

AMENDED IN ASSEMBLY APRIL 25, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 978

**Introduced by Assembly Member Blumenfield
(Coauthors: Assembly Members Brown, Fox, and Medina)**

February 22, 2013

An act to ~~amend Section 500 of, and to add Section 465 to, add Section 25 to~~ the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 978, as amended, Blumenfield. Financial institutions: Iran sanctions.

Existing law, ~~the Financial Institutions Law, generally~~ provides for the regulation and licensure of financial institutions, *including, but not limited to, banks and credit unions*, by the ~~Department of Financial Institutions and the Commissioner of Financial Institutions~~. On July 1, 2013, the Governor's Reorganization Plan No. 2 of 2012 transfers the responsibilities of the department and commissioner to the Department of Business Oversight and the Commissioner of Business Oversight, as specified. ~~A willful violation of specified provisions of the Financial Institutions Law, or a rule or order issued pursuant to the Financial Institutions Law by certain licensees, is a crime.~~

The federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 *imposes federal sanctions against the Government of Iran, as specified, and, among other duties*, requires the Secretary of the Treasury to prescribe regulations to prohibit, or impose strict conditions on, the opening or maintaining in the United States of

a correspondent account or a payable-through account by a foreign financial institution that the Secretary of the Treasury finds knowingly engages in certain activities related to the Government of Iran, subject to specified penalties. The federal act also requires the Secretary of the Treasury to prescribe regulations to require a domestic financial institution maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to perform an audit of prohibited activities that may be carried out by the foreign financial institution, report to the Department of the Treasury with respect to transactions or other financial services provided with respect to a prohibited activity, certify that the foreign financial institution is not knowingly engaging in any prohibited activity, to the best of its knowledge, and establish due diligence policies, procedures, and controls reasonably designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in any prohibited activity.

~~This bill would require the commissioner to prescribe regulations to require a licensee under the Financial Institutions Law that maintains a correspondent account or a payable-through account with a foreign financial institution to establish due diligence policies, procedures, and controls to comply with the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. The bill would also require a licensee that maintains a correspondent account or a payable-through account to establish at every 12-month examination period that it is not knowingly engaging with a foreign financial institution in violation of the sanctions under the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and authorizes the commissioner to assess an administrative fine not exceeding \$100,000 per occurrence against a licensee that fails to comply with this requirement. The bill would require the commissioner to refer all pertinent information relative to possible violations of the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 to the Secretary of the United States Treasury within 10 days of receipt and authorizes him or her to cooperate with any federal investigation pursuant to the act. The bill would also prohibit a licensee from maintaining a correspondent account or a payable-through account with any foreign financial institution that the United States Treasury Department's Office of Foreign Assets Control has placed on the federal list of Foreign Financial Institutions Subject to Part 561, when conducting specified examinations, to ensure that a licensee that~~

maintains a correspondent account or payable-through account is in compliance with the federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, associated federal regulations, and any related presidential executive orders. The bill also authorizes the commissioner to bring an action for a violation of the act, as specified, and requires the commissioner to forward evidence of a violation to the United States Department of the Treasury. This bill would become inoperative when certain conditions are met.

~~Because a willful violation of a regulation adopted by the commissioner may be a crime, the bill would impose a state-mandated local program.~~

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

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

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

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

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) In imposing United States sanctions on Iran, Congress and
4 the President have determined that the illicit nuclear activities of
5 the Government of Iran, combined with its development of
6 unconventional weapons and ballistic missiles, and its support of
7 international terrorism, represent a serious threat to the security
8 of the United States, Israel, and other United States allies in Europe,
9 the Middle East, and around the world.

10 (b) On July 1, 2010, President Barack Obama signed into law
11 H.R. 2194, the federal Comprehensive Iran Sanctions,
12 Accountability, and Divestment Act of 2010 (Public Law 111-195),
13 which puts strict limits on any foreign financial institution's ability
14 to open or maintain a correspondent account or a payable-through
15 account with United States financial institutions if the Secretary
16 of the Treasury determines that such a foreign financial institution
17 knowingly does any of the following:

18 (1) Facilitates the efforts of the Government of Iran to acquire
19 or develop weapons of mass destruction or their delivery systems.

1 (2) Provides support for organizations designated by the United
2 States as foreign terrorist organizations.

3 (3) Facilitates the activities of persons subject to financial
4 sanctions pursuant to United Nations Security Council resolutions
5 imposing sanctions on Iran.

6 (4) Engages in money laundering or carries out any activity
7 listed above.

8 (5) Facilitates a significant transaction or transactions or
9 provides significant financial services for Iran's Revolutionary
10 Guard Corps or its agents or affiliates, or any financial institution
11 whose property or interests in property are blocked pursuant to
12 federal law in connection with Iran's proliferation of weapons of
13 mass destruction or their delivery systems, or Iran's support for
14 international terrorism.

15 (c) The federal Comprehensive Iran Sanctions, Accountability
16 and Divestment Act (Public Law 111-195) imposes civil and
17 criminal penalties on United States financial institutions that know
18 or should have known that foreign financial institutions that
19 maintain correspondent accounts or payable-through accounts with
20 them are facilitating activities subject to sanctions.

21 (d) On December 21, 2011, President Obama signed into law
22 H.R. 1540, the federal National Defense Authorization Act for
23 Fiscal Year 2012 (Public Law 112-81), which, subject to certain
24 exceptions, places strict limits on any foreign financial institution's
25 ability to open or maintain a correspondent account or a
26 payable-through account with United States financial institutions
27 if the Secretary of the Treasury determines that a foreign financial
28 institution knowingly conducted or facilitated any significant
29 financial transaction with the Central Bank of Iran.

30 (e) The serious and urgent nature of the threat from Iran
31 demands that states work together with the federal government
32 and American allies to do everything possible, diplomatically,
33 politically, and economically to prevent Iran from acquiring a
34 nuclear weapons capability.

35 (f) There are moral and reputational reasons for this state to not
36 engage in business with foreign companies that have business
37 activities benefitting foreign states, such as Iran, that commit
38 egregious violations of human rights, proliferate nuclear weapons
39 capabilities, and support terrorism.

1 (g) In 2010, California enacted Chapter 573 of the Statutes of
2 2010 (Assembly Bill 1650 of the 2009–10 Regular Session) to
3 prohibit companies with certain investments in Iran from bidding
4 on or entering into contracts for goods or services with state or
5 local governments.

6 (h) The concerns of the State of California regarding Iran are
7 strictly the result of the actions of the Government of Iran.

8 *SEC. 2. Section 25 is added to the Financial Code, to read:*

9 25. (a) *The commissioner, when conducting examinations*
10 *under Section 500 or Section 14250, shall ensure that a licensee*
11 *that maintains a correspondent account or payable-through*
12 *account is in compliance with the Comprehensive Iran Sanctions,*
13 *Accountability, and Divestment Act of 2010 (Public Law 111-195),*
14 *associated federal regulations, and any related presidential*
15 *executive orders. If the commissioner finds that a licensee is in*
16 *violation, the commissioner may bring an action in accordance*
17 *with Section 566 or Section 16200, and shall forward evidence of*
18 *the violation to the United States Department of the Treasury.*

19 (b) *This section shall become inoperative if both of the following*
20 *conditions occur:*

21 (1) *Iran is removed from the United States Department of State's*
22 *list of countries that have been determined to repeatedly provide*
23 *support for acts of international terrorism.*

24 (2) *Pursuant to the appropriate federal statute, the President*
25 *determines and certifies to the appropriate committee of the United*
26 *States Congress that Iran has ceased its efforts to design, develop,*
27 *manufacture, or acquire a nuclear explosive device or related*
28 *materials and technology.*

29 ~~SEC. 2. Section 465 is added to the Financial Code, to read:~~

30 ~~465. (a) The commissioner shall prescribe regulations to~~
31 ~~require a licensee that maintains a correspondent account or a~~
32 ~~payable-through account with a foreign financial institution to~~
33 ~~establish due diligence policies, procedures, and controls to comply~~
34 ~~with the federal Comprehensive Iran Sanctions, Accountability,~~
35 ~~and Divestment Act of 2010 (Public Law 111-195). The regulations~~
36 ~~may include an affirmative responsibility to notify the~~
37 ~~commissioner or other official identified in the regulation of~~
38 ~~potential irregularities that the licensee may come across during~~
39 ~~its normal course of business.~~

1 ~~(b) A licensee that maintains a correspondent account or a~~
 2 ~~payable-through account with a foreign financial institution shall~~
 3 ~~establish, at every 12-month examination period pursuant to~~
 4 ~~subdivision (d) of Section 500, that the licensee is not knowingly~~
 5 ~~engaging with a foreign financial institution in violation of the~~
 6 ~~sanctions under the federal Comprehensive Iran Sanctions,~~
 7 ~~Accountability, and Divestment Act of 2010.~~

8 ~~(c) No licensee shall maintain a correspondent account or a~~
 9 ~~payable-through account with any foreign financial institution that~~
 10 ~~the United States Treasury Department’s Office of Foreign Assets~~
 11 ~~Control has placed on the federal list of Foreign Financial~~
 12 ~~Institutions Subject to Part 561.~~

13 ~~(d) The commissioner shall review all federal regulations related~~
 14 ~~to financial institution compliance with the federal Comprehensive~~
 15 ~~Iran Sanctions, Accountability, and Divestment Act of 2010 within~~
 16 ~~60 days of implementation and consider modification of the~~
 17 ~~regulations subject to this section.~~

18 ~~(e) The commissioner may assess an administrative fine of up~~
 19 ~~to, but not exceeding, one hundred thousand dollars (\$100,000)~~
 20 ~~per occurrence against a licensee that fails to comply with~~
 21 ~~subdivision (b).~~

22 ~~(f) The commissioner shall refer all pertinent information~~
 23 ~~relative to possible violations of the federal Comprehensive Iran~~
 24 ~~Sanctions, Accountability, and Divestment Act of 2010 to the~~
 25 ~~Secretary of the United States Treasury within 10 days of receipt.~~
 26 ~~The commission may cooperate with any federal investigation~~
 27 ~~pursuant to the federal Comprehensive Iran Sanctions,~~
 28 ~~Accountability, and Divestment Act of 2010.~~

29 ~~(g) For purposes of this section, the terms “correspondent~~
 30 ~~account” and “payable-through account” have the same meanings~~
 31 ~~as used in the federal Comprehensive Iran Sanctions,~~
 32 ~~Accountability, and Divestment Act of 2010 (Public Law 111-195).~~

33 ~~SEC. 3. Section 500 of the Financial Code is amended to read:~~

34 ~~500. (a) (1) For purposes of this section, “foreign bank” means~~
 35 ~~the business in this state of every foreign (other nation) bank~~
 36 ~~licensed under Article 3 (commencing with Section 1800) of~~
 37 ~~Chapter 20 of Division 1.1.~~

38 ~~(2) For purposes of this subdivision, an examination made by~~
 39 ~~the commissioner in conjunction with or with assistance from a~~
 40 ~~bank regulatory agency of the United States, of a state of the United~~

1 States, or of a foreign nation is deemed to be an examination caused
2 by the commissioner.

3 ~~(3) No provision of this subdivision shall be deemed to require~~
4 ~~that the commissioner cause an examination to be made onsite at~~
5 ~~the offices of a bank.~~

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

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

15 ~~(B) Foreign banks that meet the criteria set forth in Section~~
16 ~~211.26(c)(2) of Title 12 of the Code of Federal Regulations.~~

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

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

30 ~~(7) The commissioner may examine subsidiaries of every~~
31 ~~California state bank, state trust company, and foreign (other~~
32 ~~nation) bank licensed under Article 3 (commencing with Section~~
33 ~~1800) of Chapter 20 of Division 1.1 to the extent and whenever~~
34 ~~and as often as the commissioner shall deem it advisable.~~

35 ~~(b) The commissioner may at any time examine any of the~~
36 ~~following:~~

37 ~~(1) Any office of a bank organized under the laws of this state.~~

38 ~~(2) Any office of a foreign (other state) bank that maintains an~~
39 ~~office in this state.~~

1 ~~(3) Any office of a foreign (other nation) bank that maintains~~
2 ~~an office in this state.~~

3 ~~(e) The officers and employees of every California state bank,~~
4 ~~California state trust company, and foreign bank being examined~~
5 ~~shall exhibit to the examiners, on request, any or all of its securities,~~
6 ~~books, records, and accounts and shall otherwise facilitate the~~
7 ~~examination so far as it may be in their power.~~

8 ~~(d) (1) The commissioner shall require that any licensee that~~
9 ~~maintains a correspondent account or a payable-through account~~
10 ~~with a foreign financial institution shall, when under examination~~
11 ~~pursuant to paragraph (4) of subdivision (a), demonstrate that the~~
12 ~~licensee is in compliance with state regulations for the~~
13 ~~implementation of the federal Comprehensive Iran Sanctions,~~
14 ~~Accountability, and Divestment Act of 2010 (Public Law 111-195).~~

15 ~~(2) In any examination period in which the commissioner has~~
16 ~~accepted an examination by an appropriate federal regulator for~~
17 ~~compliance with paragraph (4) of subdivision (a), a licensee that~~
18 ~~maintains a correspondent account or a payable-through account~~
19 ~~with a foreign financial institution shall submit a declaration of~~
20 ~~compliance with the regulations adopted pursuant to Section 465.~~
21 ~~The declaration shall be submitted to the commissioner within 30~~
22 ~~days of the completion of the examination.~~

23 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
24 ~~Section 6 of Article XIII B of the California Constitution because~~
25 ~~the only costs that may be incurred by a local agency or school~~
26 ~~district will be incurred because this act creates a new crime or~~
27 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
28 ~~for a crime or infraction, within the meaning of Section 17556 of~~
29 ~~the Government Code, or changes the definition of a crime within~~
30 ~~the meaning of Section 6 of Article XIII B of the California~~
31 ~~Constitution.~~