "Insured bank" means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation. However, "insured bank" does not include any office of a foreign (other nation) bank, as defined in Section 1700, other than an office which is insured by the Federal Deposit Insurance Corporation.
(Amended by Stats. 1984, Ch. 957, Sec. 8.)

33052. "Insured credit union" means any credit union the member accounts of which are insured or guaranteed as provided in Section 14858 of the Financial Code.
(Amended by Stats. 1984, Ch. 209, Sec. 14.)

33053. "Insured savings and loan association" or "insured savings association" means any savings association the accounts of which are insured by the Federal Deposit Insurance Corporation.
(Amended by Stats. 1996, Ch. 1064, Sec. 702. Effective January 1, 1997. Operative July 1, 1997.)

33054. To "issue", when used with respect to any regulation or order, includes to adopt, amend, repeal, or rescind.
(Added by Stats. 1978, Ch. 1347.)

33055. "License" means a license issued under this division.
(Added by Stats. 1978, Ch. 1347.)

33056. "Licensee" means a corporation which is licensed
under this division to engage in the business of selling in this state payment instruments issued by it.
(Added by Stats. 1978, Ch. 1347.)

33057. "Officer" means:

(a) When used with respect to a corporation, any person appointed or designated as an officer of such corporation by or pursuant to applicable law or the articles of incorporation or bylaws of the corporation or any person who performs with respect to the corporation functions usually performed by an officer of a corporation; and

(b) When used with respect to a specified person other than a natural person or a corporation, any person who performs with respect to such specified person functions usually performed by an officer of a corporation with respect to such corporation.
(Added by Stats. 1978, Ch. 1347.)

33058. "Order" means any approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including any condition thereof. "Order" does not include any

license issued by the commissioner but does include any condition of such license and any written agreement made by any person with the commissioner under this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 703. Effective January 1, 1997. Operative July 1, 1997.)

33059. (a) "Payment instrument" means:

(1) Any instrument (whether or not negotiable) for the transmission or payment of money which is designated on its face by the term "money order" or by any substantially similar term; or

(2) Any check, draft, or other instrument (whether or not negotiable) for the transmission or payment of money, if payable on demand.

(b) Notwithstanding the provisions of paragraph (2) of subdivision (a), "payment instrument" does not include the following:

(1) Any travelers check.

(2) Any credit card voucher.

(3) Any letter of credit.

(4) Any instrument which is redeemable by the issuer in goods or services.
(Amended by Stats. 1987, Ch. 763, Sec. 1.)

33060. To "permit", when used with respect to a licensee's permitting an agent to perform an act, means for such licensee to fail to use its best efforts to prevent such agent from performing such act, under circumstances where the licensee knows or should know that it is probable that the agent will perform the act.
(Added by Stats. 1978, Ch. 1347.)

33061. "Person" means any natural person, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, limited liability company, government, agency of any government, or any other organization; provided, however, that "person", when used with respect to acquiring control of or controlling a specified person, includes any combination of two or more persons acting in concert.
(Amended by Stats. 1994, Ch. 1010, Sec. 120. Effective January 1, 1995.)

33062. "Regulation" means any published regulation, rule, or standard of general application issued by the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 704. Effective January 1, 1997. Operative July 1, 1997.)

33064. "Travelers check" means any instrument for the payment of money which:

(a) Is designated on its face by the term "travelers check" or by any substantially similar term or is commonly known and marketed as a travelers check by a corporation licensed as an issuer of travelers checks in this state on or prior to January 1, 1978, and not also by the term "money order" or by any substantially similar term;

(b) (1) If issued in United States currency, is in the sum of ten dollars ($10) or a whole multiple thereof, if less than one hundred dollars ($100), or in the sum of one hundred dollars ($100) or a whole multiple thereof;

(2) If issued in any foreign currency, is in an even denomination of such currency;

(c) Contains a provision for a specimen signature of the purchaser to be completed at the time of purchase; and

(d) Contains a provision for a countersignature of the purchaser to be completed at the time of negotiation.
(Added by Stats. 1978, Ch. 1347.)

33065. "United States currency", when used with respect to any payment instrument, means a payment instrument which is denominated in United States currency.
(Added by Stats. 1978, Ch. 1347.)

CHAPTER 2. EXEMPTIONS

(Chapter 2 added by Stats. 1978, Ch. 1347.)

33100. The following persons and transactions are exempted from this division:

(a) (1) Any insured bank, when selling any payment instrument issued by it.

(2) Any bank organized under the laws of a nation other than the United States which is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 or which is authorized under federal law to maintain a federal agency or federal branch in this state, when selling any foreign currency payment instrument which is issued by such bank and which is not designated on its face by the term "money order" or "travelers check" or by any substantially similar term.

(3) Any insured savings and loan association, when selling any payment instrument issued by it.

(4) Any federal or state-licensed credit union, when selling any payment instrument issued by it.

(5) Any person licensed under Chapter 14 (commencing with Section 1800) of Division 1, when selling any check or draft which is drawn by the person and which is of the type described in paragraph (3) of subdivision (a) of Section 1800.5.

(6) Any person licensed as a check seller under Division 3 (commencing with Section 12000), when selling any payment instrument issued by it.

(7) The United States or any agency of the United States, including the United States Postal Service, any Federal Reserve bank, and any federal home loan bank, when selling any payment instrument issued by it.

(b) Any California agent of any person referred to in subdivision (a) when selling any payment instrument which is issued by such person and which such person is permitted to sell under the paragraph of subdivision (a) applicable to such person.

(Amended by Stats. 1989, Ch. 1196, Sec. 32.)

33101. Any national banking association, federal savings and loan association, or federal or state-licensed credit union is exempted from all the provisions of this division, except the following provisions:

(a) The provisions of Section 34114.

(b) The provisions of Section 34115.

(c) The provisions of Section 34101; provided, however, that the provisions of Section 34101 shall apply only in the case of a failure to honor any liability imposed under the provisions of Sections 34114 and 34115; provided, further, that the provisions of Section 34101 relating to the appointment of a receiver or conservator shall not apply in any case.

(Amended by Stats. 1984, Ch. 209, Sec. 16.)

33102. The commissioner may, by regulation or order, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this division any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 706. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 3. ADMINISTRATION

(Chapter 3 added by Stats. 1978, Ch. 1347.)

Article 1. General Provisions

(Article 1 added by Stats. 1978, Ch. 1347.)

33200. The commissioner shall administer the provisions of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 707. Effective January 1, 1997. Operative July 1, 1997.)

33201. Every final order, decision, license, or other official act of the commissioner under this division is subject to judicial review in accordance with law.
(Amended by Stats. 1996, Ch. 1064, Sec. 708. Effective January 1, 1997. Operative July 1, 1997.)

33202. (a) The commissioner may from time to time issue such regulations and orders as are in his or her opinion necessary to carry out the provisions and purposes of this division.

(b) Regulations and orders issued under this division may, among other things, define any term used in this division, including the term "unsafe or unsound act", as well as any term not used in this division.

(c) For purposes of regulations and orders issued under this division, the commissioner may classify persons, transactions, and other matters within his or her jurisdiction, and may prescribe different regulations or orders for different classes.

(d) The commissioner may waive any provision of any regulation or order issued under this division in any case where in his or her opinion such provision is not necessary in the public interest.
(Amended by Stats. 1996, Ch. 1064, Sec. 709. Effective January 1, 1997. Operative July 1, 1997.)

33203. Whenever the commissioner issues an order or license under this division, the commissioner may impose such conditions as are in his or her opinion necessary to carry out the provisions and purposes of this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 710. Effective January 1, 1997. Operative July 1, 1997.)

33204. In any proceeding under this division:

(a) The burden of proving that an application should be approved is upon the applicant.

(b) The burden of proving an exemption or an exception from a definition is upon the person claiming such exemption or such exception from a definition.
(Added by Stats. 1978, Ch. 1347.)

33205. The commissioner may honor applications from interested persons for interpretive opinions regarding any provision of this division or of any regulation or order issued under this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 711. Effective January 1, 1997. Operative July 1, 1997.)

33206. Notwithstanding that the commissioner permits any licensee, any affiliate of such licensee, or any governmental agency to inspect or make copies of any record relating to such licensee or to any director, officer, employee, affiliate, or agent of such licensee or that the commissioner provides any such record, or a copy thereof, to any such person, any provision of Sections 6254 and 6255 of the Government Code which would, but for such fact, apply to such record, shall continue to apply to such record.
(Amended by Stats. 1996, Ch. 1064, Sec. 712. Effective January 1, 1997. Operative July 1, 1997.)

33207. (a) The commissioner may (1) make such public or private investigations within or outside this state as the commissioner deems necessary to determine whether to approve any application filed with the commissioner under this division or under any regulation or order issued under this division, to determine whether any person has violated or is about to violate any provision of this division or of any regulation or order issued under this division, to aid in the enforcement of any provision of this division or of any regulation or order issued under this division, or to aid in the issuing of regulations or orders under this division, and (2) publish information concerning any violation of any provision of this division or of any regulation or order issued under this division.

(b) For purposes of any investigation, examination, or other proceeding under this division, the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any documents which the commissioner deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to such person an order requiring such person to appear before the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as a contempt.
(Amended by Stats. 1996, Ch. 1064, Sec. 713. Effective January 1, 1997. Operative July 1, 1997.)

33208. The commissioner may refer such evidence as is available concerning any violation of this division or of any regulation or order issued under this division which constitutes a crime to the district attorney of the county in which such violation occurred, who may, with or without such a reference, institute appropriate criminal proceedings.
(Amended by Stats. 1996, Ch. 1064, Sec. 714. Effective January 1, 1997. Operative July 1, 1997.)

33209. (a) The several powers granted to the commissioner under this division are in addition to, and not in limitation of, each other. The fact that the commissioner possesses, or has exercised, a power under any provision of this division shall not preclude him or her from exercising a power under any other provision of this division.

(b) The several powers granted to the commissioner under this division are in addition to, and not in limitation of, his powers under other provisions of law. The fact that the commissioner possesses, or has exercised, a power under any other provision of law shall not preclude him or her from exercising any power under this division; nor shall the fact that the commissioner possesses, or has exercised, a power under any provision of this division preclude him or her from exercising a power under any other provision of law.
(Amended by Stats. 1996, Ch. 1064, Sec. 715. Effective January 1, 1997. Operative July 1, 1997.)

Article 2. Applications and Reports
(Article 2 added by Stats. 1978, Ch. 1347.)

33220. Each application filed with the commissioner under this division or under any regulation or order issued under this division shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.
(Amended by Stats. 1996, Ch. 1064, Sec. 716. Effective January 1, 1997. Operative July 1, 1997.)

33221. Each report filed with the commissioner under this division or under any regulation or order issued under this division shall be in such form, shall (subject to any limitations set forth in this division) contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.
(Amended by Stats. 1996, Ch. 1064, Sec. 717. Effective January 1, 1997. Operative July 1, 1997.)

33222. No person shall make any untrue statement of any material fact in any application or report filed with the commissioner under this division or under any regulation or order issued under this division, or willfully omit to state in any such application or report any material fact which is required to be stated therein.
(Amended by Stats. 1996, Ch. 1064, Sec. 718. Effective January 1, 1997. Operative July 1, 1997.)

33223. In determining whether to approve any application filed under this division or under any regulation or order issued under this division, the commissioner may consider proposals made by the applicant, including proposals to appoint officers or to sell securities; and, if in the opinion of the commissioner it is probable that the applicant will be able to implement any such proposal, the commissioner may make findings on the basis of such proposal. However, whenever the commissioner approves an application on the basis, in whole or in part, of a proposal made by the applicant, the commissioner shall impose upon such approval appropriate conditions requiring that the applicant implement such proposal within such period of time as the commissioner may specify.
(Amended by Stats. 1996, Ch. 1064, Sec. 719. Effective January 1, 1997. Operative July 1, 1997.)

33224. If the commissioner finds, with respect to any application filed under this division or under any regulation or order issued under this division, that not all the information which the commissioner required by regulation or order to be provided in or in connection with such application has been provided, the commissioner may deny the application.
(Amended by Stats. 1996, Ch. 1064, Sec. 720. Effective January 1, 1997. Operative July 1, 1997.)

Article 3. Adequacy of Shareholders' Equity
(Article 3 added by Stats. 1978, Ch. 1347.)

33240. In determining for purposes of this division whether the shareholders' equity of any corporation which is an applicant for a license or which is a licensee is adequate, the commissioner shall consider:

(a) The nature and volume of the business and proposed business of the corporation;

(b) The amount, nature, quality, and liquidity of the assets of the corporation;

(c) The amount and nature of the liabilities (including contingent liabilities) of the corporation;

(d) The history of, and prospects for, the corporation to earn and retain income;

(e) The quality of the operations of the corporation;

(f) The quality of the management of the corporation;

(g) The nature and quality of the controlling person of the corporation; and

(h) Such other factors as are in the opinion of the commissioner relevant.

(Amended by Stats. 1996, Ch. 1064, Sec. 721. Effective January 1, 1997. Operative July 1, 1997.)

Article 4. Service of Process
(Article 4 added by Stats. 1978, Ch. 1347.)

33260. The provisions of this article are in addition to, and not in limitation of, other provisions of law relating to service of process.

(Added by Stats. 1978, Ch. 1347.)

33261. Before any corporation is issued a license, such corporation shall file with the commissioner, in such form as the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and his or her successor from time to time in office to be such corporation's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against such corporation, or any of its successors, which arises under this division or under any regulation or order issued under this division after such appointment has been filed, with the same force and validity as if served personally on such corporation or its successor, as the case may be. Service may be made by leaving a copy of the process at any office of the commissioner, but such service is not effective unless (a) the party making such service, who may be the commissioner, forthwith sends notice of such service and a copy of the process by registered or certified mail to the party served at its last address on file with the commissioner, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(Amended by Stats. 1996, Ch. 1064, Sec. 722. Effective January 1, 1997. Operative July 1, 1997.)

33262. Whenever any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this division or by any regulation or order issued under this division, whether or not such person has filed an appointment under Section 33261, and if personal jurisdiction over such person cannot otherwise be obtained in this state, such conduct shall be considered equivalent to the appointment of the commissioner and the commissioner's successor from time to time in office to be such person's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against such person, or any of such person's successors, executors, or administrators, which grows out of such conduct and which is brought under this division, with the same force and validity as if served personally on such person or on such successor, executor, or administrator, as the case may be. Service may be made by leaving a copy of the process in any office of the commissioner but such service is not effective unless (a) the party making such service, who may be the commissioner, forthwith sends notice of such service and a copy of the process by registered or certified mail to the party served at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(Amended by Stats. 1996, Ch. 1064, Sec. 723. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. Agreements With Superintendent
(Article 5 added by Stats. 1978, Ch. 1347.)

33280. Before any corporation is issued a license, such corporation shall file with the commissioner, in such form as the commissioner may by regulation or order require, an agreement that such corporation will comply with all applicable provisions of this division and of any regulation or order issued under this division.
(Amended by Stats. 1996, Ch. 1064, Sec. 724. Effective January 1, 1997. Operative July 1, 1997.)

Article 6. Fees and Assessments
(Article 6 added by Stats. 1978, Ch. 1347.)

33300. (a) Each fee for filing an application with the commissioner shall be paid at the time when such application is filed with the commissioner.

(b) No fee for filing an application with the commissioner shall be refundable, regardless of whether such application is approved, denied, withdrawn, or abandoned.
(Amended by Stats. 1996, Ch. 1064, Sec. 725. Effective January 1, 1997. Operative July 1, 1997.)

33301. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application for a license shall be two thousand dollars ($2,000).

(b) The fee for issuing a license shall be twenty-five dollars ($25).

(c) Whenever the commissioner examines any licensee or any California agent of a licensee, that licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination plus, in case it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.
(Amended by Stats. 1997, Ch. 375, Sec. 17. Effective January 1, 1998.)

33302. In this section, "licensee" means any licensee, as defined in Section 33055, or any person licensed under Chapter 14A (commencing with Section 1851) of Division 1.

The commissioner shall annually assess and collect from licensees on a pro rata basis an amount which is, in his or her judgment, sufficient to meet his or her expenses in administering the provisions of this division and of Chapter 14A (commencing with Section 1851) of Division 1 and to provide a reasonable reserve for contingencies.

The amount of the annual assessment on any licensee shall not exceed the sum of the products determined by multiplying (a) increments of the aggregate face amount of payment instruments and travelers checks issued by the licensee and sold in this state by the licensee, directly or indirectly through agents, in the calendar year next preceding the date of such assessment, by (b) percentages of the base assessment rate, according to the following table:

Aggregate face amount of payment instruments and traveler's checks sold (in millions)	Percentage of base assessment rate
First $1	100.0
Next $9	25.0
Next $40	12.5
Next $50	6.0
Next $400	3
Next $500	2
Excess over $1,000	1

The base assessment rate shall be fixed from time to time by the commissioner but shall not exceed one dollar ($1) per one thousand dollars ($1,000) face amount of payment instruments and traveler's checks sold.
(Amended by Stats. 1996, Ch. 1064, Sec. 727. Effective January 1, 1997. Operative July 1, 1997.)

Article 7. Administration of Certain Provisions
(Article 7 added by Stats. 1978, Ch. 1347.)

CHAPTER 4. LICENSING

(Chapter 4 added by Stats. 1978, Ch. 1347.)

33400. No person other than a licensee shall engage in the business of selling payment instruments in this state. However, this section shall not be deemed to prohibit a California agent of a licensee from selling in this state payment instruments issued by such licensee.

(Added by Stats. 1978, Ch. 1347.)

33401. No licensee shall sell in this state any payment instruments other than payment instruments issued by it. However, this section shall not be deemed to prohibit:

(a) Any licensee that is an agent of another licensee, from selling payment instruments issued by such other licensee; or

(b) Any licensee that is an agent of a person referred to in subdivision (a) of Section 33100, from selling payment instruments which are issued by such person and which such person is permitted to sell under the paragraph of Section 33100(a) applicable to such person.

(Added by Stats. 1978, Ch. 1347.)

33402. (a) No person other than a corporation may apply for or be issued a license.

(b) No person other than the following may be issued a license:

(1) A corporation organized under the laws of this state; or

(2) A corporation (other than a corporation organized under the laws of this state) which is qualified to transact intrastate business in this state under Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(Added by Stats. 1978, Ch. 1347.)

33403. If the commissioner finds, with respect to an application for a license:

(a) That the applicant has adequate shareholders' equity to engage in the business of selling payment instruments issued by it and that the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of selling payment instruments issued by it;

(b) That the applicant, the directors, officers, and controlling persons of the applicant, and the directors and officers of the controlling persons of the applicant are each of good character and sound financial standing;

(c) That the applicant is competent to engage in the business of selling payment instruments issued by it;

(d) That the applicant's plan for engaging in the business of selling payment instruments issued by it affords reasonable promise of successful operation; and

(e) That it is reasonable to believe that the applicant, if licensed, will engage in the business of selling payment instruments issued by it and will comply with all applicable provisions of this division and of any regulation or order issued under this division:

The commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.

(Amended by Stats. 1996, Ch. 1064, Sec. 729. Effective January 1, 1997. Operative July 1, 1997.)

33404. For purposes of Section 33403, the commissioner may, in the absence of credible evidence to the contrary, presume that an applicant, the directors, officers, and controlling persons of an applicant, and the directors and officers of the controlling persons of an applicant are each of good character and sound financial standing.

(Amended by Stats. 1996, Ch. 1064, Sec. 730. Effective January 1, 1997. Operative July 1, 1997.)

33405. (a) For the purposes of Section 33403, the commissioner may find that an applicant, a director, officer, or controlling person of an applicant, or a director or officer of a controlling person of an applicant is not of good character if such person:

(1) Has been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;

(2) Has consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;

(3) Has consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;

(4) Has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any such application or report any material fact which was required to be stated therein; or

(5) Has willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(b) Subdivision (a) shall not be deemed to be an exclusive list of the grounds upon which the commissioner may find, for purposes of Section 33403, that an applicant, a director, officer, or controlling person of an applicant, or a director or officer of a controlling person of an applicant is not of good character.

(Amended by Stats. 1996, Ch. 1064, Sec. 731. Effective January 1, 1997. Operative July 1, 1997.)

33406. Whenever any application for a license has been approved by the commissioner and all conditions precedent to the issuance of such license have been fulfilled, the commissioner shall issue the license to the applicant.

(Amended by Stats. 1996, Ch. 1064, Sec. 732. Effective January 1, 1997. Operative July 1, 1997.)

33407. No license shall be transferable or assignable.

(Added by Stats. 1978, Ch. 1347.)

33408. No licensee shall represent that it is sponsored, recommended, or approved, or that its abilities or qualifications have in any respect been passed upon, by the commissioner. However, this section shall not be deemed to prohibit a licensee from stating that it is licensed if the effect of such license is not misrepresented.

(Amended by Stats. 1996, Ch. 1064, Sec. 733. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 5. LICENSEES

(Chapter 5 added by Stats. 1978, Ch. 1347.)

Article 1. General Provisions

(Article 1 added by Stats. 1978, Ch. 1347.)

33500. Each licensee shall maintain adequate shareholders' equity and shall otherwise maintain itself in a safe and sound condition.
(Added by Stats. 1978, Ch. 1347.)

33501. Each licensee shall transact its business in a safe and sound manner.
(Added by Stats. 1978, Ch. 1347.)

33502. No licensee shall commit any unsafe or unsound act.
(Added by Stats. 1978, Ch. 1347.)

Article 2. Sale of Payment Instruments

(Article 2 added by Stats. 1978, Ch. 1347.)

33520. (a) No licensee shall engage in the business of selling in this state payment instruments issued by it, except as follows:

(1) Directly, either through officers and employees of such licensee, acting as such at offices of the licensee located in this state or through machines located in this state which are operated by the licensee; and

(2) Indirectly, through California agents of the licensee.

(b) No licensee shall cause or permit any person to engage in the business of selling in this state payment instruments issued by such licensee, except California agents of the licensee.
(Added by Stats. 1978, Ch. 1347.)

33521. (a) No licensee shall, nor shall any licensee cause or permit any of its California agents to, sell in this state any payment instrument issued by such licensee unless such payment instrument shall have first been approved as to form by the commissioner.

(b) If the commissioner finds, with respect to an application by a licensee for approval as to form of a payment instrument to be issued by such licensee, all of the following:

(1) That the payment instrument clearly identifies the licensee as the issuer of the payment instrument.

(2) That the payment instrument is not misleading in any material respect.

(3) That the payment instrument complies with all applicable laws.

The commissioner shall approve the application and shall, after all conditions precedent to the approval of the payment instrument as to form have been fulfilled, approve the payment instrument as to form. If, after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.
(Amended by Stats. 1996, Ch. 1064, Sec. 734. Effective January 1, 1997. Operative July 1, 1997.)

33522. (a) No licensee shall, nor shall any licensee cause or permit any of its California agents to, sell in this state any payment instrument issued by such licensee which is drawn on or is payable through or at a bank, unless such bank shall have first been approved for such purpose by the commissioner.

(b) If the commissioner finds, with respect to an application by a licensee for approval of a bank as a drawee, payable through, or payable at bank for payment instruments to be issued by such licensee, that it will be safe and sound for payment instruments issued by the licensee to be drawn on, payable through, or payable at, such bank, the commissioner shall approve the application and shall, when all conditions precedent to the approval of the bank as a drawee, payable through, or payable at bank have been fulfilled, approve the bank as a drawee, payable through, or payable at bank for payment instruments to be issued by the licensee. If after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.
(Amended by Stats. 1996, Ch. 1064, Sec. 735. Effective January 1, 1997. Operative July 1, 1997.)

33523. No licensee or California agent of a licensee shall, nor shall any licensee cause or permit any of its agents to, sell any payment instrument issued by the licensee without concurrently receiving or, in the case of a sale to an insured bank, an insured savings and loan association, or an insured credit union, by the next business day after the sale, in consideration of such sale any of the following or any combination of the following in an aggregate amount not less than the face amount of such payment instrument:

(a) Cash or its equivalent.

(b) Payment instrument, check, or draft believed to be collectible.

(c) Credit card voucher believed to be collectible.

(Amended by Stats. 1987, Ch. 763, Sec. 2.)

33524. Each licensee shall be liable as a maker in accordance with the California Uniform Commercial Code with respect to each payment instrument issued by it which is sold in this state by it, directly or indirectly through a California agent.

(Added by Stats. 1978, Ch. 1347.)

33525. Each licensee or agent of the licensee shall prominently post on the premises of each office of the licensee or agent of the licensee located in this state, and at machines located in this state that issue payment instruments and are operated by the licensee or agent of the licensee, a notice clearly stating that payment instruments issued by the licensee or agent of the licensee are not insured by the federal government, the state government, or any other public or private entity. This notice shall be printed in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, with respect to the purchase of payment instruments. The information required in this notice shall be clear, legible, and in letters not less than one-half inch in height. The notice shall be posted in a conspicuous location in the unobstructed view of the public within the premises. In those locations operated by an agent of the licensee, the agent, and not the licensee, shall be responsible for the failure to properly post the required notice.

(Added by Stats. 1992, Ch. 869, Sec. 9. Effective January 1, 1993.)

Article 3. Eligible Securities

(Article 3 added by Stats. 1978, Ch. 1347.)

33560. In this article:

(a) "Eligible security" means any United States currency eligible security or foreign currency eligible security.

(b) "Eligible securities rating service" means any securities rating service which the commissioner has by regulation or order declared to be an eligible securities rating service pursuant to Section 33564.

(c) "Eligible rating," when used with respect to any security or class of securities and any eligible securities rating service, means any rating assigned to such security or class of securities by such eligible securities rating service which the commissioner has by regulation or order declared to be an eligible rating pursuant to Section 33565.

(d) "Foreign currency eligible security" means any of the following which is, or is denominated in, a foreign currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 33562:

(1) Any of the following which is of comparable quality to the United States currency eligible securities specified in paragraphs (1) to (7), inclusive, of subdivision (f):

(A) Cash.

(B) Any deposit in an office of a bank located in a foreign country.

(C) Any bond, note, or other obligation.

(2) Any other security or class of securities which the commissioner has by regulation or order declared to be eligible securities pursuant to Section 33563.

(e) "Reported outstanding payment instrument," when used with respect to a licensee, means any of the following:

(1) Any payment instrument issued by the licensee which has been sold directly by the licensee and which has not yet been paid by the licensee.

(2) Any payment instrument issued by the licensee which has been sold by an agent of the licensee, which has been reported by such agent to the licensee as having been sold (such report having been received by the licensee), and which has not yet been paid by the licensee.

(f) "United States currency eligible security" means any of the following which is, or is denominated in, United States currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 33562:

(1) Cash.

(2) Any deposit in an insured bank or an insured savings and loan association.

(3) Any bond, note, or other obligation which is issued or guaranteed by the United States or by any agency of the United States.

(4) Any bond, note, or other obligation which is issued or guaranteed by any state of the United States or by any governmental agency of or within any state of the United States and which is assigned an eligible rating by an eligible securities rating service.

(5) Any bankers acceptance which is eligible for discount by a federal reserve bank.

(6) Any commercial paper which is assigned an eligible rating by an eligible securities rating service.

(7) Any bond, note, or other obligation or preferred stock which is assigned an eligible rating by an eligible securities rating service.

(8) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), that holds itself out to investors as a money market fund, and that operates in accordance with all provisions of the Investment Company Act of 1940 and of the regulations of the Securities and Exchange Commission applicable to money market funds, including Section 270.2a-7 of the regulations of the Securities and Exchange Commission (17 C.F.R. Sec. 270.2a-7).

For purposes of this paragraph and paragraph (9), "investment company," "management company," and "open-end" have the meanings set forth in Sections 3, 4, and 5, respectively, of the Investment Company Act of 1940 (12 U.S.C. Secs. 80a-3, 80a-4, and 80a-5, respectively).

(9) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute United States currency eligible securities under the other provisions of this subdivision.

(10) Any account due to any licensee from any agent of such licensee on account of the sale by such agent of reported outstanding payment instruments issued by the licensee, if the account is current and not past due or otherwise doubtful of collection.

(11) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities pursuant to Section 33563.

(g) "Value" means:

(1) When used with respect to an eligible security owned by a licensee which consists of an account due to such licensee from an agent of the licensee on account of the sale by such agent of reported outstanding payment instruments issued by the licensee, net carrying value as determined in conformity with generally accepted accounting principles. However, in computing the value of the account due to the licensee, any amount due on account of the sale of a payment instrument shall be excluded if the time elapsed between the sale and the date of computation exceeds the average time that elapses between the time of sale and the time of payment of payment instruments issued by the licensee.

(2) When used with respect to any other eligible security owned by a licensee:

(A) In case the practice and policy of such licensee is to hold eligible securities to maturity, net carrying value as determined in conformity with generally accepted accounting principles.

(B) In any other case, market value.

(Amended by Stats. 1996, Ch. 1064, Sec. 736.1. Effective January 1, 1997. Operative July 1, 1997.)

33561. (a) For purposes of this article, a licensee shall be deemed to own an eligible security only if:

(1) The licensee owns the eligible security solely and exclusively in its own right, both of record and beneficially;

(2) The eligible security is not subject to any pledge, lien, or security interest; and

(3) The licensee can freely negotiate, assign, or otherwise transfer the eligible security.

(b) Notwithstanding the provisions of subdivision (a), no licensee shall be deemed not to own an eligible security solely on account of any of the following facts, provided that, but for such fact, such licensee would be deemed to own such eligible security under the provisions of subdivision (a):

(1) The fact that the eligible security is owned of record by a documented nominee of the licensee or by a securities depository which is licensed under, or exempt from licensing under, Division 14 (commencing with Section 30000).

(2) The fact that the licensee has pledged the eligible security with the United States or any state of the United States to secure payment by the licensee of payment instruments issued by the licensee.

(Added by Stats. 1978, Ch. 1347.)

33562. If the commissioner finds that any eligible security or class of eligible securities is not of sufficient liquidity or quality to be eligible securities, the commissioner may by regulation or order declare such security or class of securities to be ineligible.

(Amended by Stats. 1996, Ch. 1064, Sec. 737. Effective January 1, 1997. Operative July 1, 1997.)

33563. If the commissioner finds that any security or class of securities which is not an eligible security is of sufficient liquidity and quality to be an eligible security, the commissioner may by regulation or order declare such security or class of securities to be eligible securities.

(Amended by Stats. 1996, Ch. 1064, Sec. 737.5. Effective January 1, 1997. Operative July 1, 1997.)

33564. If the commissioner finds that a securities rating service:

(a) Has been continuously engaged in the business of rating securities for a period of not less than three years;

(b) Is competent to rate securities and is nationally recognized for rating securities in a competent manner; and

(c) Publishes its ratings of securities on a nationwide basis:

The commissioner may by regulation or order declare such securities rating service to be an eligible securities rating service.

(Amended by Stats. 1996, Ch. 1064, Sec. 738. Effective January 1, 1997. Operative July 1, 1997.)

33565. If the commissioner finds that a rating assigned to a class of securities by an eligible securities rating service indicates that such class of securities is of sufficient quality to be eligible securities, the commissioner may by regulation or order declare such rating to be an eligible rating.

(Amended by Stats. 1996, Ch. 1064, Sec. 739. Effective January 1, 1997. Operative July 1, 1997.)

33567. (a) Each licensee shall at all times own United States currency eligible securities having an aggregate value not less than the aggregate face amount of all reported outstanding United States currency payment instruments issued by it.

(b) Each licensee shall at all times own eligible securities having an aggregate value not less than the aggregate face amount of all reported outstanding foreign currency payment instruments issued by it.

(Added by Stats. 1978, Ch. 1347.)

33568. (a) In computing for purposes of Section 33567 the aggregate value of eligible securities owned by a licensee, all of the following shall be excluded:

(1) The value of any eligible security if and to the extent that the value of such eligible security, when combined with the aggregate value of all other eligible securities owned by such licensee which are issued or guaranteed by the same person or by any affiliate of the same person by whom such eligible security is issued or guaranteed, exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee.

(2) The portion of the aggregate value of all eligible securities of the type described in paragraph (10) of subdivision (f) of Section 33560 that exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee or any higher percentage, up to a maximum of 20 percent, that the commissioner may approve for the licensee.

(b) Subdivision (a) shall not be deemed to require the exclusion of the value of any of the following eligible securities, and each of the following eligible securities shall be exempted from the limitations of subdivision (a):

(1) The following United States currency eligible securities:

(A) Cash.

(B) Any deposit in an insured bank or an insured savings and loan association.

(C) Any bond, note, or other obligation for the payment of which the full faith and credit of the United States are pledged.

(2) Any eligible security which the commissioner, in view of the financial condition of the obligor or issuer and such other factors as may in the opinion of the commissioner be relevant, finds to be of such quality that exclusion of the value of such eligible security pursuant to subdivision (a) is not necessary for the purposes of this division and which the commissioner by regulation or order exempts from the limitations of subdivision (a).

(Amended by Stats. 1996, Ch. 1064, Sec. 741.1. Effective January 1, 1997. Operative July 1, 1997.)

33569. In computing for purposes of subdivision (b) of Section 33567 the aggregate value of foreign currency eligible securities owned by a licensee, there shall be excluded the value of any foreign currency eligible security if and to the extent that the value of such foreign currency eligible security, when combined with the value of all other foreign currency eligible securities owned by such licensee which are, or are denominated in, the same foreign currency as such foreign currency eligible security, exceed the aggregate face amount of all reported outstanding foreign currency payment instruments issued by the licensee which are denominated in such foreign currency.

(Added by Stats. 1978, Ch. 1347.)

33570. In the case of a licensee which is also licensed under Chapter 14A (commencing with Section 1851) of Division 1, the amount of aggregate value of eligible securities which such licensee is required to own under Section 33567 is in addition to the amount of aggregate value of eligible securities which the licensee is required to own under Section 1876.8. Whenever the amount of aggregate value of eligible securities owned by such a licensee is less than the sum of (a) the aggregate value required under Section 33567 and (b) the aggregate value required under Section 1876.8, such licensee shall be deemed to be in violation of Section 33567 and of Section 1876.8.

(Added by Stats. 1978, Ch. 1347.)

Article 4. Fidelity Bonds
(Article 4 added by Stats. 1978, Ch. 1347.)

33600. Each fidelity bond required by the commissioner pursuant to this article shall be issued by one or more corporations admitted to engage in the surety business in this state and is satisfactory to the commissioner.
(Amended by Stats. 1996, Ch. 1064, Sec. 742.1. Effective January 1, 1997. Operative July 1, 1997.)

33601. Whenever the commissioner approves an application for a license, the commissioner may require, as a condition of such approval, if the commissioner finds that such condition is necessary for the protection of the interests of purchasers and holders of payment instruments issued by the applicant, that the applicant obtain and thereafter maintain a fidelity bond covering such persons, having such provisions, and providing coverage in such amounts, as the commissioner may specify.
(Amended by Stats. 1996, Ch. 1064, Sec. 743. Effective January 1, 1997. Operative July 1, 1997.)

33602. Whenever the commissioner finds that such order is necessary for the protection of the interests of purchasers and holders of payment instruments issued by a licensee which is not then required to maintain a fidelity bond, the commissioner may order such licensee to obtain and thereafter maintain a fidelity bond covering such persons, having such provisions, and providing coverage in such amounts, as the commissioner may specify.
(Amended by Stats. 1996, Ch. 1064, Sec. 744. Effective January 1, 1997. Operative July 1, 1997.)

33603. Whenever the commissioner finds that it is appropriate or necessary for the protection of the interests of purchasers and holders of payment instruments issued by a licensee which is then required to maintain a fidelity bond that such licensee obtain and thereafter maintain a fidelity bond which differs from the former fidelity bond with respect to persons covered, amounts of coverage, or other provisions, the commissioner may by order relieve the licensee of the requirement that it maintain the former fidelity bond and require that the licensee obtain and thereafter maintain the latter fidelity bond.
(Amended by Stats. 1996, Ch. 1064, Sec. 745. Effective January 1, 1997. Operative July 1, 1997.)

33604. Whenever the commissioner finds that it is no longer necessary for the protection of the interests of purchasers and holders of payment instruments issued by a licensee which is then required to maintain a fidelity bond that such licensee continue to maintain any fidelity bond, the commissioner may by order relieve the licensee of the requirement that it maintain any fidelity bond.
(Amended by Stats. 1996, Ch. 1064, Sec. 746. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 6. AGENTS OF LICENSEES
(Chapter 6 added by Stats. 1978, Ch. 1347.)

Article 1. General Provisions
(Article 1 added by Stats. 1978, Ch. 1347.)

33700. No licensee shall appoint or continue any person as its agent, nor shall any person become or continue to be a California agent of a licensee, unless such licensee and such person shall have first made a written contract which shall contain the following provisions:

(a) That the licensee appoints the person as its agent with authority to sell on behalf of the licensee payment instruments issued by the licensee.

(b) (1) In case the person is a national banking association, a federal savings association, or a federal credit union, provisions substantially corresponding with the provisions of Article 3 (commencing with Section 33730).

(2) In case the person is any California agent other than an agent of the type described in paragraph (1) of this subdivision, that the person shall comply with all applicable provisions of this division and of any regulation or order issued under this division.

(3) In case the person is any agent other than (i) an agent of the type referred to in paragraph (1) of this subdivision or (ii) a California agent:

(A) If the person is an insured bank, an insured savings association, or an insured credit union, provisions substantially corresponding with the provisions of Article 3 (commencing with Section 33730); or

(B) If the person is neither an insured bank nor an insured savings association nor an insured credit union, provisions substantially corresponding with the provisions of Article 2 (commencing with Section 33720) which are applicable to California agents of a licensee and with the provisions of Article 3 (commencing with Section 33730).

(C) Such other provisions as the commissioner may find to be necessary to carry out the provisions and purposes of this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 747. Effective January 1, 1997. Operative July 1, 1997.)

33701. Each licensee shall be liable as a principal for all acts of each of its California agents in selling and redeeming payment instruments issued by such licensee.

(Added by Stats. 1978, Ch. 1347.)

Article 2. Proceeds From Sales of Payment Instruments
(Article 2 added by Stats. 1978, Ch. 1347.)

33720. The provisions of this article do not apply with respect to any California agent which is an insured bank, an insured savings and loan association, or an insured credit union.

(Added by Stats. 1978, Ch. 1347.)

33721. No provision of this article shall be construed to prevent any licensee from taking any legal action necessary to enforce any claim which such licensee may have.

(Added by Stats. 1978, Ch. 1347.)

33722. All funds (less fees) received by any California agent of a licensee from the sale of any payment instrument issued by such licensee shall, from the time when such funds are received by such agent until the time when the funds or an equivalent amount is remitted by the agent to the licensee in accordance with Article 4 (commencing with Section 33740) of this chapter, constitute trust funds owned by and belonging to the licensee.

(Added by Stats. 1978, Ch. 1347.)

33723. No California agent of a licensee shall, nor shall any licensee cause or permit any of its California agents to, commingle any funds (less fees) received from the sale by such agent of any payment instrument issued by such licensee with any other property owned or controlled by the agent or use such funds for any purpose other than to remit the funds to the licensee in accordance with Article 4 (commencing with Section 33740) of this chapter; provided, however, that any California agent of a licensee may, before remitting funds (less fees) received from the sale by such agent of any payment instrument issued by such licensee in accordance with Article 4 of this chapter and unless the agent and the licensee provide to the contrary in the contract called for in Section 33700, commingle such funds with any other funds owned or controlled by it and use the funds in the ordinary course of its business for the purpose of making change or cashing payment instruments, checks, or drafts believed by it to be collectible.

(Added by Stats. 1978, Ch. 1347.)

33724. If any California agent of a licensee shall commingle any funds (less fees) received from the sale by such agent of any payment instrument issued by such licensee with any other property owned or controlled by the agent, all such property shall be impressed with a trust in favor of the licensee in an amount equal to the aggregate amount of such funds so commingled.
(Added by Stats. 1978, Ch. 1347.)

33725. No funds (less fees) received by any California agent of a licensee from the sale of any payment instrument issued by such licensee, while held by such agent, nor any property impressed with a trust pursuant to Section 33724 shall be subject to attachment, levy of execution, or sequestration by order of any court, except for the benefit of the licensee.
(Added by Stats. 1978, Ch. 1347.)

Article 3. Reporting
(Article 3 added by Stats. 1978, Ch. 1347.)

33730. For purposes of this article, an agent of a licensee may report to such licensee a sale by such agent of a payment instrument issued by the licensee in such of the following ways as the licensee may specify for the agent:

(a) By depositing the report in the mail, addressed to the licensee at such address as the licensee may designate for such purpose, with not less than first-class postage charges prepaid; or

(b) By delivering the report to the licensee at such place as the licensee may designate for such purpose.
(Added by Stats. 1978, Ch. 1347.)

33731. Whenever any provision of this article requires a report by any agent of a licensee of the sale by such agent of a payment instrument issued by such licensee, such report shall contain the following information:

(a) The face amount and serial number of such payment instrument, and the face amount and serial number of any payment instrument issued by the licensee which the agent sold before selling such payment instrument and the sale of which the agent has not yet reported;

(b) In case the agent, at or before the time of any sale reported in the report, voided any payment instrument issued by the licensee and has not yet reported such voiding, the serial number of such payment instrument;

(c) In case the agent (i) is authorized to redeem on behalf of the licensee payment instruments issued by the licensee, (ii) did, at or before the time of any sale reported in the report, redeem any payment instrument issued by the licensee, and (iii) has not yet reported such redemption, the face amount and serial number of such payment instrument; and

(d) Such other information as the licensee (or, in the case of a report made under Section 33733, the commissioner) may provide.
(Amended by Stats. 1996, Ch. 1064, Sec. 748. Effective January 1, 1997. Operative July 1, 1997.)

33732. Each California agent of a licensee which sells any payment instrument issued by such licensee shall, and each licensee shall use its best efforts to require each of its agents which sells any payment instrument issued by such licensee to, report such sale to the licensee, as follows:

(a) (1) In case the aggregate face amount of payment instruments issued by the licensee which are sold by the agent does not in any calendar week exceed one thousand dollars ($1,000), within 10 business days after the sale; and

(2) In any other case, within seven days after the sale; or

(b) Such shorter period after the sale as the licensee may provide.
(Added by Stats. 1978, Ch. 1347.)

33733. Notwithstanding the provisions of Section 33732, whenever a California agent of a licensee knows or has reason to know that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, such agent shall immediately report to the licensee (or to the commissioner, if the commissioner so orders) each sale by the agent of a payment instrument issued by the licensee which the agent has not yet reported under this article.
(Amended by Stats. 1996, Ch. 1064, Sec. 749. Effective January 1, 1997. Operative July 1, 1997.)

Article 4. Remitting
(Article 4 added by Stats. 1978, Ch. 1347.)

33740. The provisions of this article do not apply to any California agent which is an insured bank, an insured savings and loan association, or an insured credit union.
(Added by Stats. 1978, Ch. 1347.)

33741. For purposes of this article, a California agent of a licensee may remit funds to such licensee in such of the following ways as the licensee may specify for such agent:

(a) By depositing such funds in the mail, addressed to the licensee at such address as the licensee may designate for such purpose, with not less than first-class postage charges prepaid;

(b) By delivering such funds to the licensee at such placeas the licensee may designate for such purpose; or

(c) By depositing such funds with an insured bank or an insured savings and loan association to the credit of an account maintained by the licensee in its name with such bank or savings and loan association for the purpose of receiving such funds.
(Added by Stats. 1978, Ch. 1347.)

33741.5. For purposes of subdivision (a) of Section 33742, in case a payment instrument issued by a licensee is sold by a California agent of the licensee to an insured bank, an insured savings and loan association, or an insured credit union, the sale shall be deemed to occur on the next business day after the sale.
(Added by Stats. 1987, Ch. 763, Sec. 3.)

33742. Each California agent of a licensee which sells any payment instrument issued by such licensee shall, and each licensee shall use its best efforts to require each of its California agents which sells any payment instrument issued by such licensee to, remit the face amount of such payment instrument to the licensee, as follows:

(a) (1) In case the aggregate face amount of payment instruments issued by the licensee which are sold by the agent does not in any calendar week exceed one thousand dollars ($1,000), within 10 business days after the sale; and

(2) In any other case:

(A) Within three business days after the sale; or

(B) Within a period longer than three business days after the sale, provided that the agent has previously deposited with, and during such period maintains on deposit with, an office of an insured bank or of an insured savings and loan association located in the United States in an account which is in the sole and exclusive name of the licensee an amount which, for each day by which such period exceeds three business days, is not less than the aggregate face amount of payment instruments issued by the licensee which the agent usually sells per day; or

(b) Within such shorter period after the sale as the licensee may provide.
(Added by Stats. 1978, Ch. 1347.)

33743. Notwithstanding the provisions of Section 33742, whenever a California agent of a licensee knows or has reason to know that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, such agent shall immediately remit to the licensee (or to the commissioner, if the commissioner so orders) the face amount of each payment instrument issued by the licensee and sold by the agent which the agent has not yet remitted under this article.
(Amended by Stats. 1996, Ch. 1064, Sec. 750. Effective January 1, 1997. Operative July 1, 1997.)

Article 5. Registration
(Article 5 added by Stats. 1978, Ch. 1347. Note: All sections in this article (which commenced with Section 33760) have been repealed.)

Article 6. Termination
(Article 6 added by Stats. 1978, Ch. 1347.)

33780. If, after notice and a hearing, the commissioner finds that any California agent of a licensee or any director, officer, employee, or controlling person of such agent:

(a) Has violated any provision of this chapter or of any regulation or order issued under this chapter;

(b) Has engaged or participated in any unsafe or unsound act with respect to the business of selling payment instruments issued by the licensee; or

(c) Has made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein:

The commissioner may issue an order suspending or barring such agent from continuing to be or becoming an agent of any licensee or of any person referred to in Section 33100(a), during the period for which such order is in effect.
(Amended by Stats. 1996, Ch. 1064, Sec. 754. Effective January 1, 1997. Operative July 1, 1997.)

33781. (a) In case a California agent of a licensee is a bank (other than a bank organized under the laws of this state), savings association (other than a savings association organized under the laws of this state), or credit union, the commissioner shall not commence any administrative proceeding under Section 33780 against such agent unless the commissioner shall have first given notice of his or her intent to do so to the governmental agency having primary regulatory authority over the agent and unless, within such time as is in the opinion of the commissioner appropriate in the circumstances of the case (which time shall be specified in such notice), such governmental agency shall have refused or failed to effectuate corrective action by the agent which is satisfactory to the commissioner.

(b) No California agent of a licensee which is a bank, savings association, or credit union shall have standing to raise the provisions of subdivision (a) as a defense in any administrative proceeding under Section 33780 or as a basis for challenging or for refusing to comply with any order issued under Section 33780.
(Amended by Stats. 1996, Ch. 1064, Sec. 755. Effective January 1, 1997. Operative July 1, 1997.)

33782. (a) Any licensee or person referred to in Section 33100(a) having as a California agent any person to whom an order is issued pursuant to Section 33780 shall, when such order becomes effective, immediately terminate such person as a California agent.

(b) No licensee or person referred to in Section 33100 (a) shall appoint as a California agent any person with respect to whom an order issued under Section 33780 is in effect.
(Added by Stats. 1978, Ch. 1347.)

33783. No person with respect to whom an order issued under Section 33780 is in effect shall become or continue to be a California agent of any licensee or of any person referred to in Section 33100(a).
(Added by Stats. 1978, Ch. 1347.)

33784. (a) Any person to whom an order is issued under Section 33780 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when such person becomes a California agent of a licensee, comply with all applicable provisions of this division and of any regulation and order issued under this division.

(b) The right of any person to whom an order is issued under Section 33780 to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.
(Amended by Stats. 1996, Ch. 1064, Sec. 756. Effective January 1, 1997. Operative July 1, 1997.)

33785. No licensee shall appoint or continue as a California agent any person whom the Commissioner of Corporations has, pursuant to Section 12301.4, ordered a check seller licensed under Division 3 (commencing with Section 12000) to terminate as its agent, unless the Commissioner of Corporations shall have first, pursuant to Section 12301.4, vacated such order or given his written consent for any check seller licensed under Division 3 to appoint such person as its agent.
(Added by Stats. 1978, Ch. 1347.)

CHAPTER 7. RECORDS, REPORTS, AND EXAMINATIONS

(Chapter 7 added by Stats. 1978, Ch. 1347.)

33900. (a) Each licensee shall make, keep, and preserve within the United States such books, accounts, and other records in such form, in such manner, and for such time as the commissioner may by regulation or order specify.

(b) Each California agent of a licensee shall, and each licensee shall use its best efforts to require each of its California agents to, make and keep such records regarding sales by such agent of payment instruments issued by such licensee and related matters as may be necessary to show at any time the following:

(1) Face amount, serial number, and date of sale of each payment instrument sold, the sale of which the agent has not yet reported to the licensee under Article 3 (commencing with Section 33730) of Chapter 6;

(2) Serial number and date of voiding of each payment instrument voided, the voiding of which the agent has not yet reported to the licensee under Article 3 (commencing with Section 33730) of Chapter 6;

(3) In case the agent is authorized to redeem payment instruments on behalf of the licensee, face amount, serial number, and date of redemption of each payment instrument redeemed, the redemption of which the agent has not yet reported to the licensee under Article 3 (commencing with Section 33730) of Chapter 6;

(4) Total face amount and serial numbers of payment instruments sold, the sale of which the agent reported in its last report to the licensee under Article 3 (commencing with Section 33730) of Chapter 6;

(5) Total face amount and serial numbers of payment instruments sold, on account of which the agent has not yet remitted funds to the licensee under Article 4 (commencing with Section 33740) of Chapter 6; and

(6) Date on which the agent last remitted funds to the licensee under Article 4 (commencing with Section 33740) of Chapter 6 on account of payment instruments sold, total amount of such funds, and serial numbers of such payment instruments.

(Amended by Stats. 1996, Ch. 1064, Sec. 757. Effective January 1, 1997. Operative July 1, 1997.)

33901. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within such longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of cash flows, for or as of the end of such fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

(b) Report, certificate, or opinion of such independent certified public accountant or independent public accountant, stating that such financial statements were prepared in accordance with generally accepted accounting principles.

(c) Such other information as the commissioner may by regulation or order require.

(Amended by Stats. 1996, Ch. 1064, Sec. 758.1. Effective January 1, 1997. Operative July 1, 1997.)

33902. (a) Each licensee shall file with the commissioner such reports as and when the commissioner may by regulation or order require.

(b) In case the commissioner has initiated proceedings to issue, or has issued, an order imposing conditions upon the surrender of the license of a licensee under Section 34001, an order suspending or revoking the license of a licensee under Section 34109 or 34110, or an order taking possession of the property and business of a licensee under Section 34113, each California agent of such licensee shall, and the licensee shall use its best efforts to require each of its California agents to, file with the commissioner such reports regarding sales by such agent of payment instruments issued by the licensee and related matters, as and when the commissioner may by regulation or order require.

(c) (1) Whenever the commissioner suspects that a licensee has violated, or is about to violate, any provision of this division or of any regulation or order issued under this division, the commissioner may by order require any director, officer, or employee of such licensee to file with the commissioner at the time specified in such order a report regarding such suspected violation and any related matters.

(2) Each director, officer, and employee of a licensee to whom an order is issued under paragraph (1) of this subdivision shall, and such licensee shall use its best efforts to require each such director, officer, and employee to, comply with such order.

(Amended by Stats. 1996, Ch. 1064, Sec. 759. Effective January 1, 1997. Operative July 1, 1997.)

33903. (a) The commissioner may at any time examine any licensee and any office of the licensee within or outside of this state.

(b) In case the commissioner has initiated proceedings to issue, or has issued, an order imposing conditions upon the surrender of the license of a licensee under Section 34001, an order suspending or revoking the license of a licensee under Section 34109 or 34110, or an order taking possession of the property and business of a licensee under Section 34113, the commissioner may examine any California agent of the licensee with respect to sales by the agent of payment instruments issued by the licensee and related matters.

(c) Any licensee or California agent of a licensee being examined by the commissioner shall, and each licensee shall use its best efforts to require each of its California agents being examined by the commissioner to, exhibit to the commissioner and permit the commissioner to copy, on request, any or all of the books, accounts, and other records of the licensee or the California agent, as the case may be, that may relate to the examination, and otherwise facilitate the examination so far as it may be in its power to do so.

(d) The commissioner may, if in the commissioner's opinion it is necessary in the examination of any licensee or of any California agent of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist the commissioner, and the licensee shall pay, within 10 days after receipt of a statement from the commissioner, the fees of that person.

(Amended by Stats. 2003, Ch. 404, Sec. 21. Effective January 1, 2004.)

CHAPTER 8. VOLUNTARY SURRENDER OF LICENSE

(Chapter 8 added by Stats. 1978, Ch. 1347.)

34000. Any licensee may surrender its license by filing with the commissioner such license and a report.
(Amended by Stats. 1996, Ch. 1064, Sec. 761. Effective January 1, 1997. Operative July 1, 1997.)

34001. (a) Except as otherwise provided in subdivision (b), a voluntary surrender of a license shall be effective on the 30th day after such license and the report called for in Section 34000 are filed with the commissioner or on such earlier date as the commissioner may by order specify.

(b) If a proceeding to revoke or suspend a license is pending at the time when such license and the report called for in Section 34000 are filed with the commissioner or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after such license and the report called for in Section 34000 are filed with the commissioner, the voluntary surrender of such license shall become effective at such time and upon such conditions as the commissioner may by order specify.
(Amended by Stats. 1996, Ch. 1064, Sec. 762. Effective January 1, 1997. Operative July 1, 1997.)

CHAPTER 9. ENFORCEMENT

(Chapter 9 added by Stats. 1978, Ch. 1347.)

34100. In this chapter, unless the context otherwise requires:

(a) "Office with a licensee" means the position of director, officer, employee, or agent of such licensee.

(b) "Subject person", when used with respect to a licensee, means:

(1) Any director, officer, employee, or agent of such licensee; or

(2) Any other person who participates in the conduct of the business of such licensee.
(Added by Stats. 1978, Ch. 1347.)

34100.5. (a) No order issued by the commissioner under Section 34103, 34105, or 34106 shall become effective earlier than the 10th business day after the issuance of such order.

(b) No order issued by the commissioner under subdivision (a) of Section 34104 or subdivision (a) or (b) of Section 34107 shall become effective earlier than the fifth business day after the issuance of such order.
(Amended by Stats. 1996, Ch. 1064, Sec. 763. Effective January 1, 1997. Operative July 1, 1997.)

34101. (a) Whenever it appears to the commissioner that any person has violated, or that there is reasonable cause to believe that any person is about to violate, any provision of this division or of any regulation or order issued under this division, the commissioner may bring an action in the name of the people of this state in the superior court to enjoin the violation or to enforce compliance with this division or with any regulation or order issued under this division. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandate shall be granted, and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(b) Any receiver or conservator appointed by the court pursuant to subdivision (a) may, with the approval of the court, exercise all of the powers of the defendant's directors, officers, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner or the receiver or conservator by reason of the exercise of powers or the performance of duties pursuant to the order, or with the approval of, the court.

(c) The commissioner may include in any action authorized under subdivision (a) a claim for ancillary relief, including a claim for restitution or damages on behalf of the persons injured by the act constituting the subject matter of the action, and the court shall have jurisdiction to award such additional relief.
(Amended by Stats. 1996, Ch. 1064, Sec. 764. Effective January 1, 1997. Operative July 1, 1997.)

34102. (a) If the commissioner finds that any person has violated, or that there is reasonable cause to believe that any person is about to violate, Section 33400, the commissioner may order such person to cease and desist from such violation unless and until such person is issued a license.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such person consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any person to whom an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner for hearing on the order pursuant to paragraph (1) of this subdivision.

(Amended by Stats. 1996, Ch. 1064, Sec. 765. Effective January 1, 1997. Operative July 1, 1997.)

34103. If, after notice and a hearing, the commissioner finds:

(a) That any licensee or any California agent of a licensee has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that any licensee or any California agent of a licensee is about to engage or participate, in any unsafe or unsound act with respect to the business of such licensee; or

(b) That any licensee or any California agent of a licensee has violated, is violating, or that there is reasonable cause to believe that any licensee or any California agent of a licensee is about to violate, any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law.

The commissioner may order such licensee or such California agent to cease and desist from such action or violation. The order may require the licensee or such California agent to take affirmative action to correct any condition resulting from the action or violation.

(Amended by Stats. 1996, Ch. 1064, Sec. 766. Effective January 1, 1997. Operative July 1, 1997.)

34104. (a) If the commissioner finds that any of the factors set forth in Section 34103 is true with respect to any licensee or any California agent of a licensee and that such action or violation is likely:

(1) To cause the insolvency of the licensee;

(2) To cause substantial dissipation of the assets or earnings of the licensee;

(3) To seriously weaken the condition of the licensee; or

(4) To otherwise seriously prejudice the interests of purchasers or holders of payment instruments issued by the licensee:

The commissioner may order such licensee or such California agent to cease and desist from such action or violation. Such order may require the licensee or the California agent to take affirmative action to correct any condition resulting from the action or violation.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee or California agent of a licensee to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee or California agent consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee or California agent of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such licensee or California agent of a licensee to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

(Amended by Stats. 1996, Ch. 1064, Sec. 767. Effective January 1, 1997. Operative July 1, 1997.)

34105. If, after notice and a hearing, the commissioner finds:

(a) (1) That any subject person of a licensee has engaged or participated in any unsafe or unsound act with respect to the business of such licensee;

(2) That any subject person of a licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law relating to the business of such licensee; or

(3) That any subject person of a licensee has engaged or participated in any act which constitutes a breach of his fiduciary duty as a subject person; and

(b) (1) That such act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee;

(2) That such action, violation, or breach of fiduciary duty has seriously prejudiced, or is likely to seriously prejudice, the interests of purchasers or holders of payment instruments issued by the licensee; or

(3) That the subject person has received financial gain by reason of such act, violation, or breach of fiduciary duty; and

(c) That such act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee:

The commissioner may order the licensee to suspend or remove the subject person from his or her office, if any, with the licensee and to preclude such person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 768. Effective January 1, 1997. Operative July 1, 1997.)

34106. If, after notice and a hearing, the commissioner finds that any subject person of a licensee has, by engaging or participating in any act with respect to any financial or other business institution which resulted in financial loss or other damage, demonstrated:

(a) (1) Dishonesty;

(2) Gross negligence with respect to the operations of such institution; or

(3) Willful disregard for the safety and soundness of such institution; and

(b) Unfitness to continue as a subject person of such licensee or participate in the conduct of the business of such licensee:

The commissioner may order the licensee to remove the subject person from his or her office, if any, with the licensee and to preclude him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 769. Effective January 1, 1997. Operative July 1, 1997.)

34107. (a) If the commissioner finds:

(1) That any subject person of a licensee has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That such subject person's continuing to serve as a subject person of the licensee may pose a threat to the interests of purchasers or holders of payment instruments issued by the licensee or may threaten to impair public confidence in the licensee:

The commissioner may order such licensee to suspend such subject person from his or her office, if any, with the licensee and to preclude such person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner. In case the criminal proceedings are terminated other than by a judgment of conviction, such order shall be deemed rescinded.

(b) If the commissioner finds:

(1) That any subject person or former subject person of a licensee with respect to whom an order was issued pursuant to subdivision (a) or any other subject person of a licensee has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That such person's continuing to serve or resumption of service as a subject person of the licensee may pose a threat to the interests of purchasers or holders of payment instruments issued by the licensee or may threaten to impair confidence in the licensee:

The commissioner may order such licensee to suspend or remove such subject person or former subject person from his or her office, if any, with the licensee and to preclude him from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(c) (1) Within 30 days after an order is issued pursuant to subdivision (a) or (b), any licensee to which such order is issued or any subject person or former subject person of a licensee with respect to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee, subject person, or former subject person consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee to which an order is issued under subdivision (a) or (b) or of any subject person or former subject person of a licensee with respect to whom such an order is issued to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

(d) The fact that any subject person of a licensee charged with a crime involving dishonesty or breach of trust is not finally convicted of such crime shall not preclude the commissioner from issuing an order regarding such licensee or such subject person pursuant to any other section of this division.

(Amended by Stats. 1996, Ch. 1064, Sec. 770. Effective January 1, 1997. Operative July 1, 1997.)

34108. (a) Any licensee to which an order is issued under Section 34105, 34106, or 34107 or any subject person or former subject person of a licensee with respect to whom such an order is issued may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such subject person or former subject person will, if and when he or she becomes a subject person of a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any licensee to which an order is issued under Section 34105, 34106, or 34107 or any subject person or former subject person of a licensee with respect to whom such an order is issued to petition for judicial review of such order shall not be affected by the failure of such licensee, subject person, or former subject person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

(Amended by Stats. 1996, Ch. 1064, Sec. 771. Effective January 1, 1997. Operative July 1, 1997.)

34109. If, after notice and a hearing, the commissioner finds:

(a) That any licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law;

(b) That any licensee is conducting its business in an unsafe or unsound manner;

(c) That any licensee is in such condition that it is unsafe or unsound for it to transact the business of selling in this state payment instruments issued by it;

(d) That any licensee has ceased to transact the business of selling in this state payment instruments issued by it;

(e) That any licensee is insolvent;

(f) That any licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That any licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against any licensee and such licensee has by any affirmative act approved of or consented to such action or such relief has been granted; or

(h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying such application:

The commissioner may issue an order suspending or revoking the license of such licensee.

(Amended by Stats. 1996, Ch. 1064, Sec. 772. Effective January 1, 1997. Operative July 1, 1997.)

34110. (a) If the commissioner finds that any of the factors set forth in Section 34109 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of payment instruments issued by such licensee or for the protection of the public interest that he or she immediately suspend or revoke the license of such licensee, the commissioner may issue an order suspending or revoking the license of such licensee.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee to which an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such licensee to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

(Amended by Stats. 1996, Ch. 1064, Sec. 773. Effective January 1, 1997. Operative July 1, 1997.)

34111. Any person whose license is suspended or revoked shall immediately deliver such license to the commissioner.

(Amended by Stats. 1996, Ch. 1064, Sec. 774. Effective January 1, 1997. Operative July 1, 1997.)

34112. (a) Any person to whom an order is issued under Section 34109 or 34110 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless he or she finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when it becomes a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any person to whom an order is issued under Section 34109 or 34110 to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

(Amended by Stats. 1996, Ch. 1064, Sec. 775. Effective January 1, 1997. Operative July 1, 1997.)

34113. (a) If the commissioner finds that any of the factors set forth in Section 34109 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of payment instruments issued by the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may by order forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as the commissioner may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may, within 10 days, apply to the superior court in any county of this state in which an office of the licensee is located (or, in case the licensee has no office in this state, in the County of Sacramento, in the City and County of San Francisco, or in the County of Los Angeles) to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just. The judgment of the superior court may be appealed by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court to the court of appeal.

(c) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100), Chapter 17, Division 1, and the provisions of the article (except Sections 3100, 3101, and 3102) apply as if the licensee were a bank.

(Amended by Stats. 1998, Ch. 931, Sec. 152. Effective September 28, 1998.)

34114. (a) No California agent of a licensee who has actual notice that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, shall sell any payment instrument issued by the licensee.

(b) If any California agent of a licensee, after first having actual notice that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, sells any payment instrument issued by the licensee, such agent shall be jointly and severally liable with the licensee for the payment of such payment instrument.

(Amended by Stats. 1996, Ch. 1064, Sec. 777. Effective January 1, 1997. Operative July 1, 1997.)

34115. In case any person engages in the business of selling in this state any payment instruments that are issued by a second person which is neither (i) a licensee which is licensed to sell such payment instruments and for which the first person is an agent nor (ii) a person which is referred to in subdivision (a) of Section 33100, which is permitted to sell such payment instruments under the paragraph of subdivision (a) of Section 33100 applicable to it, and for which the first person is an agent, the first person shall be jointly and severally liable as a comaker with the second person for the payment of each such payment instrument.

(Added by Stats. 1978, Ch. 1347.)

CHAPTER 10. CRIMINAL PENALTIES
(Chapter 10 added by Stats. 1978, Ch. 1347.)

34200. Nothing in this division limits the power of the state to punish any person for any act which constitutes a crime under any statute.
(Added by Stats. 1978, Ch. 1347.)

34201. Any person who willfully violates Section 33222 or 33400 shall upon conviction be fined not more than ten thousand dollars ($10,000) or be imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment.
(Added by Stats. 1978, Ch. 1347.)

CHAPTER 11. CIVIL PENALTIES
(Chapter 11 added by Stats. 1978, Ch. 1347.)

34300. If, after notice and a hearing, the commissioner finds that any person has violated any provision of this division or of any regulation or order issued under this division, the commissioner may order such person to pay to the commissioner a civil penalty in such amount as the commissioner may specify; provided, however, that the amount of such civil penalty shall not exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day for which such violation continues.
(Amended by Stats. 1996, Ch. 1064, Sec. 778. Effective January 1, 1997. Operative July 1, 1997.)

34301. The provisions of Section 34300 are additional to, and not alternative to, other provisions of this division which authorize the commissioner to issue orders or to take other action on account of a violation of any provision of this division or of any regulation or order issued under this division. However, no person who has been finally convicted under Chapter 10 (commencing with Section 34200) of this division on account of any violation of Section 33222 or 33400 shall be liable to pay a civil penalty under Section 34300 on account of such violation, nor shall any person who has paid a civil penalty under Section 34300 on account of any violation of Section 33222 or 33400 be liable to criminal prosecution under Chapter 10 on account of such violation.
(Amended by Stats. 1996, Ch. 1064, Sec. 779. Effective January 1, 1997. Operative July 1, 1997.)

DIVISION 19. RELEASE OF DEMAND DEPOSIT FUNDS

(Division 19 added by Stats. 1985, Ch. 1057, Sec. 1.)

40500. It is the intent of the Legislature that a financial institution shall not transfer funds from a depositor's account unless authorization has been granted by that depositor. This division is declaratory of existing case law and is intended to codify the law for the convenience of the public, regulatory authorities, and financial institutions.
(Added by Stats. 1985, Ch. 1057, Sec. 1.)

40501. In accordance with the implied contract existing between a financial institution and its depositor, no bank, savings association, credit union, or other financial institution operating in this state which maintains and services demand deposit accounts, including NOW accounts, may release any funds from those accounts to any person or entity who is not the account holder, unless the funds are released pursuant to the depositor's authorization or in accordance with the law. This section does not apply to any setoff for a debt claimed to be owed to a bank, savings association, credit union, or other financial institution by a customer.
(Added by Stats. 1985, Ch. 1057, Sec. 1.)

CHAPTER 4. BANK DEPOSITS

(Chapter 4 added by Stats. 1945, Ch. 120.)

Article 1. General

(Article 1 added by Stats. 1945, Ch. 120.)

16500. As used in this chapter, "eligible bank" means a state or national bank located in this state, selected by the Treasurer for the safekeeping of money belonging to or in the custody of the state, that has received an overall rating of not less than "satisfactory" in its most recent evaluation by the appropriate federal financial supervisory agency of the bank's record of meeting the credit needs of the state's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code. An eligible bank is eligible to receive deposits only to the extent that it furnishes the security required by this chapter.
(Amended by Stats. 2000, Ch. 1036, Sec. 1. Effective January 1, 2001.)

16500.5. (a) The definitions in Section 1700 of, and Chapter 1 (commencing with Section 99) of Division 1 of, the Financial Code apply to this section.

(b) In this chapter, for purposes of being an eligible bank for the safekeeping of moneys belonging to, or in the custody of, the state, the phrases "state or national bank located in this state," "state or national bank," "state or national bank in this state," and "state or national banks in the state" shall include, without limitation, any of the following:

(1) Any California branch office of a foreign (other state) state bank that the bank is authorized to maintain under the law of its domicile and federal law.

(2) Any California branch office of a foreign (other state) national bank that the bank is authorized to maintain under federal law.

(3) Any California branch office of a foreign (other nation) bank that the bank is licensed to maintain under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 of the Financial Code.

(4) Any California federal branch of a foreign (other nation) bank that the bank is authorized to maintain under federal law.
(Amended by Stats. 1995, Ch. 480, Sec. 200. Effective October 2, 1995.)

16501. Under the conditions as the Treasurer with the approval of the Director of Finance may establish, the Treasurer may deposit money in banks outside this state when the banks are fiscal agents of the state or custodians of securities owned by the state, if the banks have an overall rating of not less than "satisfactory" in their most recent evaluation by the appropriate federal financial supervisory agency of the banks' record of meeting the credit needs of the communities in which the bank is located, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code.
(Amended by Stats. 2000, Ch. 1036, Sec. 2. Effective January 1, 2001.)

16502. All other money in the State Treasury or under the control of the Treasurer belonging to or in the custody of the State, shall, so far as possible, be deposited by the Treasurer to the credit of the State in eligible banks. Any sum in the State Treasury so deposited is deemed to be in the State Treasury. Any other amount so deposited is deemed to be held in trust by the Treasurer.
(Amended by Stats. 1957, Ch. 1542.)

16503. Subject to the limitations of Article 4.5 (commencing with Section 16480) of Chapter 3, the Treasurer shall determine what amounts of money shall be deposited:

(a) As time deposits, and the rates of interest to be received.

(b) As demand deposits, and the rates of interest to be received, if any.

(Amended by Stats. 1983, Ch. 142, Sec. 48.)

16504. Subject to the applicable contract, the Treasurer may call in money from time deposits and place it in demand deposits, when necessary to meet current requirements; and time money in his possession for which there is no demand may be placed as demand deposits.

(Amended by Stats. 1961, Ch. 69.)

16505. Deposits in any bank shall not exceed the total of its net worth.

(Amended by Stats. 1992, Ch. 509, Sec. 6. Effective January 1, 1993.)

16506. All money belonging to or in the custody of the state under the control of any state officer or employee, other than the Treasurer, except petty cash funds authorized by the Department of Finance, shall be deposited in such state or national banks in this state and under such conditions as the Director of Finance prescribes. Banks receiving such deposits shall be required to deposit with the Treasurer the same security as is required by this chapter for deposits made by the Treasurer.

Banks receiving deposits of money from a county advanced or apportioned to it pursuant to Section 4481 of the Food and Agricultural Code shall be required to secure such deposits in accordance with Article 2 (commencing with Section 53630) of Chapter 4, Part 1, Division 2 of Title 5.

(Amended by Stats. 1974, Ch. 1221.)

16507. A State officer is not liable on his official bond for losses caused by the failure of a bank in which is made a deposit of money belonging to an inmate of a State institution, if the officer was required or permitted by law to act as a trustee or fiduciary with respect to the money and if he made the deposit in good faith and in accordance with law.

(Added by Stats. 1945, Ch. 120.)

16508. The Treasurer is not responsible for any money deposited in a bank pursuant to this chapter, and while it remains so deposited.

(Amended by Stats. 1957, Ch. 1542.)

16509. The Treasurer is responsible for the safekeeping, management and disbursement of the certificates of deposit received and the securities deposited with him, the interest received on deposits, and the proceeds of any sale under this chapter. The State is responsible for the custody and safe return of any securities so deposited.

(Added by Stats. 1945, Ch. 120.)

16510. Any State officer or employee who deposits any money belonging to or in the custody of the State in any manner other than as prescribed in this chapter is subject to forfeiture of his office or employment.

(Added by Stats. 1945, Ch. 120.)

Article 2. Security for Deposits

(Article 2 added by Stats. 1945, Ch. 120.)

16520. Security shall not be required for that portion of any deposit that is insured under any law of the United States.

(Added by Stats. 1945, Ch. 120.)

16521. To be eligible to receive and retain demand or time deposits, a bank shall deposit with the Treasurer as security for such deposits, securities specified in Section 16522, and approved by the Treasurer, in an amount in value at least 10 percent in excess of the amount deposited with the bank. Uncollected funds shall be excluded from the amount deposited in a demand account with a bank when determining the security requirements for such deposits.

(Amended by Stats. 1978, Ch. 1016.)

16522. The following securities may be received as security for demand and time deposits:

(a) Bonds, notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as those loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any county, city, town, metropolitan water district, municipal utility district, municipal water district, bridge and highway district, flood control district, school district, water district, water conservation district or irrigation district within this state, and, in addition, revenue or tax anticipation notes, and revenue bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by this state, or such local agency or district, or by a department, board, agency, or authority thereof.

(d) Registered warrants of this state.

(e) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, consolidated obligations of the Federal Home Loan Banks established under the Federal Home Loan Bank Act, bonds, debentures and other obligations of the Federal National Mortgage Association and of the Government National Mortgage Association established under the National Housing Act as amended, in the bonds of any federal home loan bank established under said act, bonds, debentures, and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and in bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended.

(f) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 41700) of Part 3 of Division 31 of the Health and Safety Code.

(g) Promissory notes secured by first mortgages and first trust deeds upon residential real property located in California, provided that:

(1) Notwithstanding Section 16521, the promissory notes shall at all times be in an amount in value at least 50 percent in excess of the amount deposited with the bank;

(2) The Treasurer issues regulations, establishes procedures for determining the value of the promissory notes and develops standards necessary to protect the security of the deposits so collateralized;

(3) The depository may exercise, enforce, or waive any right or power granted to it by promissory note, mortgage, or deed of trust; and

(4) The following may not be used as security for deposits:

(i) Any promissory note on which any payment is more than 90 days past due,

(ii) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust, or

(iii) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(h) Bonds issued by the State of Israel.

(i) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the Government Development Bank of Puerto Rico.

(j) Any municipal securities, as defined by Section 3(a)(29) of the Securities Exchange Act of June 6, 1934, (15 U.S.C. 78, as amended), which are issued by this state or any local agency thereof.

(k) Letters of credit issued by the Federal Home Loan Bank of San Francisco, which shall be in the form and shall contain provisions as the Treasurer may prescribe, and shall include the following terms:

(1) The Treasurer shall be the beneficiary of the letter of credit.

(2) The letter of credit shall be clean and irrevocable, and shall provide that the Treasurer may draw upon it up to the total amount in the event of the failure of the bank or if the bank refuses to permit the withdrawal of funds by the Treasurer or any other authorized state officer or employee.

(Amended by Stats. 2000, Ch. 913, Sec. 4. Effective January 1, 2001.)

16523. If it appears to him necessary for the security of the State, the Treasurer shall require as a condition of eligibility that a bank furnish an indemnity bond approved by the Treasurer, conditioned against loss by any depreciation in value that may occur in securities deposited as security for the safekeeping and prompt payment of deposits. The sureties shall not be stockholders of the principal.

(Amended by Stats. 1957, Ch. 1542.)

16525. In lieu of deposits of securities, any otherwise eligible bank may deposit with the Treasurer bonds of admitted surety insurers as security for demand and time deposits.

(Amended by Stats. 1977, Ch. 582.)

16526. An admitted surety insurer is not eligible as surety for demand or time deposits in any one bank in amounts in excess of 10 percent of the capital and surplus of the surety as shown in the preceding report issued by the United States Treasury Department.
(Amended by Stats. 1977, Ch. 582.)

16527. On demand of the Treasurer, the Insurance Commissioner shall issue a certificate showing the qualifications of any admitted surety insurer as surety for demand or time deposits.
(Amended by Stats. 1977, Ch. 582.)

16528. The bond of an admitted surety insurer shall not be accepted as security for demand or time deposits unless it has been certified by the Insurance Commissioner as meeting the requirements of this chapter and unless it also holds a certificate of authority from the United States Treasury Department under which it is eligible as surety on federal bonds.
(Amended by Stats. 1977, Ch. 582.)

16529. The form of bonds required under this chapter shall be prescribed by the Attorney General.
(Added by Stats. 1945, Ch. 120.)

16530. A surety upon any bond to secure demand or time deposits may terminate the bond as to future liability by giving 10 days' written notice of termination to the Treasurer. Such notice of termination shall not affect any liability accruing prior to the expiration of the 10-day period.

Within 10 days after receipt of such a notice of termination, the Treasurer shall require other acceptable security or withdraw the deposits secured by the bond to be terminated.
(Amended by Stats. 1977, Ch. 582.)

16531. That portion of any security for deposit that is in excess of the requirements of this article may be withdrawn or released on the written consent of the Treasurer.
(Amended by Stats. 1957, Ch. 1542.)

16531.1. (a) Notwithstanding any other provision of law and without regard to fiscal year, if the annual State Budget is not enacted by June 30 of any fiscal year preceding the fiscal year to which the budget would apply or there is a deficiency in the Medi-Cal budget during any fiscal year, both of the following shall occur:

(1) The Controller shall annually transfer from the General Fund, in the form of one or more loans, an amount not to exceed a cumulative total of one billion dollars ($1,000,000,000) in any fiscal year, to the Medical Providers Interim Payment Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the Medical Providers Interim Payment Fund is hereby continuously appropriated for the purpose of making payments to Medi-Cal providers, providers of services under Chapter 6 (commencing with Section 120950) of Part 4 of Division 105 of the Health and Safety Code, and providers of services under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, for services provided on or after July 1 of the fiscal year for which no budget has been enacted and before September 1 of that year or for the purpose of making payments to Medi-Cal providers, providers of services under Chapter 6 (commencing with Section 120950) of Part 4 of Division 105 of the Health and Safety Code, and providers of services under Division 4.5 (commencing with Section 4500), during the period in which the Medi-Cal Program has a deficiency. Payments shall be made pursuant to this subdivision if both of the following conditions have been met:

(A) An invoice has been submitted for the services.

(B) Payment for the services is due and payable and the State Department of Health Services determines that payment would be valid.

(2) For any fiscal year to which this subdivision applies, there is hereby appropriated the sum of one billion dollars ($1,000,000,000) from the Federal Trust Fund to the Medical Providers Interim Payment Fund.

(b) Upon the enactment of the annual Budget Act or a deficiency bill in any fiscal year to which subdivision (a) applies, the Controller shall transfer all expenditures and unexpended funds in the Medical Providers Interim Payment Fund to the appropriate Budget Act item.

(c) The amount of any loan made pursuant to subdivision (a) and for which moneys were expended from the Medical Providers Interim Payment Fund shall be repaid by debiting the appropriate Budget Act item in accordance with the procedure prescribed by the Department of Finance.
(Amended by Stats. 2003, Ch. 230, Sec. 3. Effective August 11, 2003.)

16532. If any bank fails to pay all or any part of such deposits on demand of the Treasurer, pursuant to the terms and conditions of the contract relating to the deposit that is to be withdrawn in whole or in part, the Treasurer shall forthwith recover upon or convert the security therefor into money and disburse it according to law.
(Added by Stats. 1945, Ch. 120.)

16533. If at any time the security deposited with the Treasurer is not deemed satisfactory by the Treasurer, he may require such additional security as is satisfactory to him.
(Amended by Stats. 1957, Ch. 1542.)

Article 3. Custody of Securities
(Article 3 added by Stats. 1945, Ch. 120.)

16550. As used in this article, "qualified trust company" means the trust department of any State or National bank in this State or a trust company authorized to act as such in this State.
(Added by Stats. 1945, Ch. 120.)

16551. With the consent of the bank owning securities deposited or to be deposited with him as security, the Treasurer may:

(a) Authorize any qualified trust company, other than the depositor bank, or the Federal Reserve Bank of San Francisco or any branch thereof or any state or national bank located in any city designated as a reserve or central reserve city by the Board of Governors of the Federal Reserve System to receive as his agent deposits of any securities approved under this chapter.

(b) Place and maintain for safekeeping as a trust deposit with any qualified trust company, other than the depositor bank, or with the Federal Reserve Bank of San Francisco or any branch thereof any securities that have been received by him under this chapter.

(c) Whenever any qualified trust company accepts such securities under paragraph (a) or (b) such trust company, with the prior approval of the Treasurer, may keep such securities for safekeeping with any state or national bank located in a city designated as a reserve or central reserve city by the Board of Governors of the Federal Reserve System.
(Amended by Stats. 1961, Ch. 69.)

16552. The Treasurer shall take from the qualified trust company or from the Federal Reserve Bank of San Francisco or a branch thereof a receipt for any securities received by it under this article. Neither the Treasurer nor the State is responsible for the custody and safe return of such securities until they are withdrawn from the qualified trust company or from the Federal Reserve Bank of San Francisco or a branch thereof by the Treasurer.
(Amended by Stats. 1949, Ch. 142.)

16553. Any qualified trust company or the Federal Reserve Bank of San Francisco or any branch thereof to which securities are delivered, either as agent or depositary for the Treasury, shall make such disposition of the securities as the Treasurer directs and is responsible only for strict compliance with written instructions given to it by the Treasurer. All such securities are at all times subject to the order of the Treasurer.
(Amended by Stats. 1961, Ch. 69.)

16554. The charges of any qualified trust company or of the Federal Reserve Bank of San Francisco or a branch thereof for the handling and safekeeping of such securities are not a charge against the Treasurer but shall be paid by the owner.
(Amended by Stats. 1949, Ch. 142.)

Article 4. Contracts
(Article 4 added by Stats. 1945, Ch. 120.)

16560. The Treasurer shall enter into such contracts with such depositaries as in his judgment will be to the public advantage so to do. The contracts shall fix the duration of deposits and the rates of interest to be received, if any, the interest payment dates, and provide conditions for their withdrawal, repayment, and security.
(Amended by Stats. 1977, Ch. 622.)

16561. In order to obtain as high rates of interest as possible, the contracts may contain any conditions necessary to conform with Section 19 of the Federal Reserve Act, as amended, and with regulations established pursuant thereto by the Board of Governors of the Federal Reserve System, and demand deposits shall be subject to withdrawal at any time upon demand of the Treasurer.
(Amended by Stats. 1977, Ch. 622.)

16562. The contracts covering demand state deposits shall provide that each depositary shall render daily to the Treasurer a statement of the account showing the date of deposits, payments or withdrawals therefrom made during the day and the balance or amount of money of the state held by it at the close of the day. In the event that such demand

deposits are interest bearing, the contract also shall provide that on the interest payment dates the depositary shall also furnish a statement showing the amount of interest due thereon together with the payment of the interest due.

The contracts covering time or interest-bearing term deposits shall provide that the interest to be paid by the depositary bank shall be paid upon the expiration of the certificate or certificates of deposit issued as a part of the contract. The contract may also provide for periodic interest payments during the term of the deposit. The contract governing time deposits shall also provide that the amounts of interest shall be reported by the depositary bank at the time of payment of the interest, by statement showing the balances or amounts of money of the state held by it during the period and the amount of accrued interest thereon.

(Amended by Stats. 1977, Ch. 622.)

16563. The contracts shall be executed by the depositaries in triplicate. The Treasurer shall file one copy of each contract with the Controller.

(Added by Stats. 1945, Ch. 120.)

16564. At the time of depositing State money in any bank, designated as a depositary, the Treasurer shall take and preserve a receipt, certificate of deposit, or such other evidence of the deposit as the Treasurer may require, stating the amount deposited and referring to the contract made between the depositary bank and the Treasurer.

(Added by Stats. 1945, Ch. 120.)

16565. On the order of the Treasurer, depositary banks shall handle, collect and pay all checks, drafts and other exchange in the same manner and under the same conditions as checks, drafts, and other exchange of other depositors are handled, collected and paid.

(Added by Stats. 1945, Ch. 120.)

TITLE 5. LOCAL AGENCIES
(Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES
(Division 2 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES
(Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 4. FINANCIAL AFFAIRS
(Chapter 4 added by Stats. 1949, Ch. 81.)

Article 2. Deposit of Funds
(Article 2 added by Stats. 1949, Ch. 81.)

53630. As used in this article:

(a) "Local agency" means county, city, city and county, including a chartered city or county, a community college district, or other public agency or corporation in this state.

(b) "Treasurer" means treasurer of the local agency.

(c) "Depository" means a state or national bank, savings association or federal association, a state or federal credit union, or a federally insured industrial loan company, in this state in which the moneys of a local agency are deposited.

(d) "Agent of depository" means a trust company or trust department of a state or national bank located in this state, including the trust department of a depository where authorized, and the Federal Home Loan Bank of San Francisco, which is authorized to act as an agent of depository for the purposes of this article pursuant to Section 53657.

(e) "Security" means any of the eligible securities or obligations listed in Section 53651.

(f) "Pooled securities" means eligible securities held by an agent of depository for a depository and securing deposits of one or more local agencies.

(g) "Administrator" means the Administrator of Local Agency Security of the State of California.

(h) "Savings association or federal association" means a savings association, savings and loan association, or savings bank as defined by Section 5102 of the Financial Code.

(i) "Federally insured industrial loan company" means an industrial loan company licensed under Division 7 (commencing with Section 18000) of the Financial Code, the investment certificates of which are insured by the Federal Deposit Insurance Corporation.

(j) "Corporation" includes a limited liability company.

(Amended by Stats. 2004, Ch. 118, Sec. 19.7. Effective January 1, 2005.)

53630.1. The Legislature hereby finds that the solvency and creditworthiness of each individual local agency can impact the solvency and creditworthiness of the state and other local agencies within the state. Therefore, to protect the solvency and creditworthiness of the state and all of its political subdivisions, the Legislature hereby declares that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern.

(Added by Stats. 1995, Ch. 784, Sec. 16. Effective January 1, 1996.)

53630.5. (a) The definitions in Section 1700 of, and Chapter 1 (commencing with Section 99) of Division 1 of, the Financial Code apply to this section.

(b) In this article, for purposes of being a depository of moneys belonging to or being in the custody of a local agency, the phrases "state or national bank located in this state," "state or national bank," "state or national bank in this state," and "state or national banks in the state" include, without limitation, any of the following:

(1) Any California branch office of a foreign (other state) state bank that the bank is authorized to maintain under the law of its domicile and federal law.

(2) Any California branch office of a foreign (other state) national bank that the bank is authorized to maintain under federal law.

(3) Any California branch office of a foreign (other nation) bank that the bank is licensed to maintain under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 of the Financial Code.

(4) Any California federal branch of a foreign (other nation) bank that the bank is authorized to maintain under federal law.

(Added by Stats. 1995, Ch. 480, Sec. 202. Effective October 2, 1995.)

53631. Under those conditions as the treasurer of a local agency fixes with the approval of the legislative body, he or she may establish accounts at banks within or without the state and deposit money in those accounts to the extent necessary to pay the principal and interest of bonds to pay any warrant that has been presented for payment, or to fund any electronic disbursement of funds from the treasury of the local agency. This article does not apply to deposits for those purposes.
(Amended by Stats. 2001, Ch. 176, Sec. 15. Effective January 1, 2002.)

53632. There are three classes of deposits:
(a) Inactive deposits.
(b) Active deposits.
(c) Interest-bearing active deposits.
(Amended by Stats. 1983, Ch. 105, Sec. 1.5.)

53632.5. There are three classes of security for deposits:
(a) Securities described in subdivision (m) of Section 53651.
(b) Securities described in subdivision (p) of Section 53651.
(c) Securities enumerated in Section 53651, except for those described in subdivisions (m) and (p) of that section.
(Amended by Stats. 1986, Ch. 1132, Sec. 2.)

53633. The treasurer shall determine the amounts of money to be deposited as inactive, active, and interest-bearing active deposits, except as otherwise provided in Section 53679.
(Amended by Stats. 1983, Ch. 105, Sec. 3.)

53634. The treasurer may call in money from inactive deposits and place it in active deposits as current demands require. When there is money in his possession for which there is no demand as inactive deposits, he may place it as active deposits.
(Added by Stats. 1949, Ch. 81.)

53635. (a) This section shall apply to a local agency that is a county, a city and a county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. However, Section 53601 shall apply to all local agencies that pool money in deposits or investments exclusively with local agencies that have the same governing body.

This section shall be interpreted in a manner that recognizes the distinct characteristics of investment pools and the distinct administrative burdens on managing and investing funds on a pooled basis pursuant to Article 6 (commencing with Section 27130) of Chapter 5 of Division 2 of Title 3.

A local agency that is a county, a city and county, or other local agency that pools money in deposits or investments with other agencies may invest in commercial paper pursuant to subdivision

(g) of Section 53601, except that the local agency shall be subject to the following concentration limits:

(1) No more than 40 percent of the local agency's money may be invested in eligible commercial paper.

(2) No more than 10 percent of the local agency's money that may be invested pursuant to this section may be invested in the outstanding commercial paper of any single issuer.

(3) No more than 10 percent of the outstanding commercial paper of any single issuer may be purchased by the local agency.

(b) Notwithstanding Section 53601, the City of Los Angeles shall be subject to the concentration limits of this section for counties and for cities and counties with regard to the investment of money in eligible commercial paper.

(Amended by Stats. 2003, Ch. 197, Sec. 2. Effective January 1, 2004.)

53635.2. As far as possible, all money belonging to, or in the custody of, a local agency, including money paid to the treasurer or other official to pay the principal, interest, or penalties of bonds, shall be deposited for safekeeping in state or national banks, savings associations, federal associations, credit unions, or federally insured industrial loan companies in this state selected by the treasurer or other official having legal custody of the money; or may be invested in the investments set forth in Section 53601. To be eligible to receive local agency money, a bank, savings association, federal association, or federally insured industrial loan company shall have received an overall rating of not less than "satisfactory" in its most recent evaluation by the appropriate federal financial supervisory agency of its record of meeting the credit needs of California's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code. Sections 53601.5 and 53601.6 shall apply to all investments that are acquired pursuant to this section.
(Repealed and added by Stats. 2001, Ch. 57, Sec. 8. Effective January 1, 2002.)

53635.7. In making any decision that involves borrowing in the amount of one hundred thousand dollars ($100,000) or more, the legislative body of the local agency shall discuss, consider, and deliberate each decision as a separate item of business on the agenda of its meeting as prescribed in Chapter 9 (commencing with Section 54950). As used in this section, "borrowing" does not include bank overdrafts or security lending.
(Amended by Stats. 2001, Ch. 176, Sec. 16. Effective January 1, 2002.)

53636. Money so deposited is deemed to be in the treasury of the local agency.
(Added by Stats. 1949, Ch. 81.)

53637. The money shall be deposited in any bank, savings association or federal association, state or federal credit union, or federally insured industrial loan company with the objective of realizing maximum return, consistent with prudent financial management, except that money shall not be deposited in any state or federal credit union if a member of the legislative body of a local agency, or any person with investment decisionmaking authority of the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the state or federal credit union.
(Amended by Stats. 1998, Ch. 81, Sec. 2. Effective January 1, 1999.)

53638. (a) The deposit shall not exceed the shareholder's equity of any depository bank. For the purposes of this subdivision, shareholder's equity shall be determined in accordance with Section 118 of the Financial Code, but shall be deemed to include capital notes and debentures.

(b) The deposit shall not exceed the total of the net worth of any depository savings association or federal association, except that deposits not exceeding a total of five hundred thousand dollars ($500,000) may be made to a savings association or federal association without regard to the net worth of that depository, if such deposits are insured or secured as required by law.

(c) The deposit to the share accounts of any regularly chartered credit union shall not exceed the total of the unimpaired capital and surplus of the credit union, as defined by rule of the Commissioner of Financial Institutions, except that the deposit to any credit union share account in an amount not exceeding five hundred thousand dollars ($500,000) may be made if the share accounts of that credit union are insured or guaranteed pursuant to Section 14858 of the Financial Code or are secured as required by law.

(d) The deposit in investment certificates of a federally insured industrial loan company shall not exceed the total of the unimpaired capital and surplus of the insured industrial loan company.
(Amended by Stats. 1996, Ch. 1064, Sec. 788. Effective January 1, 1997. Operative July 1, 1997.)

53639. Except as otherwise provided in Section 53682, the depository shall bear the expenses of transportation of money to and from the depository.
(Amended by Stats. 1986, Ch. 248, Sec. 91.)

53640. Except as otherwise provided in Section 53682, the depository shall handle, collect, and pay all checks, drafts, and other exchange without cost to the local agency.
(Amended by Stats. 1986, Ch. 248, Sec. 92.)

53641. When money is deposited in a depository, the treasurer or other authorized official shall take and preserve a receipt, certificate of deposit, or other evidence of the deposit as he or she requires.
(Amended by Stats. 1986, Ch. 248, Sec. 93.)

53642. The money deposited may be drawn out by check or order of the treasurer or other official authorized to make such deposit.
(Amended by Stats. 1953, Ch. 670.)

53643. The treasurer may deposit any part of the money as agreed upon between the treasurer and the depository.
(Amended by Stats. 1986, Ch. 248, Sec. 94.)

53644. If an agreement is not made:

(a) Active deposits and interest thereon are subject to withdrawal upon the demand of the treasurer or other authorized official, subject to any penalties which may be prescribed by federal law or regulation.

(b) Inactive deposits are subject to notice of at least thirty days before withdrawal.
(Amended by Stats. 1983, Ch. 105, Sec. 7.)

53645. Interest shall be computed and paid by the depository, as follows:

(a) For active deposits upon which interest is payable, interest shall be computed on the average daily balance for the calendar quarter, and shall be paid quarterly.

(b) For inactive deposits, interest shall be computed on a 360-day basis, and shall be paid quarterly.
(Amended by Stats. 1992, Ch. 523, Sec. 5.3. Effective January 1, 1993.)

53646. (a) (1) In the case of county government, the treasurer may annually render to the board of supervisors and any oversight committee a statement of investment policy, which the board shall review and approve at a public meeting. Any change in the policy shall also be reviewed and approved by the board at a public meeting.

(2) In the case of any other local agency, the treasurer or chief fiscal officer of the local agency may annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting. Any change in the policy shall also be considered by the legislative body of the local agency at a public meeting.

(b) (1) The treasurer or chief fiscal officer may render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency. The quarterly report shall be so submitted within 30 days following the end of the quarter covered by the report. Except as provided in subdivisions (e) and (f), this report shall include the type of investment, issuer, date of maturity par and dollar amount invested on all securities, investments and moneys held by the local agency, and shall additionally include a description of any of the local agency's funds, investments, or programs, that are under the management of contracted parties, including lending programs. With respect to all securities held by the local agency, and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund, the report shall also include a current market value as of the date of the report, and shall include the source of this same valuation.

(2) The quarterly report shall state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance.

(3) The quarterly report shall include a statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

(4) In the quarterly report, a subsidiary ledger of investments may be used in accordance with accepted accounting practices.

(c) Pursuant to subdivision (b), the treasurer or chief fiscal officer shall report whatever additional information or data may be required by the legislative body of the local agency.

(d) The legislative body of a local agency may elect to require the report specified in subdivision (b) to be made on a monthly basis instead of quarterly.

(e) For local agency investments that have been placed in the Local Agency Investment Fund, created by Section 16429.1, in National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, in a county investment pool, or any combination of these, the treasurer or chief fiscal officer may supply to the governing body, chief executive officer, and the auditor of the local agency the most recent statement or statements received by the local agency from these institutions in lieu of the information required by paragraph (1) of subdivision (b) regarding investments in these institutions.

(f) The treasurer or chief fiscal officer shall not be required to render a quarterly report, as required by subdivision (b), to a legislative body or any oversight committee of a school district or county office of education for securities, investments, or moneys held by the school district or county office of education in individual accounts that are less than twenty-five thousand dollars ($25,000).

(g) Except as provided in subdivisions (h) and (i), each city, county, or city and county shall submit copies of its second and fourth quarter reports to the California Debt and Investment Advisory Commission within 60 days after the close of the second and fourth quarters of each calendar year. Any city, county, or city and county not required to submit a report pursuant to subdivision (h) or (i) shall file with the commission a written statement within 60 days of the end of the second and fourth quarters of the calendar year stating the distribution and amount of its investment portfolio and that it is therefore not subject to this reporting requirement. This subdivision shall become inoperative on January 1, 2007.

(h) A city shall not be required to submit a quarterly report to the commission if, during the entire reporting period, the city has maintained 100 percent of its investment portfolio in (1) the treasury of the county in which it is located for investment by the county treasurer pursuant to Section 53684, (2) the Local Agency Investment Fund created by Section 16429.1, (3) National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, or (4) in any combination of these.

(i) A county or city and county shall not be required to submit a quarterly report to the commission if, during the entire reporting period, the county has maintained 100 percent of its investment portfolio in (1) the Local Agency Investment Fund created by Section 16429.1, (2) National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, or (3) in any combination of these.

(j) The city, county, or city and county investor of any public funds, no later than 60 days after the close of the second quarter of each calendar year and 60 days after the subsequent amendments thereto, shall provide the statement of investment policy required pursuant to this section, to the California Debt and Investment Advisory Commission.

(k) In recognition of the state and local interests served by the actions made optional in subdivisions (a) and (b), the Legislature encourages the local agency officials to continue taking the actions formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.

(Amended by Stats. 2004, Ch. 889, Sec. 3. Effective September 29, 2004.)

53647. (a) Interest on all money deposited belongs to, and shall be paid quarterly into the general fund of, the local agency represented by the officer making the deposit, unless otherwise directed by law.

(b) Notwithstanding the provisions of subdivision (a), and except as otherwise directed by law, if the governing body of the local agency represented by the officer making the deposit so directs, such interest shall be paid to the fund which contains the principal on which the interest accrued.

(Amended by Stats. 1978, Ch. 126.)

53647.5. Notwithstanding any other provision of law, interest earned on any bail money deposited in a bank account pursuant to Section 1463.1 of the Penal Code and Section 53679 of this code shall, if the board of supervisors so directs, be allocated for the support of the courts in that county.

(Added by Stats. 1982, Ch. 809, Sec. 1.)

53648. Notwithstanding this article, the treasurer may deposit moneys in, and enter into contracts with, a state or national bank, savings association or federal association, federal or state credit union, or federally insured industrial loan company, pursuant to a federal law or a rule of a federal department or agency adopted pursuant to the law if the law or rule conflicts with this article in regulating the payment of interest on deposits of public moneys by any of the following:

(a) Banks which are Federal Reserve System members or whose deposits are insured by the Federal Deposit Insurance Corporation.

(b) Savings associations or federal associations which are federal home loan bank members or whose deposits are insured by the Federal Savings and Loan Insurance Corporation.

(c) State or federal credit unions whose accounts are insured by the National Credit Union Share Insurance Fund or guaranteed by the California Credit Union Share Guaranty Corporation or insured or guaranteed pursuant to Section 14858 of the Financial Code, unless a member of the legislative body of a local agency, or any person with investment decisionmaking authority of the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the state or federal credit union.

(d) A federally insured industrial loan company.

(Amended by Stats. 1998, Ch. 81, Sec. 3. Effective January 1, 1999.)

53648.5. Upon the removal by federal law of the conflicting federal law or rule the agreement between the treasurer or other authorized official and a depository may be terminated by either party.

(Added by Stats. 1986, Ch. 1132, Sec. 11.)

53649. The treasurer is responsible for the safekeeping of money in his or her custody and shall enter into any contract with a depository relating to any deposit which in his or her judgment is to the public advantage. The depository, and the agent of depository to the extent the agent of depository has been notified of deposits and the amount thereof, are responsible for securing moneys deposited pursuant to such a contract in accordance with Section 53652. One copy of each contract shall be filed with the auditor, controller, secretary, or corresponding officer of the local agency. The contract shall:

(a) Fix the duration of deposits, if appropriate.

(b) Fix the interest rate, if any.

(c) Provide conditions for withdrawal and repayment.

(d) Provide for placement of pooled securities in a named agent of depository in accordance with Section 53656.

(e) Grant authority for agent of depository to place securities for safekeeping in accordance with Section 53659.

(f) Set forth in accordance with Section 53665 the conditions upon which the administrator shall order pooled securities converted into money for the benefit of the local agency, and the procedure therefor.

(g) Provide for compliance in all respects with the provisions of this article and other applicable provisions of law.

(h) Provide, upon notice to the treasurer from the administrator, that a treasurer may withdraw deposits in the event a depository fails to pay the assessments, fines, or penalties assessed by the administrator or may withdraw authorization for the placement of pooled securities in an agent of depository in the event that the agent of depository fails to pay the fines or penalties assessed by the administrator.

(Amended by Stats. 1987, Ch. 841, Sec. 1.)

53651. Eligible securities are any of the following:

(a) United States Treasury notes, bonds, bills or certificates of indebtedness, or obligations for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as the loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes or assessments to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation or assessment by the local agency or district, and in addition, limited obligation bonds pursuant to Article 4 (commencing with Section 50665) of Chapter 3 of Division 1, senior obligation bonds pursuant to Article 5 (commencing with Section 53387) of Chapter 2.7, and revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the state, local agency or district or by a department, board, agency or authority thereof.

(d) Bonds of any public housing agency (as defined in the

United States Housing Act of 1937, as amended) as are secured by a pledge of annual contributions under an annual contribution contract between the public housing agency and the Public Housing Administration if such contract shall contain the covenant by the Public Housing Administration which is authorized by subsection (b) of Section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in the contract pursuant to that subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on the obligations.

(e) Registered warrants of this state.

(f) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, consolidated obligations of the federal home loan banks established under the Federal Home Loan Bank Act, bonds, debentures and other obligations of the Federal National Mortgage Association or of the Government National Mortgage Association established under the National Housing Act, as amended, bonds of any federal home loan bank established under that act, bonds, debentures and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and obligations of the Tennessee Valley Authority.

(g) Notes, tax anticipation warrants or other evidence of indebtedness issued pursuant to Article 7 (commencing with Section 53820), Article 7.5 (commencing with Section 53840) or Article 7.6 (commencing with Section 53850) of this Chapter 4.

(h) State of California notes.

(i) Bonds, notes, certificates of indebtedness, warrants or other obligations issued by: (1) any state of the United States (except this state), or the Commonwealth of Puerto Rico, or any local agency thereof having the power to levy taxes, without limit as to rate or amount, to pay the principal and interest of such obligations, or (2) any state of the United States (except this state), or the Commonwealth of Puerto Rico, or a department, board, agency or authority thereof except bonds which provide for or are issued pursuant to a law which may contemplate a subsequent legislative appropriation as an assurance of the continued operation and solvency of the department, board, agency or authority but which does not constitute a valid and binding obligation for which the full faith and credit of such state or the Commonwealth of Puerto Rico are pledged, which are payable solely out of the revenues from a revenue-producing source owned,

controlled or operated thereby; provided the obligations issued by an entity described in (1), above, are rated in one of the three highest grades, and such obligations issued by an entity described in (2), above, are rated in one of the two highest grades by a nationally recognized investment service organization that has been engaged regularly in rating state and municipal issues for a period of not less than five years.

(j) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, Inter-American Development Bank, the Government Development Bank of Puerto Rico, the Asian Development Bank, the International Finance Corporation, or the African Development Bank.

(k) Participation certificates of the Export-Import Bank of the United States.

(l) Bonds and notes of the California Housing Finance

Agency issued pursuant to Chapter 7 (commencing with Section 51350) of Part 3 of Division 31 of the Health and Safety Code.

(m) Promissory notes secured by first mortgages and first trust deeds which comply with Section 53651.2.

(n) Any bonds, notes, warrants, or other evidences of indebtedness of a nonprofit corporation issued to finance the construction of a school building or school buildings pursuant to a lease or agreement with a school district entered into in compliance with the provisions of Section 39315 or 81345 of the Education Code, and also any bonds, notes, warrants or other evidences of indebtedness issued to refinance those bonds, notes, warrants, or other evidences of indebtedness as specified in Section 39317 of the Education Code.

(o) Any municipal securities, as defined by Section

3(a)(29) of the Securities Exchange Act of June 6, 1934, (15 U.S.C. Sec. 78, as amended), which are issued by this state or any local agency thereof.

(p) With the consent of the treasurer, letters of credit issued by the Federal Home Loan Bank of San Francisco which comply with Section 53651.6.

(Amended by Stats. 1991, Ch. 1206, Sec. 7.)

53651.2. (a) To be an eligible security under subdivision (m) of Section 53651, a promissory note placed in a securities pool on or after January 1, 1987, shall comply with all of the following provisions:

(1) Each promissory note shall be secured by a first mortgage or first trust deed on improved 1 to 4 unit residential real property located in California, shall be fully amortized over the term of the note, and shall have a term of no more than 30 years. Any first mortgage or first trust deed which secures a promissory note providing for negative amortization shall be removed from the securities pool and replaced with an eligible security under subdivision (m) of Section 53651 if the loan to value ratio exceeds 85 percent of the original appraised value of the security property as a consequence of negative amortization.

(2) Each promissory note shall be eligible for sale to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation; provided, however, that up to 25 percent of the total dollar amount of any promissory note securities pool established pursuant to Section 53658 may consist of promissory notes with loan amounts which exceed the maximum amounts eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, but which do not exceed:

(i) five hundred thousand dollars ($500,000) in the case of a single family dwelling; (ii) one million dollars ($1,000,000) in the case of a 2, 3, or 4 unit dwelling.

(b) The following shall not constitute eligible securities under subdivision (m) of Section 53651:

(1) Any promissory note on which any payment is more than 60 days past due.

(2) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust. For the purposes of this paragraph, no lien specified in Section 766 of the Financial Code shall be considered a prior encumbrance unless any installment or payment thereunder (other than a rental or royalty under a lease) is due and delinquent.

(3) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(c) The depository may exercise, enforce, or waive any right granted to it by the promissory note, mortgage, or deed of trust.

(d) For purposes of this article, the market value of a promissory note which is an eligible security under subdivision (m) of Section 53651, shall be determined in accordance with the regulations adopted by the Treasurer under paragraph (2) of subdivision (m) of Section 53651, as the regulations and statute were in effect on December 31, 1986. However, if

and when regulations on the subject are adopted by the administrator, the market value shall be determined in accordance with those regulations of the administrator.
(Amended by Stats. 1996, Ch. 1063, Sec. 81. Effective January 1, 1997.)

53651.4. (a) A depository that uses eligible securities of the class described in subdivision (m) of Section 53651 shall, within 90 days after the close of each calendar year or within a longer period as the administrator may specify, file with the administrator a report of an independent certified public accountant regarding compliance with this article and with regulations and orders issued by the administrator under this article with respect to eligible securities of that class. The report shall be based upon the audit, shall contain the information, and shall be in the form the administrator may prescribe. The depository shall provide a copy of the report to the treasurer on request.

(b) If a depository that is a state bank files with the administrator, not less than 90 days before the beginning of the calendar year, a notice that it elects to be examined by the administrator instead of filing a report of an independent certified public accountant under subdivision (a) for that calendar year, the depository shall be exempt from subdivision (a) for that calendar year and shall for that calendar year be subject to examination by the administrator regarding compliance with this article and with regulations and orders under this article with respect to eligible securities of the class described in subdivision (m) of Section 53651. The administrator shall provide a report to a treasurer with deposits in the examined state bank upon request of the treasurer.

(c) A national bank may apply to the administrator to be examined, and the administrator, in his or her discretion, may examine a national bank for the purposes of satisfying the requirements of subdivision (a). The administrator shall provide a report to a treasurer with deposits in the examined national bank upon request of the treasurer.

(d) Whenever the administrator examines a depository pursuant to subdivision (b) or (c), the depository shall pay, within 30 days after receipt of a statement from the administrator, a fee of seventy-five dollars ($75) per hour for each examiner engaged in the examination.
(Amended by Stats. 1997, Ch. 375, Sec. 18. Effective January 1, 1998.)

53651.6. (a) To be an eligible security under subdivision (p) of Section 53651, a letter of credit shall be in such form and shall contain such provisions as the administrator may prescribe, and shall include all of the following terms:

(1) The administrator shall be the beneficiary of the letter of credit.

(2) The letter of credit shall be clean and irrevocable and shall provide that the administrator may draw upon it up to the total amount in the event of the failure of the depository savings association or federal association or if the depository savings association or federal association refuses to permit the withdrawal of funds by a treasurer.
(Added by Stats. 1986, Ch. 1132, Sec. 17.)

53652. To secure active or inactive deposits a depository shall at all times maintain with the agent of depository eligible securities in securities pools, pursuant to Sections 53656 and 53658, in the amounts specified in this section. Uncollected funds shall be excluded from the amount deposited in the depository when determining the security requirements for the deposits.

(a) Eligible securities, except eligible securities of the classes described in subdivisions (m) and (p) of Section 53651, shall have a market value of at least 10 percent in excess of the total amount of all deposits of a depository secured by the eligible securities.

(b) Eligible securities of the class described in subdivision (m) of Section 53651 shall have a market value at least 50 percent in excess of the total amount of all deposits of a depository secured by those eligible securities.

(c) Eligible securities of the class described in subdivision (p) of Section 53651 shall have a market value of at least 5 percent in excess of the total amount of all deposits of a depository secured by those eligible securities. For purposes of this article, the market value of a letter of credit which is an eligible security under subdivision (p) of Section 53651 shall be the amount of credit stated in the letter of credit.
(Repealed and added by Stats. 1986, Ch. 1132, Sec. 19.)

53653. When in his or her discretion local conditions so warrant, the treasurer may waive security for the portion of any deposits as is insured pursuant to federal law, notwithstanding this article. For deposits equivalent to and not less than the maximum amount insured pursuant to federal law for which a treasurer has waived security under this section, a treasurer at his or her discretion may also waive security for the interest accrued on the deposits which, when added to the deposits, would cause the sum of the interest and deposits to exceed the maximum amount insured pursuant to federal law, provided that the interest is computed by the depository on the average daily balance of the deposits, paid monthly and computed on a 360-day basis.
(Amended by Stats. 1988, Ch. 156, Sec. 1.)

53654. (a) The depository may add securities to the pool or substitute securities of equal value for those in the pool at any time, but shall not interchange classes of security, as defined in Section 53632.5, without prior approval of the treasurer.

(b) Withdrawal of securities from the pool without replacement at equal value may be ordered only by two duly authorized officers or employees of the depository who satisfy the requirements as may be set by the administrator.

(c) The agent of depository is responsible for the safekeeping and disbursement of securities placed in its custody by a depository. It shall release securities only upon presentation by the depository of the most reasonably current statement of the total deposits subject to this article held by the depository, such statement to be verified and countersigned by two duly authorized officers, other than those who ordered the withdrawal of securities. A copy of this statement shall be forwarded to the administrator concurrently by the agent of depository.

(Amended by Stats. 1986, Ch. 1132, Sec. 22.)

53655. A placement of securities by a depository with an

agent of depository pursuant to this article shall have the effect of perfecting a security interest in those securities in the local agencies having deposits in that depository notwithstanding provisions of the Uniform Commercial Code to the contrary and notwithstanding that the agent of depository may be the trust department of the depository.

(Repealed and added by Stats. 1969, Ch. 1483.)

53656. (a) At the time the treasurer enters into a contract with the depository pursuant to Section 53649, he or she shall authorize the agent of depository designated by the depository, but including the trust department of the depository only when acceptable to both the treasurer and the depository, to hold securities of the depository in accordance with this article to secure the deposit of the local agency.

(b) Only those trust companies and trust departments, or the Federal Home Loan Bank of San Francisco, which have been authorized by the administrator pursuant to Section 53657 shall be authorized by treasurers to act as agents of depository.

(c) The securities are subject to order of the depository in accordance with Section 53654 except when the provisions of subdivision (i) of Section 53661 and Section 53665 are in effect.

(d) An agent of depository shall not release any security held to secure a local agency deposit in a depository unless the administrator issues an order authorizing the release where either of the following occurs:

(1) A state or federal regulatory agency has taken possession of the depository.

(2) A conservator, receiver, or other legal custodian has been appointed for the depository.

(Amended by Stats. 1998, Ch. 1035, Sec. 10. Effective September 30, 1998.)

53657. (a) No person shall act as an agent of depository unless that person is a trust company located in this state, the trust department of a bank located in this state, or the Federal Home Loan Bank of San Francisco, and is authorized by the administrator to act as an agent of depository.

(b) (1) An application for authorization shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the administrator so requires) be verified in such manner, as the administrator may prescribe.

(2) The fee for filing an application for authorization with the administrator shall be five hundred dollars ($500).

(3) If the administrator finds, with respect to an application for authorization, that the applicant is competent to act as an agent of depository and that it is reasonable to believe the applicant will comply with all applicable provisions of this article and of any regulation or order issued under this article, the administrator shall approve the application. If the administrator finds otherwise, the administrator shall deny the application.

(4) When an application for authorization has been approved, the applicant shall file with the administrator an agreement to comply with all applicable provisions of this article and of any regulation or order issued under this article. The agreement shall be in such form, shall contain such provisions, and shall be signed in such manner as the administrator may prescribe.

(5) When an application for authorization has been approved, the applicant has complied with paragraph (4), and all conditions precedent to authorizing the applicant to act as agent of depository have been fulfilled, the administrator shall authorize the applicant to act as agent of depository.

(Amended by Stats. 1996, Ch. 1063, Sec. 82. Effective January 1, 1997.)

53658. An agent of a depository may hold and pool securities to secure deposits for one or more depositories pursuant to Section 53656, but shall maintain a separate pool for each said depository. Each local agency shall have an undivided security interest in the pooled securities in the proportion that the amount of its deposits bears to the total amount of deposits secured by the pooled securities.

(Amended by Stats. 1970, Ch. 84.)

53659. Whenever an agent of depository accepts securities pursuant to Section 53656 it may, with the authorization of the depository, place such securities for safekeeping with a Federal Reserve Bank or branch thereof or with any bank located in a city designated as a reserve city by the Board of Governors of the Federal Reserve System or with the Federal Home Loan Bank of San Francisco or with a trust company located in this state. Authority for such placement together with the names of the banks or, including the Federal Home Loan Bank of San Francisco, trust companies to be so used, shall be contained in the contract between the treasurer and the depository required in Section 53649.
(Amended by Stats. 1976, Ch. 349.)

53660. When deposits of a local agency are secured by pooled securities pursuant to Section 53656, the agent of depository shall make available to the treasurer for review at a mutually agreed upon time and location all of the following information which may be in the form of a copy of the report required in subdivision (e) of Section 53661:

(a) A certification that there are securities in the pool in the amounts required by Section 53652 to secure deposits.

(b) A certified report of the individual securities then on deposit in the pool with the location and total market value thereof.

(c) The total amount of deposits then reported by the depository to be secured by the pool.
(Amended by Stats. 1986, Ch. 1132, Sec. 26.)

53661. (a) The Commissioner of Financial Institutions shall act as Administrator of Local Agency Security and shall be responsible for the administration of Sections 53638, 53651, 53651.2, 53651.4, 53651.6, 53652, 53654, 53655, 53656, 53657, 53658, 53659, 53660, 53661, 53663, 53664, 53665, 53666, and 53667.

(b) The administrator shall have the powers necessary or convenient to administer and enforce the sections specified in subdivision (a).

(c) (1) The administrator shall issue regulations consistent with law as the administrator may deem necessary or advisable in executing the powers, duties, and responsibilities assigned by this article. The regulations may include regulations prescribing standards for the valuation, marketability, and liquidity of the eligible securities of the class described in subdivision (m) of Section 53651, regulations prescribing procedures and documentation for adding, withdrawing, substituting, and holding pooled securities, and regulations prescribing the form, content, and execution of any application, report, or other document called for in any of the sections specified in subdivision (a) or in any regulation or order issued under any of those sections.

(2) The administrator, for good cause, may waive any provision of any regulation adopted pursuant to paragraph (1) or any order issued under this article, where the provision is not necessary in the public interest.

(d) The administrator may enter into any contracts or agreements as may be necessary, including joint underwriting agreements, to sell or liquidate eligible securities securing local agency deposits in the event of the failure of the depository or if the depository fails to pay all or part of the deposits of a local agency.

(e) The administrator shall require from every depository a report certified by the agent of depository listing all securities, and the market value thereof, which are securing local agency deposits together with the total deposits then secured by the pool, to determine whether there is compliance with Section 53652. These reports may be required whenever deemed necessary by the administrator, but shall be required at least four times each year at the times designated by the Comptroller of the Currency for reports from national banking associations. These reports shall be filed in the office of the administrator by the depository within 20 business days of the date the administrator calls for the report.

(f) The administrator may have access to reports of examination made by the Comptroller of the Currency insofar as the reports relate to national banking association trust department activities which are subject to this article.

(g) (1) The administrator shall require the immediate substitution of an eligible security, where the substitution is necessary for compliance with Section 53652, if (i) the administrator determines that a security listed in Section 53651 is not qualified to secure public deposits, or (ii) a treasurer, who has deposits secured by the securities pool, provides written notice to the administrator and the administrator confirms that a security in the pool is not qualified to secure public deposits.

(2) The failure of a depository to substitute securities, where the administrator has required the substitution, shall be reported by the administrator promptly to those treasurers having money on deposit in that depository and, in addition, shall be reported as follows:

(A) When that depository is a national bank, to the Comptroller of the Currency of the United States.

(B) When that depository is a state bank, to the Commissioner of Financial Institutions.

(C) When that depository is a federal association, to the Office of Thrift Supervision.

(D) When that depository is a savings association, to the Commissioner of Financial Institutions.

(E) When that depository is a federal credit union, to the National Credit Union Administration.

(F) When that depository is a state credit union or a federally insured industrial loan company, to the Commissioner of Financial Institutions.

(h) The administrator may require from each treasurer a registration report and at appropriate times a report stating the amount and location of each deposit together with other information deemed necessary by the administrator for effective operation of this article. The facts recited in any report from a treasurer to the administrator are conclusively presumed to be true for the single purpose of the administrator fulfilling responsibilities assigned to him or her by this article and for no other purpose.

(i) (1) If, after notice and opportunity for hearing, the administrator finds that any depository or agent of depository has violated or is violating, or that there is reasonable cause to believe that any depository or agent of depository is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued under any of those sections, the administrator may order the depository or agent of depository to cease and desist from the violation or may by order suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(2) (A) If the administrator makes any of the findings set forth in paragraph (1) with respect to any depository or agent of depository and, in addition, finds that the violation or the continuation of the violation is likely to seriously prejudice the interests of treasurers, the administrator may order the depository or agent of depository to cease and desist from the violation or may suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(B) Within five business days after an order is issued under subparagraph (A), the depository or agent of depository may file with the administrator an application for a hearing on the order. The administrator shall schedule a hearing at least 30 days, but not more than 40 days, after receipt of an application for a hearing or within a shorter or longer period of time agreed to by a depository or an agent of depository. If the administrator fails to schedule the hearing within the specified or agreed to time period, the order shall be deemed rescinded. Within 30 days after the hearing, the administrator shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded. The right of a depository or agent of depository to which an order is issued under subparagraph (A) to petition for judicial review of the order shall not be affected by the failure of the depository or agent of depository to apply to the administrator for a hearing on the order pursuant to this subparagraph.

(3) Whenever the administrator issues a cease and desist order under paragraph (1) or (2), the administrator may in the order restrict the right of the depository to withdraw securities from a security pool; and, in that event, both the depository to which the order is directed and the agent of depository which holds the security pool shall comply with the restriction.

(4) In case the administrator issues an order under paragraph (1) or (2) suspending or revoking the authorization of an agent of depository, the administrator may order the agent of depository at its own expense to transfer all pooled securities held by it to such agent of depository as the administrator may designate in the order. The agent of depository designated in the order shall accept and hold the pooled securities in accordance with this article and regulations and orders issued under this article.

(j) In the discretion of the administrator, whenever it appears to the administrator that any person has violated or is violating, or that there is reasonable cause to believe that any person is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued thereunder, the administrator may bring an action in the name of the people of the State of California in the superior court to enjoin the violation or to enforce compliance with those sections or any regulation or order issued thereunder. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and the court may not require the administrator to post a bond.

(k) In addition to other remedies, the administrator shall have the power and authority to impose the following sanctions for noncompliance with the sections specified in subdivision (a) after a hearing if requested by the party deemed in noncompliance. Any fine assessed pursuant to this subdivision shall be paid within 30 days after receipt of the assessment.

(1) Assess against and collect from a depository a fine not to exceed two hundred fifty dollars ($250) for each day the depository fails to maintain with the agent of depository securities as required by Section 53652.

(2) Assess against and collect from a depository a fine not to exceed one hundred dollars ($100) for each day beyond the time period specified in subdivision (b) of Section 53663 the depository negligently or willfully fails to file in the office of the administrator a written report required by that section.

(3) Assess against and collect from a depository a fine not to exceed one hundred dollars ($100) for each day beyond the time period specified in subdivision (e) that a depository negligently or willfully fails to file in the office of the administrator a written report required by that subdivision.

(4) Assess and collect from an agent of depository a fine not to exceed one hundred dollars ($100) for each day the agent of depository fails to comply with any of the applicable sections specified in subdivision (a) or any applicable regulation or order issued thereunder.

(l) (1) In the event that a depository or agent of depository fails to pay a fine assessed by the administrator pursuant to subdivision (k) within 30 days of receipt of the assessment, the administrator may assess and collect an additional penalty of 5 percent of the fine for each month or part thereof that the payment is delinquent.

(2) If a depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.

(3) If an agent of depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers who have authorized the agent of depository as provided in Sections 53649 and 53656, and may by order revoke the authorization of the agent of depository as provided in subdivision (i).

(m) The amendments to this section enacted by the Legislature during the 1999-2000 Regular Session shall become operative on January 1, 2001.

(Amended by Stats. 2000, Ch. 127, Sec. 21. Effective July 10, 2000. Amended section operative January 1, 2001, pursuant to subdivision (m).)

53663. (a) Each agent of depository shall report in writing to the administrator within two business days after any withdrawal, substitution or addition of pooled securities and shall state the name and market value of the securities withdrawn, substituted or added together with the total deposits then secured by the pool. This information shall be available from the administrator to the treasurer upon request.

(b) Each depository shall report in writing to the administrator weekly, giving the total amount of all deposits held by such depository pursuant to this article. Such report shall be as of close of business on Wednesday of each week and shall be delivered to the office of the administrator or deposited in the United States mail, postage prepaid, addressed to the office of the administrator, within five business days. Where there has occurred no change in the deposits required to be held by the depository pursuant to this article, the report required by this subdivision need only state that fact.

(Amended by Stats. 1982, Ch. 844, Sec. 3.)

53664. The individual reports specified in Sections 53654, 53660, 53661, and 53663 are not public documents and are not open to inspection by the public.

(Amended by Stats. 1987, Ch. 841, Sec. 5.)

53665. If a depository fails to pay all or part of the deposits of a local agency secured by pooled securities in accordance with the contract provided for in Section 53649, and on demand of its treasurer or other authorized official and the treasurer files a report with the administrator, or if the depository fails:

(a) In case the pooled securities consist of securities other than securities of the class described in subdivision (p) of Section 53651, the administrator shall order the agent of depository holding the pooled securities to convert into money that portion of the pooled securities necessary to produce an amount equal to the sum of (i) the deposits of the local agency, (ii) any accrued interest due on the deposits, and (iii) the reasonable expenses of the agent of depository in complying with the order of the administrator and to pay the sum of items (i) and (ii) to the treasurer in satisfaction of the deposits. The agent of depository shall be reimbursed out of the proceeds of the conversion for its reasonable expenses in complying with the order of the administrator, as approved by the administrator. Any excess moneys resulting from the conversion shall be retained by the agent of depository as part of the securities pool until the depository substitutes for the excess moneys securities having a market value sufficient to bring the total of pooled securities up to the amount required by Section 53652.

(b) In case the pooled securities consist of a security of the class described in subdivision (p) of Section 53651, the administrator shall draw on the letter of credit an amount equal to the sum of (i) the deposits of the local agency, (ii) any accrued interest on the deposits, and (iii) the reasonable expenses of the administrator in paying the deposits and pay the sum of items (i) and (ii) to the treasurer in satisfaction of the deposits.

(Amended by Stats. 1986, Ch. 1132, Sec. 30.)

53666. The only liability that shall attach to the administrator as the result of the operation of this article is that which would attach as a result of other laws of this state.

(Repealed and added by Stats. 1969, Ch. 1483.)

53667. (a) Expenses incurred by the administrator in carrying out the duties and responsibilities assigned to the administrator by the sections specified in subdivision (a) of Section 53661, shall be borne by the Local Agency Deposit Security Fund, which is hereby created and continuously appropriated to the administrator for the administration of the sections specified in subdivision (a) of Section 53661. This fund shall consist of fines levied pursuant to Section 53661, fees collected pursuant to the sections specified in subdivision (a) of Section 53661, and assessments levied pursuant to this section.

(b) Each fiscal year the administrator shall levy an assessment on a pro rata basis on those depositories which at any time during the preceding fiscal year held local agency deposits. The total assessment levied on all of those depositories shall be in an amount which, when added to the amount of fines and fees that the administrator estimates will be collected during the fiscal year when the assessment is levied, is sufficient in the judgment of the administrator to meet the expenses of the administrator in administering the sections specified in subdivision (a) of Section 53661 and to provide a reasonable reserve for contingencies. The basis of the apportionment of the assessment among the depositories assessed shall be the proportion that the average amount of local agency deposits held by each of those depositories bears to the average total amount of local agency deposits held by all of those depositories as shown by the reports of depositories to the administrator for the preceding fiscal year, as required in subdivision (e) of Section 53661; provided, however, that the amount of the assessment levied on each of those depositories shall be not less than twenty-five dollars ($25).

(c) The administrator shall notify each depository by mail of the amount levied against it. The depository shall pay the amount levied within 20 days after such notice into the Local Agency Deposit Security Fund for the administration of the sections specified in subdivision (a) of Section 53661. If payment is not made to the administrator within such time, the administrator shall assess and collect, in addition to the annual assessment, a penalty of 5 percent of the assessment for each month or part thereof that the payment is delinquent. If a depository fails to pay the assessment or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.
(Amended by Stats. 1987, Ch. 841, Sec. 6.)

53669. The treasurer or other authorized official is not responsible for money while it is deposited pursuant to this article.
(Amended by Stats. 1953, Ch. 670.)

53676. The treasurer is not responsible for securities delivered to and receipted for by any bank, savings and loan association, credit union, federally insured industrial loan company, or trust company.
(Amended by Stats. 1988, Ch. 1004, Sec. 6. Operative January 1, 1989, by Sec. 8 of Ch. 1004.)

53678. The charges for the handling and safekeeping of any such securities are not a charge against the treasurer but shall be paid by the depository owning the securities.
(Amended by Stats. 1976, Ch. 349.)

53679. So far as possible, all money belonging to a local agency under the control of any of its officers or employees other than the treasurer or a judge or officer of a municipal court shall, and all money coming into the possession of a judge or officer of a municipal court may, be deposited as active deposits in the state or national bank, inactive deposits in the state or national bank or state or federal association, federal or state credit union, or federally insured industrial loan company in this state selected by the officer, employee, or judge of the court. For purposes of this section, an officer or employee of a local agency and a judge or officer of a municipal court are prohibited from depositing local agency funds or money coming into their possession into a state or federal credit union if an officer or employee of the local agency, or a judge or officer of a municipal court, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the particular state or federal credit union. Such money is subject to this article except:

(a) Deposits in an amount less than that insured pursuant to federal law are not subject to this article.

For deposits in excess of the amount insured under any federal law a contract in accordance with Section 53649 is required and the provisions of this article shall apply.

(b) Interest is not required on money deposited in an active deposit by a judge or officer of a municipal court.

(c) Interest is not required on money deposited in an active deposit by an officer having control of a revolving fund created pursuant to Chapter 2 (commencing with Section 29300) of Division 3 of Title 3.

(d) Interest is not required on money deposited in an active deposit by an officer having control of a special fund established pursuant to Articles 5 (commencing with Section 29400) or 6 (commencing with Section 29430) of Chapter 2 of Division 3 of Title 3.
(Amended by Stats. 1998, Ch. 931, Sec. 219. Effective September 28, 1998.)

53679.1. Notwithstanding any other provision of law, the accounting practices of each county utilized prior to the effective date of this section relating to interest on trust funds shall be deemed appropriate and to have been made under the direction of the board of supervisors of that county. This section is declaratory of the law in existence prior to the enactment of this section.
(Added by Stats. 1992, Ch. 1032, Sec. 1. Effective January 1, 1993.)

53680. A tax collector of a local agency shall immediately deposit with the treasurer all money under his control, unless he deposits the money in a depositary pursuant to this article under permission and instructions of the treasurer having authority to make such deposit.
(Added by Stats. 1949, Ch. 81.)

53681. An officer or employee of a local agency who deposits money belonging to, or in the custody of, the local agency in any other manner than that prescribed in this article is subject to forfeiture of his office or employment.
(Added by Stats. 1949, Ch. 81.)

53682. Notwithstanding any other provision in this article except Section 53652, the treasurer may deposit moneys in and enter into contracts with any depository, as defined in subdivision (c) of Section 53630, for services to be rendered by that depository that in the treasurer's judgment are to the public advantage. One copy of each contract entered into under this section shall be filed with the auditor or corresponding officer of the local agency. The contract shall:

(a) Fix the duration of compensating deposits, if any.

(b) Fix the interest rate of that compensating deposit, if any.

(c) Specify the services to be rendered by the depository.

(d) Indicate whether the depository shall bear the expenses of transportation of the money to and from the depository.

(e) Fix the consideration payable by the agency for such services.

(f) Specify who may deposit moneys into the treasurer's active account and how those persons are to make those deposits.
(Amended by Stats. 1994, Ch. 705, Sec. 11. Effective January 1, 1995.)

53683. Notwithstanding any other provision in this article, the consideration payable by the agency as specified in subdivision (e) of Section 53682 shall be paid by the treasurer by applying such consideration as costs applied on a pro rata basis against the interest earned by all the agencies for which the treasurer invests.
(Amended by Stats. 1976, Ch. 723.)

53684. (a) Unless otherwise provided by law, if the treasurer of any local agency, or other official responsible for the funds of the local agency, determines that the local agency has excess funds which are not required for immediate use, the treasurer or other official may, upon the adoption of a resolution by the legislative or governing body of the local agency authorizing the investment of funds pursuant to this section and with the consent of the county treasurer, deposit the excess funds in the county treasury for the purpose of investment by the county treasurer pursuant to Section 53601 or 53635.

(b) The county treasurer shall, at least quarterly, apportion any interest or other increment derived from the investment of funds pursuant to this section in an amount proportionate to the average daily balance of the amounts deposited by the local agency and to the total average daily balance of deposits in the investment pool. In apportioning and distributing that interest or increment, the county treasurer may use the cash method, the accrual method, or any other method in accordance with generally accepted accounting principles.

Prior to distributing that interest or increment, the county treasurer may deduct the actual costs incurred by the county in administering this section in proportion to the average daily balance of the amounts deposited by the local agency and to the total average daily balance of deposits in the investment pool.

(c) The county treasurer shall disclose to each local agency that invests funds pursuant to this section the method of accounting used, whether cash, accrual, or other, and shall notify each local agency of any proposed changes in the accounting method at least 30 days prior to the date on which the proposed changes take effect.

(d) The treasurer or other official responsible for the funds of the local agency may withdraw the funds of the local agency pursuant to the procedure specified in Section 27136.

(e) Any moneys deposited in the county treasury for investment pursuant to this section are not subject to impoundment or seizure by any county official or agency while the funds are so deposited.

(f) This section is not operative in any county until the board of supervisors of the county, by majority vote, adopts a resolution making this section operative in the county.

(g) It is the intent of the Legislature in enacting this section to provide an alternative procedure to Section 51301 for local agencies to deposit money in the county treasury for investment purposes. Nothing in this section shall, therefore, be construed as a limitation on the authority of a county and a city to contract for the county treasurer to perform treasury functions for a city pursuant to Section 51301.
(Amended by Stats. 2000, Ch. 168, Sec. 1. Effective January 1, 2001.)

53686. (a) Any audit conducted relating to the investment of local agency funds and other funds by the county treasurer in the county fund maintained pursuant to Section 53684 shall be rendered to the depositary, the auditor, the controller, the secretary, or the corresponding officer of the local agency, the treasurer or other official responsible for the funds of any local agency that has funds on deposit in the county treasury, and the presiding judge of any superior court that has ordered, pursuant to Section 3412, Section 3413, or Section 3611 of the Probate Code, that assets of an estate be deposited with the county treasurer for deposit or investment.

(b) Any report rendered pursuant to Section 53646 shall be provided to the treasurer or other official responsible for the funds of any local agency that has funds on deposit in the county treasury.

(Added by Stats. 1996, Ch. 81, Sec. 2. Effective July 1, 1996.)