

Senate Bill No. 537

CHAPTER 334

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, 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.

[Approved by Governor September 23, 2013. Filed with
Secretary of State September 23, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 537, 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."

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

SECTION 1. Section 31101 of the Corporations Code is amended to read:

31101. There shall be exempted from the provisions of Chapter 2 (commencing with Section 31110) of this part the offer and sale of a franchise if the franchisor complies with each of the following minimum net worth, experience, disclosure, and notice filing requirements:

(a) Net worth. The franchisor and, when necessary, a corporation owning at least 80 percent of the franchisor (parent) meet one of the following net worth requirements, according to financial statements for the fiscal year just ended. The franchisor and the parent, when necessary, may rely upon the immediately preceding fiscal year's audited financial statement for 15 months from that fiscal year end date.

(1) The franchisor has a net worth on a consolidated basis of not less than five million dollars (\$5,000,000), according to its audited financial statement.

(2) The franchisor has a net worth of not less than one million dollars (\$1,000,000) and its parent has a net worth of five million dollars (\$5,000,000), according to the audited financial statements of the franchisor and its parent, respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A written statement from the franchisor that (1) the filing has been made but is not effective, (2) the information in the franchise disclosure document and exhibits has not been reviewed by the commissioner, and (3) the franchisor will deliver to the prospective franchisee an effective franchise disclosure document and exhibits at least 14 days prior to execution by the prospective franchisee of a binding agreement or payment of any consideration to the franchisor, or any person affiliated with the franchisor, whichever occurs first, showing all material changes from the franchise disclosure document and exhibits received by the prospective franchisee under subdivision (a) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Nothing in this division shall be construed to prevent a franchisor from providing copies of the franchise disclosure documents to prospective

franchisees through electronic means pursuant to any requirements or conditions that may be imposed by rule or order of the commissioner.

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

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

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

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

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

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

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

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

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

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

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

171. “Distribution to its shareholders” has the meaning set forth in Section 166 of the Corporations Code. However, in Division 1 (commencing with Section 100), Title 1 of the Corporations Code, in this division, and in Division 1.1 (commencing with Section 1000), “distribution to its shareholders” does not include any purchase of shares by a bank or by a majority-owned subsidiary of a bank which is necessary to reduce or avoid loss to such bank or to such subsidiary on an extension of credit previously made in good faith. Also, in this division and in Division 1.1 (commencing with Section 1000), “distribution to its shareholders” includes any distribution made by a bank or by a majority-owned subsidiary of a bank to the shareholders of any corporation of which such bank is a majority-owned subsidiary.

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

185. “Licensee” has the following meanings:

- (a) Any bank authorized by the commissioner pursuant to Section 1042 to transact banking or trust business.
- (b) Any industrial bank authorized by the commissioner pursuant to Section 1042 to transact industrial banking business.
- (c) Any trust company authorized by the commissioner pursuant to Section 1042 to transact trust business.
- (d) Any foreign (other nation) bank that is licensed under Article 2 (commencing with Section 1780) of Chapter 20 or under Article 3 (commencing with Section 1800) of Chapter 20.
- (e) Any person licensed by the commissioner as a money transmitter pursuant to Division 1.2 (commencing with Section 2000).
- (f) Any person authorized by the commissioner to conduct the business of a savings association pursuant to Division 2 (commencing with Section 5000).
- (g) Any credit union authorized by the commissioner to conduct business pursuant to Section 14154.
- (h) Any foreign (other state) credit union licensed by the commissioner to conduct business pursuant to Chapter 11 (commencing with Section 16000) of Division 5.
- (i) Any foreign (other nation) credit union licensed by the commissioner to conduct business pursuant to Chapter 12 (commencing with Section 16500) of Division 5.
- (j) Any industrial loan company authorized by the commissioner to conduct insurance premium finance business pursuant to Division 7 (commencing with Section 18000).
- (k) Any corporation licensed by the commissioner as a business and industrial development corporation pursuant to Section 31154.

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

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

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

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

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

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

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

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

189. (a) “National bank” or “national banking association” means a national banking association organized under the National Bank Act.

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

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

190. "Officer" means:

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

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

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

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

(1) "Applicable law" means:

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

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

(ii) Article 3 (commencing with Section 1130) of Chapter 5 of Division

1.1.

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

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

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

(vi) Article 1 (commencing with Section 1530) of Chapter 15 of Division

1.1.

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

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

(ix) Section 456.

(x) Section 457.

(xi) Section 459.

(xii) Section 460.

(xiii) Section 461.

(xiv) Section 1331.

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

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

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

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

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

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

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

(i) Section 14252.

(ii) Section 14253.

- (iii) Section 14255.
 - (iv) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.
 - (v) Section 14401.
 - (vi) Section 14404.
 - (vii) Section 14408, only as that section applies to gifts to directors, volunteers, and employees, and the related family or business interests of the directors, volunteers, and employees.
 - (viii) Section 14409.
 - (ix) Section 14410.
 - (x) Article 5 (commencing with Section 14600) of Chapter 4 of Division 5.
 - (xi) Article 6 (commencing with Section 14650) of Chapter 4 of Division 5, excluding subdivision (a) of Section 14651.
 - (xii) Section 14803.
 - (xiii) Section 14851.
 - (xiv) Section 14858.
 - (xv) Section 14860.
 - (xvi) Section 14861.
 - (xvii) Section 14863.
- (F) With respect to any money transmitter, any provision of Division 1.2 (commencing with Section 2000).
- (2) “Licensee” means any bank, savings association, credit union, trust company, money transmitter, insurance premium finance agency, or business and industrial development corporation that is authorized by the commissioner to conduct business in this state.
- (b) Notwithstanding any other provision of this code that applies to a licensee or a subsidiary of a licensee, after notice and an opportunity to be heard, the commissioner may, by order that shall include findings of fact which incorporates a determination made in accordance with subdivision (e), levy civil penalties against any licensee or any subsidiary of a licensee who has violated any provision of applicable law, any order issued by the commissioner, any written agreement between the commissioner and the licensee or subsidiary of the licensee, or any condition of any approval issued by the commissioner. Notwithstanding any other provision of law, neither the commissioner nor any employee of the department shall disclose or permit the disclosure of any record, record of any action, or information contained in a record of any action, taken by the commissioner under the provisions of this section, unless the action was taken pursuant to paragraph (2) of subdivision (b), to persons other than federal or state government employees who are authorized by statute to obtain the records in the performance of their official duties, unless the disclosure is authorized or requested by the affected licensee or the affected subsidiary of the licensee. The commissioner shall have the sole authority to bring any action with respect to a violation of applicable law subject to a penalty imposed under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The filing, approval, or denial under Chapter 1 (commencing with Section 1000) of Division 1.1 of an application for authority to organize a California state bank, or the issuance under Chapter 3 (commencing with

Section 1040) of Division 1.1 of a certificate of authority to a California state bank.

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

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

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

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

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

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

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

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

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

(b) Other information as the commissioner deems appropriate.

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

377. Notwithstanding any other provision of this code, whenever any provision of the Financial Institutions Law requires the pledge of securities to be deposited with the Treasurer, to ensure the performance of any act or duty, the securities after first being approved by the commissioner and upon the written order of the commissioner, shall be deposited with the Treasurer. The Treasurer, with the consent of the owner of the securities deposited or

to be deposited with the Treasurer, may place the securities in the custody of a qualified trust company or bank in the same manner and under the same conditions provided in Article 3 (commencing with Section 16550) of Chapter 4 of Part 2 of Division 4 of Title 2 of the Government Code.

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

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

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

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

(3) "Subject person" means any licensee.

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

(1) An applicant for employment with the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Any California state commercial bank, industrial bank, or trust company.

(b) Any national bank.

(c) Any insured foreign (other state) state bank.

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

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

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

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

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

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

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

SEC. 27. Section 589 of the Financial Code is amended to read:

589. (a) In this section, “subject financial institution” means any:

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

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

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

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

(b) It is unlawful for any subject person or former subject person of a subject financial institution to whom an order is issued under Sections 585 to 587, inclusive, willfully to do, directly or indirectly, any of the following without the approval of the commissioner, so long as the order is in effect:

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

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

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

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

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

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

(a) The licensee has violated, is violating, or that there is reasonable cause to believe that the licensee is about to violate, any provision of any of the following:

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

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

(3) A provision of any other applicable law.

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

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

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

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

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

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

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

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

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

(h) The licensee has ceased to transact the business the licensee is authorized to conduct pursuant to its license.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Subject to any applicable federal statutes and regulations and any applicable laws of the jurisdiction under which a foreign corporation is organized, any foreign corporation or any office of a foreign corporation that is licensed by the commissioner to transact business in this state and that is authorized to accept shares or deposits in this state, may, with the

approval of the commissioner, purchase from the receiver of a national banking association or federal credit union the whole or any part of the business of the national banking association or federal credit union.

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

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

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

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

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

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

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

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

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

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

(2) That the establishment of a proposed bank or trust company will not promote the public convenience and advantage if any person who is proposed to control the proposed bank or trust company or any director or officer of

such person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

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

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

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

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

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

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

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

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

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

(b) Subdivision (a) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 1254, that the integrity of an acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of a bank or controlling person or in the interest of the public to permit the acquiring person to control the bank or controlling person or that a plan to make a major change in the management of a bank or controlling person is not fair and reasonable to the depositors, creditors, or shareholders of the bank or controlling person.

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

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

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

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

(3) “Security” has the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Loans to the extent that they are covered by guarantees or by commitments to take over or to purchase without recourse made by (1) any Federal Reserve bank, (2) the United States, (3) any department, bureau, board, commission, agency, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States, or (4) any small business development corporation, urban development corporation, or rural development corporation incorporated pursuant to Part

5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code.

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

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

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

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

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

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

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

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

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

(i) Obligations described in Section 1510.

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

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

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

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

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

(b) A commercial bank may make additional advances, or additional loans, to an existing borrower in order to finance the purchase and installation of material and equipment designed to promote energy conservation or the efficient use of energy in the residential real property securing the loan, if all of the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1806. (a) In addition to other provisions of this division and Division 1 (commencing with Section 99) that are otherwise applicable to or with respect to foreign (other nation) banks licensed to maintain nondepository agencies, the following provisions of this division shall apply to or with respect to each foreign (other nation) bank licensed to maintain a nondepository agency with respect to its business in this state as if the bank were a commercial bank organized under the laws of this state:

- (1) Article 6 (commencing with Section 405) of Chapter 3 of Division 1.
- (2) Chapter 6 (commencing with Section 550) of Division 1.
- (3) Chapter 4.5 (commencing with Section 1090).
- (4) Chapter 17 (commencing with Section 1620).
- (5) Chapter 19 (commencing with Section 1670).

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

- (1) Article 6 (commencing with Section 405) of Chapter 3 of Division 1.
- (2) Chapter 6 (commencing with Section 550) of Division 1.
- (3) Chapter 4.5 (commencing with Section 1090).
- (4) Chapter 10 (commencing with Section 1320).
- (5) Chapter 12 (commencing with Section 1400).
- (6) Chapter 13 (commencing with Section 1450).
- (7) Chapter 14 (commencing with Section 1460).
- (8) Chapter 17 (commencing with Section 1620).
- (9) Chapter 19 (commencing with Section 1670).
- (10) Section 1864 and Article 2 (commencing with Section 1900), Article 3 (commencing with Section 1905), and Article 4 (commencing with Section 1910) of Chapter 21.

(c) Whenever any provision of this chapter or of any regulation or order issued under this chapter that is applicable to or with respect to foreign

(other nation) banks licensed to transact business in this state is inconsistent with any provision of any other chapter of this division and Division 1 (commencing with Section 99) that is applicable to or with respect to foreign (other nation) banks licensed to transact business in this state, the former provision shall apply, and the latter provision shall not apply.

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

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

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

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

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

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

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

1835. (a) If the commissioner finds that any of the factors set forth in Section 1831 is true with respect to any foreign (other nation) bank which is licensed to transact business in this state and that it is necessary for the protection of the interests of the creditors of such bank’s business in this state or for the protection of the public interest that he or she take immediate possession of the property and business of the bank, the commissioner may by order forthwith take possession of the property and business of the bank and retain possession until the bank resumes business in this state or is finally liquidated. The bank may, with the consent of the commissioner, resume business in this state upon such conditions as the commissioner may prescribe.

(b) (1) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a),

such bank may, within 10 days, apply to the superior court in the county in which the primary office of the bank is located to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss such application or enjoin the commissioner from further proceedings and order him or her to surrender the property and business of the bank to the bank or make such further order as may be just.

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

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

(d) When the commissioner has completed the liquidation of the property and business of a foreign (other nation) bank, the commissioner shall transfer any remaining assets to such bank in accordance with such orders as the court may issue. However, in case the bank has an office in another state of the United States which is in liquidation and the assets of such office appear to be insufficient to pay in full the creditors of the office, the court shall order the commissioner to transfer to the liquidator of the office such amount of any such remaining assets as appears to be necessary to cover such insufficiency; if there are two or more such offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of such offices in such manner as the court finds equitable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If the articles of a California state depository corporation provide for more or less than one vote for any share on any matter that is subject to this division, the references in Sections 139 and 141 (which are made applicable to this division by Section 4805.01) to a majority or other proportion of shares mean, as to the matter, a majority or other proportion of the votes entitled to be cast.

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

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

4823. References in this division to shareholders’ equity mean shareholders’ equity determined in accordance with generally accepted

accounting principles, subject (a) in the case of California state banks or California industrial loan companies, to the provisions of Section 463, and (b) in the case of California state savings associations, to the provisions of Division 2 (commencing with Section 5000).

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

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

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

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

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

4826.5. Notwithstanding any other provision of this division:

(a) The provisions of Chapter 19 (commencing with Section 1670) of Division 1.1 apply to any transaction that is subject to this division. Whenever any provision of Chapter 19 (commencing with Section 1670) of Division 1.1 or of any regulation or order issued under Chapter 19 (commencing with Section 1670) of Division 1.1 is inconsistent with any provision of this division or of any regulation or order issued under this division, the provision of Chapter 19 (commencing with Section 1670) of Division 1.1 or of the regulation or order issued under Chapter 19 (commencing with Section 1670) of Division 1.1 applies, and the provision of this division or of the regulation or order issued under this division does not apply.

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

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

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

4827. Except as expressly provided otherwise in this division:

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

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

(b) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state bank, a California state-licensed foreign (other nation) bank, or a California industrial loan company, in which the purchasing or surviving depository corporation is a California state savings association, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1.1 (commencing with Section 1000), except the provisions of Chapter 19 (commencing with Section 1670) of Division 1.1, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1.1 (commencing with Section 1000), except as may be required under the provisions of Chapter 19 (commencing with Section 1670) of Division 1.1.

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

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

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

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

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

(A) No California state depository corporation may, as the selling or disappearing depository corporation, make a sale or merger pursuant to this division in which it would transfer to a California state-licensed or federally

licensed foreign (other nation) bank any deposit or fiduciary account that the foreign bank is not authorized to accept.

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

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

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

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

(B) No California state savings association may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would acquire any deposit or fiduciary account that it is not authorized to accept.

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

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

(A) No California state bank or savings association may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it would transfer to an

industrial loan company any deposit or fiduciary account that the industrial loan company is not authorized to accept.

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

(2) Notwithstanding paragraph (1) and Division 1.1 (commencing with Section 1000), a California state bank or savings and loan association may, as the selling, disappearing, or converting depository corporation, make a sale, merger, or conversion pursuant to this division in which it transfers to an industrial loan company deposits or fiduciary accounts that the industrial loan company is not authorized to accept, and a California industrial loan company may, as the purchasing, surviving, or resulting depository corporation, make a sale, merger, or conversion pursuant to this division in which it acquires deposits or fiduciary accounts that it is not authorized to accept, if, concurrently with the effective time of the sale, merger, or conversion, the industrial loan company, pursuant to Article 5 (commencing with Section 4879.01) of Chapter 3 or other applicable law, sells all those deposit accounts and fiduciary accounts to a depository corporation that is authorized to accept them.

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

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

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

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

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

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

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

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

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

4961.5. (a) No provision of Division 1.1 (commencing with Section 1000), except the provisions of Chapter 19 (commencing with Section 1670) of Division 1.1, prohibits or restricts the conversion of a California state bank.

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

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

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

4970. For purposes of this division:

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

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

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

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

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

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

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

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

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

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

(f) “Licensing agency” shall mean the Department of Real Estate for licensed real estate brokers, the Department of Corporations for licensed residential mortgage lenders and licensed finance lenders and brokers, and

the Department of Financial Institutions for commercial and industrial banks and savings associations and credit unions organized in this state.

(g) “Licensed person” means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000)), a residential mortgage lender licensed under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank organized under the Banking Law (Division 1.1 (commencing with Section 1000)), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000)), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)). Nothing in this division shall be construed to prevent any enforcement by a governmental entity against any person who originates a loan and who is exempt or excluded from licensure by all of the licensing agencies, based on a violation of any provision of this division. Nothing in this division shall be construed to prevent the Department of Real Estate from enforcing this division against a licensed salesperson employed by a licensed real estate broker as if that salesperson were a licensed person under this division. A licensed person includes any person engaged in the practice of consumer lending, as defined in this division, for which a license is required under any other provision of law, but whose license is invalid, suspended or revoked, or where no license has been obtained.

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

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

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

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

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

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

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

(commencing with Section 5300) of Chapter 1 of Division 2, Article 8 (commencing with Section 14750) of Chapter 4 of Division 5, and Chapter 6 (commencing with Section 18435) of Division 7. Subdivision (a) also applies to felony convictions of offenses specified in provisions of the laws of the United States added or amended by the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73).

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

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

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

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

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

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

(b) "Licensed person" means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000)), a residential mortgage lender licensed under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank organized under the Banking Law (Division 1.1 (commencing with Section 1000)), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000)), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)).

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

(d) "Mortgage brokerage services" means arranging or attempting to arrange, as exclusive agent for the borrower or as dual agent for the borrower

and lender, for compensation or in expectation of compensation, paid directly or indirectly, a higher-priced mortgage loan made by an unaffiliated third party.

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

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