

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1268

Introduced by Assembly Member ~~Gaines~~ Members *Gaines and Nava*

February 27, 2009

~~An act relating to taxation.~~ *An act to amend Sections 110 and 1583 of, to add Sections 220, 221, 222, 223, 230.5, 236, 250.5, 291, 292, 352, 353, 354, 355, and 356 to, to add Article 3.5 (commencing with Section 240), Article 7 (commencing with Section 295), Article 8 (commencing with Section 305), and Article 9 (commencing with Section 335) to Chapter 2 of Division 1 of, to repeal Sections 100, 101, 107.5, 116, 117, 684, 1817, 1818, 1819, 1819.5, 1820, 1821, 1822, 1824, 1825, 1880, 1880.5, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1910, 1911, 1911.5, 1912, 1913, 1913.5, 1951, 1952, 14200, 14200.1, 14200.2, 14201, 14204, 14205, 14208, 14209, 14253, 14255, 14257, 34100, 34100.5, 34101, 34102, 34103, 34104, 34105, 34106, 34107, 34108, 34109, 34110, 34111, 34112, and 34113 of, to repeal Chapter 17 (commencing with Section 3100) of Division 1 of, to repeal Article 3 (commencing with Section 14300) and Article 5 (commencing with Section 14380) of Chapter 3 of Division 5 of, and to repeal Chapter 11 (commencing with Section 31700) of Division 15 of, the Financial Code, relating to financial institutions.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1268, as amended, ~~Gaines. Income taxes: carbon tax.~~ *Financial institutions.*

Existing law provides for the regulation and licensure by the Commissioner of Financial Institutions of state-chartered banks and credit unions, money transmitters, persons engaged in the business of

issuing travelers checks, business and industrial development corporations, and corporations engaging in the business of selling, in this state, payment instruments issued by it. Each of the laws regulating these licensees establishes various enforcement provisions for violations of those laws.

This bill would repeal those enforcement provisions. The bill would recast, in one body of law, the enforcement provisions applicable to those licensees. The bill would recast provisions establishing the Deputy Commissioner of Financial Institutions for the Division of Credit Unions. The bill would recast provisions making it a crime for the deputy commissioner to fail to report to the commissioner information regarding the insolvency or unsafe condition of a licensee, if the deputy commissioner has knowledge of those facts. The bill would recast provisions establishing the Credit Union Advisory Committee. The bill would make other related changes.

~~The Personal Income Tax Law imposes a tax on taxable income in accordance with specified marginal tax rates.~~

~~This bill would declare the Legislature’s intent to enact legislation imposing a carbon tax and offsetting the specified marginal tax rates.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 100 of the Financial Code is repealed.
- 2 100. ~~This division is applicable to the following:~~
- 3 (a) ~~All corporations engaging in commercial banking, industrial~~
- 4 ~~banking, or the trust business.~~
- 5 (b) ~~All national banking associations authorized to transact~~
- 6 ~~business in this state to the extent that the provisions of this division~~
- 7 ~~are not inconsistent with and do not infringe paramount federal~~
- 8 ~~laws governing national banking associations.~~
- 9 (c) ~~All other corporations as shall subject themselves to the~~
- 10 ~~special provisions and sections of this division.~~
- 11 (d) ~~All other persons, associations, copartnerships, or~~
- 12 ~~corporations who, by violating any of its provisions, become~~
- 13 ~~subject to the penalties provided for in this division.~~
- 14 SEC. 2. Section 101 of the Financial Code is repealed.
- 15 101. (a) ~~A California state bank is a corporation incorporated~~
- 16 ~~under Division 1 (commencing with Section 100) of the~~

1 Corporations Code that is, with the approval of the commissioner,
2 incorporated for the purpose of engaging in, or that is authorized
3 by the commissioner to engage in, the commercial or industrial
4 banking business.

5 (b) All provisions of law applicable to corporations generally
6 (including, but not limited to, the General Corporation Law
7 (Division 1 (commencing with Section 100), Title 1 of the
8 Corporations Code)) shall apply to banks. However, whenever any
9 provision of this division or of any regulation or order issued under
10 any provision (other than this section) of this division applicable
11 to banks is inconsistent with any provision of law applicable to
12 corporations generally, such provision of this division or of such
13 regulation or order shall apply and such provision of law applicable
14 to corporations generally shall not apply.

15 *SEC. 3. Section 107.5 of the Financial Code is repealed.*

16 ~~107.5. It shall be unlawful for any person, corporation, limited
17 liability company, partnership, firm, or any other form of business
18 entity allowed by law, to engage in or transact commercial banking
19 business, industrial banking business, or trust business within this
20 state except by means of a corporation duly organized for that
21 purpose.~~

22 *SEC. 4. Section 110 of the Financial Code is amended to read:*

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

25 "Head office" means the principal place of business of a ~~bank~~
26 licensee.

27 *SEC. 5. Section 116 of the Financial Code is repealed.*

28 ~~116. No corporation shall hereafter be organized under the
29 laws of this state to transact the business of a commercial bank,
30 industrial bank, or trust company except as provided in this
31 division.~~

32 *SEC. 6. Section 117 of the Financial Code is repealed.*

33 ~~117. Neither the enactment of this code nor the amendment or
34 repeal thereof nor the repeal of any statute affected thereby shall
35 take away or impair any liability or cause of action existing or
36 incurred against any bank or trust company or the shareholders,
37 directors, or officers thereof.~~

38 *SEC. 7. Section 220 is added to the Financial Code, to read:*

39 220. The powers of supervision and examination of all licensees
40 are vested in the commissioner.

1 *SEC. 8. Section 221 is added to the Financial Code, to read:*
2 *221. The commissioner may promulgate or waive such rules*
3 *and regulations as may be reasonable or necessary to carry out*
4 *his or her duties and responsibilities.*

5 *SEC. 9. Section 222 is added to the Financial Code, to read:*
6 *222. (a) The commissioner, whenever in his or her opinion*
7 *such action is necessary or appropriate to carry out his or her*
8 *duties, may call a meeting of the board of directors of a licensee.*

9 *(b) A meeting of the board of a licensee called by the*
10 *commissioner shall be held upon four days' notice by first class*
11 *mail or 24 hours' notice delivered personally or by telephone. The*
12 *notice shall be given by the commissioner or, if the commissioner*
13 *so orders, by an officer of the licensee.*

14 *(c) A meeting of the board of a licensee called by the*
15 *commissioner shall be held at a place within this state as may be*
16 *designated by the commissioner and specified in the notice of the*
17 *meeting.*

18 *(d) The expenses of a meeting of the board of a licensee called*
19 *by the commissioner shall be paid by the licensee.*

20 *SEC. 10. Section 223 is added to the Financial Code, to read:*
21 *223. The commissioner may, at any time, require a licensee to*
22 *write down any asset held by the licensee to a valuation that will*
23 *represent the asset's then fair market value.*

24 *SEC. 11. Section 230.5 is added to the Financial Code, to read:*
25 *230.5. The Chief Officer of the Division of Credit Unions is*
26 *the Deputy Commissioner of Financial Institutions for the Division*
27 *of Credit Unions. The Deputy Commissioner of Financial*
28 *Institutions for the Division of Credit Unions shall administer the*
29 *laws of this state relating to credit unions or the credit union*
30 *business under the direction of the commissioner. The Deputy*
31 *Commissioner of Financial Institutions for the Division of Credit*
32 *Unions shall be appointed by the Governor and shall hold office*
33 *at the pleasure of the Governor. The Deputy Commissioner of*
34 *Financial Institutions shall receive an annual salary as fixed by*
35 *the Governor.*

36 *SEC. 12. Section 236 is added to the Financial Code, to read:*
37 *236. If a deputy commissioner or any examiner has knowledge*
38 *of the insolvency or unsafe condition of any licensee and willfully*
39 *fails to report that fact to the commissioner in writing over his or*
40 *her signature, he or she is guilty of a felony.*

1 *SEC. 13. Article 3.5 (commencing with Section 240) is added*
2 *to Chapter 2 of Division 1 of the Financial Code, to read:*

3
4 *Article 3.5. Credit Union Advisory Committee*
5

6 240. *There is in the department a Credit Union Advisory*
7 *Committee.*

8 241. *The Credit Union Advisory Committee shall advise the*
9 *commissioner and the Deputy Commissioner of Financial*
10 *Institutions for the Division of Credit Unions on matters relating*
11 *to credit unions or the credit union business.*

12 242. (a) *The Credit Union Advisory Committee shall consist*
13 *of seven members.*

14 (b) *The members of the Credit Union Advisory Committee shall*
15 *be appointed by the Secretary of Business, Transportation and*
16 *Housing.*

17 (c) *The term of office of a member of the Credit Union Advisory*
18 *Committee shall be two years. However, a member may be*
19 *reappointed.*

20 (d) *Membership on the Credit Union Advisory Committee is*
21 *voluntary. No person is required to accept an appointment to the*
22 *Credit Union Advisory Committee, and any member may resign*
23 *by filing a resignation with the commissioner.*

24 (e) *No member of the Credit Union Advisory Committee shall*
25 *receive any compensation, reimbursement for expenses, or other*
26 *payment for service on the Credit Union Advisory Committee.*

27 243. *The Credit Union Advisory Committee shall meet at least*
28 *once each calendar quarter.*

29 244. *The commissioner may, by order or regulation, prescribe*
30 *rules governing the Credit Union Advisory Committee and its*
31 *members, including such matters as meetings, quorum, and actions.*

32 *SEC. 14. Section 250.5 is added to the Financial Code, to read:*

33 250.5. *There is in the Department of Financial Institutions,*
34 *the Division of Credit Unions. The Division of Credit Unions has*
35 *charge of the execution of the laws of this state relating to credit*
36 *unions and to the credit union business.*

37 *SEC. 15. Section 291 is added to the Financial Code, to read:*

38 291. *Any debt due a licensee on which interest is past due and*
39 *unpaid for the period of one year shall be charged off, unless it is*
40 *well secured or is in process of collection.*

1 *SEC. 16. Section 292 is added to the Financial Code, to read:*
 2 292. Any person that provides services to any licensee, at the
 3 request of the commissioner, shall submit to an examination by
 4 the commissioner. Should the commissioner deem it necessary or
 5 desirable that an examination be made of a person, the examination
 6 shall be made at the expense of the person examined. If the person
 7 refuses to permit an examination to be made, the commissioner
 8 may order every licensee receiving services from that person to
 9 discontinue receiving those services or otherwise conducting
 10 business with that person, and the licensees shall comply with that
 11 order.

12 *SEC. 17. Article 7 (commencing with Section 295) is added to*
 13 *Chapter 2 of Division 1 of the Financial Code, to read:*

14
 15 *Article 7. Enforcement*

16
 17 295. *In this article:*

18 (a) *“Appropriate licensee business” means the business that a*
 19 *licensee may conduct in accordance with the license that the*
 20 *commissioner has issued to that licensee.*

21 (b) *“Customer” means a depositor of a bank, a member of a*
 22 *credit union, or a customer of any other licensee.*

23 (c) *“Holding company” shall have the meaning set forth in*
 24 *Section 3700.*

25 (d) *“Officer of a subject institution” means any director, officer,*
 26 *official, or employee of the subject institution.*

27 (e) *“Subject institution” means any of the following:*

28 (1) *Licensee.*

29 (2) *Subsidiary licensee.*

30 (3) *Foreign (other state) or foreign (other nation) bank or credit*
 31 *union that maintains an office in this state, with respect to any*
 32 *such office other than a national bank or federal credit union.*

33 (4) *Any other person lawfully conducting the business of a bank*
 34 *or credit union in this state other than a national bank or federal*
 35 *credit union.*

36 (f) *“Subject person,” when used with respect to a subject*
 37 *institution, means any of the following:*

38 (1) *Director, officer, employee, or agent of the subject*
 39 *institution.*

1 (2) *Member, consultant, joint venture partner, or other person*
2 *that participates in the affairs of a subject institution.*

3 (3) *Independent contractor, including any attorney, appraiser,*
4 *or accountant, who knowingly or recklessly participates in any of*
5 *the following acts if the act caused or is likely to cause more than*
6 *a minimal financial loss to, or a significant adverse effect on, the*
7 *subject institution:*

8 (A) *A violation of any applicable law, regulation, or order.*

9 (B) *A breach of fiduciary duty.*

10 (C) *An unsafe or unsound act.*

11 (g) *“Violation” includes any act performed, alone or with other*
12 *persons, for or toward causing, bringing about, participating in,*
13 *counseling, aiding, or abetting a violation of any applicable statute,*
14 *regulation, provision of a written order issued by the commissioner,*
15 *or provision of a written operating agreement signed by the*
16 *commissioner and a subject institution or subject person.*

17 295.1. *Any person who is entitled to a hearing pursuant to this*
18 *article may waive that right at any time. A waiver under this section*
19 *shall relieve the commissioner from having to issue a formal notice*
20 *of hearing that would otherwise be required by this article.*

21 295.2. (a) *Within 30 days after an order is issued pursuant to*
22 *Section 297, 298.1, 299, 300.1, or 301.1, or subdivision (c) of*
23 *Section 300.2, the person to whom the order is issued may file with*
24 *the commissioner an application for a hearing on the order.*

25 (b) *If the commissioner fails to commence the hearing within*
26 *15 business days after the application is filed with the*
27 *commissioner or within any longer period to which the person*
28 *consents, the order shall be deemed rescinded.*

29 (c) *Within 30 days after the hearing, or within any longer period*
30 *to which the person consents, the commissioner shall affirm,*
31 *modify, or rescind the order. If the commissioner fails to affirm,*
32 *modify, or rescind the order within that time limit, the order shall*
33 *be deemed rescinded.*

34 (d) *The right to petition for judicial review of the order shall*
35 *not be affected by the failure of the person to apply to the*
36 *commissioner for a hearing on the order pursuant to subdivision*
37 *(a).*

38 295.3. *An order issued pursuant to Section 297.1, 298, 298.1,*
39 *299, 300, 300.1, or 300.2 may include any of the following*
40 *provisions:*

1 (a) *Require the subject institution, subject person, or holding*
2 *company to take affirmative action to correct any condition*
3 *resulting from the action or violation, including:*

4 (1) *Make restitution or provide reimbursement, indemnification,*
5 *or guarantee against loss, if the subject institution, subject person,*
6 *or holding company was unjustly enriched by the action or*
7 *violation or if the action or violation involved a reckless disregard*
8 *for any provision of this division, of any regulation or order issued*
9 *under this division, of any other applicable law, or of any*
10 *agreement with the commissioner.*

11 (2) *Restrict the growth of the subject institution.*

12 (3) *Dispose of any loan or other asset involved.*

13 (4) *Correct violations of law.*

14 (5) *Employ qualified officers or employees, who may be subject*
15 *to approval of the commissioner.*

16 (6) *Take any other action that the commissioner deems*
17 *necessary or advisable.*

18 (b) *Limit the activities or functions of the subject institution,*
19 *subject person, or holding company.*

20 295.4. *If the commissioner takes possession of a subject*
21 *institution without a prior notice or hearing, or takes action against*
22 *a subject person without prior notice or hearing, the commissioner*
23 *shall, upon taking possession or taking that action, concurrently*
24 *provide to the subject institution or subject person a written order.*
25 *The order shall set forth the condition or conditions of the subject*
26 *institution or action or actions of the subject person that constitute*
27 *the basis or bases for the commissioner's action. In any case where*
28 *the commissioner takes possession of a subject institution, the*
29 *commissioner shall establish, by clear evidence, the basis for his*
30 *or her action.*

31 296. (a) *The commissioner may bring an action in the name*
32 *of the people of this state in superior court to enjoin any violation*
33 *of, to enforce compliance with, or to collect any penalty or other*
34 *liability imposed under, any law subject to the jurisdiction of the*
35 *commissioner. The commissioner may bring an action in the name*
36 *of the people of this state in superior court to enjoin any violation*
37 *of, to enforce compliance with, or to collect any penalty or other*
38 *liability imposed under, any regulation promulgated under the*
39 *power of the commissioner. The commissioner may bring an action*
40 *in the name of the people of this state in superior court to enjoin*

1 any violation of, to enforce compliance with, or to collect any
2 penalty or other liability imposed under, any (1) agreement entered
3 into with the commissioner or (2) order issued by the
4 commissioner. Upon a proper showing, a permanent or preliminary
5 injunction, restraining order, or writ of mandate shall be granted,
6 and a monitor, receiver, conservator, or other designated fiduciary
7 or officer of the court may be appointed for the defendant or the
8 defendant's assets, or other relief may be granted as appropriate.

9 (b) A receiver, monitor, conservator, or other designated
10 fiduciary officer of the court appointed by the court pursuant to
11 this section may, with the approval of the court, exercise all of the
12 powers of the defendant's officers, directors, partners, trustees,
13 or persons who exercise similar powers and perform similar duties.
14 No action at law or in equity may be maintained by any party
15 against the commissioner or a receiver, monitor, conservator, or
16 other designated fiduciary or officer of the court by reason of his
17 or her exercise of those powers or performing these duties pursuant
18 to the order of, or with the approval of, the court.

19 (c) If the commissioner finds that it is in the public interest, the
20 commissioner may include in any action authorized by subdivision
21 (a) a claim for ancillary relief, including a claim for restitution,
22 disgorgement, or damages on behalf of the person injured by the
23 act or practice constituting the subject matter of the action, and
24 the court shall have jurisdiction to award ancillary relief.

25 (d) Neither the provision of subdivision (a) that authorizes the
26 appointment of a monitor, receiver, conservator, or other
27 designated fiduciary or officer of the court nor any provision of
28 subdivision (b) or (c) applies to any of the following:

29 (1) A licensee that is authorized by the commissioner to transact
30 appropriate licensee business.

31 (2) A foreign (other state) or foreign (other nation) bank or
32 credit union that maintains an office in this state in accordance
33 with federal law, the law of this state, and the law of the bank or
34 credit union's domicile.

35 (e) The provisions of this section that authorize the
36 commissioner to bring actions and seek relief are not intended to,
37 and do not, affect any right that any other person may have to
38 bring the same or similar actions or to seek the same or similar
39 relief.

1 297. *If the commissioner finds that a person has conducted,*
2 *or that there is reasonable cause to believe that a person is about*
3 *to conduct, business that requires a license issued by the*
4 *commissioner and that person has not been issued the required*
5 *license, the commissioner may, without any prior notice or hearing,*
6 *order the person to cease and desist from conducting any*
7 *unauthorized business unless and until the person is issued a*
8 *license to engage in appropriate licensee business.*

9 298. *If, after notice and a hearing, the commissioner finds any*
10 *of the factors set forth in subdivision (a) or (b) with respect to any*
11 *subject institution, subject person, or any holding company, the*
12 *commissioner may order the subject institution, subject person,*
13 *or holding company to cease and desist from the act or violation:*

14 (a) *That the subject institution, subject person, or holding*
15 *company has engaged or participated, is engaging or participating,*
16 *or that there is reasonable cause to believe that the subject*
17 *institution, subject person, or holding company is about to engage*
18 *or participate, in any unsafe or unsound act with respect to the*
19 *business of the subject institution.*

20 (b) *That the subject institution, subject person, or holding*
21 *company has violated, is violating, or that there is reasonable*
22 *cause to believe that the subject institution, subject person, or*
23 *holding company is about to violate any:*

24 (1) *Provision of any division subject to the jurisdiction of the*
25 *commissioner.*

26 (2) *Provision of any regulation promulgated by, or subject to*
27 *the jurisdiction of, the commissioner.*

28 (3) *Provision of any order issued by the commissioner or under*
29 *the commissioner's authority.*

30 (4) *Provision of any other applicable law.*

31 (5) *Provision of any written agreement with the commissioner.*

32 298.1. *If the commissioner finds that any of the factors set forth*
33 *in Section 298 is true with respect to any subject institution, subject*
34 *person, or holding company, and that the action or violation is*
35 *likely to have any of the consequences set forth in subdivisions (a)*
36 *to (d), inclusive, the commissioner may, without any prior notice*
37 *or hearing, order the subject institution or subject person to cease*
38 *and desist from the act or violation to:*

39 (a) *Cause the insolvency of the subject institution.*

1 (b) Cause significant dissipation of the assets or earnings of
2 the subject institution.

3 (c) Weaken the condition of the subject institution.

4 (d) Otherwise prejudice the interests of the customers of the
5 subject institution.

6 299. If the commissioner finds that a subject institution's books
7 or records are so incomplete or inaccurate that the commissioner
8 is unable through the normal supervisory process to determine
9 the financial condition of the subject institution or the details or
10 purpose of any transaction or transactions that may materially
11 affect the financial condition of the subject institution, the
12 commissioner may, without any prior notice or hearing, order the
13 subject institution to do either of the following:

14 (a) Cease any activity or practice that gave rise, in whole or in
15 part, to the incomplete or inaccurate state of the books or records.

16 (b) Take affirmative action to restore the books or records to a
17 complete and accurate state.

18 300. If, after notice and an opportunity for a hearing, the
19 commissioner finds that any of the factors set forth in subdivision
20 (a), any of the factors set forth in subdivision (b), and any of the
21 factors set forth in subdivision (c) are true with respect to a subject
22 person of a subject institution or holding company, the
23 commissioner may issue an order suspending or removing the
24 subject person from the subject person's office, if any, with the
25 subject institution or holding company, and prohibiting the subject
26 person from participating in any manner in the conduct of the
27 affairs of the subject institution or holding company without the
28 approval of the commissioner:

29 (a) (1) That the subject person has, directly or indirectly,
30 violated any provision of any:

31 (A) Division subject to the jurisdiction of the commissioner.

32 (B) Regulation promulgated by, or subject to the jurisdiction
33 of, the commissioner.

34 (C) Other applicable law.

35 (D) Order issued by the commissioner or under the
36 commissioner's authority.

37 (E) Written agreement with the commissioner.

38 (2) That the subject person has, directly or indirectly, engaged
39 or participated in any unsafe or unsound act in connection with

1 *the business of the subject institution, holding company, or any*
2 *other business institution.*

3 *(3) That the subject person has, directly or indirectly, engaged*
4 *or participated in any act that constitutes a breach of the subject*
5 *person's fiduciary duty.*

6 *(b) That, by reason of the act, violation, or breach of fiduciary*
7 *duty described in subdivision (a):*

8 *(1) The subject institution, holding company, or business*
9 *institution has suffered or will probably suffer financial loss or*
10 *other harm.*

11 *(2) The rights or interests of the customers or members of the*
12 *subject institution have been or could be prejudiced.*

13 *(3) The subject person has received financial gain or other*
14 *benefit.*

15 *(c) That the act, violation, or breach of fiduciary duty described*
16 *in subdivision (a) either involves dishonesty on the part of the*
17 *subject person or demonstrates the subject person's willful or*
18 *continuing disregard for the safety or soundness of the subject*
19 *institution, holding company, or business institution.*

20 *300.1. If the commissioner finds that any of the factors set forth*
21 *in subdivision (a) of Section 300, any of the factors set forth in*
22 *subdivision (b) of Section 300, and any of the factors set forth in*
23 *subdivision (c) of Section 300 are true with respect to a subject*
24 *person of a subject institution, and that it is necessary or advisable*
25 *for the protection of the subject institution or holding company,*
26 *or the rights or interests of the customers or members of the subject*
27 *institution, the commissioner may, without any prior notice or*
28 *hearing, issue an order suspending the subject person from the*
29 *subject person's office, if any, with the subject institution or holding*
30 *company, and prohibiting the subject person from participating*
31 *in any manner in the conduct of the affairs of the subject institution*
32 *or holding company without the prior approval of the*
33 *commissioner.*

34 *300.2. (a) If the commissioner finds that any of the factors set*
35 *forth in paragraph (1) and the factor set forth in paragraph (2)*
36 *are true with respect to a subject person or former subject person*
37 *of a subject institution or holding company, the commissioner may,*
38 *without any prior notice or hearing, issue an order suspending*
39 *the subject person or former subject person from his or her office,*
40 *if any, with the subject institution or holding company and*

1 *prohibiting him or her from further participating in any manner*
2 *in the conduct of the affairs of the subject institution or holding*
3 *company without the approval of the commissioner:*

4 *(1) That the subject person or former subject person has been*
5 *charged in an indictment issued by a grand jury or in an*
6 *information, complaint, or similar pleading issued by a United*
7 *States attorney, district attorney, or other governmental official*
8 *or agency authorized to prosecute crimes, with commission of or*
9 *participation in any of the following:*

10 *(A) A crime that involves dishonesty or breach of trust and that*
11 *is punishable by imprisonment for a term exceeding one year.*

12 *(B) A criminal violation of any provision of this division.*

13 *(C) A criminal violation of Section 1956, 1957, or 1960 of Title*
14 *18 of, or Section 5322 or 5324 of Title 31 of, the United States*
15 *Code.*

16 *(D) A criminal violation of a law of any jurisdiction other than*
17 *the United States that is substantially similar to any of the statutes*
18 *specified in subparagraph (C).*

19 *(2) That continued or resumed service or participation by the*
20 *subject person or former subject person may pose a threat to the*
21 *rights or interests of the customers or members of the subject*
22 *institution or may threaten to impair public confidence in the*
23 *subject institution.*

24 *(b) An order issued pursuant to subdivision (a) shall remain in*
25 *effect until the indictment or the information, complaint, or similar*
26 *pleading is finally disposed of or, if the order is earlier terminated*
27 *by the commissioner, until the order is so terminated.*

28 *(c) If the commissioner finds that the factors set forth in*
29 *paragraphs (1) and (2) are true with respect to a subject person*
30 *or former subject person of a subject institution or holding*
31 *company, the commissioner may, without any prior notice or*
32 *hearing, issue an order suspending or removing the subject person*
33 *or former subject person from his or her office, if any, with the*
34 *subject institution or holding company and prohibiting him or her*
35 *from further participating in any manner in the affairs of the*
36 *subject institution or holding company without the approval of the*
37 *commissioner:*

38 *(1) That the subject person or former subject person has been*
39 *finally convicted of any crime of the type described in paragraph*
40 *(1) of subdivision (a). For purposes of this paragraph, an*

1 agreement to enter a pretrial diversion or similar program is
2 deemed to be a conviction.

3 (2) That continued or resumed service or participation by the
4 subject person or former subject person may pose a threat to the
5 interests of the customers of the subject institution or may threaten
6 to impair public confidence in the subject institution.

7 (d) The fact that any subject person of a subject institution
8 charged with a crime of the type described in paragraph (1) of
9 subdivision (a) is not finally convicted of the crime does not
10 preclude the commissioner from issuing an order regarding the
11 subject person pursuant to any other provision of this article.

12 300.3. (a) Any subject institution, subject person of a subject
13 institution, or former subject person of a subject institution to
14 whom an order is issued under Sections 300 to 300.2, inclusive,
15 may apply to the commissioner to modify or rescind the order. In
16 deciding whether to grant or deny the application, the
17 commissioner shall consider whether it is in the public interest to
18 modify or rescind the order and whether it is reasonable to believe
19 that the subject person or former subject person will, if and when
20 he or she becomes a subject person of a subject institution or
21 holding company, comply with all applicable provisions of law,
22 or any regulation or order issued by the commissioner.

23 (b) The right of any subject person or former subject person of
24 a subject institution or holding company to whom an order is
25 issued under Sections 300 to 300.2, inclusive, to petition for
26 judicial review of the order shall not be affected by the failure of
27 the subject institution or holding company to apply to the
28 commissioner pursuant to subdivision (a) to modify or rescind the
29 order.

30 300.4. (a) In this section, “subject depository institution”
31 means any:

32 (1) Licensee or any bank or credit union that maintains an office
33 in this state.

34 (2) Affiliate of any of the institutions specified in paragraph (1).

35 (3) Subsidiary of any of the institutions specified in paragraph
36 (1).

37 (4) Holding company of any of the institutions specified in
38 paragraph (1).

39 (b) It is unlawful for any subject person or former subject person
40 of a subject institution, or holding company to whom an order is

1 issued under Sections 300 to 300.2, inclusive, wilfully to do,
2 directly or indirectly, any of the following without the approval of
3 the commissioner, so long as the order is in effect:

4 (1) Act as a subject person of any subject depository institution.

5 (2) Vote any shares or other securities having voting rights for
6 the election of any person as a director of a subject depository
7 institution.

8 (3) Solicit, procure, transfer or attempt to transfer, or vote any
9 proxy, consent, or authorization with respect to any shares or other
10 securities of a subject depository institution having voting rights.

11 (4) Otherwise to participate in any manner in the affairs of any
12 subject depository institution.

13 301. The commissioner may revoke or suspend any license
14 issued by, or under the authority of, the commissioner, if, after
15 notice and opportunity for hearing, he or she finds any of the
16 following:

17 (a) The licensee has violated, is violating, or that there is
18 reasonable cause to believe that the subject institution, subject
19 person, or holding company is about to violate any provision of
20 any of the following:

21 (1) Any division subject to the jurisdiction of the commissioner.

22 (2) Any regulation promulgated by, or subject to the jurisdiction
23 of, the commissioner.

24 (3) Any order issued by the commissioner or under the
25 commissioner's authority.

26 (4) Any other applicable law.

27 (5) Any written agreement with the commissioner.

28 (b) Any fact or condition exists which, if it had existed at the
29 time of the original application for the license, would be grounds
30 for denying the application for the license.

31 (c) The licensee is conducting its business in an unsafe manner.

32 (d) The licensee is in such condition that it is unsafe or unsound
33 for the licensee to transact appropriate licensee business.

34 (e) The licensee has inadequate capital or is insolvent.

35 (f) The licensee failed to pay any of its obligations as they came
36 due or is reasonably expected to be unable to pay its obligations
37 as they come due.

38 (g) The licensee has applied for an adjudication of bankruptcy,
39 reorganization, arrangement, or other relief under any bankruptcy,
40 reorganization, insolvency, or moratorium law, or that any person

1 *has applied for any such relief under any such law against the*
2 *licensee and the licensee has by any affirmative act approved of,*
3 *or consented to, the action or the relief has been granted.*

4 *(h) The licensee has ceased to transact appropriate licensee*
5 *business.*

6 *(i) The licensee refuses to submit its books, papers, and affairs*
7 *to the inspection of any examiner.*

8 *(j) Any officer of the licensee refuses to be examined upon oath*
9 *touching the concerns of the licensee.*

10 *(k) The licensee has, with the approval of its board, requested*
11 *the commissioner to take possession of its property and business.*

12 *301.1. If the commissioner finds that any of the factors set forth*
13 *in Section 301 is true with respect to any licensee and that it is*
14 *necessary for the protection of the public interest, the commissioner*
15 *may issue an order immediately suspending or revoking the*
16 *licensee's license.*

17 *302. If the commissioner finds that any of the factors set forth*
18 *in subdivisions (a) to (k), inclusive, is true with respect to a*
19 *licensee, the commissioner may by order, without any prior notice*
20 *or hearing, take possession of the property and business of the*
21 *licensee:*

22 *(a) The licensee has violated any provision of (1) any division*
23 *subject to the jurisdiction of the commissioner, (2) any regulation*
24 *promulgated by, or subject to the jurisdiction of, the commissioner,*
25 *(3) any order issued by the commissioner or under the*
26 *commissioner's authority, (4) any other applicable law, or (5) any*
27 *written agreement with the commissioner.*

28 *(b) The licensee is conducting its business in an unsafe or*
29 *unsound manner.*

30 *(c) The licensee is in such condition that it is unsafe or unsound*
31 *for the licensee to transact appropriate licensee business.*

32 *(d) The licensee has inadequate capital or is insolvent.*

33 *(e) If the licensee is a bank, the tangible shareholders' equity*
34 *of the bank is less than the following:*

35 *(1) If the bank is a commercial bank or industrial bank, the*
36 *greater of three percent of the bank's total assets or one million*
37 *dollars (\$1,000,000).*

38 *(2) If the bank is a trust company other than a commercial bank*
39 *authorized to engage in trust business, one million dollars*
40 *(\$1,000,000).*

1 (f) *The licensee failed to pay any of its obligations as they came*
2 *due or is reasonably expected to be unable to pay its obligations*
3 *as they come due.*

4 (g) *The licensee has applied for an adjudication of bankruptcy,*
5 *reorganization, arrangement, or other relief under any bankruptcy,*
6 *reorganization, insolvency, or moratorium law, or that any person*
7 *has applied for any such relief under any such law against the*
8 *licensee and the licensee has by any affirmative act approved of*
9 *or consented to the action or the relief has been granted.*

10 (h) *The licensee has ceased to transact appropriate licensee*
11 *business.*

12 (i) *The licensee refuses to submit its books, papers, and affairs*
13 *to the inspection of any examiner.*

14 (j) *Any officer of the licensee refuses to be examined upon oath*
15 *touching the concerns of the licensee.*

16 (k) *The licensee has, with the approval of its board, requested*
17 *the commissioner to take possession of its property and business.*

18 302.1. (a) *If the commissioner takes possession of the property*
19 *and business of a licensee pursuant to Section 302, the licensee*
20 *may, within 10 days, apply to the superior court in the county*
21 *where its head office is located to enjoin further proceedings. The*
22 *court may, after citing the commissioner to show cause why further*
23 *proceedings should not be enjoined and after a hearing, dismiss*
24 *the application or enjoin the commissioner from further*
25 *proceedings and order the commissioner to surrender the property*
26 *and business of the licensee to the licensee or make any further*
27 *order as may be just. The judgment of the court may be appealed*
28 *by the commissioner or by the licensee as allowed by law.*

29 (b) *At any time after the commissioner takes possession of the*
30 *property and business of a licensee pursuant to Section 302, the*
31 *licensee may, with the approval of the commissioner, resume*
32 *business upon conditions as the commissioner may prescribe.*

33 302.2. (a) *Upon taking possession of the property and business*
34 *of any licensee, the commissioner shall give notice of that fact to*
35 *all persons holding or having in their possession any assets of the*
36 *licensee. No person knowing of the taking or who has been notified*
37 *thereof shall have a lien or charge upon any assets of the licensee*
38 *for any payment, advance, or clearance thereafter made or for*
39 *any liability thereafter incurred.*

1 **(b)** *The giving of notice in accordance with this section shall*
2 *not be deemed to be a prerequisite to the taking of possession of*
3 *the property and business of the licensee.*

4 **SEC. 18.** *Article 8 (commencing with Section 305) is added to*
5 *Chapter 2 of Division 1 of the Financial Code, to read:*

6

7

8 **Article 8. Liquidation and Conservation**

9

10 **305.** *In this article, “Federal Insurance Agency” means the*
11 *Federal Deposit Insurance Corporation or the National Credit*
12 *Union Administration, as appropriate, or their respective*
13 *successors-in-interest.*

14 **305.1.** *Upon taking possession of the property and business of*
15 *any licensee, the commissioner has authority, and it is his or her*
16 *duty, to collect all moneys due to the licensee and to do other acts*
17 *as are necessary or expedient to collect, conserve, or protect the*
18 *licensee’s assets, property, and business, and he or she shall*
19 *proceed to conserve or liquidate the affairs of the licensee as*
20 *provided in this article.*

21 **305.2.** *No attachment shall be issued against the property of*
22 *any licensee subject to conservation or liquidation pursuant to*
23 *this article.*

24 **305.3.** *Upon taking possession of the property and business of*
25 *any licensee pursuant to Section 302, the commissioner may*
26 *proceed to liquidate or conserve the licensee in the manner*
27 *provided by this article.*

28 **305.4.** *Upon taking possession of the property and business of*
29 *a licensee pursuant to Section 302, the commissioner may tender*
30 *to any person an appointment as conservator, liquidator, or*
31 *receiver of the licensee.*

32 **305.5.** *The commissioner shall supervise the acts of the*
33 *conservator, liquidator, liquidating agent, or liquidating committee*
34 *appointed under this article and may remove the conservator,*
35 *liquidator, liquidating agent, or any or all members of the*
36 *liquidating committee in his or her discretion.*

37 **305.6.** *If required by the commissioner, the conservator,*
38 *liquidator, liquidating agent, or members of the liquidating*
39 *committee appointed under this article shall provide proof of bond*
40 *coverage that extends to the liquidating agent or members of the*
liquidating committee. The bond shall include fraud, dishonesty,

1 *and faithful performance coverage. The premium for that bond*
2 *shall be paid out of the assets of the licensee.*

3 305.7. (a) *If the commissioner retains possession of the assets*
4 *of the licensee for the purpose of liquidation or conservation, the*
5 *commissioner shall, to the extent possible, use the services of civil*
6 *service employees of the commissioner's office, and the attorneys*
7 *employed by the commissioner or the Department of Justice shall*
8 *render all necessary legal services, as the commissioner may*
9 *request.*

10 (b) *The commissioner, from time to time, under his or her official*
11 *seal, may appoint one or more special deputy commissioners as*
12 *his or her agent or agents with the powers specified in the*
13 *certificate of appointment to assist him or her in the duties of*
14 *conservation or of liquidation and distribution. The certificate of*
15 *appointment shall be filed in the office of the commissioner and a*
16 *certified copy in the office of the clerk of the county in which the*
17 *head office of the licensee is located. The commissioner may*
18 *employ counsel and procure expert assistance and advice as may*
19 *be necessary in the liquidation and distribution of the assets of the*
20 *licensee and for that purpose may retain any of the officers or*
21 *employees of the licensee as the commissioner may deem necessary.*

22 305.8. *The compensation of civil service employees, special*
23 *deputies, counsel, and other employees and assistants appointed*
24 *to assist in the conservation or liquidation of any licensee and the*
25 *distribution of its assets and all expenses of supervision and*
26 *liquidation shall be fixed by the commissioner and shall be paid*
27 *out of the funds of the licensee in the hands of the commissioner.*
28 *The expenses of liquidation shall be reported to the court upon*
29 *each application for payment of a dividend.*

30 305.9. *If a licensee is not insured by a Federal Insurance*
31 *Agency, upon the commissioner taking possession of the business*
32 *and property of the licensee, the superior court of the State of*
33 *California for the county in which the head office of the licensee*
34 *is located shall have exclusive original jurisdiction of all*
35 *proceedings relating thereto and of any action or other proceedings*
36 *brought under the provisions of this article. All papers relating to*
37 *the proceeding, including copies of the certificate of appointment*
38 *of any special deputy and the inventories required to be filed, shall*
39 *be filed and be made a part of the record of the proceeding without*
40 *the payment of any additional fees. No damages may be awarded*

1 *in the proceeding but, if sought, may only be recovered in a*
2 *separate action.*

3 *310. If the licensee whose property and business has been taken*
4 *pursuant to Section 302 is insured by a Federal Insurance Agency,*
5 *the commissioner may tender to the appropriate Federal Insurance*
6 *Agency an appointment as conservator, liquidator, or receiver of*
7 *the licensee. If the Federal Insurance Agency accepts the*
8 *appointment, the Federal Insurance Agency shall have, in addition*
9 *to any powers conferred by applicable federal law, the powers*
10 *conferred on the commissioner pursuant to this article.*

11 *310.1. The Federal Insurance Agency may be, and act as, a*
12 *conservator, liquidator, or receiver without bond.*

13 *310.2. If the Federal Insurance Agency accepts the appointment*
14 *in accordance with Section 310.1, the rights of customers and*
15 *other creditors of the insured licensee shall be determined in*
16 *accordance with the applicable provisions of the laws of this state.*

17 *310.3. The Federal Insurance Agency conservator, liquidator,*
18 *or receiver shall possess with respect to the insured licensee all*
19 *the powers, rights, and privileges given the commissioner under*
20 *this article with respect to the conservation or liquidation of a*
21 *licensee, as appropriate, and the property and assets of which he*
22 *or she has taken possession, except insofar as the same may be in*
23 *conflict with the provisions of applicable federal law.*

24 *310.4. (a) The commissioner may sell any part or the whole*
25 *of the business of a licensee to any other licensee. The purchase*
26 *and sale shall be approved by the purchasing licensee, as follows:*

27 *(1) If the purchasing licensee is organized under the laws of*
28 *this state, by two-thirds of all of its directors.*

29 *(2) If the licensee is any licensee other than a licensee organized*
30 *under the laws of this state, in accordance with the laws of the*
31 *jurisdiction under which the licensee is organized.*

32 *(b) (1) Subject to any applicable federal statutes and*
33 *regulations, any bank or credit union organized under the laws of*
34 *this state may, with the approval of two-thirds of all of its directors*
35 *and of the commissioner, purchase from the receiver of a national*
36 *banking association or a federal credit union the whole or any*
37 *part of the business of the national banking association or federal*
38 *credit union.*

39 *(2) Subject to any applicable federal statutes and regulations*
40 *and any applicable laws of the jurisdiction under which a foreign*

1 corporation is organized, any foreign corporation or office of a
2 foreign corporation that is licensed by the commissioner to transact
3 business in this state and that is authorized to accept shares or
4 deposits in this state, may, with the approval of the commissioner,
5 purchase from the receiver of a national banking association or
6 federal credit union the whole or any part of the business of the
7 national banking association or federal credit union.

8 (c) The provisions of Chapter 12 (commencing with Section
9 1200) and Chapter 13 (commencing with Section 1300) of Division
10 1 of Title 1 of the Corporations Code shall not apply to any
11 purchase and sale of the type described in subdivision (a) or (b).

12 (d) When a purchase and sale of the type described in
13 subdivision (a) or (b) becomes effective, the licensee shall, ipso
14 facto and by operation of law and without further transfer,
15 substitution, act, or deed, to the extent provided in the agreement
16 of the purchase and sale or in the order of the court approving the
17 purchase and sale and except as withheld or limited by the
18 agreement or by the order:

19 (1) Succeed to the rights, obligations, properties, assets,
20 investments, shares, deposits, demands, and agreements of the
21 licensee whose business is sold, subject to the right of every
22 customer of a licensee to withdraw his or her shares or deposit in
23 full on demand after the sale, irrespective of the terms under which
24 the share or deposit was made.

25 (2) Succeed to the rights, obligations, properties, assets,
26 investments, shares, deposits, demands, and agreements of the
27 whose business is sold under all trusts, executorships,
28 administrations, guardianships, conservatorships, agencies, and
29 other fiduciary or representative capacities, to the same extent as
30 though the purchasing licensee had originally assumed, acquired,
31 or owned the same, subject to the rights of trustors and
32 beneficiaries under the trusts so sold to nominate another or
33 succeeding trustee of the trust so sold after the sale.

34 (3) Succeed to and be entitled to take and execute the
35 appointment to executorships, trusteeships, guardianships,
36 conservatorships, and other fiduciary and representative capacities
37 to which the licensee whose business is sold is or may be named
38 in wills, whenever probated, or to which it is or may be named or
39 appointed by any other instrument.

1 (e) For purposes of subdivision (d), any purchase and sale of
2 the type referred to in subdivision (d) shall be deemed to be
3 effective at the time provided in the agreement of the purchase and
4 sale or in the order of the court approving the purchase and sale.

5 315. Whenever the commissioner deems it necessary in order
6 to conserve the assets of any licensee for the benefit of the
7 customers and other creditors, he or she may appoint a conservator
8 of the licensee and require the conservator to post a bond as the
9 commissioner deems proper. The conservator, under the direction
10 of the commissioner, shall take possession of the books, records,
11 and assets of every description of the licensee and take any action
12 as the conservator may deem necessary to conserve the assets of
13 the licensee pending further disposition of its business.

14 315.1. A conservator appointed in accordance with Section
15 315 has all of the powers and rights with relation to the business
16 and the property of the licensee for which he or she is appointed
17 conservator as are possessed by the commissioner under this
18 article with relation to a licensee of which the commissioner has
19 taken possession, and the conservator is subject to the same
20 obligations as are imposed upon the commissioner under this
21 article. During the time that the conservator remains in possession
22 of the licensee the rights of the licensee, and of all persons with
23 respect thereto, subject to the other provisions of this article, are
24 the same as if the commissioner had taken possession of the
25 property and business of the licensee for the purposes of
26 liquidation. All expenses of the conservatorship shall be paid out
27 of the assets of the licensee and shall be a lien thereon which shall
28 be prior to any other lien. The conservator shall receive a salary
29 in an amount no greater than that which would be paid by the
30 commissioner to a special deputy in charge of the liquidation of
31 a licensee.

32 315.2. The commissioner may order an examination at the
33 earliest possible date of a licensee for which the commissioner
34 has appointed a conservator.

35 315.3. While any licensee is in the hands of a conservator, the
36 commissioner may require the conservator to set aside and make
37 available for withdrawal by customers and for payment to other
38 creditors on a ratable basis such amounts as in the opinion of the
39 commissioner may safely be used for that purpose.

1 315.4. *The commissioner, in his or her discretion, may permit*
2 *the conservator to receive shares or deposits, but any shares or*
3 *deposits received while the licensee is in the hands of a conservator*
4 *shall be held as trust funds and shall not be subject to any*
5 *limitation as to payment or withdrawal. The shares or deposits*
6 *shall be segregated and shall not be used to liquidate any*
7 *indebtedness of the licensee existing at the time the conservator*
8 *was appointed or for the payment of any later indebtedness*
9 *incurred for the purpose of liquidating any indebtedness of the*
10 *licensee existing at the time the conservator was appointed. The*
11 *shares or deposits shall be kept on hand in cash, invested in direct*
12 *obligations of the United States, or deposited with the Federal*
13 *Reserve Bank.*

14 315.5. *If the commissioner is satisfied that it may be done safely*
15 *and that it would be in the public interest, he or she may terminate*
16 *a conservatorship and permit the licensee for whom a conservator*
17 *was appointed to resume the transaction of its business under the*
18 *direction of its board, subject to any terms, conditions, restrictions,*
19 *and limitations as the commissioner may prescribe.*

20 315.6. *The conservator of a licensee that has been permitted*
21 *to resume accepting member shares or deposits shall first cause*
22 *a notice to be published in a newspaper of local circulation. The*
23 *notice shall state the date on which the affairs of the licensee will*
24 *be returned to its board and that the provisions of Section 315.4*
25 *will not be effective after 30 days from that date. The form of the*
26 *notice and the newspaper in which the same is to be published*
27 *shall be first approved by the commissioner. On the date of the*
28 *publication of the notice, the conservator shall mail a copy of the*
29 *notice to every person who made any deposit in the licensee after*
30 *the date of the appointment of the conservator. The conservator*
31 *shall address the copy of the notice to the persons who have made*
32 *the deposits at the addresses appearing upon the books of the*
33 *licensee. The conservator shall also mail a similar notice to every*
34 *person making a deposit in the licensee after the date of the*
35 *publication of the notice and before the affairs of the licensee are*
36 *returned to its board.*

37 315.7. *The commissioner may assess and collect from all*
38 *licensees for whom a conservator is appointed their ratable share*
39 *of the costs incurred in the administration of this article.*

1 315.8. Any licensee that the commissioner has taken possession
2 of pursuant to Section 302, and for which a conservator has been
3 appointed pursuant to this article, may be reorganized under a
4 plan that requires the consent of any of the following:

5 (a) Customers and other creditors of the licensee representing
6 at least 75 percent in amount of its total member shares or deposits
7 and other liabilities as shown by the books of the licensee,
8 excluding member shares or deposits and other liabilities which
9 are to be satisfied in full under the provisions of the plan.

10 (b) Stockholders owning at least two-thirds of the outstanding
11 stock as shown by the books of the licensee.

12 (c) Members of the licensee.

13 (d) Customers and other creditors of the licensee representing
14 at least 75 percent in amount of its total shares or deposits and
15 other liabilities as shown by the books of the licensee, excluding
16 shares or deposits and other liabilities that are to be satisfied in
17 full under the provisions of the plan, and, if applicable to the
18 licensee, of stockholders owning at least two-thirds of its
19 outstanding stock as shown by the books of the licensee.

20 315.9. All customers, creditors, stockholders, if applicable,
21 and other interested persons shall be given notice of any proposed
22 plan of reorganization in the manner and at the times as the
23 commissioner directs.

24 315.10. No plan of reorganization shall become effective until
25 the commissioner finds that the plan is fair and equitable to all
26 customers, creditors, and stockholders, if applicable, and is in the
27 public interest and until the commissioner approves the same in
28 writing, subject to any conditions, restrictions, and limitations as
29 the commissioner may prescribe.

30 315.11. No creditor having security for the payment of his, her,
31 or its claim shall be affected in his, her, or its right to enforce the
32 security by the provisions of any plan for the reorganization of the
33 licensee. Any plan of reorganization involving the reduction of
34 claims of creditors shall apply only to that portion of a secured
35 creditor's loan that is not covered by the pledged security.

36 315.12. When any plan of reorganization becomes effective,
37 all books, records, and assets of the licensee shall be disposed of
38 in accordance with the provisions of the plan and the affairs of
39 the licensee shall be conducted by its board in the manner provided
40 by the plan and under the conditions, restrictions, and limitations

1 *that may have been prescribed by the commissioner. When any*
2 *plan of reorganization adopted and approved as herein provided*
3 *becomes effective, all customers and other creditors and, if*
4 *applicable, stockholders of the licensee, whether or not they have*
5 *consented to the plan of reorganization, shall be fully and in all*
6 *respects subject to and bound by the plan's provisions and the*
7 *claims of all customers and other creditors shall be treated as if*
8 *they had consented to the plan of reorganization.*

9 320. The commissioner may sell, compromise, or compound
10 any bad or doubtful debt owing the licensee for a principal sum
11 not exceeding ten thousand dollars (\$10,000), upon those terms
12 as the commissioner may deem proper. If the principal sum thereof
13 exceeds ten thousand dollars (\$10,000), the commissioner may
14 compromise, compound, or sell the debt upon those terms as the
15 court may approve. If it appears improbable that a recovery on a
16 debt can be had, and that the costs of an action to collect would
17 be lost, and the principal sum thereof does not exceed five hundred
18 dollars (\$500), the commissioner may determine that no suit
19 thereon shall be brought. If the principal sum of that debt exceeds
20 ten thousand dollars (\$10,000), the commissioner may determine
21 that no suit thereon be brought after obtaining approval of the
22 court.

23 320.1. The commissioner may sell any real or personal property
24 of the licensee for cash or on credit and on any other terms and
25 conditions as the commissioner may deem proper, subject to the
26 approval of the court.

27 320.2. (a) The commissioner may, with the approval of the
28 court, sell any part or the whole of the business of a licensee to
29 any other licensee. The purchase and sale shall be approved by
30 the purchasing licensee, as follows:

31 (1) If the purchasing licensee is organized under the laws of
32 this state, by two-thirds of all of its directors.

33 (2) If the licensee is any licensee other than a licensee organized
34 under the laws of this state, in accordance with the laws of the
35 jurisdiction under which the licensee is organized.

36 (b) (1) Subject to any applicable federal statutes and
37 regulations, any bank or credit union organized under the laws of
38 this state may, with the approval of two-thirds of all of its directors
39 and of the commissioner, purchase from the receiver of a national
40 banking association or a federal credit union the whole or any

1 *part of the business of the national banking association or federal*
2 *credit union.*

3 *(2) Subject to any applicable federal statutes and regulations*
4 *and any applicable laws of the jurisdiction under which a foreign*
5 *corporation is organized, any foreign corporation or any office*
6 *of a foreign corporation that is licensed by the commissioner to*
7 *transact business in this state and that is authorized to accept*
8 *shares or deposits in this state, may, with the approval of the*
9 *commissioner, purchase from the receiver of a national banking*
10 *association or federal credit union the whole or any part of the*
11 *business of the national banking association or federal credit*
12 *union.*

13 *(c) The provisions of Chapter 12 (commencing with Section*
14 *1200) and Chapter 13 (commencing with Section 1300) of Division*
15 *1 of Title 1 of the Corporations Code shall not apply to any*
16 *purchase and sale of the type described in subdivision (a) or (b).*

17 *(d) When a purchase and sale of the type described in*
18 *subdivision (a) or (b) becomes effective, the purchasing licensee*
19 *shall, by operation of law and without further transfer, substitution,*
20 *act, or deed, to the extent provided in the agreement of the*
21 *purchase and sale or in the order of the court approving the*
22 *purchase and sale and except as withheld or limited by the*
23 *agreement or by the order:*

24 *(1) Succeed to the rights, obligations, properties, assets,*
25 *investments, shares, deposits, demands, and agreements of the*
26 *licensee whose business is sold, subject to the right of every*
27 *customer of the licensee whose shares or deposit is sold to*
28 *withdraw his or her shares or deposit in full on demand after the*
29 *sale, irrespective of the terms under which the deposit was made.*

30 *(2) Succeed to the rights, obligations, properties, assets,*
31 *investments, shares, deposits, demands, and agreements of the*
32 *whose business is sold under all trusts, executorships,*
33 *administrations, guardianships, conservatorships, agencies, and*
34 *other fiduciary or representative capacities, to the same extent as*
35 *though the purchasing licensee had originally assumed, acquired,*
36 *or owned the same, subject to the rights of trustors and*
37 *beneficiaries under the trusts so sold to nominate another or*
38 *succeeding trustee of the trust so sold after the sale.*

39 *(3) Succeed to and be entitled to take and execute the*
40 *appointment to executorships, trusteeships, guardianships,*

1 conservatorships, and other fiduciary and representative capacities
2 to which the licensee whose business is sold is or may be named
3 in wills, whenever probated, or to which it is or may be named or
4 appointed by any other instrument.

5 (e) For purposes of subdivision (d), any purchase and sale of
6 the type referred to in subdivision (d) shall be deemed to be
7 effective at the time provided in the agreement of the purchase and
8 sale or in the order of the court approving the purchase and sale.

9 320.3. Within six months after taking possession of the property
10 and business of any licensee, the commissioner may terminate or
11 adopt any executory contract to which the licensee may be a party
12 including leases of real or personal property. Claims for damages
13 resulting from the termination of any the contract or lease may be
14 filed and allowed, but no claim of a landlord for damages resulting
15 from the rejection of an unexpired lease of real property or under
16 any covenant of the lease shall be allowed in an amount exceeding
17 the rent reserved by the lease, without acceleration, for the year
18 succeeding the date of the surrender of the premises plus the
19 amount of any unpaid accrued rent without acceleration. Any claim
20 shall be filed within 30 days of the date of the termination or within
21 the time that claims are to be filed under Section 320.10, whichever
22 is longer.

23 320.4. The commissioner, in his or her own name or in the
24 name of the licensee, may execute, acknowledge, and deliver any
25 and all conveyances and other instruments necessary or
26 appropriate to effectuate the sale of any real or personal property
27 or to effectuate any other transaction in connection with the
28 liquidation of a licensee or the distribution of its assets. Any
29 conveyance or other instrument executed by the commissioner
30 pursuant to this authority shall be valid and effectual for all
31 purposes as though the same had been executed by the officers of
32 the licensee by authority of its board of directors. Whenever the
33 commissioner sells any real property of the licensee a certified
34 copy of the order of the court approving the sale shall be recorded
35 in the county in which any part of the real property is located.

36 320.5. The commissioner, in the name of the delinquent licensee
37 or in his or her own name, may prosecute and defend any and all
38 actions and other legal proceedings appropriate or necessary to
39 the liquidation of the licensee.

1 320.6. *The commissioner from time to time shall deposit all*
2 *moneys coming into his or her hands in the course of the*
3 *liquidation of the licensee in one or more state banks or state credit*
4 *unions and in the event of the suspension or insolvency of the*
5 *depository shall be preferred before all other deposits.*

6 320.7. *The commissioner shall make an inventory of the assets*
7 *of the licensee in duplicate and file one in the office of the*
8 *commissioner and one with the clerk of the county in which the*
9 *head office of the licensee is located to be filed with the papers in*
10 *the liquidation proceedings. The inventory shall be open for*
11 *inspection at all reasonable times.*

12 320.8. *When the time fixed for the presentation of claims has*
13 *expired, the commissioner shall make in duplicate a full and*
14 *complete list of all claims presented, including and specifying*
15 *claims that have been rejected by the commissioner, and a list of*
16 *all claims of customers as shown by the books or records of the*
17 *licensee for which claims have not yet been presented, and shall*
18 *file one copy of the list in the commissioner's office and one with*
19 *the clerk of the county in which the head office of the licensee is*
20 *located to be filed with the papers in the liquidation proceedings.*
21 *Before each application to the court for leave to declare a dividend,*
22 *the commissioner shall file a supplemental list of claims presented*
23 *since the last preceding list was filed, including and specifying*
24 *any claims that have been rejected by him or her. The list of claims*
25 *and of claims of customers as shown by the books or records of*
26 *the licensee shall be open for inspection at all reasonable times.*

27 320.9. *The commissioner shall cause notice to be given by*
28 *advertisement in any newspapers of general circulation as he or*
29 *she may select weekly for three consecutive months, calling on all*
30 *persons who have claims against the licensee to present the same*
31 *to the commissioner and make legal proof thereof at a place to be*
32 *specified therein and within four months of the date of the first*
33 *publication of the notice, which date shall be specified in the notice.*
34 *The notice shall also state that all claims other than those of*
35 *customers appearing upon the books or records of the licensee*
36 *shall be forever barred if not filed within the four months' period*
37 *and that all claims of customers appearing upon the books or*
38 *records of the licensee will be forever barred, except as herein*
39 *provided, if not filed prior to the filing of a petition for a final*
40 *dividend. The commissioner shall also mail a similar notice to all*

1 *persons, including customers whose names appear as creditors*
2 *upon the books of the licensee and whose addresses appear upon*
3 *the books or records of the licensee, and shall enclose therewith*
4 *a printed form of notice of claim.*

5 *320.10. All claims of every kind against the licensee or against*
6 *any property owned or held by the licensee shall be presented to*
7 *the commissioner in writing verified by the claimant or someone*
8 *on his or her behalf within four months of the date of the first*
9 *publication of the notice to creditors. Any claim, other than the*
10 *claim of a customer whose claim appears upon the books or*
11 *records of the licensee, not presented within the four months'*
12 *period shall be forever barred and any claim of a customer whose*
13 *claim appears upon the books or records of the licensee that is*
14 *not so presented prior to the date of the filing of the petition of the*
15 *commissioner with the court for approval of the payment of the*
16 *final dividend shall be forever barred except as to any moneys*
17 *remaining after all debts for which claims were duly filed have*
18 *been paid in full with interest. If the commissioner doubts the*
19 *validity of any claim, he or she may reject the claim and serve*
20 *notice of the rejection upon the claimant either by mail or*
21 *personally. An affidavit of the mailing or personal service of the*
22 *notice shall be prima facie evidence of the receipt thereof and shall*
23 *be filed with the commissioner. Any action upon a rejected claim*
24 *shall be brought within three months after the date of mailing or*
25 *personal service of the notice of rejection.*

26 *320.11. At any time and from time-to-time after the expiration*
27 *of the time fixed for the presentation of claims, the commissioner,*
28 *after obtaining approval of the court, may declare and pay one or*
29 *more dividends upon all approved claims out of the funds*
30 *remaining in his or her hands after the payment of expenses and*
31 *after setting aside an amount sufficient to pay to all customers,*
32 *who have not yet filed claims but whose claims appear upon the*
33 *books or records of the licensee, their pro rata share of the funds*
34 *then available for the payment of a dividend. At any time after the*
35 *expiration of one year from the date of the first publication of*
36 *notice to creditors and after obtaining the approval of the court,*
37 *the commissioner may declare and pay a final dividend.*

38 *320.12. (a) Expenses and claims of unsecured creditors have*
39 *priority in the following order:*

1 (1) Expenses of liquidation and approved claims for fees and
2 assessments due the department.

3 (2) Approved claims given priority under other provisions of
4 state or federal law, including, but not limited to, Sections 320.6
5 and 330.

6 (3) Approved claims for “deposits,” as that term is defined in
7 12 U.S.C. Section 1813(1), but including obligations of the type
8 described in 12 U.S.C. Section 1813(1)(5)(A) and (B).

9 (4) Approved claims for other general liabilities.

10 (5) Approved claims for obligations subordinated to deposits
11 and other general liabilities.

12 (b) Interest shall be given the same priority as the claim on
13 which it is based, but no interest shall be paid on any claim until
14 the principal of all claims within the same class has been paid or
15 adequately provided for in full.

16 (c) Any funds remaining shall be paid to the members or
17 shareholders, as appropriate.

18 320.13. Objections to any claim not rejected by the
19 commissioner may be made by any person interested by filing a
20 copy of the objection with the commissioner, who shall present
21 the copy to the court at the time of the next application for approval
22 of the declaration of a dividend. The court shall thereupon dispose
23 of the objections or may order a reference for that purpose, and
24 should the objections to any claim be sustained by the court or by
25 the referee, the claim shall not be allowed by the commissioner
26 until the claimant has established the claim by judgment.

27 320.14. Dividends remaining unpaid and any sums available
28 for payment of shares or deposits for which no claim was filed,
29 which remain in the hands of the commissioner six months after
30 the order for the payment of a final dividend, shall be deposited
31 in the State Treasury. The shares or deposits shall be deemed to
32 have been received under Chapter 7 (commencing with Section
33 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and
34 shall be subject to claim or other disposition as provided in that
35 chapter. The commissioner may pay over the moneys held by him
36 or her to the persons respectively entitled thereto at any time prior
37 to depositing the shares or deposits in the State Treasury, upon
38 being furnished satisfactory evidence of the persons’ right to the
39 same.

1 320.15. *Whenever, under the provisions of this article, the*
2 *commissioner is required to transmit unclaimed money or other*
3 *unclaimed property to any state officer for deposit in the State*
4 *Treasury, the commissioner, upon request of the Controller, shall*
5 *transmit to the Controller all signature cards and any other*
6 *identifying information available from the records of the licensee,*
7 *covering the money or other property. Upon receipt by the*
8 *Controller of the signature cards or other identifying information,*
9 *the licensee and the commissioner shall be relieved of all*
10 *responsibility therefor. The signature cards and other identifying*
11 *information may be destroyed or otherwise disposed of by the*
12 *Controller whenever, in his or her discretion, their further retention*
13 *by him or her is no longer required in the interest of the customers*
14 *or the state.*

15 320.16. *All approved claims of customers and other creditors*
16 *shall bear interest at the rate provided by law on judgments from*
17 *the date that the commissioner takes possession of the property*
18 *and business of the licensee.*

19 320.17. *If the licensee has in its possession for safekeeping or*
20 *storage any jewelry, plate, money, specie, bullion, stocks, bonds,*
21 *securities, valuable papers, or other valuable personal property,*
22 *or has rented any vaults, safes, or safe-deposit boxes, the*
23 *commissioner shall cause to be mailed, by registered mail, postage*
24 *prepaid, to any known person claiming to be or appearing on the*
25 *books of the licensee to be the owner of the property or to the*
26 *person in whose name the safe, vault, or box stands a notice*
27 *notifying the person to remove all of the personal property within*
28 *a specified fixed period of not less than 60 days.*

29 320.18. *On the last day fixed in the notice for the removal of*
30 *the property or on the date when the property is removed or the*
31 *box surrendered, any contract between the person owning the*
32 *property or holding the box and the licensee shall cease and the*
33 *amount of the unearned prepaid rent or charges, if any, shall*
34 *become a debt of the licensee to the person.*

35 320.19. *If any property is not removed within the time fixed by*
36 *the notice mailed by the commissioner, the commissioner may*
37 *dispose of the property as the court, on application thereto, shall*
38 *direct. The commissioner may cause any safe, vault, or box to be*
39 *opened in his or her presence or in the presence of one of the*
40 *special deputy commissioners and of a notary not an officer or*

1 *employee of the licensee or of the commissioner. The contents*
2 *thereof, if any, shall be sealed by the notary in a package upon*
3 *which the notary shall distinctly mark the name and address of*
4 *the person in whose name the safe or box stands upon the books*
5 *of the licensee and shall attach thereon a list and a description of*
6 *the property within the package. The package so sealed and*
7 *addressed, together with the list and description may be kept by*
8 *the commissioner in one or more of the safes or boxes of the*
9 *licensee or elsewhere until delivered to the person whose name it*
10 *bears or until otherwise disposed of as directed by the court.*

11 320.20. (a) *When the commissioner has completed the*
12 *liquidation of the licensee, he or she shall petition the court for*
13 *an order declaring the licensee duly wound up and dissolved.*

14 (b) *After any notice as the court may direct and a hearing, the*
15 *court may make an order declaring the licensee duly wound up*
16 *and dissolved. The order shall declare all of th following:*

17 (1) *The licensee has been duly wound up.*

18 (2) *A final franchise tax return, if any, as described by Section*
19 *23332 of the Revenue and Taxation Code, has been filed with the*
20 *Franchise Tax Board as required under Part 10.2 (commencing*
21 *with Section 18401) of Division 2 of the Revenue and Taxation*
22 *Code, and any tax or penalty due under the Corporation Tax Law*
23 *has been paid, and the licensee's known debts and liabilities have*
24 *been paid or adequately provided for, or any taxes, penalties,*
25 *debts, and liabilities have been paid so far as the licensee's assets*
26 *permitted, as the case may be. If there are known debts or liabilities*
27 *for the payment of which adequate provision has been made, the*
28 *order shall describe the provision, setting forth any information*
29 *necessary to enable the creditor or other person to whom payment*
30 *is to be made to appear and claim payment of the debt or liability.*

31 (3) *All known assets of the licensee have been distributed to its*
32 *shareholders or wholly applied on account of the licensee's debts*
33 *and liabilities.*

34 (4) *The licensee is dissolved.*

35 (c) *The court may make additional orders and grant further*
36 *relief as it deems proper upon the evidence submitted.*

37 (d) *Upon the making of the order declaring the licensee*
38 *dissolved, the corporate existence of the licensee shall cease, except*
39 *for the purposes of any necessary further winding up.*

1 (e) Upon the making of the order declaring the licensee
2 dissolved, the commissioner shall file with the Secretary of State
3 a copy of the order, certified by the clerk of the court.

4 320.21. Whenever this article requires court approval of any
5 step in the liquidation proceedings, approval shall be given after
6 a hearing upon notice as the court may direct. At the hearing, the
7 court may by order approve the actions of the commissioner for
8 which he or she has petitioned the court's approval or it may, by
9 appropriate order, otherwise direct the commissioner in the matter
10 in connection with which the petition was filed.

11 320.22. Whenever, in the opinion of the commissioner, the
12 liquidation or reorganization of any licensee taken in charge by
13 him or her would be facilitated, or the public interests and the
14 interests of customers or stockholders would be served, the
15 commissioner may borrow money on behalf of the licensee from
16 any federal agency authorized to lend money to receivers, trustees,
17 liquidating agents, or other agents or supervisory authorities in
18 charge of licensees that are closed or in process of liquidation
19 and, with approval of the court, the commissioner may secure any
20 borrowings by the pledge of the assets of the licensee in any
21 manner and amount the commissioner deems necessary, proper,
22 or expedient.

23 325. Whenever any licensee is being liquidated or whenever
24 the trust business of any licensee has been discontinued and the
25 licensee has in its possession money or other property held by it
26 in trust or for safekeeping and the beneficiaries or persons entitled
27 thereto are unknown or cannot be found, the commissioner or the
28 licensee, upon obtaining approval of the superior court of the
29 county in which the liquidation proceedings are pending or in
30 which the head office of the licensee is situated, may do the
31 following:

32 (a) In the case of money, deliver it to the Treasurer.

33 (b) In the case of other property, deliver it to the Controller for
34 deposit in the State Treasury.

35 325.1. Upon the delivery of any money to the Treasurer or
36 upon the delivery of any property to the Controller, a certified
37 copy of the order of the court approving the delivery shall be given
38 to the Controller, and upon the delivery of any money to the
39 Treasurer a notice giving the amount delivered shall be filed with
40 the Controller. Upon the receipt of any money or other properties,

1 *the Treasurer or the Controller, as the case may be, shall issue a*
2 *receipt for the same and the receipt shall be deemed a voucher in*
3 *favor of the licensee to the same extent as though executed by the*
4 *beneficiary or other person entitled thereto.*

5 *325.2. All money or other property delivered to the Treasurer*
6 *or Controller pursuant to this article shall be deemed to be*
7 *delivered for deposit in the State Treasury under the provisions of*
8 *Chapter 7 (commencing with Section 1500) of Title 10 of Part 3*
9 *of the Code of Civil Procedure and shall be subject to claim or*
10 *other disposition as provided in that chapter.*

11 *330. The holder or transferor of a negotiable instrument*
12 *transferred to a licensee for collection has a preferred claim in*
13 *the amount of the liability of the licensee on the instrument if the*
14 *instrument was forwarded to the licensee by any person or by any*
15 *other financial institution for collection and remittance, if payment*
16 *therefor has not been made and if the same has been collected*
17 *either in whole or in part by the licensee, unless the holder or*
18 *transferor is a voluntary depositor in the licensee and the proceeds*
19 *of the collection, at his or her request, have been credited by the*
20 *licensee to his or her account.*

21 *SEC. 19. Article 9 (commencing with Section 335) is added to*
22 *Chapter 2 of Division 1 of the Financial Code, to read:*

23

24

Article 9. Voluntary Liquidation

25

26 *335. Any licensee that voluntarily has ceased to do the business*
27 *for which it is licensed shall immediately notify the commissioner*
28 *and proceed to liquidate its affairs. Any share or deposit or other*
29 *sum that has not been paid to the person entitled thereto within*
30 *six months after the licensee ceased to conduct a business shall*
31 *be paid into the State Treasury. The deposits with the State*
32 *Treasury shall be deemed to have been received under the*
33 *provisions of Chapter 7 (commencing with Section 1500) of Title*
34 *10 of Part 3 of the Code of Civil Procedure and shall be subject*
35 *to claim or other disposition as provided in that chapter. If the*
36 *commissioner has reason to conclude that the liquidation of the*
37 *licensee is not being safely or expeditiously conducted, he or she*
38 *may take possession of the business and property of the licensee*
39 *in the same manner and with the same effect and subject to the*
40 *same rights accorded the licensee as if he or she had taken*

1 *possession pursuant to Article 8 (commencing with Section 305),*
2 *and he or she may proceed to liquidate the licensee's affairs in*
3 *the same manner as provided in that article. When the licensee*
4 *has been completely liquidated, its corporate existence shall be*
5 *dissolved in the manner provided by law.*

6 *335.1. If the licensee referred to in Section 335 is a state*
7 *chartered credit union and the commissioner has taken possession*
8 *of the business and property of the credit union, the commissioner*
9 *may appoint a liquidating agent or a liquidating committee of*
10 *three members of the credit union to liquidate the business and*
11 *assets of the credit union in the manner provided in Article 2*
12 *(commencing with Section 15250) of Chapter 9 of Division 5,*
13 *except that, in lieu of the certificate required under Section 15252,*
14 *the commissioner shall prepare and file in the office of the*
15 *Secretary of State a certificate of commencement of liquidation*
16 *proceedings upon taking possession of the business and assets,*
17 *and the commissioner or his authorized deputy shall countersign*
18 *the certificate referred to in Sections 15257 and 15258 whenever*
19 *liquidation is involuntary. The commissioner may, however,*
20 *prepare and file a final certificate whenever he or she retains*
21 *possession of the assets of any credit union for the purpose of*
22 *liquidation. The liquidating agent need not be a member of the*
23 *credit union to be liquidated and may be a person, firm, or*
24 *corporation, as determined by the commissioner.*

25 *SEC. 20. Section 352 is added to the Financial Code, to read:*

26 *352. Except where the context provides otherwise, this division*
27 *is applicable to the following:*

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

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

34 *(c) All other corporations that subject themselves to the special*
35 *provisions and sections of this division.*

36 *(d) All other persons, associations, copartnerships, or*
37 *corporations who, by violating any of its provisions, become*
38 *subject to the penalties provided for in this division.*

39 *SEC. 21. Section 353 is added to the Financial Code, to read:*

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

7 (b) All provisions of law applicable to corporations generally
8 including, but not limited to, the General Corporation Law
9 (Division 1 (commencing with Section 100), Title 1 of the
10 Corporations Code) shall apply to banks. However, whenever any
11 provision of this division or any regulation or order issued under
12 any provision (other than this section) of this division applicable
13 to banks is inconsistent with any provision of law applicable to
14 corporations generally, that provision of this division or that
15 regulation or order shall apply and the provision of law applicable
16 to corporations generally shall not apply.

17 SEC. 22. Section 354 is added to the Financial Code, to read:

18 354. It shall be unlawful for any person, corporation, limited
19 liability company, partnership, firm, or any other form of business
20 entity allowed by law, to engage in or transact commercial banking
21 business, industrial banking business, or trust business within this
22 state except by means of a corporation duly organized for that
23 purpose.

24 SEC. 23. Section 355 is added to the Financial Code, to read:

25 355. No corporation shall hereafter be organized under the
26 laws of this state to transact the business of a commercial bank,
27 industrial bank, or trust company, except as provided in this
28 chapter.

29 SEC. 24. Section 356 is added to the Financial Code, to read:

30 356. Neither the enactment of this code nor the amendment or
31 repeal thereof, nor the repeal of any statute affected thereby, shall
32 take away or impair any liability or cause of action existing or
33 incurred against any bank or trust company, or the shareholders,
34 directors, or officers thereof.

35 SEC. 25. Section 684 of the Financial Code is repealed.

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

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

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

9 ~~(d) The expenses of a meeting of the board of a bank called by~~
10 ~~the commissioner shall be paid by such bank.~~

11 *SEC. 26. Section 1583 of the Financial Code is amended to*
12 *read:*

13 1583. The commissioner shall examine the court trust business
14 of a trust company at least once every ~~two calendar years~~ *24 months*
15 and shall examine the private trust business at such times and to
16 such extent as he or she may deem necessary or advisable.

17 *SEC. 27. Section 1817 of the Financial Code is repealed.*

18 ~~1817. If it appears to the commissioner that a licensee is~~
19 ~~violating or failing to comply with any law of this state, the~~
20 ~~commissioner may direct such licensee to comply with the law by~~
21 ~~an order issued over his or her official seal, or if it appears to the~~
22 ~~commissioner that any licensee is conducting its business in an~~
23 ~~unsafe or injurious manner the commissioner may in like manner~~
24 ~~direct it to discontinue the unsafe or injurious practices. The order~~
25 ~~shall require the licensee to show cause before the commissioner~~
26 ~~at a time and place to be fixed by him or her why the order should~~
27 ~~not be observed.~~

28 *SEC. 28. Section 1818 of the Financial Code is repealed.*

29 ~~1818. If upon any hearing held pursuant to Section 1817 the~~
30 ~~commissioner finds that the licensee is violating or failing to~~
31 ~~comply with any law of this state or is conducting its business in~~
32 ~~an unsafe or injurious manner he or she may make a final order~~
33 ~~directing it to comply with the law or to discontinue the unsafe or~~
34 ~~injurious practices. Unless within 10 days after the issuance of~~
35 ~~such final order its enforcement is restrained in a proceeding~~
36 ~~brought by the licensee, it shall forthwith comply therewith.~~

37 *SEC. 29. Section 1819 of the Financial Code is repealed.*

38 ~~1819. The commissioner may revoke or suspend any license~~
39 ~~issued pursuant to this chapter, if, after notice and opportunity for~~
40 ~~hearing, he or she finds any of the following:~~

1 ~~(a) The licensee has violated any provision of this chapter, any~~
 2 ~~rule or regulation adopted by the commissioner, or any federal or~~
 3 ~~state law that reasonably applies to the conduct of the licensee’s~~
 4 ~~money transmission business.~~

5 ~~(b) Any fact or condition exists which, if it had existed at the~~
 6 ~~time of the original application for the license, would be grounds~~
 7 ~~for denying an application for a license under Section 1802.2.~~

8 ~~(c) The licensee is conducting its business in an unsafe manner.~~

9 ~~(d) The licensee has failed to obey a final order issued by the~~
 10 ~~commissioner.~~

11 ~~SEC. 30. Section 1819.5 of the Financial Code is repealed.~~

12 ~~1819.5.—(a) If the commissioner finds that any of the factors~~
 13 ~~set forth in Section 1819 is true with respect to any licensee and~~
 14 ~~that it is necessary for the protection of the public interest, the~~
 15 ~~commissioner may issue an order immediately suspending or~~
 16 ~~revoking the licensee’s license.~~

17 ~~(b) (1) Within 30 days after the license is suspended or revoked~~
 18 ~~pursuant to subdivision (a), the licensee may file with the~~
 19 ~~commissioner an application for a hearing on the suspension or~~
 20 ~~revocation.~~

21 ~~(2) If the commissioner fails to commence a hearing within 15~~
 22 ~~business days after the application is filed with the commissioner~~
 23 ~~or within a longer period of time agreed to by the licensee, the~~
 24 ~~suspension or revocation shall be deemed rescinded.~~

25 ~~(3) Within 30 days after the hearing, the commissioner shall~~
 26 ~~affirm, modify, or rescind the suspension or revocation. Otherwise,~~
 27 ~~the suspension or revocation shall be deemed rescinded.~~

28 ~~(4) The right of the licensee to petition for judicial review of~~
 29 ~~the suspension or revocation, shall not be affected by the failure~~
 30 ~~of the licensee to apply to the commissioner for a hearing on the~~
 31 ~~suspension or revocation pursuant to this subdivision.~~

32 ~~SEC. 31. Section 1820 of the Financial Code is repealed.~~

33 ~~1820.—Every order, decision, or other official act of the~~
 34 ~~commissioner is subject to review in accordance with law.~~

35 ~~SEC. 32. Section 1821 of the Financial Code is repealed.~~

36 ~~1821.—Whenever it appears to the commissioner that a licensee~~
 37 ~~has done or is doing any of the acts specified in subdivisions (a)~~
 38 ~~to (g), inclusive, the commissioner may take possession of the~~
 39 ~~property and business of the licensee and retain possession until~~
 40 ~~the licensee resumes business or its affairs are finally liquidated.~~

1 The licensee, with the consent of the commissioner, may resume
2 business upon those conditions as the commissioner may prescribe.

3 ~~(a) The licensee has violated any federal or state law or any rule
4 or regulation that reasonably applies to the conduct of the business
5 of the licensee.~~

6 ~~(b) The licensee is conducting its business in an unsafe or
7 unauthorized manner.~~

8 ~~(c) The licensee refuses to submit its books, papers, and affairs
9 to the inspection of the commissioner.~~

10 ~~(d) The licensee or any officer of a licensee refuses to be
11 examined upon oath touching the concerns of the licensee.~~

12 ~~(e) The licensee has suspended payment of its obligations.~~

13 ~~(f) The licensee is in a condition that it is unsound, unsafe, or
14 inexpedient for it to transact business.~~

15 ~~(g) The licensee neglects or refuses to observe any order of the
16 commissioner made pursuant to Section 1818 unless the
17 enforcement of the order is restrained in a proceeding brought by
18 the licensee.~~

19 *SEC. 33. Section 1822 of the Financial Code is repealed.*

20 ~~1822. Whenever the commissioner has taken possession of the
21 property and business of any licensee, such licensee, within 10
22 days after such taking, if it deems itself aggrieved thereby, may
23 apply to the superior court in the county in which the head office
24 of such licensee is located to enjoin further proceedings. The court,
25 after citing the commissioner to show cause why further
26 proceedings should not be enjoined and after a hearing and a
27 determination of the facts upon the merits may dismiss such
28 application or enjoin the commissioner from further proceedings
29 and direct him or her to surrender the property and business to
30 such licensee.~~

31 *SEC. 34. Section 1824 of the Financial Code is repealed.*

32 ~~1824. An appeal may be taken from the judgment of the court
33 by the commissioner or by the licensee in the manner provided by
34 law for appeals from the judgment of a superior court to the court
35 of appeal.~~

36 *SEC. 35. Section 1825 of the Financial Code is repealed.*

37 ~~1825. When the commissioner takes possession of the property
38 or business of any licensee for the purpose of liquidation or
39 conservation, the commissioner shall liquidate or conserve the
40 property or business pursuant to Chapter 17 of this division.~~

1 *SEC. 36. Section 1880 of the Financial Code is repealed.*

2 ~~1880. In this article, unless the context otherwise requires:~~

3 ~~(a) “Act” includes omission.~~

4 ~~(b) “Insolvent”, when used with respect to any person, means~~
5 ~~a person who has ceased to pay his debts in the ordinary course of~~
6 ~~business, who cannot pay his debts as they become due, or whose~~
7 ~~liabilities exceed his assets.~~

8 ~~(c) “Office with a license” means the position of director,~~
9 ~~officer, employee, or agent of such licensee.~~

10 ~~(d) “Subject person”, when used with respect to a licensee,~~
11 ~~means:~~

12 ~~(1) Any director, officer, employee, or agent of such licensee;~~
13 ~~or~~

14 ~~(2) Any other person who participates in the conduct of the~~
15 ~~business of such licensee.~~

16 *SEC. 37. Section 1880.5 of the Financial Code is repealed.*

17 ~~1880.5. (a) No order issued by the commissioner under Section~~
18 ~~1883, 1885, or 1886 shall become effective earlier than the 10th~~
19 ~~business day after the issuance of such order.~~

20 ~~(b) No order issued by the commissioner under subdivision (a)~~
21 ~~of Section 1884 or subdivision (a) or (b) of Section 1887 shall~~
22 ~~become effective earlier than the fifth business day after the~~
23 ~~issuance of such order.~~

24 *SEC. 38. Section 1881 of the Financial Code is repealed.*

25 ~~1881. (a) Whenever it appears to the commissioner that any~~
26 ~~person has violated, or that there is reasonable cause to believe~~
27 ~~that any person is about to violate, any provision of this chapter~~
28 ~~or of any regulation or order issued under this chapter, the~~
29 ~~commissioner may bring an action in the name of the people of~~
30 ~~this state in the superior court to enjoin such violation or to enforce~~
31 ~~compliance with this chapter or with any regulation or order issued~~
32 ~~under this chapter. Upon a proper showing, a restraining order,~~
33 ~~preliminary or permanent injunction, or writ of mandate shall be~~
34 ~~granted, and a receiver or conservator may be appointed for the~~
35 ~~defendant or the defendant’s assets.~~

36 ~~(b) Any receiver or conservator appointed by the court pursuant~~
37 ~~to subdivision (a) may, with the approval of the court, exercise all~~
38 ~~of the powers of the defendant’s directors, officers, partners,~~
39 ~~trustees, or persons who exercise similar powers and perform~~
40 ~~similar duties, including the filing of a petition for bankruptcy. No~~

1 action at law or in equity may be maintained by any party against
2 the commissioner or such receiver or conservator by reason of the
3 exercise of such powers or the performance of such duties pursuant
4 to the order, or with the approval of, the court.

5 (e) ~~The commissioner may include in any action authorized~~
6 ~~under subdivision (a) a claim for ancillary relief, including a claim~~
7 ~~for restitution or damages on behalf of the persons injured by the~~
8 ~~act constituting the subject matter of such action, and the court~~
9 ~~shall have jurisdiction to award such additional relief.~~

10 *SEC. 39. Section 1882 of the Financial Code is repealed.*

11 ~~1882. (a) If the commissioner finds that any person has~~
12 ~~violated, or that there is reasonable cause to believe that any person~~
13 ~~is about to violate, Section 1853, the commissioner may order such~~
14 ~~person to cease and desist from such violation unless and until~~
15 ~~such person is issued a license.~~

16 ~~(b) (1) Within 30 days after an order is issued pursuant to~~
17 ~~subdivision (a), the person to whom such order is issued may file~~
18 ~~with the commissioner an application for a hearing on the order.~~
19 ~~If the commissioner fails to commence such hearing within 15~~
20 ~~business days after such application is filed with the commissioner~~
21 ~~(or within such longer period to which such person consents), the~~
22 ~~order shall be deemed rescinded. Within 30 days after the hearing,~~
23 ~~the commissioner shall affirm, modify, or rescind the order;~~
24 ~~otherwise, the order shall be deemed rescinded.~~

25 ~~(2) The right of any person to whom an order is issued under~~
26 ~~subdivision (a) to petition for judicial review of such order shall~~
27 ~~not be affected by the failure of such person to apply to the~~
28 ~~commissioner for hearing on the order pursuant to paragraph (1)~~
29 ~~of this subdivision.~~

30 *SEC. 40. Section 1883 of the Financial Code is repealed.*

31 ~~1883. If, after notice and a hearing, the commissioner finds:~~

32 ~~(a) That any licensee or any California agent of a licensee has~~
33 ~~engaged or participated, is engaging or participating, or that there~~
34 ~~is reasonable cause to believe that any licensee or any California~~
35 ~~agent of a licensee is about to engage or participate, in any unsafe~~
36 ~~or unsound act with respect to the business of such licensee; or~~

37 ~~(b) That any licensee or any California agent of a licensee has~~
38 ~~violated, is violating, or that there is reasonable cause to believe~~
39 ~~that any licensee or any California agent of a licensee is about to~~
40 ~~violate, any provision of this chapter or of any regulation or order~~

1 issued under this chapter or any provision of any other applicable
2 law:

3 ~~The commissioner may order such licensee or such California~~
4 ~~agent to cease and desist from such action or violation. The order~~
5 ~~may require the licensee or such California agent to take affirmative~~
6 ~~action to correct any condition resulting from the action or~~
7 ~~violation.~~

8 *SEC. 41. Section 1884 of the Financial Code is repealed.*

9 1884. (a) ~~If the commissioner finds that any of the factors set~~
10 ~~forth in Section 1883 is true with respect to any licensee or any~~
11 ~~California agent of a licensee and that such action or violation is~~
12 ~~likely:~~

13 ~~(1) To cause the insolvency of the licensee;~~

14 ~~(2) To cause substantial dissipation of the assets or earnings of~~
15 ~~the licensee;~~

16 ~~(3) To seriously weaken the condition of the licensee; or~~

17 ~~(4) To otherwise seriously prejudice the interests of purchasers~~
18 ~~or holders of traveler's checks issued by the licensee:~~

19 ~~The commissioner may order such licensee or such California~~
20 ~~agent to cease and desist from such action or violation. Such order~~
21 ~~may require the licensee or the California agent to take affirmative~~
22 ~~action to correct any condition resulting from the action or~~
23 ~~violation.~~

24 ~~(b) (1) Within 30 days after an order is issued pursuant to~~
25 ~~subdivision (a), any licensee or California agent of a licensee to~~
26 ~~whom such order is issued may file with the commissioner an~~
27 ~~application for a hearing on the order. If the commissioner fails to~~
28 ~~commence such hearing within 15 business days after such~~
29 ~~application is filed with the commissioner (or within such longer~~
30 ~~period to which such licensee or California agent consents), the~~
31 ~~order shall be deemed rescinded. Within 30 days after the hearing,~~
32 ~~the commissioner shall affirm, modify, or rescind the order;~~
33 ~~otherwise, the order shall be deemed rescinded.~~

34 ~~(2) The right of any licensee or California agent of a licensee~~
35 ~~to whom an order is issued under subdivision (a) to petition for~~
36 ~~judicial review of such order shall not be affected by the failure~~
37 ~~of such licensee or California agent of a licensee to apply to the~~
38 ~~commissioner for a hearing on the order pursuant to paragraph (1)~~
39 ~~of this subdivision.~~

40 *SEC. 42. Section 1885 of the Financial Code is repealed.*

1 1885. ~~If, after notice and a hearing, the commissioner finds:~~

2 (a) ~~(1) That any subject person of a licensee has engaged or~~
3 ~~participated in any unsafe or unsound act with respect to the~~
4 ~~business of such licensee;~~

5 ~~(2) That any subject person of a licensee has violated any~~
6 ~~provision of this chapter or of any regulation or order issued under~~
7 ~~this chapter or any provision of any other applicable law relating~~
8 ~~to the business of such licensee; or~~

9 ~~(3) That any subject person of a licensee has engaged or~~
10 ~~participated in any act which constitutes a breach of his fiduciary~~
11 ~~duty as a subject person; and~~

12 (b) ~~(1) That such act, violation, or breach of fiduciary duty has~~
13 ~~caused or is likely to cause substantial financial loss or other~~
14 ~~damage to the licensee;~~

15 ~~(2) That such action, violation, or breach of fiduciary duty has~~
16 ~~seriously prejudiced, or is likely to seriously prejudice, the interests~~
17 ~~of purchasers or holders of traveler's checks issued by the licensee;~~
18 ~~or~~

19 ~~(3) That the subject person has received financial gain by reason~~
20 ~~of such act, violation, or breach of fiduciary duty; and~~

21 (c) ~~That such act, violation, or breach of fiduciary duty either~~
22 ~~involves dishonesty on the part of the subject person or~~
23 ~~demonstrates the subject person's gross negligence with respect~~
24 ~~to the business of the licensee or a willful disregard for the safety~~
25 ~~and soundness of the licensee;~~

26 ~~The commissioner may order the licensee to suspend or remove~~
27 ~~the subject person from his or her office, if any, with the licensee~~
28 ~~and to preclude such person from further participating in any~~
29 ~~manner in the conduct of the business of the licensee, except with~~
30 ~~the prior consent of the commissioner.~~

31 *SEC. 43. Section 1886 of the Financial Code is repealed.*

32 1886. ~~If, after notice and a hearing, the commissioner finds~~
33 ~~that any subject person of a licensee has, by engaging or~~
34 ~~participating in any act with respect to any financial or other~~
35 ~~business institution which resulted in financial loss or other~~
36 ~~damage, demonstrated:~~

37 (a) ~~(1) Dishonesty;~~

38 ~~(2) Gross negligence with respect to the operations of such~~
39 ~~institution; or~~

1 ~~(3) Willful disregard for the safety and soundness of such~~
2 ~~institution; and~~

3 ~~(b) Unfitness to continue as a subject person of such licensee~~
4 ~~or participate in the conduct of the business of such licensee:~~

5 ~~The commissioner may order the licensee to remove the subject~~
6 ~~person from his or her office, if any, with the licensee and to~~
7 ~~preclude him or her from further participating in any manner in~~
8 ~~the conduct of the business of the licensee, except with the prior~~
9 ~~consent of the commissioner.~~

10 *SEC. 44. Section 1887 of the Financial Code is repealed.*

11 ~~1887. (a) If the commissioner finds:~~

12 ~~(1) That any subject person of a licensee has been charged in~~
13 ~~an indictment issued by a grand jury or in an information,~~
14 ~~complaint, or similar pleading issued by a United States attorney,~~
15 ~~district attorney, or other governmental official or agency~~
16 ~~authorized to prosecute crimes, with a crime which is punishable~~
17 ~~by imprisonment for a term exceeding one year and which involves~~
18 ~~dishonesty or breach of trust; and~~

19 ~~(2) That such subject person's continuing to serve as a subject~~
20 ~~person of the licensee may pose a threat to the interests of~~
21 ~~purchasers or holders of traveler's checks issued by the licensee~~
22 ~~or may threaten to impair public confidence in the licensee:~~

23 ~~The commissioner may order such licensee to suspend such~~
24 ~~subject person from his or her office, if any, with the licensee and~~
25 ~~to preclude such person from further participating in any manner~~
26 ~~in the conduct of the business of the licensee, except with the prior~~
27 ~~consent of the commissioner. In case the criminal proceedings are~~
28 ~~terminated other than by a judgment of conviction, such order shall~~
29 ~~be deemed rescinded.~~

30 ~~(b) If the commissioner finds:~~

31 ~~(1) That any subject person or former subject person of a~~
32 ~~licensee with respect to whom an order was issued pursuant to~~
33 ~~subdivision (a) or any other subject person of a licensee has been~~
34 ~~finally convicted of a crime which is punishable by imprisonment~~
35 ~~for a term exceeding one year and which involves dishonesty or~~
36 ~~breach of trust; and~~

37 ~~(2) That such person's continuing to serve or resumption of~~
38 ~~service as a subject person of the licensee may pose a threat to the~~
39 ~~interests of purchasers or holders of traveler's checks issued by~~
40 ~~the licensee or may threaten to impair confidence in the licensee:~~

1 The commissioner may order such licensee to suspend or remove
2 such subject person or former subject person from his or her office;
3 if any, with the licensee and to preclude him or her from further
4 participating in any manner in the conduct of the business of the
5 licensee, except with the prior consent of the commissioner.

6 ~~(e) (1) Within 30 days after an order is issued pursuant to~~
7 ~~subdivision (a) or (b), any licensee to which such order is issued~~
8 ~~or any subject person or former subject person of a licensee with~~
9 ~~respect to whom such order is issued may file with the~~
10 ~~commissioner an application for a hearing on the order. If the~~
11 ~~commissioner fails to commence such hearing within 15 business~~
12 ~~days after such application is filed with the commissioner (or within~~
13 ~~such longer period to which such licensee, subject person, or former~~
14 ~~subject person consents), the order shall be deemed rescinded.~~
15 ~~Within 30 days after the hearing, the commissioner shall affirm,~~
16 ~~modify, or rescind the order; otherwise, the order shall be deemed~~
17 ~~rescinded.~~

18 ~~(2) The right of any licensee to which an order is issued under~~
19 ~~subdivision (a) or (b) or of any subject person or former subject~~
20 ~~person of a licensee with respect to whom such an order is issued~~
21 ~~to petition for judicial review of such order shall not be affected~~
22 ~~by the failure of such person to apply to the commissioner for a~~
23 ~~hearing on the order pursuant to paragraph (1) of this subdivision.~~

24 ~~(d) The fact that any subject person of a licensee charged with~~
25 ~~a crime involving dishonesty or breach of trust is not finally~~
26 ~~convicted of such crime shall not preclude the commissioner from~~
27 ~~issuing an order regarding such licensee or such subject person~~
28 ~~pursuant to any other section of this chapter.~~

29 *SEC. 45. Section 1888 of the Financial Code is repealed.*

30 ~~1888.—(a) Any licensee to which an order is issued under~~
31 ~~Section 1885, 1886, or 1887 or any subject person or former subject~~
32 ~~person of a licensee with respect to whom such an order is issued~~
33 ~~may apply to the commissioner to modify or rescind such order.~~
34 ~~The commissioner shall not grant such application unless the~~
35 ~~commissioner finds that it is in the public interest to do so and that~~
36 ~~it is reasonable to believe that such subject person or former subject~~
37 ~~person will, if and when he or she becomes a subject person of a~~
38 ~~licensee, comply with all applicable provisions of this chapter and~~
39 ~~of any regulation or order issued under this chapter.~~

1 ~~(b) The right of any licensee to which an order is issued under~~
 2 ~~Section 1885, 1886, or 1887 or any subject person or former subject~~
 3 ~~person of a licensee with respect to whom such an order is issued~~
 4 ~~to petition for judicial review of such order shall not be affected~~
 5 ~~by the failure of such licensee, subject person, or former subject~~
 6 ~~person to apply to the commissioner pursuant to subdivision (a)~~
 7 ~~to modify or rescind the order.~~

8 ~~SEC. 46. Section 1889 of the Financial Code is repealed.~~
 9 ~~1889. If, after notice and a hearing, the commissioner finds:~~

10 ~~(a) That any licensee has violated any provision of this chapter~~
 11 ~~or of any regulation or order issued under this chapter or any~~
 12 ~~provision of any other applicable law;~~

13 ~~(b) That any licensee is conducting its business in an unsafe or~~
 14 ~~unsound manner;~~

15 ~~(c) That any licensee is in such condition that it is unsafe or~~
 16 ~~unsound for it to transact the business of selling in this state~~
 17 ~~payment instruments issued by it;~~

18 ~~(d) That any licensee has ceased to transact the business of~~
 19 ~~selling in this state payment instruments issued by it;~~

20 ~~(e) That any licensee is insolvent;~~

21 ~~(f) That any licensee has suspended payment of its obligations,~~
 22 ~~has made an assignment for the benefit of its creditors, or has~~
 23 ~~admitted in writing its inability to pay its debts as they become~~
 24 ~~due;~~

25 ~~(g) That any licensee has applied for an adjudication of~~
 26 ~~bankruptcy, reorganization, arrangement, or other relief under any~~
 27 ~~bankruptcy, reorganization, insolvency, or moratorium law, or that~~
 28 ~~any person has applied for any such relief under any such law~~
 29 ~~against any licensee and such licensee has by any affirmative act~~
 30 ~~approved of or consented to such action or such relief has been~~
 31 ~~granted; or~~

32 ~~(h) That any fact or condition exists which, if it had existed at~~
 33 ~~the time when any licensee applied for its license, would have been~~
 34 ~~grounds for denying such application.~~

35 ~~The commissioner may issue an order suspending or revoking~~
 36 ~~the license of such licensee.~~

37 ~~SEC. 47. Section 1890 of the Financial Code is repealed.~~

38 ~~1890. (a) If the commissioner finds that any of the factors set~~
 39 ~~forth in Section 1889 is true with respect to any licensee and that~~
 40 ~~it is necessary for the protection of the interests of purchasers or~~

1 holders of traveler's checks issued by such licensee or for the
2 protection of the public interest that he or she immediately suspend
3 or revoke the license of such licensee, the commissioner may issue
4 an order suspending or revoking the license of such licensee.

5 (b) (1) ~~Within 30 days after an order is issued pursuant to~~
6 ~~subdivision (a), any licensee to whom such order is issued may~~
7 ~~file with the commissioner an application for a hearing on the~~
8 ~~order. If the commissioner fails to commence such hearing within~~
9 ~~15 business days after such application is filed with the~~
10 ~~commissioner (or within such longer period to which such licensee~~
11 ~~consents), the order shall be deemed rescinded. Within 30 days~~
12 ~~after the hearing, the commissioner shall affirm, modify, or rescind~~
13 ~~the order; otherwise, the order shall be deemed rescinded.~~

14 (2) ~~The right of any licensee to which an order is issued under~~
15 ~~subdivision (a) to petition for judicial review of such order shall~~
16 ~~not be affected by the failure of such licensee to apply to the~~
17 ~~commissioner for a hearing on the order pursuant to paragraph (1)~~
18 ~~of this subdivision.~~

19 *SEC. 48. Section 1891 of the Financial Code is repealed.*

20 1891. ~~Any person whose license is suspended or revoked shall~~
21 ~~immediately deliver such license to the commissioner.~~

22 *SEC. 49. Section 1892 of the Financial Code is repealed.*

23 1892. (a) ~~Any person to whom an order is issued under Section~~
24 ~~1889 or 1890 may apply to the commissioner to modify or rescind~~
25 ~~such order. The commissioner shall not grant such application~~
26 ~~unless the commissioner finds that it is in the public interest to do~~
27 ~~so and that it is reasonable to believe that such person will, if and~~
28 ~~when it becomes a licensee, comply with all applicable provisions~~
29 ~~of this division and of any regulation or order issued under this~~
30 ~~division.~~

31 (b) ~~The right of any person to whom an order is issued under~~
32 ~~Section 1889 or 1890 to petition for judicial review of such order~~
33 ~~shall not be affected by the failure of such person to apply to the~~
34 ~~commissioner pursuant to subdivision (a) to modify or rescind the~~
35 ~~order.~~

36 *SEC. 50. Section 1893 of the Financial Code is repealed.*

37 1893. (a) ~~If the commissioner finds that any of the factors set~~
38 ~~forth in Section 1889 is true with respect to any licensee and that~~
39 ~~it is necessary for the protection of the interests of purchasers or~~
40 ~~holders of traveler's checks issued by the licensee or for the~~

1 protection of the public interest that the commissioner take
2 immediate possession of the property and business of the licensee;
3 the commissioner may by order forthwith take possession of the
4 property and business of the licensee and retain possession until
5 the licensee resumes business or is finally liquidated. The licensee
6 may, with the consent of the commissioner, resume business upon
7 such conditions as the commissioner may prescribe.

8 (b) Whenever the commissioner takes possession of the property
9 and business of a licensee pursuant to subdivision (a), the licensee
10 may, within 10 days, apply to the superior court in any county of
11 this state in which an office of the licensee is located (or, in case
12 the licensee has no office in this state, in the County of Sacramento,
13 in the City and County of San Francisco, or in the County of Los
14 Angeles) to enjoin further proceedings. The court may, after citing
15 the commissioner to show cause why further proceedings should
16 not be enjoined and after a hearing, dismiss the application or
17 enjoin the commissioner from further proceedings and order the
18 commissioner to surrender the property and business of the licensee
19 to the licensee or make such further order as may be just. The
20 judgment of the superior court may be appealed by the
21 commissioner or by the licensee in the manner provided by law
22 for appeals from the judgment of a superior court to the court of
23 appeal.

24 (c) Whenever the commissioner takes possession of the property
25 and business of a licensee pursuant to subdivision (a), the
26 commissioner shall conserve or liquidate the property and business
27 of the licensee pursuant to Article 1 (commencing with Section
28 3100) of Chapter 17, and the provisions of that article (except
29 Sections 3100, 3101, and 3102) apply as if the licensee were a
30 bank.

31 *SEC. 51. Section 1910 of the Financial Code is repealed.*

32 1910. If a deputy commissioner or any examiner has knowledge
33 of the insolvency or unsafe condition of any bank, trust company,
34 or foreign banking corporation and fails or neglects to forthwith
35 report such fact to the commissioner in writing over his or her
36 signature, he or she is guilty of a felony.

37 *SEC. 52. Section 1911 of the Financial Code is repealed.*

38 1911. A national banking association doing business in this
39 state and receiving deposits of any bank organized under the laws
40 of this state, at the request of the commissioner, shall submit to an

1 examination by him or her, at the expense of such association,
2 should he or she deem it necessary or desirable that such
3 examination be made. If any such association refuses to permit
4 such an examination to be made, the commissioner shall notify
5 every bank depositing its funds with such association to withdraw
6 its deposits therefrom and the banks so notified shall comply with
7 his or her order.

8 *SEC. 53. Section 1911.5 of the Financial Code is repealed.*

9 1911.5. In Sections 1912 and 1913, “holding company” shall
10 have the meaning set forth in Section 3700.

11 *SEC. 54. Section 1912 of the Financial Code is repealed.*

12 1912. If it appears to the commissioner that a bank, trust
13 company, or foreign banking corporation, or any holding company
14 or subsidiary of the bank, trust company, or foreign banking
15 corporation, is violating or failing to comply with its articles or
16 with any applicable law, the commissioner may direct the bank,
17 trust company, or foreign banking corporation to comply with its
18 articles or with the law by an order issued over his or her official
19 seal, or if it appears to the commissioner that any bank, trust
20 company, or foreign banking corporation is conducting its business
21 in an unsafe or injurious manner the commissioner may in like
22 manner direct it to discontinue the unsafe or injurious practices.
23 The order shall require the bank, trust company, or foreign banking
24 corporation, or any holding company or subsidiary of the bank,
25 trust company, or foreign banking corporation, to show cause
26 before the commissioner at a time and place to be fixed by him or
27 her why the order should not be observed.

28 *SEC. 55. Section 1913 of the Financial Code is repealed.*

29 1913. If upon any hearing held pursuant to Section 1912 it
30 appears to the commissioner that the bank, trust company, or
31 foreign banking corporation, or any holding company or subsidiary
32 of the bank, trust company, or foreign banking corporation, is
33 violating or failing to comply with its articles or with any
34 applicable law or is conducting its business in an unsafe or
35 injurious manner the commissioner may make a final order
36 directing it to comply with its articles or with the law or to
37 discontinue the unsafe or injurious practices. Unless within 10
38 days after the issuance of the final order its enforcement is
39 restrained in a proceeding brought by the bank, trust company, or
40 foreign banking corporation, or any holding company or subsidiary

1 of the bank, trust company, or foreign banking corporation, it shall
2 forthwith comply with the order.

3 *SEC. 56. Section 1913.5 of the Financial Code is repealed.*

4 ~~1913.5. (a) For the purposes of this section, the following~~
5 ~~definitions are applicable:~~

6 ~~(1) "Account holder" includes, in the case of a deposit account,~~
7 ~~the depositor; in the case of a trust account, each trustor and~~
8 ~~beneficiary of the trust account; and, in the case of any other~~
9 ~~fiduciary account, each person who occupies, with respect to the~~
10 ~~account, a position that is similar to the position that a trustor or~~
11 ~~beneficiary occupies with respect to a trust account.~~

12 ~~(2) "Bank" means the following:~~

13 ~~(A) Any commercial bank, industrial bank, or trust company~~
14 ~~incorporated under the laws of this state.~~

15 ~~(B) Any foreign (other state) state bank that maintains a branch~~
16 ~~office in this state, with respect to the branch office and any other~~
17 ~~office in this state.~~

18 ~~(C) Any foreign (other state) state bank that is licensed by the~~
19 ~~commissioner under Article 4 (commencing with Section 3860)~~
20 ~~of Chapter 22 to maintain a facility (as defined in Section 3800)~~
21 ~~in this state, with respect to that office.~~

22 ~~(D) Any foreign (other nation) bank that is licensed by the~~
23 ~~commissioner under Chapter 13.5 (commencing with Section 1700)~~
24 ~~to maintain an office in this state, with respect to that office.~~

25 ~~(E) Any corporation incorporated under the laws of this state~~
26 ~~that is incorporated for the purpose of engaging in, or that is~~
27 ~~authorized by the commissioner to engage in, business under~~
28 ~~Article 1 (commencing with Section 3500) of Chapter 19.~~

29 ~~(F) Any foreign corporation that is licensed by the commissioner~~
30 ~~under Article 1 (commencing with Section 3500) of Chapter 19~~
31 ~~to maintain an office in this state and to transact at that office~~
32 ~~business under Article 1 (commencing with Section 3500) of~~
33 ~~Chapter 19, with respect to that office.~~

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

39 ~~(4) "Order" means any approval, consent, authorization, permit,~~
40 ~~exemption, denial, prohibition, or requirement applicable to a~~

1 specific case issued by the commissioner, including, without
2 limitation, any condition thereof. “Order” does not include any
3 certificate of authority or license issued by the commissioner but
4 does include any condition of a license and any written agreement
5 made by any person with the commissioner under this division.

6 (5) “Subject person of a bank” means any director, officer, or
7 employee of the bank, or any person who participates in the
8 conduct of the business of the bank. However, “subject person of
9 a bank” does not include a controlling person of the bank that is
10 registered as a bank holding company with the Board of Governors
11 of the Federal Reserve System pursuant to the Bank Holding
12 Company Act of 1956 (12 U.S.C. Sections 1841, et seq.). “Subject
13 person of a bank” does not include an individual who is a director,
14 officer, or employee of a controlling person of the bank unless the
15 individual is a director, officer, or employee of the bank or
16 participates in the conduct of the business of the bank. For purposes
17 of this paragraph, “controlling person” has the meaning set forth
18 in Section 700.

19 (6) “Violation” includes, without limitation, any act done, alone
20 or with one or more persons, for or toward causing, bringing about,
21 participating in, counseling, aiding, or abetting a violation.

22 (b) If, after notice and a hearing, the commissioner finds the
23 following, the commissioner may issue an order suspending or
24 removing a subject person of a bank from his or her office with
25 the bank or prohibiting the subject person from further participating
26 in any manner in the conduct of the business of the bank, except
27 with the prior consent of the commissioner:

28 (1) (A) That the subject person has violated any provision of
29 this division or of any regulation or order issued under this division,
30 or any provision of any other applicable law relating to the business
31 of the bank; or

32 (B) That the subject person has engaged or participated in any
33 unsafe or unsound act with respect to the business of the bank; or

34 (C) That the subject person has committed or engaged in any
35 act that constitutes a breach of his or her fiduciary duty as a subject
36 person; and

37 (2) (A) That the bank has suffered or will probably suffer
38 substantial financial loss or other damage by reason of the
39 violation, act, or breach of fiduciary duty; or

1 ~~(B) That the interests of the bank’s accountholders have been~~
2 ~~or are likely to be seriously prejudiced by reason of the violation,~~
3 ~~act, or breach of fiduciary duty; or~~

4 ~~(C) That the subject person has received financial gain by reason~~
5 ~~of the violation, act, or breach of fiduciary duty; and~~

6 ~~(3) That the violation, act, or breach of fiduciary duty is one~~
7 ~~involving personal dishonesty on the part of the subject person, or~~
8 ~~one that demonstrates a willful or continuing disregard for the~~
9 ~~safety or soundness of the bank.~~

10 ~~(e) If, after notice and a hearing, the commissioner finds the~~
11 ~~following, the commissioner may issue an order suspending or~~
12 ~~removing a subject person of a bank from his or her office with~~
13 ~~the bank or prohibiting the subject person from further participating~~
14 ~~in any manner in the conduct of the business of the bank, except~~
15 ~~with the prior consent of the commissioner:~~

16 ~~(1) That the subject person’s conduct or practice with respect~~
17 ~~to another bank or business institution has resulted in substantial~~
18 ~~financial loss or other damage; and~~

19 ~~(2) That the conduct or practice has evidenced personal~~
20 ~~dishonesty or willful or continuing disregard for the safety and~~
21 ~~soundness of the other bank or business institution; and~~

22 ~~(3) That the conduct or practice is relevant in that it demonstrates~~
23 ~~unfitness to continue as a subject person of the bank.~~

24 ~~(d) If the commissioner finds the following, the commissioner~~
25 ~~may immediately issue an order suspending or removing a subject~~
26 ~~person of a bank from his or her office with the bank or prohibiting~~
27 ~~the subject person from further participating in any manner in the~~
28 ~~conduct of the business of the bank, except with the prior consent~~
29 ~~of the commissioner:~~

30 ~~(1) That it is necessary for the protection of the bank or the~~
31 ~~interests of the bank’s accountholders that the commissioner issue~~
32 ~~the order immediately; and~~

33 ~~(2) (A) That any of the factors set forth in paragraph (1) of~~
34 ~~subdivision (b), any of the factors set forth in paragraph (2) of~~
35 ~~subdivision (b), and any of the factors set forth in paragraph (3)~~
36 ~~of subdivision (b) are true with respect to the subject person; or~~

37 ~~(B) That any of the factors set forth in paragraph (1) of~~
38 ~~subdivision (c), any of the factors set forth in paragraph (2) of~~
39 ~~subdivision (c), and the factor set forth in paragraph (3) of~~
40 ~~subdivision (c) are true with respect to the subject person.~~

1 ~~(e) (1) If the commissioner finds the following, the~~
2 ~~commissioner may immediately issue an order suspending or~~
3 ~~removing a subject person of a bank from his or her office with~~
4 ~~the bank or prohibiting the subject person from further participating~~
5 ~~in any manner in the conduct of the business of the bank, except~~
6 ~~with the prior consent of the commissioner:~~

7 ~~(A) That the subject person has been charged in an indictment~~
8 ~~issued by a grand jury or in an information, complaint, or similar~~
9 ~~pleading issued by a United States attorney, district attorney, or~~
10 ~~other governmental official or agency authorized to prosecute~~
11 ~~crimes, with a crime that is punishable by imprisonment for a term~~
12 ~~exceeding one year and that involves dishonesty or breach of trust;~~
13 ~~and~~

14 ~~(B) That the person's continuing to serve as a subject person of~~
15 ~~the bank may pose a material threat to the interests of the bank's~~
16 ~~accountholders or may threaten to materially impair public~~
17 ~~confidence in the bank. In case the criminal proceedings are~~
18 ~~terminated other than by a judgment of conviction, the order shall~~
19 ~~be deemed rescinded.~~

20 ~~(2) If the commissioner finds the following, the commissioner~~
21 ~~may immediately issue an order suspending or removing a subject~~
22 ~~person of a bank, or a former subject person of a bank, from his~~
23 ~~or her office, if any, with the bank and prohibiting the person from~~
24 ~~further participating in any manner in the conduct of the business~~
25 ~~of the bank, except with the prior consent of the commissioner:~~

26 ~~(A) That the person has been finally convicted of a crime that~~
27 ~~is punishable by imprisonment for a term exceeding one year and~~
28 ~~that involves dishonesty or breach of trust; and~~

29 ~~(B) That the person's continuing to serve or resumption of~~
30 ~~service as a subject person of the bank may pose a material threat~~
31 ~~to the interests of the bank's accountholders or may threaten to~~
32 ~~materially impair public confidence in the bank.~~

33 ~~(3) The fact that any subject person of a bank charged with a~~
34 ~~crime involving dishonesty or breach of trust is not finally~~
35 ~~convicted of that crime shall not preclude the commissioner from~~
36 ~~issuing an order regarding the subject person pursuant to other~~
37 ~~provisions of this division.~~

38 ~~(f) (1) Within 30 days after an order is issued pursuant to~~
39 ~~subdivision (d) or (e), the person to whom the order is issued may~~
40 ~~file with the commissioner an application for a hearing on the~~

1 order. The commissioner shall, upon the written request of the
2 person, extend the 30-day period by an additional 30 days provided
3 the request is filed with the commissioner within 30 days after the
4 order is issued. If the commissioner fails to commence the hearing
5 within 15 business days after the application is filed, or within a
6 longer period to which the person consents, the order shall be
7 deemed rescinded. Within 30 days after the hearing, the
8 commissioner shall affirm, modify, or rescind the order; otherwise,
9 the order shall be deemed rescinded.

10 (2) The right of any person to whom an order is issued under
11 subdivision (d) or (e) to petition for judicial review of the order
12 shall not be affected by the failure of that person to apply to the
13 commissioner for a hearing on the order pursuant to this
14 subdivision.

15 (g) (1) Any person to whom an order is issued under subdivision
16 (b), (c), (d), or (e) may apply to the commissioner to modify or
17 rescind that order. The commissioner shall not grant that
18 application unless the commissioner finds that it is in the public
19 interest to do so and that it is reasonable to believe that the person
20 will, if and when he or she becomes a subject person of a bank,
21 comply with all applicable provisions of this division and of any
22 regulation or order issued thereunder.

23 (2) The right of any person to whom an order is issued under
24 subdivision (b), (c), (d), or (e) to petition for judicial review of
25 that order shall not be affected by the failure of the person to apply
26 to the commissioner pursuant to paragraph (1) to modify or rescind
27 the order.

28 (h) (1) A notice issued under this section shall state the facts
29 constituting the grounds for removal, suspension, or prohibition.

30 (2) A hearing held before the commissioner pursuant to this
31 section shall be private unless the commissioner, in his or her
32 discretion, after fully considering the view of the party afforded
33 the hearing, determines that a public hearing is necessary to protect
34 the public interest.

35 (i) (1) It is unlawful for any subject person of a bank or former
36 subject person of a bank to whom an order is issued under
37 subdivision (b), (c), (d), or (e) to do any of the following, except
38 with the prior consent of the commissioner, so long as the order
39 is effective:

1 ~~(A) To serve or act as a director, officer, employee, or agent of~~
2 ~~any licensee.~~

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

6 ~~(C) Directly or indirectly, to solicit, procure, or transfer or~~
7 ~~attempt to transfer, or vote any proxy, consent, or authorization~~
8 ~~with respect to any shares or other securities of any licensee having~~
9 ~~voting rights.~~

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

12 ~~(2) Any person who violates paragraph (1) shall, upon~~
13 ~~conviction, be punished by a fine of not more than five thousand~~
14 ~~dollars (\$5,000) or imprisoned in the state prison, or in a county~~
15 ~~jail not to exceed one year, or by both that fine and imprisonment.~~

16 ~~(3) If, after notice and a hearing, the commissioner finds that~~
17 ~~any person has violated paragraph (1), the commissioner may order~~
18 ~~that person to pay to the commissioner a civil penalty in an amount~~
19 ~~as the commissioner may specify, provided that the amount of the~~
20 ~~civil penalty shall not exceed one thousand dollars (\$1,000) for~~
21 ~~each violation or, in the case of a continuing violation, one~~
22 ~~thousand dollars (\$1,000) for each day for which the violation~~
23 ~~continues.~~

24 ~~In determining the amount of a civil penalty to be paid to the~~
25 ~~commissioner under this paragraph, the commissioner shall~~
26 ~~consider the financial resources and good faith of the person~~
27 ~~charged, the gravity of the violation, the history of previous~~
28 ~~violations by the person, and other factors that in the opinion of~~
29 ~~the commissioner may be relevant.~~

30 ~~SEC. 57. Section 1951 of the Financial Code is repealed.~~

31 ~~1951. Any debt due a bank on which interest is past due and~~
32 ~~unpaid for the period of one year shall be charged off, unless it is~~
33 ~~well secured or is in process of collection.~~

34 ~~SEC. 58. Section 1952 of the Financial Code is repealed.~~

35 ~~1952. The commissioner at any time may require a bank to~~
36 ~~write down any asset held by it to a valuation which will represent~~
37 ~~its then fair market value.~~

38 ~~SEC. 59. Chapter 17 (commencing with Section 3100) of~~
39 ~~Division 1 of the Financial Code is repealed.~~

40 ~~SEC. 60. Section 14200 of the Financial Code is repealed.~~

1 14200. The powers of supervision and examination of all credit
2 unions organized under the provisions of this division are vested
3 in the commissioner.

4 *SEC. 61. Section 14200.1 of the Financial Code is repealed.*

5 14200.1. There is in the Department of Financial Institutions,
6 the Division of Credit Unions. The Division of Credit Unions has
7 charge of the execution of the laws of this state relating to credit
8 unions or to the credit union business.

9 *SEC. 62. Section 14200.2 of the Financial Code is repealed.*

10 14200.2. The Chief Officer of the Division of Credit Unions
11 is the Deputy Commissioner of Financial Institutions for the
12 Division of Credit Unions. The Deputy Commissioner of Financial
13 Institutions for the Division of Credit Unions shall administer the
14 laws of this state relating to credit unions or the credit union
15 business under the direction of and on behalf of the commissioner.
16 The Deputy Commissioner of Financial Institutions for the Division
17 of Credit Unions shall be appointed by the Governor and shall
18 hold office at the pleasure of the Governor. The Deputy
19 Commissioner of Financial Institutions shall receive an annual
20 salary as fixed by the Governor.

21 *SEC. 63. Section 14201 of the Financial Code is repealed.*

22 14201. The commissioner may establish or waive such rules
23 and regulations as may be reasonable or necessary to carry out the
24 purposes and provisions of this division.

25 *SEC. 64. Section 14204 of the Financial Code is repealed.*

26 14204. If the commissioner upon any examination, or from
27 any report made to the commissioner, finds any credit union is
28 violating the provisions of this division or the rules made pursuant
29 to this division, or has impaired capital, or is insolvent, or is
30 conducting its business in an unsafe or unauthorized manner, the
31 commissioner may notify the credit union to, and the credit union
32 shall, cease these practices. The commissioner may notify the
33 credit union to, and the credit union shall, temporarily suspend or
34 entirely cease the transaction of any new business or the portion
35 thereof as is ordered by the commissioner. Within 10 days from
36 the date of a notification or order pursuant to this section, the credit
37 union may request a hearing. Neither the request for a hearing nor
38 the hearing itself shall stay the notification or order issued by the
39 commissioner under this section.

40 *SEC. 65. Section 14205 of the Financial Code is repealed.*

1 ~~14205. The commissioner may, upon reasonable notice and~~
2 ~~opportunity to be heard, suspend or revoke any certificate if the~~
3 ~~commissioner finds that the credit union has violated any~~
4 ~~provisions of this division or any rule or regulation of the~~
5 ~~commissioner made pursuant to this division, or if any fact or~~
6 ~~condition exists which, if it had existed at the time of the original~~
7 ~~application for certificate, reasonably would have warranted the~~
8 ~~commissioner in refusing originally to issue such certificate.~~

9 ~~SEC. 66. Section 14208 of the Financial Code is repealed.~~

10 ~~14208. The commissioner may, after appropriate notice and~~
11 ~~opportunity for hearing, by order censure, or suspend for a period~~
12 ~~not exceeding 12 months, or bar from any position of employment~~
13 ~~or management of, any credit union, any officer, director, or~~
14 ~~employee of, or person performing similar functions for, a credit~~
15 ~~union, if the commissioner finds that:~~

16 ~~(1) The censure, suspension or bar is in the public interest, that~~
17 ~~the person has committed a violation of this division or rule of the~~
18 ~~commissioner, and that the violation was either willful or caused,~~
19 ~~or will probably cause, material damage to the credit union or any~~
20 ~~member thereof.~~

21 ~~(2) Any officer, director, employee of, or person performing~~
22 ~~similar functions for a credit union has been convicted of, or~~
23 ~~pleaded nolo contendere to, a crime, or has been held liable in a~~
24 ~~civil action by final judgment if the crime or civil action involved~~
25 ~~fraud, embezzlement, fraudulent conversion or misappropriation~~
26 ~~of property.~~

27 ~~SEC. 67. Section 14209 of the Financial Code is repealed.~~

28 ~~14209. (a) Whenever it appears to the commissioner that any~~
29 ~~person has engaged in or is about to engage in any acts or practices~~
30 ~~constituting a violation of any provision of this division or any~~
31 ~~rule or order adopted pursuant to this division, the commissioner~~
32 ~~may in the commissioner's discretion bring an action in the name~~
33 ~~of the people of the State of California in the superior court to~~
34 ~~enjoin the acts or practices or to enforce compliance. Upon a proper~~
35 ~~showing a permanent or preliminary injunction, restraining order,~~
36 ~~or writ of mandate shall be granted and a receiver or conservator,~~
37 ~~which may include the commissioner, may be appointed for the~~
38 ~~defendant or the defendant's assets, and any other ancillary relief~~
39 ~~may be granted as appropriate. A receiver or conservator appointed~~
40 ~~by the court pursuant to this section may, with the approval of the~~

1 court, exercise all of the powers of the defendant's officers,
2 directors, trustees, or persons who exercise similar powers and
3 perform similar duties, including the powers expressly authorized
4 by subdivision (b) of Section 14300.

5 (b) If the commissioner determines it is in the public interest,
6 the commissioner may include in any action authorized by
7 subdivision (a), a claim for ancillary relief, including, but not
8 limited to, a claim for restitution or disgorgement or damages on
9 behalf of the persons injured by the act or practice constituting the
10 subject matter of the action, and the court shall have jurisdiction
11 to award the additional relief.

12 *SEC. 68. Section 14253 of the Financial Code is repealed.*

13 ~~14253. A credit union shall, when requested by the~~
14 ~~commissioner, submit its unaudited financial statements, prepared~~
15 ~~in accordance with generally accepted accounting principles and~~
16 ~~consisting of at least a balance sheet and statement of income as~~
17 ~~of the date and for the period specified by the commissioner. The~~
18 ~~commissioner may require the submission of such reports on a~~
19 ~~monthly or other periodic basis.~~

20 *SEC. 69. Section 14255 of the Financial Code is repealed.*

21 ~~14255. Every credit union shall make other special reports to~~
22 ~~the commissioner as the commissioner may from time to time~~
23 ~~require. Such reports shall be in the form and filed at such date as~~
24 ~~prescribed by the commissioner, and shall if required by him, be~~
25 ~~verified in such manner as he prescribes.~~

26 *SEC. 70. Section 14257 of the Financial Code is repealed.*

27 ~~14257. Investigation and examination reports prepared by the~~
28 ~~commissioner's duly designated representatives shall not be public~~
29 ~~records. The reports may be disclosed to the officers, directors,~~
30 ~~members of the supervisory committee, members of the credit~~
31 ~~committee, and key management personnel of the credit union that~~
32 ~~is the subject of a report for the purpose of corrective action by~~
33 ~~those persons. The examination report may also be disclosed to~~
34 ~~internal and external auditors and attorneys that are retained by~~
35 ~~the subject credit union, but only to the extent necessary for the~~
36 ~~auditors and attorneys to perform work related to issues addressed~~
37 ~~in the examination report. The disclosure shall not operate as a~~
38 ~~waiver of the exemption specified in subdivision (d) of Section~~
39 ~~6254 of the Government Code.~~

1 ~~SEC. 71. Article 3 (commencing with Section 14300) of Chapter~~
2 ~~3 of Division 5 of the Financial Code is repealed.~~

3 ~~SEC. 72. Article 5 (commencing with Section 14380) of Chapter~~
4 ~~3 of Division 5 of the Financial Code is repealed.~~

5 ~~SEC. 73. Chapter 11 (commencing with Section 31700) of~~
6 ~~Division 15 of the Financial Code is repealed.~~

7 ~~SEC. 74. Section 34100 of the Financial Code is repealed.~~

8 ~~34100. In this chapter, unless the context otherwise requires:~~

9 ~~(a) "Office with a license" means the position of director,~~
10 ~~officer, employee, or agent of such licensee.~~

11 ~~(b) "Subject person", when used with respect to a licensee,~~
12 ~~means:~~

13 ~~(1) Any director, officer, employee, or agent of such licensee;~~
14 ~~or~~

15 ~~(2) Any other person who participates in the conduct of the~~
16 ~~business of such licensee.~~

17 ~~SEC. 75. Section 34100.5 of the Financial Code is repealed.~~

18 ~~34100.5. (a) No order issued by the commissioner under~~
19 ~~Section 34103, 34105, or 34106 shall become effective earlier than~~
20 ~~the 10th business day after the issuance of such order.~~

21 ~~(b) No order issued by the commissioner under subdivision (a)~~
22 ~~of Section 34104 or subdivision (a) or (b) of Section 34107 shall~~
23 ~~become effective earlier than the fifth business day after the~~
24 ~~issuance of such order.~~

25 ~~SEC. 76. Section 34101 of the Financial Code is repealed.~~

26 ~~34101. (a) Whenever it appears to the commissioner that any~~
27 ~~person has violated, or that there is reasonable cause to believe~~
28 ~~that any person is about to violate, any provision of this division~~
29 ~~or of any regulation or order issued under this division, the~~
30 ~~commissioner may bring an action in the name of the people of~~
31 ~~this state in the superior court to enjoin the violation or to enforce~~
32 ~~compliance with this division or with any regulation or order issued~~
33 ~~under this division. Upon a proper showing, a restraining order,~~
34 ~~preliminary or permanent injunction, or writ of mandate shall be~~
35 ~~granted, and a receiver or conservator may be appointed for the~~
36 ~~defendant or the defendant's assets.~~

37 ~~(b) Any receiver or conservator appointed by the court pursuant~~
38 ~~to subdivision (a) may, with the approval of the court, exercise all~~
39 ~~of the powers of the defendant's directors, officers, partners,~~
40 ~~trustees, or persons who exercise similar powers and perform~~

1 similar duties, including the filing of a petition for bankruptcy. No
2 action at law or in equity may be maintained by any party against
3 the commissioner or the receiver or conservator by reason of the
4 exercise of powers or the performance of duties pursuant to the
5 order, or with the approval of, the court.

6 ~~(e) The commissioner may include in any action authorized~~
7 ~~under subdivision (a) a claim for ancillary relief, including a claim~~
8 ~~for restitution or damages on behalf of the persons injured by the~~
9 ~~act constituting the subject matter of the action, and the court shall~~
10 ~~have jurisdiction to award such additional relief.~~

11 *SEC. 77. Section 34102 of the Financial Code is repealed.*

12 ~~34102. (a) If the commissioner finds that any person has~~
13 ~~violated, or that there is reasonable cause to believe that any person~~
14 ~~is about to violate, Section 33400, the commissioner may order~~
15 ~~such person to cease and desist from such violation unless and~~
16 ~~until such person is issued a license.~~

17 ~~(b) (1) Within 30 days after an order is issued pursuant to~~
18 ~~subdivision (a), the person to whom such order is issued may file~~
19 ~~with the commissioner an application for a hearing on the order.~~
20 ~~If the commissioner fails to commence such hearing within 15~~
21 ~~business days after such application is filed with the commissioner~~
22 ~~(or within such longer period to which such person consents), the~~
23 ~~order shall be deemed rescinded. Within 30 days after the hearing,~~
24 ~~the commissioner shall affirm, modify, or rescind the order;~~
25 ~~otherwise, the order shall be deemed rescinded.~~

26 ~~(2) The right of any person to whom an order is issued under~~
27 ~~subdivision (a) to petition for judicial review of such order shall~~
28 ~~not be affected by the failure of such person to apply to the~~
29 ~~commissioner for hearing on the order pursuant to paragraph (1)~~
30 ~~of this subdivision.~~

31 *SEC. 78. Section 34103 of the Financial Code is repealed.*

32 ~~34103. If, after notice and a hearing, the commissioner finds:~~
33 ~~—(a) That any licensee or any California agent of a licensee has~~
34 ~~engaged or participated, is engaging or participating, or that there~~
35 ~~is reasonable cause to believe that any licensee or any California~~
36 ~~agent of a licensee is about to engage or participate, in any unsafe~~
37 ~~or unsound act with respect to the business of such licensee; or~~

38 ~~—(b) That any licensee or any California agent of a licensee has~~
39 ~~violated, is violating, or that there is reasonable cause to believe~~
40 ~~that any licensee or any California agent of a licensee is about to~~

1 violate, any provision of this division or of any regulation or order
2 issued under this division or any provision of any other applicable
3 law.

4 The commissioner may order such licensee or such California
5 agent to cease and desist from such action or violation. The order
6 may require the licensee or such California agent to take affirmative
7 action to correct any condition resulting from the action or
8 violation.

9 *SEC. 79. Section 34104 of the Financial Code is repealed.*

10 34104. (a) If the commissioner finds that any of the factors
11 set forth in Section 34103 is true with respect to any licensee or
12 any California agent of a licensee and that such action or violation
13 is likely:

- 14 —(1) To cause the insolvency of the licensee;
- 15 —(2) To cause substantial dissipation of the assets or earnings
16 of the licensee;
- 17 —(3) To seriously weaken the condition of the licensee; or
- 18 —(4) To otherwise seriously prejudice the interests of purchasers
19 or holders of payment instruments issued by the licensee:

20 The commissioner may order such licensee or such California
21 agent to cease and desist from such action or violation. Such order
22 may require the licensee or the California agent to take affirmative
23 action to correct any condition resulting from the action or
24 violation.

25 (b) (1) Within 30 days after an order is issued pursuant to
26 subdivision (a), any licensee or California agent of a licensee to
27 whom such order is issued may file with the commissioner an
28 application for a hearing on yhe order. If the commissioner fails
29 to commence such hearing within 15 business days after such
30 application is filed with the commissioner (or within such longer
31 period to which such licensee or California agent consents), the
32 order shall be deemed rescinded. Within 30 days after the hearing,
33 the commissioner shall affirm, modify, or rescind the order;
34 otherwise, the order shall be deemed rescinded.

35 (2) The right of any licensee or California agent of a licensee
36 to whom an order is issued under subdivision (a) to petition for
37 judicial review of such order shall not be affected by the failure
38 of such licensee or California agent of a licensee to apply to the
39 commissioner for a hearing on the order pursuant to paragraph (1)
40 of this subdivision.

1 ~~SEC. 80. Section 34105 of the Financial Code is repealed.~~

2 ~~34105. If, after notice and a hearing, the commissioner finds:~~

3 ~~—(a) (1) That any subject person of a licensee has engaged or~~
 4 ~~participated in any unsafe or unsound act with respect to the~~
 5 ~~business of such licensee;~~

6 ~~—(2) That any subject person of a licensee has violated any~~
 7 ~~provision of this division or of any regulation or order issued under~~
 8 ~~this division or any provision of any other applicable law relating~~
 9 ~~to the business of such licensee; or~~

10 ~~—(3) That any subject person of a licensee has engaged or~~
 11 ~~participated in any act which constitutes a breach of his fiduciary~~
 12 ~~duty as a subject person; and~~

13 ~~—(b) (1) That such act, violation, or breach of fiduciary duty~~
 14 ~~has caused or is likely to cause substantial financial loss or other~~
 15 ~~damage to the licensee;~~

16 ~~—(2) That such action, violation, or breach of fiduciary duty~~
 17 ~~has seriously prejudiced, or is likely to seriously prejudice, the~~
 18 ~~interests of purchasers or holders of payment instruments issued~~
 19 ~~by the licensee; or~~

20 ~~—(3) That the subject person has received financial gain by~~
 21 ~~reason of such act, violation, or breach of fiduciary duty; and~~

22 ~~—(c) That such act, violation, or breach of fiduciary duty either~~
 23 ~~involves dishonesty on the part of the subject person or~~
 24 ~~demonstrates the subject person's gross negligence with respect~~
 25 ~~to the business of the licensee or a willful disregard for the safety~~
 26 ~~and soundness of the licensee;~~

27 ~~The commissioner may order the licensee to suspend or remove~~
 28 ~~the subject person from his or her office, if any, with the licensee~~
 29 ~~and to preclude such person from further participating in any~~
 30 ~~manner in the conduct of the business of the licensee, except with~~
 31 ~~the prior consent of the commissioner.~~

32 ~~SEC. 81. Section 34106 of the Financial Code is repealed.~~

33 ~~34106. If, after notice and a hearing, the commissioner finds~~
 34 ~~that any subject person of a licensee has, by engaging or~~
 35 ~~participating in any act with respect to any financial or other~~
 36 ~~business institution which resulted in financial loss or other~~
 37 ~~damage, demonstrated:~~

38 ~~—(a) (1) Dishonesty;~~

39 ~~—(2) Gross negligence with respect to the operations of such~~
 40 ~~institution; or~~

1 ~~—(3) Willful disregard for the safety and soundness of such~~
2 ~~institution; and~~

3 ~~—(b) Unfitness to continue as a subject person of such licensee~~
4 ~~or participate in the conduct of the business of such licensee:~~

5 ~~The commissioner may order the licensee to remove the subject~~
6 ~~person from his or her office, if any, with the licensee and to~~
7 ~~preclude him or her from further participating in any manner in~~
8 ~~the conduct of the business of the licensee, except with the prior~~
9 ~~consent of the commissioner.~~

10 *SEC. 82. Section 34107 of the Financial Code is repealed.*

11 ~~34107. (a) If the commissioner finds:~~

12 ~~—(1) That any subject person of a licensee has been charged in~~
13 ~~an indictment issued by a grand jury or in an information,~~
14 ~~complaint, or similar pleading issued by a United States attorney,~~
15 ~~district attorney, or other governmental official or agency~~
16 ~~authorized to prosecute crimes, with a crime which is punishable~~
17 ~~by imprisonment for a term exceeding one year and which involves~~
18 ~~dishonesty or breach of trust; and~~

19 ~~—(2) That such subject person's continuing to serve as a subject~~
20 ~~person of the licensee may pose a threat to the interests of~~
21 ~~purchasers or holders of payment instruments issued by the licensee~~
22 ~~or may threaten to impair public confidence in the licensee:~~

23 ~~The commissioner may order such licensee to suspend such~~
24 ~~subject person from his or her office, if any, with the licensee and~~
25 ~~to preclude such person from further participating in any manner~~
26 ~~in the conduct of the business of the licensee, except with the prior~~
27 ~~consent of the commissioner. In case the criminal proceedings are~~
28 ~~terminated other than by a judgment of conviction, such order shall~~
29 ~~be deemed rescinded.~~

30 ~~(b) If the commissioner finds:~~

31 ~~—(1) That any subject person or former subject person of a~~
32 ~~licensee with respect to whom an order was issued pursuant to~~
33 ~~subdivision (a) or any other subject person of a licensee has been~~
34 ~~finally convicted of a crime which is punishable by imprisonment~~
35 ~~for a term exceeding one year and which involves dishonesty or~~
36 ~~breach of trust; and~~

37 ~~—(2) That such person's continuing to serve or resumption of~~
38 ~~service as a subject person of the licensee may pose a threat to the~~
39 ~~interests of purchasers or holders of payment instruments issued~~
40 ~~by the licensee or may threaten to impair confidence in the licensee:~~

1 The commissioner may order such licensee to suspend or remove
2 such subject person or former subject person from his or her office;
3 if any, with the licensee and to preclude him from further
4 participating in any manner in the conduct of the business of the
5 licensee, except with the prior consent of the commissioner.

6 ~~(e) (1) Within 30 days after an order is issued pursuant to~~
7 ~~subdivision (a) or (b), any licensee to which such order is issued~~
8 ~~or any subject person or former subject person of a licensee with~~
9 ~~respect to whom such order is issued may file with the~~
10 ~~commissioner an application for a hearing on the order. If the~~
11 ~~commissioner fails to commence such hearing within 15 business~~
12 ~~days after such application is filed with the commissioner (or within~~
13 ~~such longer period to which such licensee, subject person, or former~~
14 ~~subject person consents), the order shall be deemed rescinded.~~
15 ~~Within 30 days after the hearing, the commissioner shall affirm,~~
16 ~~modify, or rescind the order; otherwise, the order shall be deemed~~
17 ~~rescinded.~~

18 ~~(2) The right of any licensee to which an order is issued under~~
19 ~~subdivision (a) or (b) or of any subject person or former subject~~
20 ~~person of a licensee with respect to whom such an order is issued~~
21 ~~to petition for judicial review of such order shall not be affected~~
22 ~~by the failure of such person to apply to the commissioner for a~~
23 ~~hearing on the order pursuant to paragraph (1) of this subdivision.~~

24 ~~(d) The fact that any subject person of a licensee charged with~~
25 ~~a crime involving dishonesty or breach of trust is not finally~~
26 ~~convicted of such crime shall not preclude the commissioner from~~
27 ~~issuing an order regarding such licensee or such subject person~~
28 ~~pursuant to any other section of this division.~~

29 *SEC. 83. Section 34108 of the Financial Code is repealed.*

30 ~~34108. (a) Any licensee to which an order is issued under~~
31 ~~Section 34105, 34106, or 34107 or any subject person or former~~
32 ~~subject person of a licensee with respect to whom such an order~~
33 ~~is issued may apply to the commissioner to modify or rescind such~~
34 ~~order. The commissioner shall not grant such application unless~~
35 ~~the commissioner finds that it is in the public interest to do so and~~
36 ~~that it is reasonable to believe that such subject person or former~~
37 ~~subject person will, if and when he or she becomes a subject person~~
38 ~~of a licensee, comply with all applicable provisions of this division~~
39 ~~and of any regulation or order issued under this division.~~

1 ~~(b) The right of any licensee to which an order is issued under~~
2 ~~Section 34105, 34106, or 34107 or any subject person or former~~
3 ~~subject person of a licensee with respect to whom such an order~~
4 ~~is issued to petition for judicial review of such order shall not be~~
5 ~~affected by the failure of such licensee, subject person, or former~~
6 ~~subject person to apply to the commissioner pursuant to subdivision~~
7 ~~(a) to modify or rescind the order.~~

8 *SEC. 84. Section 34109 of the Financial Code is repealed.*

9 34109. If, after notice and a hearing, the commissioner finds:

10 ~~—(a) That any licensee has violated any provision of this division~~
11 ~~or of any regulation or order issued under this division or any~~
12 ~~provision of any other applicable law;~~

13 ~~—(b) That any licensee is conducting its business in an unsafe~~
14 ~~or unsound manner;~~

15 ~~—(c) That any licensee is in such condition that it is unsafe or~~
16 ~~unsound for it to transact the business of selling in this state~~
17 ~~payment instruments issued by it;~~

18 ~~—(d) That any licensee has ceased to transact the business of~~
19 ~~selling in this state payment instruments issued by it;~~

20 ~~—(e) That any licensee is insolvent;~~

21 ~~—(f) That any licensee has suspended payment of its obligations,~~
22 ~~has made an assignment for the benefit of its creditors, or has~~
23 ~~admitted in writing its inability to pay its debts as they become~~
24 ~~due;~~

25 ~~—(g) That any licensee has applied for an adjudication of~~
26 ~~bankruptcy, reorganization, arrangement, or other relief under any~~
27 ~~bankruptcy, reorganization, insolvency, or moratorium law, or that~~
28 ~~any person has applied for any such relief under any such law~~
29 ~~against any licensee and such licensee has by any affirmative act~~
30 ~~approved of or consented to such action or such relief has been~~
31 ~~granted; or~~

32 ~~—(h) That any fact or condition exists which, if it had existed~~
33 ~~at the time when any licensee applied for its license, would have~~
34 ~~been grounds for denying such application:~~

35 ~~The commissioner may issue an order suspending or revoking~~
36 ~~the license of such licensee.~~

37 *SEC. 85. Section 34110 of the Financial Code is repealed.*

38 34110. ~~(a) If the commissioner finds that any of the factors~~
39 ~~set forth in Section 34109 is true with respect to any licensee and~~
40 ~~that it is necessary for the protection of the interests of purchasers~~

1 or holders of payment instruments issued by such licensee or for
2 the protection of the public interest that he or she immediately
3 suspend or revoke the license of such licensee, the commissioner
4 may issue an order suspending or revoking the license of such
5 licensee.

6 (b) (1) ~~Within 30 days after an order is issued pursuant to~~
7 ~~subdivision (a), any licensee to whom such order is issued may~~
8 ~~file with the commissioner an application for a hearing on the~~
9 ~~order. If the commissioner fails to commence such hearing within~~
10 ~~15 business days after such application is filed with the~~
11 ~~commissioner (or within such longer period to which such licensee~~
12 ~~consents), the order shall be deemed rescinded. Within 30 days~~
13 ~~after the hearing, the commissioner shall affirm, modify, or rescind~~
14 ~~the order; otherwise, the order shall be deemed rescinded.~~

15 (2) ~~The right of any licensee to which an order is issued under~~
16 ~~subdivision (a) to petition for judicial review of such order shall~~
17 ~~not be affected by the failure of such licensee to apply to the~~
18 ~~commissioner for a hearing on the order pursuant to paragraph (1)~~
19 ~~of this subdivision.~~

20 *SEC. 86. Section 34111 of the Financial Code is repealed.*

21 ~~34111. Any person whose license is suspended or revoked~~
22 ~~shall immediately deliver such license to the commissioner.~~

23 *SEC. 87. Section 34112 of the Financial Code is repealed.*

24 ~~34112. (a) Any person to whom an order is issued under~~
25 ~~Section 34109 or 34110 may apply to the commissioner to modify~~
26 ~~or rescind such order. The commissioner shall not grant such~~
27 ~~application unless he or she finds that it is in the public interest to~~
28 ~~do so and that it is reasonable to believe that such person will, if~~
29 ~~and when it becomes a licensee, comply with all applicable~~
30 ~~provisions of this division and of any regulation or order issued~~
31 ~~under this division.~~

32 (b) ~~The right of any person to whom an order is issued under~~
33 ~~Section 34109 or 34110 to petition for judicial review of such~~
34 ~~order shall not be affected by the failure of such person to apply~~
35 ~~to the commissioner pursuant to subdivision (a) to modify or~~
36 ~~rescind the order.~~

37 *SEC. 88. Section 34113 of the Financial Code is repealed.*

38 ~~34113. (a) If the commissioner finds that any of the factors~~
39 ~~set forth in Section 34109 is true with respect to any licensee and~~
40 ~~that it is necessary for the protection of the interests of purchasers~~

1 or holders of payment instruments issued by the licensee or for
 2 the protection of the public interest that the commissioner take
 3 immediate possession of the property and business of the licensee,
 4 the commissioner may by order forthwith take possession of the
 5 property and business of the licensee and retain possession until
 6 the licensee resumes business or is finally liquidated. The licensee
 7 may, with the consent of the commissioner, resume business upon
 8 such conditions as the commissioner may prescribe.

9 (b) ~~Whenever the commissioner takes possession of the property~~
 10 ~~and business of a licensee pursuant to subdivision (a), the licensee~~
 11 ~~may, within 10 days, apply to the superior court in any county of~~
 12 ~~this state in which an office of the licensee is located (or, in case~~
 13 ~~the licensee has no office in this state, in the County of Sacramento,~~
 14 ~~in the City and County of San Francisco, or in the County of Los~~
 15 ~~Angeles) to enjoin further proceedings. The court may, after citing~~
 16 ~~the commissioner to show cause why further proceedings should~~
 17 ~~not be enjoined and after a hearing, dismiss the application or~~
 18 ~~enjoin the commissioner from further proceedings and order the~~
 19 ~~commissioner to surrender the property and business of the licensee~~
 20 ~~to the licensee or make such further order as may be just. The~~
 21 ~~judgment of the superior court may be appealed by the~~
 22 ~~commissioner or by the licensee in the manner provided by law~~
 23 ~~for appeals from the judgment of a superior court to the court of~~
 24 ~~appeal.~~

25 (c) ~~Whenever the commissioner takes possession of the property~~
 26 ~~and business of a licensee pursuant to subdivision (a), the~~
 27 ~~commissioner shall conserve or liquidate the property and business~~
 28 ~~of the licensee pursuant to Article 1 (commencing with Section~~
 29 ~~3100), Chapter 17, Division 1, and the provisions of the article~~
 30 ~~(except Sections 3100, 3101, and 3102) apply as if the licensee~~
 31 ~~were a bank.~~

32 SECTION 1. ~~The Legislature declares its intent to enact~~
 33 ~~legislation to impose a carbon tax and to offset the marginal~~
 34 ~~personal income tax rates.~~

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