

AMENDED IN ASSEMBLY AUGUST 12, 2013

AMENDED IN ASSEMBLY MAY 16, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 537**

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**Introduced by Committee on Banking and Financial Institutions  
(Senators Correa (Chair), Beall, Berryhill, Calderon, Hill, Hueso,  
Lara, Roth, Torres, and Walters)**

February 22, 2013

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An act to amend Sections 31101, 31107, 31109.1, 31114, and 31119 of the Corporations Code, and to amend Sections 101, 103, 129, 133, 155, 171, 185, 189, ~~326~~, 329, 331, 376, 377, 379, 405, 413, 563, 589, 590, 600, 672, 1024, 1026, 1080, 1255, 1331, 1473, 1485, 1495, 1515, 1702, 1805, 1806, 1835, 1858, 4805.01, 4805.02, 4805.05, 4805.10, 4821.5, 4822, 4823, 4824, 4826.5, 4827, 4827.3, 4827.7, 4871.5, 4877.03, 4901.5, 4961.5, 4970, 4982, 4990, 4995, and 18003 of, to amend the heading of Article 4 (commencing with Section 670) of Chapter 7 of Division 1 of, to add Sections 186, 188, and 190 to, and to repeal and add Section 187 of, the Financial Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 537, as amended, Committee on Banking and Financial Institutions. Business and finance.

(1) Existing law provides for the regulation of specified financial institutions pursuant to the Financial Institutions Law.

This bill would revise and recast provisions of the Financial Institutions Law. The bill would, among other things, make changes to cross-references and definitions that apply to the Financial Institutions

Law, as specified, in accordance with changes made to the law pursuant to Chapter 243 of the Statutes of 2011. The bill would make changes to provisions related to foreign (other nation) banks, as specified.

(2) The Franchise Investment Law generally provides for the regulation of the offer and sale of franchises. The law requires specific written disclosures, including, but not limited to, an offering circular, and authorizes the sale of a franchise to be exempt from specified requirements if the franchisor meets certain disclosure and notice requirements.

This bill, for that exemption to apply, would modify the requirement that certain written disclosures be made by a franchisor at least 10 business days prior to the sale or material modification of a franchise, and instead require those disclosures to be made at least 14 days prior to the sale or modification. The bill also would replace the term for a written document called an “offering circular” with the term “franchise disclosure document.”

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

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

1 SECTION 1. Section 31101 of the Corporations Code is  
 2 amended to read:  
 3 31101. There shall be exempted from the provisions of Chapter  
 4 2 (commencing with Section 31110) of this part the offer and sale  
 5 of a franchise if the franchisor complies with each of the following  
 6 minimum net worth, experience, disclosure, and notice filing  
 7 requirements:  
 8 (a) Net worth. The franchisor and, when necessary, a corporation  
 9 owning at least 80 percent of the franchisor (parent) meet one of  
 10 the following net worth requirements, according to financial  
 11 statements for the fiscal year just ended. The franchisor and the  
 12 parent, when necessary, may rely upon the immediately preceding  
 13 fiscal year’s audited financial statement for 15 months from that  
 14 fiscal year end date.  
 15 (1) The franchisor has a net worth on a consolidated basis of  
 16 not less than five million dollars (\$5,000,000), according to its  
 17 audited financial statement.  
 18 (2) The franchisor has a net worth of not less than one million  
 19 dollars (\$1,000,000) and its parent has a net worth of five million

1 dollars (\$5,000,000), according to the audited financial statements  
2 of the franchisor and its parent, respectively.

3 (3) The franchisor has a net worth of one million dollars  
4 (\$1,000,000), according to its unaudited financial statement, and  
5 the parent has a net worth on a consolidated basis of not less than  
6 five million dollars (\$5,000,000), according to its audited financial  
7 statement, and the parent absolutely and unconditionally guarantees  
8 to assume the duties and obligations of the franchisor under the  
9 franchise agreement should the franchisor become unable to  
10 perform its duties and obligations.

11 (b) Experience. The franchisor or a corporation owning at least  
12 80 percent of the franchisor (parent) complies with one or more  
13 of the following conditions throughout the five-year period  
14 immediately preceding the offer and sale of the franchise, or  
15 complies with one of the following conditions during part of the  
16 period and one or more of the following conditions during the  
17 balance of the period:

18 (1) The franchisor has had at least 25 franchisees conducting  
19 business which is the subject of the franchise.

20 (2) The franchisor has conducted business which is the subject  
21 of the franchise.

22 (3) The parent has had at least 25 franchisees conducting  
23 business which is the subject of the franchise.

24 (4) The parent has conducted business which is the subject of  
25 the franchise.

26 (c) Disclosure. (1) Except as provided in ~~subparagraph~~  
27 *paragraph* (2), the franchisor discloses in writing to each  
28 prospective franchisee, at least 14 days prior to the execution by  
29 the prospective franchisee of any binding franchise or other  
30 agreement, or at least 14 days prior to the receipt of any  
31 consideration, the following information:

32 (A) The name of the franchisor, the name under which the  
33 franchisor is doing or intends to do business, and the name of any  
34 parent or affiliated company that will engage in business  
35 transactions with franchisees.

36 (B) The franchisor's principal business address and the name  
37 and address of its agent in the State of California authorized to  
38 receive service of process.

39 (C) The business form of the franchisor, whether corporate,  
40 partnership, or otherwise.

1 (D) The business experience of the franchisor, including the  
2 length of time the franchisor (i) has conducted a business of the  
3 type to be operated by the franchisees, (ii) has granted franchises  
4 for such business, and (iii) has granted franchises in other lines of  
5 business.

6 (E) A copy of the typical franchise contract or agreement  
7 proposed for use or in use in this state.

8 (F) A statement of the franchise fee charged, the proposed  
9 application of the proceeds of such fee by the franchisor, and the  
10 formula by which the amount of the fee is determined if the fee is  
11 not the same in all cases.

12 (G) A statement describing any payments or fees other than  
13 franchise fees that the franchisee or subfranchisor is required to  
14 pay to the franchisor, including royalties and payments or fees  
15 which the franchisor collects in whole or in part on behalf of a  
16 third party or parties.

17 (H) A statement of the conditions under which the franchise  
18 agreement may be terminated or renewal refused, or repurchased  
19 at the option of the franchisor.

20 (I) A statement as to whether, by the terms of the franchise  
21 agreement or by other device or practice, the franchisee or  
22 subfranchisor is required to purchase from the franchisor or his or  
23 her designee services, supplies, products, fixtures, or other goods  
24 relating to the establishment or operation of the franchise business,  
25 together with a description thereof.

26 (J) A statement as to whether, by the terms of the franchise  
27 agreement or other device or practice, the franchisee is limited in  
28 the goods or services offered by him or her to his or her customers.

29 (K) A statement of the terms and conditions of any financing  
30 arrangements when offered directly or indirectly by the franchisor  
31 or his or her agent or affiliate.

32 (L) A statement of any past or present practice or of any intent  
33 of the franchisor to sell, assign, or discount to a third party any  
34 note, contract, or other obligation of the franchisee or subfranchisor  
35 in whole or in part.

36 (M) If any statement of estimated or projected franchisee  
37 earnings is used, a statement of such estimation or projection and  
38 the data upon which it is based.

39 (N) A statement as to whether franchisees or subfranchisors  
40 receive an exclusive area or territory.

1 (O) A copy of the financial statement or statements required by  
2 subdivision (a).

3 (P) A copy of the unconditional guaranty, if applicable, required  
4 by paragraph (3) of subdivision (a).

5 (2) In the case of a material modification of an existing  
6 franchise, the franchisor discloses in writing to each franchisee  
7 information concerning the specific sections of the franchise  
8 agreement proposed to be modified and such additional information  
9 as may be required by rule or order of the commissioner. Any  
10 agreement by such franchisee to such material modifications shall  
11 not be binding upon the franchisee if the franchisee, within 14  
12 days after the receipt of such writing identifying the material  
13 modification, notifies the franchisor in writing that the agreement  
14 to such modification is rescinded. A writing identifying the material  
15 modification is received when delivered to the franchisee. A written  
16 notice by the franchisee rescinding an agreement to a material  
17 modification is effective when delivered to the franchisor or when  
18 deposited in the mail, postage prepaid, and addressed to the  
19 franchisor in accordance with any notice provisions in the franchise  
20 agreement, or when delivered or mailed to the person designated  
21 in the franchise agreement for the receipt of notices on behalf of  
22 the franchisor.

23 (d) Notice filing. The franchisor has filed with the commissioner  
24 a notice of exemption and paid the fee required by subdivision (f)  
25 of Section 31500 prior to an offer or sale of a franchise in this state  
26 during any calendar year in which one or more franchises are sold,  
27 excluding any material modification.

28 SEC. 2. Section 31107 of the Corporations Code is amended  
29 to read:

30 31107. There shall be exempted from the provisions of Chapter  
31 2 (commencing with Section 31110) of this part, any offer (but  
32 not the sale) by a franchisor of a franchise while an application  
33 for renewal or amendment is pending if the prospective franchisee  
34 receives all of the following:

35 (a) The franchise disclosure document and its exhibits as filed  
36 with the commissioner with the application for renewal or  
37 amendment.

38 (b) A written statement from the franchisor that (1) the filing  
39 has been made but is not effective, (2) the information in the  
40 franchise disclosure document and exhibits has not been reviewed

1 by the commissioner, and (3) the franchisor will deliver to the  
2 prospective franchisee an effective franchise disclosure document  
3 and exhibits at least 14 days prior to execution by the prospective  
4 franchisee of a binding agreement or payment of any consideration  
5 to the franchisor, or any person affiliated with the franchisor,  
6 whichever occurs first, showing all material changes from the  
7 franchise disclosure document and exhibits received by the  
8 prospective franchisee under subdivision (a) of this section.

9 (c) The franchise disclosure document and exhibits in  
10 accordance with paragraph (3) of subdivision (b) of this section.

11 SEC. 3. Section 31109.1 of the Corporations Code is amended  
12 to read:

13 31109.1. (a) There shall be exempted from the provisions of  
14 Chapter 2 (commencing with Section 31110) the offer and sale of  
15 a franchise registered under Section 31111, 31121, or 31123 on  
16 terms different from the terms of the offer registered thereunder  
17 if all of the following requirements are met:

18 (1) The initial offer is the offer registered under Section 31111,  
19 31121, or 31123.

20 (2) The prospective franchisee receives all of the following in  
21 a separate written appendix to the franchise disclosure document:

22 (A) A summary description of each material negotiated term  
23 that was negotiated by the franchisor for a California franchise  
24 during the 12-month period ending in the calendar month  
25 immediately preceding the month in which the negotiated offer or  
26 sale is made under this section.

27 (B) A statement indicating that copies of the negotiated terms  
28 are available upon written request.

29 (C) The name, telephone number, and address of the  
30 representative of the franchisor to whom requests for a copy of  
31 the negotiated terms may be obtained.

32 (3) The franchisor certifies or declares in an appendix to its  
33 application for renewal that it has complied with all of the  
34 requirements of this section, in the event this exemption is claimed.

35 (4) The negotiated terms, on the whole, confer additional  
36 benefits on the franchisee.

37 (b) The franchisor shall provide a copy of the negotiated terms  
38 described in subdivision (a) to the prospective franchisee within  
39 five business days following the request of the franchisee.

1 (c) The franchisor shall maintain copies of all material  
2 negotiated terms for which this exemption is claimed for a period  
3 of five years from the effective date of the first agreement  
4 containing the relevant negotiated term. Upon the request of the  
5 commissioner, the franchisor shall make the copies available to  
6 the commissioner for review. For purposes of this section, the  
7 commissioner may prescribe by rule or order the format and content  
8 of the summary description of the negotiated terms required by  
9 subparagraph (A) of paragraph (2) of subdivision (a).

10 (d) For purposes of this section, “material” means that a  
11 reasonable franchisee would view the terms as important in  
12 negotiating the franchise.

13 SEC. 4. Section 31114 of the Corporations Code is amended  
14 to read:

15 31114. The application for registration shall be accompanied  
16 by a proposed franchise disclosure document, which shall contain  
17 the material information set forth in the application for registration,  
18 as specified by rule of the commissioner, and such additional  
19 disclosures as the commissioner may require. The franchise  
20 disclosure document shall recite in bold type of not less than  
21 10-point type that registration does not constitute approval,  
22 recommendation, or endorsement by the commissioner.

23 SEC. 5. Section 31119 of the Corporations Code is amended  
24 to read:

25 31119. (a) It is unlawful to sell any franchise in this state that  
26 is subject to registration under this law without first providing to  
27 the prospective franchisee, at least 14 days prior to the execution  
28 by the prospective franchisee of any binding franchise or other  
29 agreement, or at least 14 days prior to the receipt of any  
30 consideration, whichever occurs first, a copy of the franchise  
31 disclosure document, together with a copy of all proposed  
32 agreements relating to the sale of the franchise.

33 (b) Nothing in this division shall be construed to prevent a  
34 franchisor from providing copies of the franchise disclosure  
35 documents to prospective franchisees through electronic means  
36 pursuant to any requirements or conditions that may be imposed  
37 by rule or order of the commissioner.

38 SEC. 6. Section 101 of the Financial Code is amended to read:

1 101. If and to the extent that any provision of the Financial  
2 Institutions Law is preempted by federal law, the provision does  
3 not apply and shall not be enforced.

4 SEC. 7. Section 103 of the Financial Code is amended to read:

5 103. The word “bank” as used in the Financial Institutions Law  
6 means any incorporated banking institution that shall have been  
7 incorporated to engage in commercial banking business, industrial  
8 banking, or trust business.

9 SEC. 8. Section 129 of the Financial Code is amended to read:

10 129. Unless the provision or the context otherwise requires,  
11 the definitions set forth in this chapter govern the construction of  
12 the Financial Institutions Law.

13 SEC. 9. Section 133 of the Financial Code is amended to read:

14 133. If the articles of a bank provide for more or less than one  
15 vote for any share on any matter, the references in Sections 139  
16 and 141 to a majority or other proportion of shares means, as to  
17 such matter, a majority or other proportion of the votes entitled to  
18 be cast. Whenever, under Division 1 (commencing with Section  
19 100), Title 1 of the Corporations Code, this division, or Division  
20 1.1 (commencing with Section 1000), shares are disqualified from  
21 voting on any matter, they shall not be considered outstanding for  
22 the determination of a quorum at any meeting to act upon, or the  
23 required vote to approve action upon, such matter under any  
24 provision of Division 1 (commencing with Section 100), Title 1  
25 of the Corporations Code, of this division, Division 1.1  
26 (commencing with Section 1000), or of the articles or bylaws.

27 SEC. 10. Section 155 of the Financial Code is amended to read:

28 155. “Certificate of revocation” means a certificate executed  
29 and filed with the Secretary of State pursuant to the second and  
30 third sentences of subdivision (c) of Section 110 of the  
31 Corporations Code, subject, however, to the provisions of Section  
32 1106.

33 SEC. 11. Section 171 of the Financial Code is amended to read:

34 171. “Distribution to its shareholders” has the meaning set  
35 forth in Section 166 of the Corporations Code. However, in  
36 Division 1 (commencing with Section 100), Title 1 of the  
37 Corporations Code, in this division, and in Division 1.1  
38 (commencing with Section 1000), “distribution to its shareholders”  
39 does not include any purchase of shares by a bank or by a  
40 majority-owned subsidiary of a bank which is necessary to reduce

1 or avoid loss to such bank or to such subsidiary on an extension  
2 of credit previously made in good faith. Also, in this division and  
3 in Division 1.1 (commencing with Section 1000), “distribution to  
4 its shareholders” includes any distribution made by a bank or by  
5 a majority-owned subsidiary of a bank to the shareholders of any  
6 corporation of which such bank is a majority-owned subsidiary.

7 SEC. 12. Section 185 of the Financial Code is amended to read:

8 185. “Licensee” has the following meanings:

9 (a) Any bank authorized by the commissioner pursuant to  
10 Section 1042 to transact banking or trust business.

11 (b) Any industrial bank authorized by the commissioner pursuant  
12 to Section 1042 to transact industrial banking business.

13 (c) Any trust company authorized by the commissioner pursuant  
14 to Section 1042 to transact trust business.

15 (d) Any foreign (other nation) bank that is licensed under Article  
16 2 (commencing with Section 1780) of Chapter 20 or under Article  
17 3 (commencing with Section 1800) of Chapter 20.

18 (e) Any person licensed by the commissioner as a money  
19 transmitter pursuant to Division 1.2 (commencing with Section  
20 2000).

21 (f) Any person authorized by the commissioner to conduct the  
22 business of a savings association pursuant to Division 2  
23 (commencing with Section 5000).

24 (g) Any credit union authorized by the commissioner to conduct  
25 business pursuant to Section 14154.

26 (h) Any foreign (other state) credit union licensed by the  
27 commissioner to conduct business pursuant to Chapter 11  
28 (commencing with Section 16000) of Division 5.

29 (i) Any foreign (other nation) credit union licensed by the  
30 commissioner to conduct business pursuant to Chapter 12  
31 (commencing with Section 16500) of Division 5.

32 (j) Any industrial loan company authorized by the commissioner  
33 to conduct insurance premium finance business pursuant to  
34 Division 7 (commencing with Section 18000).

35 (k) Any corporation licensed by the commissioner as a business  
36 and industrial development corporation pursuant to Section 31154.

37 SEC. 13. Section 186 is added to the Financial Code, to read:

38 186. “Majority-owned subsidiary” has the meaning set forth  
39 for “subsidiary” in subdivision (a) of Section 189 of the  
40 Corporations Code.

1 SEC. 14. Section 187 of the Financial Code is repealed.

2 SEC. 15. Section 187 is added to the Financial Code, to read:

3 187. "Member of the public" means any person, except an  
4 agent, officer, or employee of the department acting within the  
5 scope of his or her agency, office, or employment. Member of the  
6 public does not include a director, officer, employee, attorney,  
7 accountant, or consultant of a licensee, provided that the  
8 confidential information in question only pertains to the licensee  
9 that employs or utilizes the director, officer, employee, attorney,  
10 accountant, or consultant.

11 SEC. 16. Section 188 is added to the Financial Code, to read:

12 188. "Money transmitter" means a person authorized pursuant  
13 to Chapter 3 (commencing with Section 2030) of Division 1.2 to  
14 engage in the business of money transmission.

15 SEC. 17. Section 189 of the Financial Code is amended to read:

16 189. (a) "National bank" or "national banking association"  
17 means a national banking association organized under the National  
18 Bank Act.

19 (b) For purposes of the Financial Institutions Law, a national  
20 bank is deemed to be a corporation.

21 SEC. 18. Section 190 is added to the Financial Code, to read:

22 190. "Officer" means:

23 (a) When used with respect to a corporation, any person  
24 appointed or designated as an officer of the corporation by or  
25 pursuant to applicable law or the articles of incorporation or bylaws  
26 of the corporation or any person who performs with respect to the  
27 corporation functions usually performed by an officer of a  
28 corporation.

29 (b) When used with respect to a specified person other than a  
30 natural person or a corporation, any person who performs with  
31 respect to the specified person, functions usually performed by an  
32 officer of a corporation with respect to the corporation.

33 ~~SEC. 19. Section 326 of the Financial Code is amended to read:~~

34 ~~326. The commissioner is responsible for the performance of~~  
35 ~~all duties, the exercise of all powers and jurisdiction, and the~~  
36 ~~assumption and discharge of all responsibilities vested by law in~~  
37 ~~the department. The commissioner has and may exercise all the~~  
38 ~~powers necessary or convenient for the administration and~~  
39 ~~enforcement of, among other laws, the Financial Institutions Law.~~  
40 ~~The commissioner may issue such rules and regulations consistent~~

1 with law as he or she may deem necessary or advisable in executing  
2 the powers, duties, and responsibilities of the department.

3 ~~SEC. 20.~~

4 *SEC. 19.* Section 329 of the Financial Code is amended to read:

5 329. (a) For purposes of this section, the following definitions  
6 apply:

7 (1) “Applicable law” means:

8 (A) With respect to any bank, Division 1.6 (commencing with  
9 Section 4800), and any of the following provisions:

10 (i) Article 6 (commencing with Section 405) of Chapter 3.

11 (ii) Article 3 (commencing with Section 1130) of Chapter 5 of  
12 Division 1.1.

13 (iii) Chapter 6 (commencing with Section 1200) of Division  
14 1.1.

15 (iv) Chapter 10 (commencing with Section 1320) of Division  
16 1.1.

17 (v) Chapter 14 (commencing with Section 1460) of Division  
18 1.1.

19 (vi) Article 1 (commencing with Section 1530) of Chapter 15  
20 of Division 1.1.

21 (vii) Chapter 16 (commencing with Section 1550) of Division  
22 1.1.

23 (viii) Chapter 20 (commencing with Section 1750) of Division  
24 1.1.

25 (ix) Section 456.

26 (x) Section 457.

27 (xi) Section 459.

28 (xii) Section 460.

29 (xiii) Section 461.

30 (xiv) Section 1331.

31 (xv) Chapter 21 (commencing with Section 1850) of Division  
32 1.1.

33 (xvi) Chapter 18 (commencing with Section 1660) of Division  
34 1.1.

35 (xvii) Chapter 19 (commencing with Section 1670) of Division  
36 1.1.

37 (B) With respect to any savings association, any provision of  
38 Division 1.6 (commencing with Section 4800) and Division 2  
39 (commencing with Section 5000).

- 1 (C) With respect to any insurance premium finance agency, any  
2 provision of Division 7 (commencing with Section 18000).
- 3 (D) With respect to any business and industrial development  
4 corporation, any provision of Division 15 (commencing with  
5 Section 31000).
- 6 (E) With respect to any credit union, any of the following  
7 provisions:
- 8 (i) Section 14252.  
9 (ii) Section 14253.  
10 (iii) Section 14255.  
11 (iv) Article 4 (commencing with Section 14350) of Chapter 3  
12 of Division 5.  
13 (v) Section 14401.  
14 (vi) Section 14404.  
15 (vii) Section 14408, only as that section applies to gifts to  
16 directors, volunteers, and employees, and the related family or  
17 business interests of the directors, volunteers, and employees.  
18 (viii) Section 14409.  
19 (ix) Section 14410.  
20 (x) Article 5 (commencing with Section 14600) of Chapter 4  
21 of Division 5.  
22 (xi) Article 6 (commencing with Section 14650) of Chapter 4  
23 of Division 5, excluding subdivision (a) of Section 14651.  
24 (xii) Section 14803.  
25 (xiii) Section 14851.  
26 (xiv) Section 14858.  
27 (xv) Section 14860.  
28 (xvi) Section 14861.  
29 (xvii) Section 14863.
- 30 (F) With respect to any money transmitter, any provision of  
31 Division 1.2 (commencing with Section 2000).
- 32 (2) “Licensee” means any bank, savings association, credit  
33 union, trust company, money transmitter, insurance premium  
34 finance agency, or business and industrial development corporation  
35 that is authorized by the commissioner to conduct business in this  
36 state.
- 37 (b) Notwithstanding any other provision of this code that applies  
38 to a licensee or a subsidiary of a licensee, after notice and an  
39 opportunity to be heard, the commissioner may, by order that shall  
40 include findings of fact which incorporates a determination made

1 in accordance with subdivision (e), levy civil penalties against any  
2 licensee or any subsidiary of a licensee who has violated any  
3 provision of applicable law, any order issued by the commissioner,  
4 any written agreement between the commissioner and the licensee  
5 or subsidiary of the licensee, or any condition of any approval  
6 issued by the commissioner. Notwithstanding any other provision  
7 of law, neither the commissioner nor any employee of the  
8 department shall disclose or permit the disclosure of any record,  
9 record of any action, or information contained in a record of any  
10 action, taken by the commissioner under the provisions of this  
11 section, unless the action was taken pursuant to paragraph (2) of  
12 subdivision (b), to persons other than federal or state government  
13 employees who are authorized by statute to obtain the records in  
14 the performance of their official duties, unless the disclosure is  
15 authorized or requested by the affected licensee or the affected  
16 subsidiary of the licensee. The commissioner shall have the sole  
17 authority to bring any action with respect to a violation of  
18 applicable law subject to a penalty imposed under this section.

19 Except as provided in paragraphs (1) and (2), any penalty  
20 imposed by the commissioner may not exceed one thousand dollars  
21 (\$1,000) a day, provided that the aggregate penalty of all offenses  
22 in any one action against any licensee or subsidiary of a licensee  
23 shall not exceed fifty thousand dollars (\$50,000).

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

34 (2) If the commissioner determines that any licensee or  
35 subsidiary of the licensee has knowingly violated any applicable  
36 law, any order issued by the commissioner, any provision of any  
37 written agreement between the commissioner and the licensee or  
38 subsidiary, or any condition of any approval issued by the  
39 commissioner, the commissioner may impose a penalty not to  
40 exceed ten thousand dollars (\$10,000) per day, provided that the

1 aggregate penalty of all offenses in an action against any licensee  
2 or subsidiary of a licensee shall not exceed 1 percent of the total  
3 assets of the licensee or subsidiary of a licensee subject to the  
4 penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (12) Tendency to engage in violations of law, unsafe or unsound  
8 financial institutions practices, or breaches of duties.

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

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

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

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

27 ~~SEC. 21.~~

28 *SEC. 20.* Section 331 of the Financial Code is amended to read:

29 331. Notwithstanding any other provision of law, the  
30 commissioner may adopt and implement any method of accepting  
31 electronic filings of applications, reports, or other matters, which,  
32 in the opinion of the commissioner, is secure. Any method of  
33 electronic filing chosen by the commissioner shall include a method  
34 to verify the identity of the person making the filing. The  
35 verification shall be deemed to satisfy all other verifications  
36 required by the Financial Institutions Law, and shall have the same  
37 force and effect as the use of manual signatures.

38 ~~SEC. 22.~~

39 *SEC. 21.* Section 376 of the Financial Code is amended to read:

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

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

6 (1) The filing, approval, or denial under Chapter 1 (commencing  
7 with Section 1000) of Division 1.1 of an application for authority  
8 to organize a California state bank, or the issuance under Chapter  
9 3 (commencing with Section 1040) of Division 1.1 of a certificate  
10 of authority to a California state bank.

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

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

21 (4) The filing, approval, or denial under Division 1.2  
22 (commencing with Section 2000), Division 7 (commencing with  
23 Section 18000), or Division 15 (commencing with Section 31000)  
24 of an application for a license to engage in business, or the issuance  
25 under any of those laws of a license to engage in business.

26 (5) The filing, approval, or denial under Chapter 20  
27 (commencing with Section 1750) of Division 1.1 of an application  
28 by a foreign (other nation) bank to establish its first office of any  
29 particular class (as determined under Section 1753) in this state,  
30 or the issuance under that chapter of a license in connection with  
31 the establishment of such an office.

32 (6) The filing, approval, or denial under Division 1.6  
33 (commencing with Section 4800) of an application for approval  
34 of a sale, merger, or conversion.

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

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

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

8 (10) The taking of possession of the property and business of a  
9 California state bank, savings association, credit union, or person  
10 licensed by the commissioner under any of the laws cited in  
11 paragraph (4).

12 (b) Other information as the commissioner deems appropriate.

13 ~~SEC. 23.~~

14 *SEC. 22.* Section 377 of the Financial Code is amended to read:

15 377. Notwithstanding any other provision of this code,  
16 whenever any provision of the Financial Institutions Law requires  
17 the pledge of securities to be deposited with the Treasurer, to ensure  
18 the performance of any act or duty, the securities after first being  
19 approved by the commissioner and upon the written order of the  
20 commissioner, shall be deposited with the Treasurer. The Treasurer,  
21 with the consent of the owner of the securities deposited or to be  
22 deposited with the Treasurer, may place the securities in the  
23 custody of a qualified trust company or bank in the same manner  
24 and under the same conditions provided in Article 3 (commencing  
25 with Section 16550) of Chapter 4 of Part 2 of Division 4 of Title  
26 2 of the Government Code.

27 ~~SEC. 24.~~

28 *SEC. 23.* Section 379 of the Financial Code is amended to read:

29 379. (a) For the purposes of this section the following  
30 definitions shall apply:

31 (1) “Control” has the meaning set forth in subdivision (b) of  
32 Section 1250. “Control” also means the ownership of a subject  
33 person by means of sole proprietorship, partnership, or by any  
34 other similar means.

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

37 (3) “Subject person” means any licensee.

38 (b) Notwithstanding any other provision of law, and subject to  
39 subdivision (c), the commissioner may deliver, or cause to be

1 delivered, to local, state, or federal law enforcement agencies  
2 fingerprints taken of any of the following:

3 (1) An applicant for employment with the department.

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

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

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

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

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

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

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

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

29 ~~SEC. 25.~~

30 *SEC. 24.* Section 405 of the Financial Code is amended to read:

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

38 (b) The amount of the annual assessment for the fund on any  
39 bank or trust company shall not be less than five thousand dollars  
40 (\$5,000). Above that minimum amount, except as otherwise

1 provided in subdivision (c), the annual assessment shall not exceed  
 2 the sum of the products of a base assessment rate, or percentage  
 3 thereof, and segregated portions of its total resources, according  
 4 to the following table:

6 Segregated Total Resources 7 (In Millions or Fractions Thereof)	8 Percentage of Base 9 Assessment Rate
10 First \$2	100.0
11 Next \$18	50.0
12 Next \$80	12.0
13 Next \$100	6.25
14 Next \$800	6.0
15 Next \$1,000	4.0
16 Next \$4,000	3.5
17 Next \$14,000	3.0
18 Next \$20,000	2.5
19 Excess over \$40,000	1.5

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

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

35 (d) The base assessment rate shall be set by the commissioner  
 36 from time to time at the commissioner’s discretion, not to exceed  
 37 two dollars and twenty cents (\$2.20) per one thousand dollars  
 38 (\$1,000) of total resources.

39 ~~SEC. 26.~~

*SEC. 25.* Section 413 of the Financial Code is amended to read:

1 413. (a) In this section, “assessment statute” means any statute  
2 that authorizes the commissioner to make or collect an assessment  
3 (other than a fine) on financial institutions, including the following:

- 4 (1) Sections 405 to 407, inclusive.  
5 (2) Section 2042.  
6 (3) Article 2 (commencing with Section 8030) of Chapter 7 of  
7 Division 2.  
8 (4) Article 4 (commencing with Section 14350) of Chapter 3  
9 of Division 5.  
10 (5) Section 1533.

11 (b) The commissioner may charge to and collect from the  
12 Financial Institutions Fund, the Credit Union Fund, each of the  
13 accounts included in the Financial Institutions Fund, and each of  
14 the programs included in the State Banking Account an amount  
15 equal to the fund’s, account’s, or program’s pro rata share of those  
16 expenses of the department which, in the opinion of the  
17 commissioner, it is not feasible to attribute to any single one of  
18 the funds, accounts, or programs. The fund’s, account’s, or  
19 program’s pro rata share shall be determined and paid in the manner  
20 and at the time ordered by the commissioner.

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

28 ~~SEC. 27.~~

29 *SEC. 26.* Section 563 of the Financial Code is amended to read:

30 563. No provision of Section 560, 561, or 562 prohibits any  
31 of the following from transacting any business or performing any  
32 activity if it is authorized by applicable law to transact the business  
33 or perform the activity and is not prohibited by any applicable law,  
34 other than Section 560, 561, or 562, from transacting the business  
35 or performing the activity:

- 36 (a) Any California state commercial bank, industrial bank, or  
37 trust company.  
38 (b) Any national bank.  
39 (c) Any insured foreign (other state) state bank.

1 (d) Any foreign (other state) state bank that is licensed by the  
2 commissioner under Article 3 (commencing with Section 1700)  
3 of Chapter 19 of Division 1.1 to maintain a facility, as defined in  
4 Section 1670, in this state.

5 (e) Any foreign (other nation) bank that is licensed by the  
6 commissioner under Chapter 20 (commencing with Section 1750)  
7 of Division 1.1 to maintain an office in this state.

8 (f) Any foreign (other nation) bank that maintains a federal  
9 agency, as defined in subdivision (g) of Section 1750, or federal  
10 branch, as defined in subdivision (h) of Section 1750, in this state.

11 (g) Any California state corporation that is incorporated for the  
12 purpose of engaging in, and that is authorized by the commissioner  
13 to engage in, business under Article 1 (commencing with Section  
14 1850) of Chapter 21 of Division 1.1.

15 (h) Any corporation incorporated under Section 25A of the  
16 Federal Reserve Act (12 U.S.C. Sec. 612 et seq.).

17 (i) Any foreign corporation that is licensed by the commissioner  
18 under Article 1 (commencing with Section 1850) of Chapter 21  
19 of Division 1.1 to maintain an office in this state and to transact  
20 at that office business under Article 1 (commencing with Section  
21 1850) of Chapter 21 of Division 1.1.

22 (j) Any industrial bank that is organized under the laws of  
23 another state of the United States and is insured by the Federal  
24 Deposit Insurance Corporation.

25 ~~SEC. 28.~~

26 *SEC. 27.* Section 589 of the Financial Code is amended to read:  
27 589. (a) In this section, “subject financial institution” means

28 any:

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

31 (2) Affiliate of any of the institutions specified in paragraph  
32 (1).

33 (3) Subsidiary of any of the institutions specified in paragraph  
34 (1).

35 (4) Holding company of any of the institutions specified in  
36 paragraph (1).

37 (b) It is unlawful for any subject person or former subject person  
38 of a subject financial institution to whom an order is issued under  
39 Sections 585 to 587, inclusive, willfully to do, directly or indirectly,

1 any of the following without the approval of the commissioner,  
2 so long as the order is in effect:

3 (1) Act as a subject person of any subject financial institution.

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

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

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

12 ~~SEC. 29.~~

13 *SEC. 28.* Section 590 of the Financial Code is amended to read:

14 590. The commissioner may revoke or suspend any license  
15 issued by, or under the authority of, the commissioner, if, after  
16 notice and opportunity to be heard, the commissioner finds any of  
17 the following:

18 (a) The licensee has violated, is violating, or that there is  
19 reasonable cause to believe that the licensee is about to violate,  
20 any provision of 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) A provision of any other applicable law.

25 (4) A provision of any order issued by the commissioner.

26 (5) A provision of any written agreement between the licensee  
27 and the commissioner.

28 (6) A condition imposed on any written approval granted by  
29 the commissioner.

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

33 (c) The licensee is conducting its business in an unsafe or  
34 unsound manner.

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

37 (e) The licensee has inadequate capital or net worth or is  
38 insolvent.

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 the business the licensee  
11 is authorized to conduct pursuant to its license.

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 ~~SEC. 30.~~

19 *SEC. 29.* Section 600 of the Financial Code is amended to read:

20 600. In this chapter, “Federal Insurance Agency” means the  
21 Federal Deposit Insurance Corporation or the National Credit  
22 Union Administration, as appropriate, or their respective  
23 successors-in-interest.

24 ~~SEC. 31.~~

25 *SEC. 30.* The heading of Article 4 (commencing with Section  
26 670) of Chapter 7 of Division 1 of the Financial Code is amended  
27 to read:

28  
29 Article 4. Conservatorship and Liquidation of a Bank and  
30 Liquidation of an Uninsured Licensee

31  
32 ~~SEC. 32.~~

33 *SEC. 31.* Section 672 of the Financial Code is amended to read:

34 672. (a) The commissioner may, with the approval of the court,  
35 sell any part or the whole of the business of a licensee to any other  
36 licensee. The purchase and sale shall be approved by the purchasing  
37 licensee, as follows:

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

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

4 (b) (1) Subject to any applicable federal statutes and regulations,  
5 any bank or credit union organized under the laws of this state  
6 may, with the approval of two-thirds of all of its directors and of  
7 the commissioner, purchase from the receiver of a national banking  
8 association or a federal credit union the whole or any part of the  
9 business of the national banking association or federal credit union.

10 (2) Subject to any applicable federal statutes and regulations  
11 and any applicable laws of the jurisdiction under which a foreign  
12 corporation is organized, any foreign corporation or any office of  
13 a foreign corporation that is licensed by the commissioner to  
14 transact business in this state and that is authorized to accept shares  
15 or deposits in this state, may, with the approval of the  
16 commissioner, purchase from the receiver of a national banking  
17 association or federal credit union the whole or any part of the  
18 business of the national banking association or federal credit union.

19 (c) The provisions of Chapter 12 (commencing with Section  
20 1200) and Chapter 13 (commencing with Section 1300) of Division  
21 1 of Title 1 of the Corporations Code shall not apply to any  
22 purchase and sale of the type described in subdivision (a) or (b).

23 (d) When a purchase and sale of the type described in  
24 subdivision (a) or (b) becomes effective, the purchasing licensee  
25 shall, by operation of law and without further transfer, substitution,  
26 act, or deed, to the extent provided in the agreement of the purchase  
27 and sale or in the order of the court approving the purchase and  
28 sale and except as withheld or limited by the agreement or by the  
29 order:

30 (1) Succeed to the rights, obligations, properties, assets,  
31 investments, shares, deposits, demands, and agreements of the  
32 licensee whose business is sold, subject to the right of every  
33 customer of the licensee whose shares or deposit is sold to  
34 withdraw his or her shares or deposit in full on demand after the  
35 sale, irrespective of the terms under which the deposit was made.

36 (2) Succeed to the rights, obligations, properties, assets,  
37 investments, shares, deposits, demands, and agreements of the  
38 licensee whose business is sold under all trusts, executorships,  
39 administrations, guardianships, conservatorships, agencies, and  
40 other fiduciary or representative capacities, to the same extent as

1 though the purchasing licensee had originally assumed, acquired,  
2 or owned the same, subject to the rights of trustors and beneficiaries  
3 under the trusts so sold to nominate another or succeeding trustee  
4 of the trust so sold after the sale.

5 (3) Succeed to and be entitled to take and execute the  
6 appointment to executorships, trusteeships, guardianships,  
7 conservatorships, and other fiduciary and representative capacities  
8 to which the licensee whose business is sold is or may be named  
9 in wills, whenever probated, or to which it is or may be named or  
10 appointed by any other instrument.

11 (e) For purposes of subdivision (d), any purchase and sale of  
12 the type referred to in subdivision (d) shall be deemed to be  
13 effective at the time provided in the agreement of the purchase  
14 and sale or in the order of the court approving the purchase and  
15 sale.

16 ~~SEC. 33.~~

17 *SEC. 32.* Section 1024 of the Financial Code is amended to  
18 read:

19 1024. (a) In this section, “control” has the meaning set forth  
20 in Section 1250.

21 (b) For purposes of Section 1023, the commissioner may find:

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

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

33 (c) Subdivision (b) shall not be deemed to be the only grounds  
34 upon which the commissioner may find, for purposes of Section  
35 1023, that a proposed officer or director of a proposed bank or  
36 trust company does not have sufficient standing to afford  
37 reasonable promise of successful operation or that the establishment  
38 of a proposed bank or trust company will not promote the public  
39 convenience and advantage.

1 ~~SEC. 34.~~

2 *SEC. 33.* Section 1026 of the Financial Code is amended to  
3 read:

4 1026. The commissioner may, in approving an application to  
5 organize and establish a corporation to engage in the banking or  
6 trust business pursuant to Section 1023, impose any conditions  
7 the commissioner deems reasonable or necessary or advisable in  
8 the public interest.

9 ~~SEC. 35.~~

10 *SEC. 34.* Section 1080 of the Financial Code is amended to  
11 read:

12 1080. If a bank violates any provision of this chapter or fails  
13 to comply with any order, the commissioner may levy a penalty  
14 against the bank pursuant to Section 329.

15 ~~SEC. 36.~~

16 *SEC. 35.* Section 1255 of the Financial Code is amended to  
17 read:

18 1255. (a) For purposes of Section 1254, the commissioner  
19 may find:

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

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

34 (b) Subdivision (a) shall not be deemed to be the only grounds  
35 upon which the commissioner may find, for purposes of Section  
36 1254, that the integrity of an acquiring person indicates that it  
37 would not be in the interest of the depositors, creditors, or  
38 shareholders of a bank or controlling person or in the interest of  
39 the public to permit the acquiring person to control the bank or  
40 controlling person or that a plan to make a major change in the

1 management of a bank or controlling person is not fair and  
2 reasonable to the depositors, creditors, or shareholders of the bank  
3 or controlling person.

4 ~~SEC. 37.~~

5 *SEC. 36.* Section 1331 of the Financial Code is amended to  
6 read:

7 1331. (a) For purposes of this section, the following terms  
8 have the following meanings:

9 (1) “Carrying a security” means maintaining, reducing, or  
10 retiring indebtedness originally incurred to acquire a security.

11 (2) “Controlling person” has the same meaning specified in  
12 Section 1250.

13 (3) “Security” has the following meanings:

14 (A) When used with respect to a bank, “security” has the same  
15 meaning set forth in subdivision (c) of Section 1200.

16 (B) When used with respect to any other person, “security” has  
17 the same meaning set forth in Section 25019 of the Corporations  
18 Code.

19 (b) No bank shall acquire, hold, extend credit on the security  
20 of, or extend credit for the purpose of acquiring or carrying, any  
21 security of the bank or of any controlling person of the bank.

22 (c) (1) Any bank which acquires or holds securities in violation  
23 of this section shall be liable to the people of this state for twice  
24 the market, book, or face value of the securities, whichever is  
25 greatest.

26 (2) Any bank which extends credit in violation of this section  
27 shall be liable to the people of this state for twice the amount of  
28 the credit so extended.

29 (d) This section does not apply to any of the following  
30 transactions:

31 (1) Any acquisition or extension of credit by a bank which is  
32 necessary to reduce or prevent loss to the bank on debts previously  
33 contracted in good faith.

34 (2) Any redemption by a bank of any of its redeemable securities  
35 in accordance with applicable provisions of this division and of  
36 Division 1 (commencing with Section 100) of Title 1 of the  
37 Corporations Code.

38 (3) Any acquisition by a bank of any of its securities, other than  
39 an acquisition of the type described in paragraph (1) or (2), if the  
40 acquisition is approved in advance by the commissioner.

1 (e) The provisions of Section 329 shall not apply to this section.

2 ~~SEC. 38.~~

3 ~~SEC. 37.~~ Section 1473 of the Financial Code is amended to  
4 read:

5 1473. Sections 1481 and 1510 shall not apply to investments  
6 held by a bank prior to January 1, 2009. All authorizations  
7 regarding investments by a bank issued by the commissioner prior  
8 to January 1, 2009, are terminated.

9 ~~SEC. 39.~~

10 ~~SEC. 38.~~ Section 1485 of the Financial Code is amended to  
11 read:

12 1485. The limitations of Section 1481 shall not apply to the  
13 following and the following shall not be included among the  
14 obligations of a person for the purpose of applying these  
15 limitations:

16 (a) Loans secured by obligations of the United States or by  
17 obligations unconditionally guaranteed both as to principal and  
18 interest by the United States, having a market value at least 10  
19 percent in excess of the loans secured thereby.

20 (b) Loans in an amount and of a type or class previously  
21 approved in writing by the commissioner that are secured by not  
22 less than a like amount of obligations of the United States or by  
23 obligations unconditionally guaranteed both as to principal and  
24 interest by the United States.

25 (c) Loans to the extent that they are covered by guarantees or  
26 by commitments to take over or to purchase without recourse made  
27 by (1) any Federal Reserve bank, (2) the United States, (3) any  
28 department, bureau, board, commission, agency, or establishment  
29 of the United States, including any corporation wholly owned  
30 directly or indirectly by the United States, or (4) any small business  
31 development corporation, urban development corporation, or rural  
32 development corporation incorporated pursuant to Part 5  
33 (commencing with Section 14000) of Division 3 of Title 1 of the  
34 Corporations Code.

35 (d) Drafts or bills of exchange drawn in good faith against actual  
36 existing values with negotiable bills of lading attached, whether  
37 or not accepted by the drawee.

38 (e) Bankers' acceptances of other banks which are eligible for  
39 rediscount with a Federal Reserve bank.

1 (f) Obligations resulting from daily clearances through any  
2 clearinghouse association.

3 (g) Obligations that are fully guaranteed or fully insured or  
4 covered by a commitment to fully guarantee or fully insure by the  
5 Federal Housing Administration.

6 (h) Obligations, including portions thereof, to the extent secured  
7 by a segregated deposit account in the lending bank, provided a  
8 security interest in the deposit has been perfected under applicable  
9 law, and subject to all of the following conditions:

10 (1) Where the deposit is eligible for withdrawal before the  
11 secured obligation matures, the lending bank shall establish internal  
12 procedures to prevent release of the security without the lending  
13 bank's prior consent.

14 (2) A deposit that is denominated and payable in a currency  
15 other than that of the obligation that it secures may be eligible for  
16 this exception if the currency is freely convertible to United States  
17 dollars.

18 (A) This exception applies only to that portion of the obligation  
19 that is covered by the United States dollar value of the deposit.

20 (B) The lending bank shall establish procedures to periodically  
21 revalue foreign currency deposits to ensure that the loan or  
22 extension of credit remains fully secured at all times.

23 (i) Obligations described in Section 1510.

24 ~~SEC. 40.~~

25 *SEC. 39.* Section 1495 of the Financial Code is amended to  
26 read:

27 1495. (a) A commercial bank may make amortized loans upon  
28 the security of residential real property to finance the purchase and  
29 installation of material or equipment designed to promote energy  
30 conservation or the efficient use of energy in the residential real  
31 property securing the loan, if all of the following apply:

32 (1) The residential real property securing the loan consists of  
33 not more than four dwelling units.

34 (2) The loan is made in connection with a concurrent loan  
35 authorized under Section 1486.

36 (3) The loan is in an amount not to exceed 10 percent of the  
37 loan made under the authority of Section 1486.

38 (b) A commercial bank may make additional advances, or  
39 additional loans, to an existing borrower in order to finance the  
40 purchase and installation of material and equipment designed to

1 promote energy conservation or the efficient use of energy in the  
2 residential real property securing the loan, if all of the following  
3 apply:

4 (1) The residential real property securing the loan consists of  
5 not more than four dwelling units.

6 (2) The aggregate of the additional loan or advance and the  
7 unpaid balance of the existing loan will not exceed that percent of  
8 the appraised value of the residential real property securing the  
9 loan permitted by Section 1486 immediately after the purchase  
10 and installation of such material and equipment.

11 ~~SEC. 41.~~

12 *SEC. 40.* Section 1515 of the Financial Code is amended to  
13 read:

14 1515. A bank or trust company may acquire stock in settlement  
15 or reduction of a loan or in exchange for an investment previously  
16 made in good faith where the acquisition of the stock is necessary  
17 in order to minimize or avoid loss arising out of the loan or  
18 investment. The limitation in Section 1510 shall not apply to the  
19 stock acquired in accordance with this section. Whenever any stock  
20 that is acquired in accordance with this section can be sold for an  
21 amount sufficient to reimburse the bank or trust company for all  
22 loss arising out of the loan for which the stock was security or  
23 arising out of the original investment by the bank or trust company,  
24 the bank or trust company shall sell the same or shall convert the  
25 stock to an investment subject to Section 1510.

26 ~~SEC. 42.~~

27 *SEC. 41.* Section 1702 of the Financial Code is amended to  
28 read:

29 1702. Not less than 30 days before an insured foreign (other  
30 state) bank establishes a facility, the bank shall file with the  
31 commissioner a report and the appointment required pursuant to  
32 Section 1703.

33 ~~SEC. 43.~~

34 *SEC. 42.* Section 1805 of the Financial Code is amended to  
35 read:

36 1805. (a) A foreign (other nation) bank that is licensed to  
37 maintain an agency or branch office may transact commercial  
38 banking business at the office, subject to the following:

39 (1) In case the office is a nondepository agency, the bank shall  
40 not transact the business of accepting deposits.

1 (2) In case the office is a depository agency, the bank shall not  
2 transact the business of accepting any deposits other than deposits  
3 of (A) a foreign nation, (B) an agency or instrumentality of a  
4 foreign nation, or (C) a person which resides, is domiciled, and  
5 maintains its principal place of business in a foreign nation. For  
6 purposes of this paragraph, “person” means any individual,  
7 proprietorship, joint venture, partnership, trust, business trust,  
8 syndicate, association, joint stock company, corporation, limited  
9 liability company, or any other organization or any branch or  
10 division thereof.

11 (3) In case the office is a limited branch office, the bank shall  
12 not transact the business of accepting any deposits other than (A)  
13 deposits of the kind described in paragraph (2), or (B) deposits  
14 that a corporation organized under Section 25A of the Federal  
15 Reserve Act (12 U.S.C. Sec. 612 et seq.) is permitted to accept.

16 (4) In case the office is a wholesale branch office, the bank shall  
17 not transact the business of accepting any deposits other than (A)  
18 deposits of the kind described in paragraph (2), (B) deposits of  
19 two hundred fifty thousand dollars (\$250,000) or more, or (C)  
20 deposits the acceptance of which the commissioner determines by  
21 regulation or order do not constitute engaging in domestic retail  
22 deposit activities requiring deposit insurance protection.

23 (5) In case the office is an agency, limited branch office, or  
24 wholesale branch office, the bank may, subject to any regulations  
25 that the commissioner may prescribe, maintain credit balances.

26 (6) In any case, the bank shall not transact any business that it  
27 is not authorized to transact or is prohibited from transacting under  
28 the law of its domicile or that commercial banks organized under  
29 the laws of this state are not authorized to transact or are prohibited  
30 from transacting.

31 (b) No foreign (other nation) bank that is licensed to maintain  
32 an agency or branch office shall transact any trust business at the  
33 office except as permitted under Section 1555.

34 ~~SEC. 44.~~

35 *SEC. 43.* Section 1806 of the Financial Code is amended to  
36 read:

37 1806. (a) In addition to other provisions of this division and  
38 Division 1 (commencing with Section 99) that are otherwise  
39 applicable to or with respect to foreign (other nation) banks  
40 licensed to maintain nondepository agencies, the following

1 provisions of this division shall apply to or with respect to each  
2 foreign (other nation) bank licensed to maintain a nondepository  
3 agency with respect to its business in this state as if the bank were  
4 a commercial bank organized under the laws of this state:

5 (1) Article 6 (commencing with Section 405) of Chapter 3 of  
6 Division 1.

7 (2) Chapter 6 (commencing with Section 550) of Division 1.

8 (3) Chapter 4.5 (commencing with Section 1090).

9 (4) Chapter 17 (commencing with Section 1620).

10 (5) Chapter 19 (commencing with Section 1670).

11 (b) In addition to other provisions of this division and Division  
12 1 (commencing with Section 99) which are otherwise applicable  
13 to or with respect to foreign (other nation) banks licensed to  
14 maintain depository agencies or branch offices, the following  
15 provisions of this division and Division 1 (commencing with  
16 Section 99) shall apply to or with respect to each foreign (other  
17 nation) bank licensed to maintain a depository agency or branch  
18 office with respect to its business in this state as if the bank were  
19 a commercial bank organized under the laws of this state:

20 (1) Article 6 (commencing with Section 405) of Chapter 3 of  
21 Division 1.

22 (2) Chapter 6 (commencing with Section 550) of Division 1.

23 (3) Chapter 4.5 (commencing with Section 1090).

24 (4) Chapter 10 (commencing with Section 1320).

25 (5) Chapter 12 (commencing with Section 1400).

26 (6) Chapter 13 (commencing with Section 1450).

27 (7) Chapter 14 (commencing with Section 1460).

28 (8) Chapter 17 (commencing with Section 1620).

29 (9) Chapter 19 (commencing with Section 1670).

30 (10) Section 1864 and Article 2 (commencing with Section  
31 1900), Article 3 (commencing with Section 1905), and Article 4  
32 (commencing with Section 1910) of Chapter 21.

33 (c) Whenever any provision of this chapter or of any regulation  
34 or order issued under this chapter that is applicable to or with  
35 respect to foreign (other nation) banks licensed to transact business  
36 in this state is inconsistent with any provision of any other chapter  
37 of this division and Division 1 (commencing with Section 99) that  
38 is applicable to or with respect to foreign (other nation) banks  
39 licensed to transact business in this state, the former provision  
40 shall apply, and the latter provision shall not apply.

1 (d) (1) Whenever any provision of this division (other than the  
2 provisions of this chapter) and Division 1 (commencing with  
3 Section 99) is applicable to or with respect to foreign (other nation)  
4 banks licensed to transact business in this state, the provision shall  
5 be applied with any changes in points of detail as may be necessary  
6 or appropriate.

7 (2) Without limiting the provisions of paragraph (1), for  
8 purposes of any provision of this division (other than the provisions  
9 of this chapter) and Division 1 (commencing with Section 99) that  
10 is applicable to or with respect to a foreign (other nation) bank  
11 licensed to transact business in this state:

12 (A) “Approved by (or approval of) the board” means approved  
13 or ratified by the board of the bank, by a committee of the board  
14 authorized to exercise the powers of the board with respect to the  
15 particular matter, or by an officer of the bank who is assigned to  
16 the head office of the bank and who has authority over the bank’s  
17 business in this state, including authority to approve or ratify the  
18 particular matter.

19 (B) “Head office” means the primary office of the bank.

20 (C) “Shareholders’ equity” means the shareholders’ equity of  
21 the bank or, if the bank has no shareholders’ equity, the closest  
22 equivalent account or accounts.

23 (e) Whenever any provision of this division (other than the  
24 provisions of this chapter) and Division 1 (commencing with  
25 Section 99) that is applicable to or with respect to a foreign (other  
26 nation) bank licensed to transact business in this state limits the  
27 amount of any assets or liabilities of the bank (including, by way  
28 of example, the amount of borrowings of, obligations to, or  
29 investments of the bank), for purposes of calculating the amount  
30 of the assets or liabilities, only the assets or liabilities of the  
31 agencies or branch offices of the bank shall be included, and the  
32 assets and liabilities of offices of the bank outside this state shall  
33 be excluded.

34 ~~SEC. 45.~~

35 *SEC. 44.* Section 1835 of the Financial Code is amended to  
36 read:

37 1835. (a) If the commissioner finds that any of the factors set  
38 forth in Section 1831 is true with respect to any foreign (other  
39 nation) bank which is licensed to transact business in this state and  
40 that it is necessary for the protection of the interests of the creditors

1 of such bank's business in this state or for the protection of the  
2 public interest that he or she take immediate possession of the  
3 property and business of the bank, the commissioner may by order  
4 forthwith take possession of the property and business of the bank  
5 and retain possession until the bank resumes business in this state  
6 or is finally liquidated. The bank may, with the consent of the  
7 commissioner, resume business in this state upon such conditions  
8 as the commissioner may prescribe.

9 (b) (1) Whenever the commissioner takes possession of the  
10 property and business of a foreign (other nation) bank pursuant to  
11 subdivision (a), such bank may, within 10 days, apply to the  
12 superior court in the county in which the primary office of the  
13 bank is located to enjoin further proceedings. The court may, after  
14 citing the commissioner to show cause why further proceedings  
15 should not be enjoined and after a hearing, dismiss such application  
16 or enjoin the commissioner from further proceedings and order  
17 him or her to surrender the property and business of the bank to  
18 the bank or make such further order as may be just.

19 (2) The judgment of the court may be appealed by the  
20 commissioner or by the bank in the manner provided by law for  
21 appeals from the judgment of a superior court to the court of  
22 appeal. In case the commissioner appeals the judgment of the court,  
23 such appeal shall operate as a stay of the judgment, and the  
24 commissioner shall not be required to post any bond.

25 (c) Whenever the commissioner takes possession of the property  
26 and business of a foreign (other nation) bank pursuant to  
27 subdivision (a), the commissioner shall conserve or liquidate the  
28 property and business of the bank pursuant to Chapter 6  
29 (commencing with Section 550) and Chapter 7 (commencing with  
30 Section 600) of Division 1, and the provisions of those chapters  
31 shall apply, except Sections 592, 593, and 690, as if the bank were  
32 a bank organized under the laws of this state.

33 (d) When the commissioner has completed the liquidation of  
34 the property and business of a foreign (other nation) bank, the  
35 commissioner shall transfer any remaining assets to such bank in  
36 accordance with such orders as the court may issue. However, in  
37 case the bank has an office in another state of the United States  
38 which is in liquidation and the assets of such office appear to be  
39 insufficient to pay in full the creditors of the office, the court shall  
40 order the commissioner to transfer to the liquidator of the office

1 such amount of any such remaining assets as appears to be  
2 necessary to cover such insufficiency; if there are two or more  
3 such offices and the amount of remaining assets is less than the  
4 aggregate amount of insufficiencies with respect to the offices, the  
5 court shall order the commissioner to distribute the remaining  
6 assets among the liquidators of such offices in such manner as the  
7 court finds equitable.

8 ~~SEC. 46.~~

9 *SEC. 45.* Section 1858 of the Financial Code is amended to  
10 read:

11 1858. Nothing contained in this article shall prevent  
12 corporations from purchasing and holding stock in any corporation  
13 where such purchase shall be necessary to prevent a loss upon a  
14 debt previously contracted in good faith; and stock so purchased  
15 or acquired in corporations shall within six months from such  
16 purchase be sold or disposed of at public or private sale unless the  
17 time to so dispose of same is extended by the commissioner.

18 ~~SEC. 47.~~

19 *SEC. 46.* Section 4805.01 of the Financial Code is amended  
20 to read:

21 4805.01. Subject to additional definitions contained in this  
22 division that are applicable to specific provisions of this division  
23 and unless the context otherwise requires:

24 (a) The definitions in this article apply throughout this division.

25 (b) The definitions in Chapter 1 (commencing with Section 99)  
26 of Division 1 and in Section 1750 apply throughout this division.  
27 For this purpose, “this division,” as used in Sections 139 and 141,  
28 means:

29 (1) In the case of a California state bank, Division 1  
30 (commencing with Section 99), Division 1.1 (commencing with  
31 Section 1000), and this division.

32 (2) In the case of a California state savings association, this  
33 division and Division 2 (commencing with Section 5000).

34 ~~SEC. 48.~~

35 *SEC. 47.* Section 4805.02 of the Financial Code is amended  
36 to read:

37 4805.02. (a) In this division, “bank” means a commercial bank  
38 or trust company (other than an industrial loan company authorized  
39 to engage in trust business). “Bank” does not include an industrial  
40 loan company.

1 (b) Notwithstanding subdivision (a), “foreign (other nation)  
2 bank” has the meaning set forth in paragraph (1) of subdivision  
3 (b) of Section 177.

4 ~~SEC. 49.~~

5 *SEC. 48.* Section 4805.05 of the Financial Code is amended  
6 to read:

7 4805.05. “California state-licensed foreign (other nation) bank,”  
8 when used with respect to a sale or merger, means a foreign (other  
9 nation) bank that is licensed under Article 3 (commencing with  
10 Section 1800) of Chapter 20 of Division 1.1 to maintain an agency  
11 or branch office in this state immediately before the effective time  
12 of the sale or merger in case it is the selling or disappearing  
13 corporation or at the effective time of the sale or merger in case it  
14 is the purchasing or surviving corporation.

15 ~~SEC. 50.~~

16 *SEC. 49.* Section 4805.10 of the Financial Code is amended  
17 to read:

18 4805.10. In this division, “industrial loan company” means an  
19 industrial bank as defined in Section 111.

20 ~~SEC. 51.~~

21 *SEC. 50.* Section 4821.5 of the Financial Code is amended to  
22 read:

23 4821.5. Any certificate of authority, license, or other  
24 authorization issued under subdivision (b) of Section 4858,  
25 subdivision (b) of Section 4879.12, subdivision (b) of Section  
26 4888, subdivision (b) of Section 4928, or Section 4948 or 4949 is  
27 deemed to have been issued under the provisions of Division 1.1  
28 (commencing with Section 1000) or Division 2 (commencing with  
29 Section 5000) that would otherwise apply to the issuance of the  
30 certificate of authority, license, or other authorization.

31 ~~SEC. 52.~~

32 *SEC. 51.* Section 4822 of the Financial Code is amended to  
33 read:

34 4822. (a) References in this division to the voting of the shares  
35 of a California state depository corporation shall be construed in  
36 accordance with Section 111 of the Corporations Code.

37 (b) If the articles of a California state depository corporation  
38 provide for more or less than one vote for any share on any matter  
39 that is subject to this division, the references in Sections 139 and  
40 141 (which are made applicable to this division by Section

1 4805.01) to a majority or other proportion of shares mean, as to  
2 the matter, a majority or other proportion of the votes entitled to  
3 be cast.

4 (c) Whenever shares of a California state depository corporation  
5 are disqualified under any applicable law from voting on any matter  
6 that is subject to this division, the shares shall not be considered  
7 outstanding for the determination of a quorum at any meeting to  
8 act upon, or the required vote to approve action upon, the matter.

9 ~~SEC. 53.~~

10 *SEC. 52.* Section 4823 of the Financial Code is amended to  
11 read:

12 4823. References in this division to shareholders' equity mean  
13 shareholders' equity determined in accordance with generally  
14 accepted accounting principles, subject (a) in the case of California  
15 state banks or California industrial loan companies, to the  
16 provisions of Section 463, and (b) in the case of California state  
17 savings associations, to the provisions of Division 2 (commencing  
18 with Section 5000).

19 ~~SEC. 54.~~

20 *SEC. 53.* Section 4824 of the Financial Code is amended to  
21 read:

22 4824. In determining for purposes of this division whether the  
23 shareholders' equity of a California state depository corporation  
24 will be adequate:

25 (a) In case the corporation is, or is to convert into, a California  
26 state bank, the commissioner shall consider the factors specified  
27 in Section 1150.

28 (b) In case the corporation is, or is to convert into, a California  
29 state savings association or a California industrial loan company,  
30 the commissioner shall consider factors equivalent to those  
31 specified in Section 1150.

32 ~~SEC. 55.~~

33 *SEC. 54.* Section 4826.5 of the Financial Code is amended to  
34 read:

35 4826.5. Notwithstanding any other provision of this division:

36 (a) The provisions of Chapter 19 (commencing with Section  
37 1670) of Division 1.1 apply to any transaction that is subject to  
38 this division. Whenever any provision of Chapter 19 (commencing  
39 with Section 1670) of Division 1.1 or of any regulation or order  
40 issued under Chapter 19 (commencing with Section 1670) of

1 Division 1.1 is inconsistent with any provision of this division or  
2 of any regulation or order issued under this division, the provision  
3 of Chapter 19 (commencing with Section 1670) of Division 1.1  
4 or of the regulation or order issued under Chapter 19 (commencing  
5 with Section 1670) of Division 1.1 applies, and the provision or  
6 this division or of the regulation or order issued under this division  
7 does not apply.

8 (b) Nothing in this division authorizes any sale or merger in a  
9 case where the purchasing or surviving depository corporation is  
10 a foreign depository corporation if the sale or merger is prohibited  
11 by Chapter 19 (commencing with Section 1670) of Division 1.1.

12 (c) Nothing in this division constitutes an election by this state  
13 under federal law to prohibit or permit interstate sales or mergers  
14 between banks or industrial loan companies.

15 ~~SEC. 56.~~

16 *SEC. 55.* Section 4827 of the Financial Code is amended to  
17 read:

18 4827. Except as expressly provided otherwise in this division:

19 (a) (1) No sale of a whole business unit (as defined in Section  
20 4840) or merger in which the selling or disappearing depository  
21 corporation is a California state savings association, in which the  
22 purchasing or surviving depository corporation is a California state  
23 bank, a California industrial loan company, or a California  
24 state-licensed foreign (other nation) bank, and which may be  
25 effected with the approval of the commissioner pursuant to this  
26 division is prohibited or restricted by any provision of Division 2  
27 (commencing with Section 5000) or requires any approval, consent,  
28 or other authorization of the commissioner pursuant to Division 2  
29 (commencing with Section 5000).

30 (2) No conversion in which the converting depository  
31 corporation is a California state savings association in which the  
32 resulting depository corporation is a California state bank or a  
33 California industrial loan company, and which may be effected  
34 with the approval of the commissioner pursuant to this division is  
35 prohibited or restricted by any provision of Division 2  
36 (commencing with Section 5000) or requires any approval, consent,  
37 or other authorization of the commissioner pursuant to Division 2  
38 (commencing with Section 5000).

39 (b) (1) No sale of a whole business unit (as defined in Section  
40 4840) or merger in which the selling or disappearing depository

1 corporation is a California state bank, a California state-licensed  
2 foreign (other nation) bank, or a California industrial loan  
3 company, in which the purchasing or surviving depository  
4 corporation is a California state savings association, and which  
5 may be effected with the approval of the commissioner pursuant  
6 to this division is prohibited or restricted by any provision of  
7 Division 1.1 (commencing with Section 1000), except the  
8 provisions of Chapter 19 (commencing with Section 1670) of  
9 Division 1.1, or requires any approval, consent, or other  
10 authorization of the commissioner pursuant to Division 1.1  
11 (commencing with Section 1000), except as may be required under  
12 the provisions of Chapter 19 (commencing with Section 1670) of  
13 Division 1.1.

14 (2) No conversion in which the converting depository  
15 corporation is a California state bank or a California industrial  
16 loan company, in which the resulting depository corporation is a  
17 California state savings association, and which may be effected  
18 with the approval of the commissioner pursuant to this division is  
19 prohibited or restricted by any provision of Division 1.1  
20 (commencing with Section 1000), except the provisions of Chapter  
21 19 (commencing with Section 1670) of Division 1.1, or requires  
22 any approval, consent, or other authorization of the commissioner  
23 pursuant to Division 1.1 (commencing with Section 1000), except  
24 as may be required under the provisions of Chapter 19  
25 (commencing with Section 1670) of Division 1.1.

26 ~~SEC. 57.~~

27 *SEC. 56.* Section 4827.3 of the Financial Code is amended to  
28 read:

29 4827.3. Except as otherwise provided in paragraph (2) of  
30 subdivision (a) of Section 4827.7 in the case of a California  
31 state-licensed foreign (other nation) bank or in federal law in the  
32 case of a federally licensed foreign (other nation) bank, nothing  
33 in this division except subdivision (c) of Section 4879.02 authorizes  
34 any sale or merger in a case where the purchasing or surviving  
35 corporation is a foreign (other nation) bank unless the foreign  
36 (other nation) bank is at the effective time of the sale or merger  
37 licensed under Article 3 (commencing with Section 1800) of  
38 Chapter 20 of Division 1.1 or authorized under federal law to  
39 transact in this state the business to be acquired in the sale or  
40 merger.

1     ~~SEC. 58.~~

2     *SEC. 57.* Section 4827.7 of the Financial Code is amended to  
3 read:

4     4827.7. (a) (1) Except as otherwise provided in paragraph  
5 (2):

6     (A) No California state depository corporation may, as the  
7 selling or disappearing depository corporation, make a sale or  
8 merger pursuant to this division in which it would transfer to a  
9 California state-licensed or federally licensed foreign (other nation)  
10 bank any deposit or fiduciary account that the foreign bank is not  
11 authorized to accept.

12     (B) No California state-licensed foreign (other nation) bank  
13 may, as the purchasing or surviving depository corporation, make  
14 a sale or merger pursuant to this division in which it would acquire  
15 any deposit or fiduciary account that it is not authorized to accept.

16     (2) Notwithstanding paragraph (1) and Section 1805, a  
17 California state depository corporation may, as the selling or  
18 disappearing depository corporation, make a sale or merger  
19 pursuant to this division in which it transfers to a California  
20 state-licensed or federally licensed foreign (other nation) bank  
21 deposits or fiduciary accounts that the foreign bank is not  
22 authorized to accept, and a California state-licensed foreign (other  
23 nation) bank may, as the purchasing or surviving depository  
24 corporation, make a sale or merger pursuant to this division in  
25 which it acquires deposits or fiduciary accounts that it is not  
26 authorized to accept, if, concurrently with the effective time of the  
27 sale or merger, the foreign bank, pursuant to Article 5 (commencing  
28 with Section 4879.01) of Chapter 3 or other applicable law, sells  
29 all those deposits and fiduciary accounts to a depository corporation  
30 that is authorized to accept them.

31     (b) (1) Except as otherwise provided in paragraph (2):

32     (A) No California state bank or industrial loan company may,  
33 as the selling, disappearing, or converting depository corporation,  
34 make a sale, merger, or conversion pursuant to this division in  
35 which it would transfer to a savings association any deposit or  
36 fiduciary account that the savings association is not authorized to  
37 accept.

38     (B) No California state savings association may, as the  
39 purchasing, surviving, or resulting depository corporation, make  
40 a sale, merger, or conversion pursuant to this division in which it

1 would acquire any deposit or fiduciary account that it is not  
2 authorized to accept.

3 (2) Notwithstanding paragraph (1) and Division 2 (commencing  
4 with Section 5000), a California state bank or industrial loan  
5 company may, as the selling, disappearing, or converting  
6 depository corporation, make a sale, merger, or conversion pursuant  
7 to this division in which it transfers to a savings association  
8 deposits or fiduciary accounts that the savings association is not  
9 authorized to accept, and a California state savings association  
10 may, as the purchasing, surviving, or resulting depository  
11 corporation, make a sale, merger, or conversion pursuant to this  
12 division in which it acquires deposits or fiduciary accounts that it  
13 is not authorized to accept, if, concurrently with the effective time  
14 of the sale, merger, or conversion, the savings association, pursuant  
15 to Article 5 (commencing with Section 4879.01) of Chapter 3 or  
16 other applicable law, sells all those deposits and fiduciary accounts  
17 to a depository corporation that is authorized to accept them.

18 (c) (1) Except as otherwise provided in paragraph (2):

19 (A) No California state bank or savings association may, as the  
20 selling, disappearing, or converting depository corporation, make  
21 a sale, merger, or conversion pursuant to this division in which it  
22 would transfer to an industrial loan company any deposit or  
23 fiduciary account that the industrial loan company is not authorized  
24 to accept.

25 (B) No California industrial loan company may, as the  
26 purchasing, surviving, or resulting depository corporation, make  
27 a sale, merger, or conversion pursuant to this division in which it  
28 would acquire any deposit or fiduciary account that it is not  
29 authorized to accept.

30 (2) Notwithstanding paragraph (1) and Division 1.1  
31 (commencing with Section 1000), a California state bank or savings  
32 and loan association may, as the selling, disappearing, or converting  
33 depository corporation, make a sale, merger, or conversion pursuant  
34 to this division in which it transfers to an industrial loan company  
35 deposits or fiduciary accounts that the industrial loan company is  
36 not authorized to accept, and a California industrial loan company  
37 may, as the purchasing, surviving, or resulting depository  
38 corporation, make a sale, merger, or conversion pursuant to this  
39 division in which it acquires deposits or fiduciary accounts that it  
40 is not authorized to accept, if, concurrently with the effective time

1 of the sale, merger, or conversion, the industrial loan company,  
2 pursuant to Article 5 (commencing with Section 4879.01) of  
3 Chapter 3 or other applicable law, sells all those deposit accounts  
4 and fiduciary accounts to a depository corporation that is authorized  
5 to accept them.

6 ~~SEC. 59.~~

7 *SEC. 58.* Section 4871.5 of the Financial Code is amended to  
8 read:

9 4871.5. (a) No provision of Division 1.1 (commencing with  
10 Section 1000), except the provisions of Chapter 19 (commencing  
11 with Section 1670) of Division 1.1, prohibits or restricts a sale in  
12 a case where the seller is a California state bank or a California  
13 industrial loan company.

14 (b) No provision of Division 2 (commencing with Section 5000)  
15 prohibits or restricts a sale in a case where the seller is a California  
16 state savings and loan association.

17 ~~SEC. 60.~~

18 *SEC. 59.* Section 4877.03 of the Financial Code is amended  
19 to read:

20 4877.03. No provision of Division 1.1 (commencing with  
21 Section 1000), except the provisions of Chapter 19 (commencing  
22 with Section 1670) of Division 1.1, prohibits or restricts a sale in  
23 a case where the seller is a California state bank or a California  
24 industrial loan company.

25 ~~SEC. 61.~~

26 *SEC. 60.* Section 4901.5 of the Financial Code is amended to  
27 read:

28 4901.5. (a) No provision of Division 1.1 (commencing with  
29 Section 1000), except the provisions of Chapter 19 (commencing  
30 with Section 1670) of Division 1.1, prohibits or restricts the merger  
31 of a California state bank or California industrial loan company.

32 (b) No provision of Division 2 (commencing with Section 5000)  
33 prohibits or restricts the merger of a California state savings and  
34 loan association.

35 ~~SEC. 62.~~

36 *SEC. 61.* Section 4961.5 of the Financial Code is amended to  
37 read:

38 4961.5. (a) No provision of Division 1.1 (commencing with  
39 Section 1000), except the provisions of Chapter 19 (commencing

1 with Section 1670) of Division 1.1, prohibits or restricts the  
2 conversion of a California state bank.

3 (b) No provision of Division 2 (commencing with Section 5000)  
4 prohibits or restricts the conversion of a California state savings  
5 and loan association.

6 (c) No provision of Division 7 (commencing with Section  
7 18000), except the provisions of Chapter 10 (commencing with  
8 Section 18660) of Division 7, prohibits or restricts the conversion  
9 of a California industrial loan company.

10 ~~SEC. 63.~~

11 *SEC. 62.* Section 4970 of the Financial Code is amended to  
12 read:

13 4970. For purposes of this division:

14 (a) “Annual percentage rate” means the annual percentage rate  
15 for the loan calculated according to the provisions of the federal  
16 Truth in Lending Act and the regulations adopted thereunder by  
17 the Federal Reserve Board.

18 (b) “Covered loan” means a consumer loan in which the original  
19 principal balance of the loan does not exceed the most current  
20 conforming loan limit for a single-family first mortgage loan  
21 established by the Federal National Mortgage Association in the  
22 case of a mortgage or deed of trust, and where one of the following  
23 conditions are met:

24 (1) For a mortgage or deed of trust, the annual percentage rate  
25 at consummation of the transaction will exceed by more than eight  
26 percentage points the yield on Treasury securities having  
27 comparable periods of maturity on the 15th day of the month  
28 immediately preceding the month in which the application for the  
29 extension of credit is received by the creditor.

30 (2) The total points and fees payable by the consumer at or  
31 before closing for a mortgage or deed of trust will exceed 6 percent  
32 of the total loan amount.

33 (c) “Points and fees” shall include the following:

34 (1) All items required to be disclosed as finance charges under  
35 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
36 Regulations, including the Official Staff Commentary, as amended  
37 from time to time, except interest.

38 (2) All compensation and fees paid to mortgage brokers in  
39 connection with the loan transaction.

1 (3) All items listed in Section 226.4(c)(7) of Title 12 of the Code  
2 of Federal Regulations, only if the person originating the covered  
3 loan receives direct compensation in connection with the charge.

4 (d) “Consumer loan” means a consumer credit transaction that  
5 is secured by real property located in this state used, or intended  
6 to be used or occupied, as the principal dwelling of the consumer  
7 that is improved by a one-to-four residential unit. “Consumer loan”  
8 does not include a reverse mortgage, an open line of credit as  
9 defined in Part 226 of Title 12 of the Code of Federal Regulations  
10 (Regulation Z), or a consumer credit transaction that is secured by  
11 rental property or second homes. “Consumer loan” does not include  
12 a bridge loan. For purposes of this division, a bridge loan is any  
13 temporary loan, having a maturity of one year or less, for the  
14 purpose of acquisition or construction of a dwelling intended to  
15 become the consumer’s principal dwelling.

16 (e) “Original principal balance” means the total initial amount  
17 the consumer is obligated to repay on the loan.

18 (f) “Licensing agency” shall mean the Department of Real Estate  
19 for licensed real estate brokers, the Department of Corporations  
20 for licensed residential mortgage lenders and licensed finance  
21 lenders and brokers, and the Department of Financial Institutions  
22 for commercial and industrial banks and savings associations and  
23 credit unions organized in this state.

24 (g) “Licensed person” means a real estate broker licensed under  
25 the Real Estate Law (Part 1 (commencing with Section 10000) of  
26 Division 4 of the Business and Professions Code), a finance lender  
27 or broker licensed under the California Finance Lenders Law  
28 (Division 9 (commencing with Section 22000)), a residential  
29 mortgage lender licensed under the California Residential Mortgage  
30 Lending Act (Division 20 (commencing with Section 50000)), a  
31 commercial or industrial bank organized under the Banking Law  
32 (Division 1.1 (commencing with Section 1000)), a savings  
33 association organized under the Savings Association Law (Division  
34 2 (commencing with Section 5000)), and a credit union organized  
35 under the California Credit Union Law (Division 5 (commencing  
36 with Section 14000)). Nothing in this division shall be construed  
37 to prevent any enforcement by a governmental entity against any  
38 person who originates a loan and who is exempt or excluded from  
39 licensure by all of the licensing agencies, based on a violation of  
40 any provision of this division. Nothing in this division shall be

1 construed to prevent the Department of Real Estate from enforcing  
2 this division against a licensed salesperson employed by a licensed  
3 real estate broker as if that salesperson were a licensed person  
4 under this division. A licensed person includes any person engaged  
5 in the practice of consumer lending, as defined in this division, for  
6 which a license is required under any other provision of law, but  
7 whose license is invalid, suspended or revoked, or where no license  
8 has been obtained.

9 (h) “Originate” means to arrange, negotiate, or make a consumer  
10 loan.

11 (i) “Servicer” has the same meaning provided in Section 6 (i)(2)  
12 of the *federal* Real Estate Settlement Procedures Act of 1974  
13 (*Public Law 93-533*).

14 ~~SEC. 64.~~

15 *SEC. 63.* Section 4982 of the Financial Code is amended to  
16 read:

17 4982. Any violation of this division by a bank is a violation of  
18 Division 1.1 (commencing with Section 1000); a violation by a  
19 savings association is a violation of Division 2 (commencing with  
20 Section 5000); a violation by a credit union is a violation of  
21 Division 5 (commencing with Section 14000); and a violation by  
22 an industrial loan company is a violation of Division 7  
23 (commencing with Section 18000).

24 ~~SEC. 65.~~

25 *SEC. 64.* Section 4990 of the Financial Code is amended to  
26 read:

27 4990. (a) Any person convicted of a felony violation of any  
28 of the provisions specified in subdivision (b) shall not serve in any  
29 capacity as a director or officer or in any other position involving  
30 any management duties with a financial institution in this state  
31 with accounts insured by an agency or instrumentality of the United  
32 States or a private share insurance or guaranty arrangement. This  
33 subdivision does not, however, apply to any director or officer of  
34 a financial institution, or to persons serving in managerial positions  
35 for financial institutions, whose office or employment with a  
36 financial institution commenced, and whose felony conviction  
37 occurred, prior to January 1, 1991.

38 (b) Subdivision (a) applies to felony convictions of offenses  
39 specified in Chapter 10 (commencing with Section 1320) of  
40 Division 1.1, Article 4 (commencing with Section 5300) of Chapter

1 1 of Division 2, Article 8 (commencing with Section 14750) of  
2 Chapter 4 of Division 5, and Chapter 6 (commencing with Section  
3 18435) of Division 7. Subdivision (a) also applies to felony  
4 convictions of offenses specified in provisions of the laws of the  
5 United States added or amended by the federal Financial  
6 Institutions Reform, Recovery, and Enforcement Act of 1989  
7 (Public Law 101-73).

8 (c) On and after January 1, 1991, any person who seeks  
9 employment by, or a controlling interest in, a financial institution  
10 specified in subdivision (a) shall, as a condition to obtaining that  
11 employment or controlling interest, permit the financial institution,  
12 its regulatory agency, or both to have access to that person's state  
13 summary criminal history information, as defined in Section 11105  
14 of the Penal Code, for purposes of determining whether the person  
15 has a prior conviction of a felony offense specified in subdivision  
16 (b) or any theft offense.

17 (d) Any state summary criminal history information obtained  
18 pursuant to this subdivision shall be kept confidential and no  
19 recipient under this subdivision shall disclose the contents other  
20 than for the purpose of determining eligibility for employment by,  
21 or acquisition of a controlling interest in, a financial institution  
22 specified in subdivision (a).

23 (e) The authority granted by this section to the commissioner  
24 and other regulatory agencies shall be in addition to any other  
25 authority granted by law to obtain information about the  
26 background of any person. Nothing in this section shall be  
27 construed to limit any authority of the commissioner or any  
28 regulatory agency otherwise provided by law.

29 ~~SEC. 66.~~

30 *SEC. 65.* Section 4995 of the Financial Code is amended to  
31 read:

32 4995. The following definitions shall apply for purposes of  
33 this division:

34 (a) "Higher-priced mortgage loan" has the meaning set forth in  
35 Part 226 of Title 12 of the Code of Federal Regulations.

36 (b) "Licensed person" means a real estate broker licensed under  
37 the Real Estate Law (Part 1 (commencing with Section 10000) of  
38 Division 4 of the Business and Professions Code), a finance lender  
39 or broker licensed under the California Finance Lenders Law  
40 (Division 9 (commencing with Section 22000)), a residential

1 mortgage lender licensed under the California Residential Mortgage  
2 Lending Act (Division 20 (commencing with Section 50000)), a  
3 commercial or industrial bank organized under the Banking Law  
4 (Division 1.1 (commencing with Section 1000)), a savings  
5 association organized under the Savings Association Law (Division  
6 2 (commencing with Section 5000)), and a credit union organized  
7 under the California Credit Union Law (Division 5 (commencing  
8 with Section 14000)).

9 (c) “Mortgage broker” means a licensed person who provides  
10 mortgage brokerage services. For purposes of this division, a  
11 licensed person who makes home loans is a “mortgage broker,”  
12 and subject to the requirements of this division applicable to  
13 mortgage brokers, only with respect to transactions in which the  
14 licensed person provides mortgage brokerage services.

15 (d) “Mortgage brokerage services” means arranging or  
16 attempting to arrange, as exclusive agent for the borrower or as  
17 dual agent for the borrower and lender, for compensation or in  
18 expectation of compensation, paid directly or indirectly, a  
19 higher-priced mortgage loan made by an unaffiliated third party.

20 ~~SEC. 67:~~

21 *SEC. 66.* Section 18003 of the Financial Code is amended to  
22 read:

23 18003. “Industrial loan company,” “thrift and loan company,”  
24 or “company” as used in this division means a premium finance  
25 agency as defined in Section 18560. Notwithstanding any other  
26 provision of this chapter, these terms and this division do not apply  
27 to an industrial bank subject to, and governed by, Chapter 15  
28 (commencing with Section 1530) of Division 1.1.