

Assembly Bill No. 1301

CHAPTER 125

An act to amend Sections 101, 113, 118, 250, 1542, 1761, 1900, 1912, 1913, 1913.5, and 3516 of, to amend the heading of Chapter 6 (commencing with Section 750) of Division 1 of, to add Sections 201, 218, 219, 364, 365, 760, 767, 1239, 1240, 1330, 1331, 1332, 1592, 1593, and 1911.5 to, to add a heading as Article 1 (commencing with Section 750) to, to add Article 2 (commencing with Section 780) and Article 3 (commencing with Section 790) to, Chapter 6 of Division 1 of, to add Article 1.5 (commencing with Section 1210) to Chapter 10 of Division 1 of, to add Chapter 4 (commencing with Section 500) to, and Chapter 4.5 (commencing with Section 550) to, Division 1 of, to repeal Sections 751.7, 760.1, 761.5, 771, 772, 773, 774, 775, 775.1, 776, 777, 777.5, 778, 779, 782, 1232, 1335, and 1336 of, to repeal Article 5 (commencing with Section 419) of Chapter 3 of Division 1 of, to repeal Chapter 4 (commencing with Section 490) and Chapter 18 (commencing with Section 3350) of Division 1 of, and to repeal and add Sections 752, 753, 754, 755, 756, 758, 759, 761, 762, 763, 764, 765, 766, 768, and 769 of, the Financial Code, and to amend Section 11105 of the Penal Code, relating to financial institutions.

[Approved by Governor July 16, 2008. Filed with
Secretary of State July 16, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1301, Gaines. Financial institutions.

(1) Existing law, the Banking Law, provides for the licensure and regulation by the Commissioner of Financial Institutions of various financial institutions, including banks, commercial banks, and trust companies.

This bill would revise and recast various provisions applicable to these financial institutions, including, among others, provisions relating to the location of bank offices and to the powers, prohibited practices, and penalties applicable to banks. The bill would authorize the commissioner to adopt and implement methods of accepting electronic filings of applications, reports, and other matters. The bill would authorize a bank, with the approval of the commissioner, to be formed to facilitate a merger or an acquisition of control, as specified. The bill would establish loan and investment limitations for a bank to hold obligations made by a person and securities issued by that same person. The bill would require the applicable minimum of specified eligible assets of a foreign (other nation) bank to be no less than 1% of the adjusted liabilities of the bank, instead of 5%. The bill would require the commissioner to examine California state banks and foreign banks no less than once every 12 months, except that specified California state banks and foreign banks would be required to be examined pursuant

to federal standards. The bill would make various conforming and related changes.

(2) Existing law makes it a crime for a subject person of a bank, as defined, or a former subject person of a bank to engage in specified acts with any bank, if that person was issued an order of suspension or removal from his or her office with the bank, except with the prior consent of the commissioner.

This bill would make it a crime for such a subject person or former subject person to engage in those acts with any licensee, as defined. By expanding the scope of a crime, the bill would impose a state-mandated local program.

(3) Existing law prohibits the amount of funds of a bank or trust company that are deposited in any other financial institution from exceeding 10% 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 approved by the commissioner as a depository for these purposes, and other conditions are met. Existing law allows the commissioner to revoke approval of a depository or limit the amount of funds that may be deposited by a bank or trust company with any other financial institution, as specified.

This bill would delete this prohibition and would make conforming changes.

(4) Existing law requires the Department of Justice to maintain state summary criminal history information, as defined. Existing law requires the Department of Justice to disseminate certain criminal history information to financial institutions that have applied to the Department of Justice for the information to be used for employment, licensing, or certification purposes.

This bill would revise those provisions relating to the furnishing of summary criminal history information to banks and their affiliates by the Department of Justice for those purposes and would authorize the department to charge a fee sufficient to cover its costs in that regard.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 101 of the Financial Code is amended to read:

101. (a) A California state bank is a corporation incorporated under Division 1 (commencing with Section 100) of the Corporations Code that is, with the approval of the commissioner, incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, the commercial or industrial banking business.

(b) 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.

SEC. 1.5. Section 113 of the Financial Code is amended to read:

113. “Person” means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, joint stock company, limited liability company, unincorporated association, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

SEC. 2. Section 118 of the Financial Code is amended to read:

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 in the United States, fairly presenting in conformity with generally accepted accounting principles accepted in the United States 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 accepted in the United States if the commissioner finds that such other manner is necessary or appropriate to carry out the purposes or provisions of this division.

SEC. 2.5. Section 201 is added to the Financial Code, to read:

201. This chapter is applicable to this division, Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000).

SEC. 3. Section 218 is added to the Financial Code, to read:

218. Notwithstanding any other provision of law, the commissioner may adopt and implement any method of accepting electronic filings of applications, reports, or other matters, which, in the opinion of the commissioner, is secure. Any method of electronic filing chosen by the commissioner shall include a method to verify the identity of the person

making the filing. The verification shall be deemed to satisfy all other verifications required by this division, and shall have the same force and effect as the use of manual signatures.

SEC. 4. Section 219 is added to the Financial Code, to read:

219. (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).

SEC. 5. Section 250 of the Financial Code is amended to read:

250. The commissioner may have an office in the City of Sacramento, the City of Los Angeles, the City of San Diego, the City and County of San Francisco, or any other location in the state that he or she considers appropriate. 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.

SEC. 6. Section 364 is added to the Financial Code, to read:

364. The commissioner may, in approving an application to organize and establish a corporation to engage in the banking or trust business pursuant to Section 362, impose any conditions the commissioner deems reasonable or necessary or advisable in the public interest.

SEC. 7. Section 365 is added to the Financial Code, to read:

365. (a) With the approval of the commissioner, a bank may be formed to facilitate a merger or an acquisition of control. The new bank may survive the merger or acquisition of control.

(b) Sections 360, 360.5, 361, 362, and 363 shall not apply to the formation of a bank pursuant to subdivision (a).

(c) Article 4 (commencing with Section 250) shall apply to a bank formed pursuant to subdivision (a).

(d) A request for approval to form a bank in accordance with subdivision (a) shall be accompanied by a fee of two thousand five hundred dollars (\$2,500).

SEC. 8. Article 5 (commencing with Section 419) of Chapter 3 of Division 1 of the Financial Code is repealed.

SEC. 9. Chapter 4 (commencing with Section 490) of Division 1 of the Financial Code is repealed.

SEC. 10. Chapter 4 (commencing with Section 500) is added to Division 1 of the Financial Code, to read:

CHAPTER 4. BANK OFFICES

500. For purposes of this chapter, the following definitions apply:

(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.

(b) “Branch office” means any office at which core banking business is conducted other than an automated teller machine, a device used to facilitate check guarantee or check authorization, or a remote service facility as defined in subsection (d) of Section 345.12 of Title 12 of the Code of Federal Regulations.

(c) “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.

(d) “Facility,” means an office in this state at which a bank engages in noncore banking business but at which it does not engage in core banking business.

(e) “Head office” means the office designated by the bank as its headquarters.

(f) “Noncore banking business” means all activities permissible for banks, 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.

(g) “Office” means the head office, any branch office, and any facility office of a bank.

(h) “Redesignate offices” means (1) the relocation by a bank of its head office to the site of a branch or facility office in this state and the concurrent establishment by the bank of an office at the former site of the head office, or (2) the relocation by a bank of a branch office to the site of a facility office and the concurrent establishment by the bank of a branch or facility office at the former site of the branch office.

501. The commissioner shall issue a certificate in duplicate authorizing a bank to establish and maintain an office. A bank shall pay a fee of twenty-five dollars (\$25) for every certificate the commissioner issues pursuant to this section.

502. Every bank shall establish and maintain a head office which shall be located in this state.

503. A bank, with the approval of its board, may establish and maintain one or more offices.

504. A bank, with the approval of its board, may relocate an office.

505. A bank, with the approval of its board, may redesignate offices.

506. Each time a bank establishes an office, relocates an office, or redesignates an office, the bank shall, within 10 days of the establishment, relocation, or redesignation of the offices, file a notice with the commissioner. The notice shall include:

(a) The type of office or offices to be established, relocated, or redesignated.

(b) The complete address of the office or offices to be established, relocated, or redesignated. If an office is being relocated, the old address of the office and the address at which the office will be relocated.

(c) The date the office or offices were established, relocated, or redesignated.

(d) The appropriate fee for the certificate or certificates to be issued by the commissioner.

507. On or before January 1 of each year, every bank shall file with the commissioner a list of all offices that are currently maintained and operated by the bank. The report shall designate the type of each office that is being maintained and operated, and the complete address of each office.

508. (a) A bank 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, 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.

509. If the commissioner finds for any reason that the establishment, relocation, or redesignation of office would be unsafe or unsound for a bank, the commissioner may order the bank not to establish, relocate, or redesignate offices without the prior approval of the commissioner. The order may

contain any other restrictions and conditions as the commissioner deems necessary.

510. If a bank violates any provision of this chapter or fails to comply with any order, the commissioner may levy a penalty against the bank pursuant to Section 216.3.

SEC. 11. Chapter 4.5 (commencing with Section 550) is added to Division 1 of the Financial Code, to read:

CHAPTER 4.5. AUTHORIZATIONS FOR BANKS

550. (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) Banks and their affiliates shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all directors, officers, employees, or an applicant for employment for the purpose of obtaining information regarding the existence and content of a record of state and federal convictions and also information regarding the existence and content of a record of state and federal arrests for which the Department of Justice establishes that the person is free on bail, or on his or her recognizance, pending trial or appeal.

(d) When the Department of Justice receives a request under this section for federal summary criminal history information, it shall forward the request to the Federal Bureau of Investigation. Once the information is received from the Federal Bureau of Investigation, the Department of Justice shall

review, compile, and disseminate the information to the federally chartered bank or affiliate pursuant to paragraph (1) of subdivision (o) of Section 11105 of the Penal Code.

(e) When the Department of Justice receives a request for federal summary criminal history information from a nonchartered bank, it shall forward the request to the Federal Bureau of Investigation. Once the information is received from the Federal Bureau of Investigation, the Department of Justice shall review and provide a fitness determination on an applicant for employment based on criminal convictions or on arrests for which the person is released on bail or on his or her recognizance pending trial for the commission or attempted commission of crimes specified in subdivision (a).

(f) A bank or affiliate may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a).

(g) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

(h) 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.

(i) "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.

551. (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.

SEC. 12. The heading of Chapter 6 (commencing with Section 750) of Division 1 of the Financial Code is amended to read:

CHAPTER 6. RESTRICTIONS AND PROHIBITED PRACTICES

SEC. 13. The heading of Article 1 (commencing with Section 750) is added to Chapter 6 of Division 1 of the Financial Code, to read:

Article 1. General

SEC. 14. Section 751.7 of the Financial Code is repealed.

SEC. 15. Section 752 of the Financial Code is repealed.

SEC. 16. Section 752 is added to the Financial Code, to read:

752. 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.

SEC. 17. Section 753 of the Financial Code is repealed.

SEC. 18. Section 753 is added to the Financial Code, to read:

753. Any director, officer, agent, or employee of any bank who knowingly receives or possesses himself or herself 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.

SEC. 19. Section 754 of the Financial Code is repealed.

SEC. 20. Section 754 is added to the Financial Code, to read:

754. 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 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 or her deputies or examiners, is guilty of a felony.

SEC. 21. Section 755 of the Financial Code is repealed.

SEC. 22. Section 755 is added to the Financial Code, to read:

755. 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.

SEC. 23. Section 756 of the Financial Code is repealed.

SEC. 24. Section 756 is added to the Financial Code, to read:

756. (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.

SEC. 25. Section 758 of the Financial Code is repealed.

SEC. 26. Section 758 is added to the Financial Code, to read:

758. (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 the prior approval by the board of directors of the bank and for not more than the current market value of the property purchased.

SEC. 27. Section 759 of the Financial Code is repealed.

SEC. 28. Section 759 is added to the Financial Code, to read:

759. (a) In this section, “subject person” has the meaning set forth in subdivision (a) of Section 758.

(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 without the prior approval of the board of the directors of the bank and for an amount less than the then current market value. 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.

SEC. 29. Section 760 is added to the Financial Code, to read:

760. (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.

SEC. 30. Section 760.1 of the Financial Code is repealed.

SEC. 31. Section 761 of the Financial Code is repealed.

SEC. 32. Section 761 is added to the Financial Code, to read:

761. 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.

SEC. 33. Section 761.5 of the Financial Code is repealed.

SEC. 34. Section 762 of the Financial Code is repealed.

SEC. 35. Section 762 is added to the Financial Code, to read:

762. (a) Every director of a bank in this state who does either of the following is guilty of a misdemeanor:

(1) In case of the fraudulent insolvency of such bank, the director participated in the fraud.

(2) Wilfully does any act as the director that is expressly forbidden by law or wilfully omits to perform any duty imposed by law upon him or her as the director.

(b) 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.

SEC. 36. Section 763 of the Financial Code is repealed.

SEC. 37. Section 763 is added to the Financial Code, to read:

763. 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.

SEC. 38. Section 764 of the Financial Code is repealed.

SEC. 39. Section 764 is added to the Financial Code, to read:

764. 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.

SEC. 40. Section 765 of the Financial Code is repealed.

SEC. 41. Section 765 is added to the Financial Code, to read:

765. 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.

SEC. 42. Section 766 of the Financial Code is repealed.

SEC. 43. Section 766 is added to the Financial Code, to read:

766. 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.

SEC. 44. Section 767 is added to the Financial Code, to read:

767. 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.

SEC. 45. Section 768 of the Financial Code is repealed.

SEC. 46. Section 768 is added to the Financial Code, to read:

768. Any officer, director, trustee, employee, or agent of any bank, 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 the 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 the 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, willfully omits to make a new entry of any matter particularly pertaining to the business, property, condition, affairs, transactions, assets,

or accounts of the bank in any book, record, report, statement, or tag of the bank, or who with like intent alters, abstracts, conceals, or destroys any book, record, report, statement, or tag of the bank 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.

SEC. 47. Section 769 of the Financial Code is repealed.

SEC. 47.5. Section 769 is added to the Financial Code, to read:

769. Unless specifically authorized by law or by the commissioner, a bank shall not become, act as, or in any other manner assume the duties or liabilities of, a general partner. For purposes of this section, “general partner” has the meaning set forth in subdivision (m) of Section 15901.02 of the Corporations Code.

SEC. 48. Section 771 of the Financial Code is repealed.

SEC. 49. Section 772 of the Financial Code is repealed.

SEC. 50. Section 773 of the Financial Code is repealed.

SEC. 51. Section 774 of the Financial Code is repealed.

SEC. 52. Section 775 of the Financial Code is repealed.

SEC. 53. Section 775.1 of the Financial Code is repealed.

SEC. 54. Section 776 of the Financial Code is repealed.

SEC. 55. Section 777 of the Financial Code is repealed.

SEC. 56. Section 777.5 of the Financial Code is repealed.

SEC. 57. Section 778 of the Financial Code is repealed.

SEC. 58. Section 779 of the Financial Code is repealed.

SEC. 59. Article 2 (commencing with Section 780) is added to Chapter 6 of Division 1 of the Financial Code, to read:

Article 2. Loans to Insiders

780. 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.

781. 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 to maintain a depository 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 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.

(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.

782. 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 781, the manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) of Section 781 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 also 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.

(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 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.

783. 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.

784. In making any extension of credit that is subject to this article, a bank shall comply with all other applicable provisions of this division relating to extensions of credit by banks.

785. 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.

786. 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.

787. 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.

SEC. 60. Section 782 of the Financial Code is repealed.

SEC. 61. Article 3 (commencing with Section 790) is added to Chapter 6 of Division 1 of the Financial Code, to read:

Article 3. Banking Business by Unauthorized Persons

790. No person who 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 checks, or transact business in the way or manner of a bank or trust company.

791. No person who 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 therefore, 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 checks, 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.

792. No person who has not received a certificate from the commissioner authorizing it to engage in the banking business shall transact business under any name or title that 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” or act or advertise in any manner that 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.

793. No provision of Section 790, 791, or 792 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 790, 791, and 792, 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.

794. 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) per day or part thereof during which that violation continues.

795. 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 those securities are in fact at that time legal investments for such banks or do in fact so conform. 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.

SEC. 62. Article 1.5 (commencing with Section 1210) is added to Chapter 10 of Division 1 of the Financial Code, to read:

Article 1.5. Loan and Investment Limitations

1210. (a) In this article and in Article 4 (commencing with Section 3860) of Chapter 22, “affiliate,” when used with respect to a specified person, means any person controlling, controlled by, or under common control with, the specified person, directly or indirectly, through one or more intermediaries.

(b) “Control” has the meaning set forth in Section 700.

(c) “Regulated corporation” means any corporation in which a bank makes an equity investment and which the bank controls.

(d) “Securities issued by a person” means any debt, equity, or other security issued by a person, and any and all affiliates of that person, issued for the benefit of that person or for the benefit of an affiliate of that person.

1211. (a) Subject to the limitations in Sections 1221 and 1330, a bank may hold both obligations made by a person, and securities issued by that same person.

(b) The total amount of obligations and securities held by a bank pursuant to subdivision (a) shall not exceed 25 percent of the sum of the shareholders’ equity, allowance for loan and lease losses, capital notes and debentures of the bank.

1212. Subject to prior approval by the commissioner and to any limitations the commissioner may impose on an investment, the limitations in subdivision (b) of Section 1211 and Section 1330 shall not apply to investments by banks in securities of regulated corporations.

1213. Sections 1211 and 1330 shall not apply to investments held by a bank prior to the operative date of this section. All authorizations regarding investments by a bank issued by the commissioner prior to the operative date of this section are terminated.

SEC. 63. Section 1232 of the Financial Code is repealed.

SEC. 64. Section 1239 is added to the Financial Code, to read:

1239. 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 the assessment.

(b) A lien created by a contract and given to secure the payment for water to be furnished under the 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 that bond, if the unpaid balance of the bond and the amount of the 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 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 that law, if the unpaid balance of the assessment or subscription and the amount of the 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 provision of this division.

SEC. 65. Section 1240 is added to the Financial Code, to read:

1240. 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.

SEC. 66. Section 1330 is added to Article 4 of Chapter 10 of Division 1 of the Financial Code, to read:

1330. The total amount invested by a bank in the securities issued by a person shall not exceed 15 percent of the sum of the shareholders' equity, allowance for loan and lease losses, capital notes and debentures of the bank, 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; in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933; 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.

(e) Capital stock of the Federal Reserve Bank serving the district in which the bank is located.

(f) Capital stock of a federal home loan bank in the manner provided in the Federal Home Loan Bank Act.

(g) Capital stock of the Federal Deposit Insurance Corporation.

SEC. 67. Section 1331 is added to Article 4 of Chapter 10 of Division 1 of the Financial Code, to read:

1331. Section 1330 shall not apply to investments made pursuant to this section. 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 (15 U.S.C. Sec. 80a-1 et seq.) and for which the shares are registered under the federal Securities Act of 1933 (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 1330 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 Federal 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.

(c) Cash or its equivalent.

SEC. 68. Section 1332 is added to Article 4 of Chapter 10 of Division 1 of the Financial Code, to read:

1332. Notwithstanding Section 1330, a bank may purchase, acquire, or hold the stock of any corporation 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

SEC. 69. Section 1335 of the Financial Code is repealed.

SEC. 70. Section 1336 of the Financial Code is repealed.

SEC. 70.5. Section 1542 of the Financial Code is amended to read:

1542. Security deposited with the 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) Obligations and securities of the type described in subdivisions (a) to (g), inclusive, of Section 1330.

(d) Obligations and assets of the type described in subdivisions (a) to (c), inclusive, of Section 1331.

(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.

SEC. 71. Section 1592 is added to the Financial Code, to read:

1592. Notwithstanding any other provision of law, any bank and any trust company holding securities in a fiduciary capacity or while engaged in a trust business, or while acting in any capacity under a court or private trust, or while acting in that capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating the trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit of the 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 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 the securities were deposited maintains an account, or in the custody of any bank or trust company with authority to accept custody of the securities, that accepts custody of the securities on behalf of a securities depository. The 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 those certificates in bulk with any other securities deposited in any securities depository by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. Any bank or trust company that deposits or arranges for the deposit of the securities in a securities depository shall maintain records that at all times show the ownership of the deposited securities. A bank or trust company 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 bank or trust company in the above designated capacities. A 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.

SEC. 72. Section 1593 is added to the Financial Code, to read:

1593. Notwithstanding any other provision of law, any bank and any trust company holding securities in a fiduciary capacity or while engaged in a trust business, or while acting in any capacity under a court or private trust, or while acting in that capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating the 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 the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. Any bank or trust company that deposits or arranges for the deposit of securities pursuant to this section shall maintain records that at all times show the ownership of the securities deposited. A bank or trust company 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 the federal reserve bank without physical delivery of any securities. A 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 the 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 that party the securities deposited for its account as a 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.

SEC. 73. Section 1761 of the Financial Code is amended to read:

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 1 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.

SEC. 74. Section 1900 of the Financial Code is amended to read:

1900. (a) (1) For purposes of this section, “foreign bank” means the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5.

(2) 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.

(3) 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.

(4) The commissioner shall cause every California state bank and every foreign bank to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less frequently than once every 12 months, except that the following banks shall be examined pursuant to federal law no less frequently than state banks and foreign banks that meet the respective federal criteria:

(A) California state banks that meet the criteria set forth in Section 1820(d)(4) of Title 12 of the United States Code.

(B) Foreign banks that meet the criteria set forth in Section 211.26(c)(2) of Title 12 of the Code of Federal Regulations.

(5) The examinations required by paragraph (4) may be conducted in alternate examination periods, as appropriate, if the commissioner determines that an examination of the state bank by the appropriate federal regulator, insuring or guaranteeing corporation during the intervening examination period carries out the purpose of this section. The commissioner may not accept two consecutive examinations, or two consecutive examination reports, made by federal regulators, insuring or guaranteeing corporations, or agencies with respect to the condition of the state bank.

(6) The commissioner shall cause every California state trust company to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less frequently than once every 24 months.

(7) The commissioner may examine subsidiaries of every California state bank, state trust company, and foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to the extent and whenever and as often as the commissioner shall deem it advisable.

(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.

SEC. 75. Section 1911.5 is added to the Financial Code, to read:

1911.5. In Sections 1912 and 1913, “holding company” shall have the meaning set forth in Section 3700.

SEC. 76. Section 1912 of the Financial Code is amended to read:

1912. If it appears to the commissioner that a bank, trust company, or foreign banking corporation, or any holding company or subsidiary of the 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, or any holding company or subsidiary of 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.

SEC. 77. Section 1913 of the Financial Code is amended to read:

1913. If upon any hearing held pursuant to Section 1912 it appears to the commissioner that the bank, trust company, or foreign banking corporation, or any holding company or subsidiary of 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, or any holding company or subsidiary of the bank, trust company, or foreign banking corporation, it shall forthwith comply with the order.

SEC. 78. Section 1913.5 of the Financial Code is amended to read:

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) “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.

(4) “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.

(5) “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.

(6) “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 or 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 or 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 or 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 or 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 licensee.

(B) To vote any shares or other securities of a licensee having voting rights, for the election of any person as a director of the licensee.

(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 licensee having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any licensee.

(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.

SEC. 79. Chapter 18 (commencing with Section 3350) of Division 1 of the Financial Code is repealed.

SEC. 80. Section 3516 of the Financial Code is amended to read:

3516. No corporation shall deposit any of its funds with any other moneyed corporation unless the other corporation has been nominated and designated as a depository for the funds of the depositing corporation by the vote of a majority of the directors of the depositing corporation and has been approved by the commissioner as a depository. The commissioner may in his or her discretion revoke his or her approval of any such depository. This limitation shall not apply to the deposit of funds by a corporation with another moneyed corporation, that owns all or a majority of the capital stock of the corporation.

SEC. 81. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) “State summary criminal history information” means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) “State summary criminal history information” does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or parole revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(10) (A) Any public utility, as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal-level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal-level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D) (i) Authority for a cable corporation to request state or federal-level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal-level criminal history information under this paragraph shall commence July 1, 2005.

(11) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the

department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(l) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101 of the Penal Code, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant

is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 550 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 550 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

SEC. 82. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that

may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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