

AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1517

Introduced by Committee on Banking and Finance (Assembly Members Dababneh (Chair), Travis Allen (Vice Chair), Achadjian, Brown, Chau, Gatto, Kim, Low, Perea, Ridley-Thomas, and Mark Stone)

March 10, 2015

An act to amend Section 17511.1 of the Business and Professions Code, to amend Sections 1632.5, 1748.13, 1789.12, 1812.201, and 2923.3 of the Civil Code, to amend Sections 1101.1, 2207, 2510, 3100, 17713.12, 25003, 25018, 25100, 25207, 25243.5, 25247, 25254, 25401, 25604, 25607, 25612.5, 25614, 25702, 29542, 31408, 31503, and 31513 of the Corporations Code, to amend Sections 620, 622, 1070, 2105, 4057, 12104, 17210.2, 17214, 17311, 17320, 17331, 18405, 22105.1, 22159.5, 22160, 22756, 23070, 23071, 23072, 23073, 23074, 23102, 30217, 50140, 50303, 50307.1, and 50316.5 of, ~~and~~ to amend the heading of Article 4 (commencing with Section 670) of Chapter 7 of Division 1 of, and to repeal Section 1008 of, the Financial Code, to amend Sections 5970, 6254.5, 6254.12, 6254.22, 11840, 53344.1, 53638, and 54956.87 of the Government Code, to amend Sections 1341.10, 1341.11, 1341.12, and 1341.14 ~~of, and to repeal Section 1341.9 of, of~~ the Health and Safety Code, to amend Sections 1280.7, 12693.35, 14053, and 15036 of the Insurance Code, to amend Section 4600.5 of the Labor Code, to amend Section 11604.5 of the Probate Code, to amend Section 408 of the Revenue and Taxation Code, and to amend Section 22005.1 of the Welfare and Institutions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as amended, Committee on Banking and Finance. Business.

(1) Existing law abolished the Department of Corporations and the Department of Financial Institutions and transferred their responsibilities to the Department of Business Oversight, which is headed by a Commissioner of Business Oversight.

This bill would transfer additional duties from the abolished Department of Corporations and the abolished Department of Financial Institutions to the Department of Business Oversight and the Commissioner of Business Oversight, as specified. This bill would also update cross-references and outdated contact information with respect to the Department of Business Oversight. ~~This bill would repeal obsolete provisions relating to the Department of Corporations.~~

(2) Existing law, *the Corporate Securities Law of 1968*, makes it unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to employ a device, scheme, or artifice to defraud, make an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, or engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

This bill would instead make it unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading.

Existing law, the Corporate Securities Law of 1968, requires the offer and sale of securities in the state to be qualified with the Commissioner of Business Oversight, unless exempt. That law exempts specific securities or transactions from qualification, including, among others, any security issued or guaranteed by a public utility holding company, as specified.

This bill would revise this exemption to exempt any security issued or guaranteed by a public utility holding company that is regulated in respect to its rates and charges by the United States or a state, and delete obsolete cross-references.

This bill would also update and delete obsolete cross-references to federal law in the Corporate Securities Law of 1968.

(3) Existing law limits the amount of funds of a bank or trust company that are deposited in any other financial institution, as specified, unless the financial institution has been designated as a depository for the funds of the depositing bank or trust company by a vote of the majority of the directors of the depositing bank or trust company and the financial institution has been approved by the commissioner as a depository for the purposes of these provisions.

This bill would repeal these provisions.

(4) Existing law, the Banking Law, prescribes the conditions pursuant to which a state-chartered bank may engage in the practice of banking. Existing law requires a bank to have authorization to open an office. Existing law defines core and noncore banking business and defines a facility, in this context, as an office in this state at which a bank engages in noncore banking business but not core banking business.

This bill would delete the phrase “in this state” from the definition of a facility, as described above.

(5) Existing law requires an industrial loan company to annually file with the Commissioner of Business Oversight an audit report containing audited financial statements and other relevant information the commissioner may require relating to the company. Existing law further requires an industrial loan company whose certificate has been surrendered or revoked to submit to the commissioner a closing audit report containing audited financial statements, as specified.

This bill would repeal the requirement for the closing audit report.

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

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

1 SECTION 1. Section 17511.1 of the Business and Professions
2 Code is amended to read:
3 17511.1. As used in this article, “telephonic seller” or “seller”
4 means a person who, on his or her own behalf or through
5 salespersons or through the use of an automatic dialing-announcing
6 device, as defined in Section 2871 of the Public Utilities Code,
7 causes a telephone solicitation or attempted telephone solicitation
8 to occur which meets the criteria specified in subdivision (a), (b),
9 (c), or (d) and who is not exempted by subdivision (e), as follows:
10 (a) A telephone solicitation or attempted telephone solicitation
11 wherein the telephonic seller initiates telephonic contact with a

1 prospective purchaser and represents or implies one or more of
2 the following:

3 (1) That a prospective purchaser who buys one or more items
4 will also receive additional or other items, whether or not of the
5 same type as purchased, without further cost. For purposes of this
6 subdivision, “further cost” does not include actual postage or
7 common carrier delivery charges, if any.

8 (2) That a prospective purchaser will receive a prize or gift, if
9 the person also encourages the prospective purchaser to do either
10 of the following:

11 (A) Purchase or rent any goods or services.

12 (B) Pay any money, including, but not limited to, a delivery or
13 handling charge.

14 (3) That a prospective purchaser is able to obtain any item or
15 service at a price which the seller states or implies is below the
16 regular price of the item or service offered. This paragraph shall
17 not apply to retailers who, within the previous 12 months, have
18 sold a majority of their goods or services through in-person sales
19 at retail stores.

20 (4) That a prospective purchaser who buys office equipment or
21 supplies will, because of some unusual event or imminent price
22 increase, be able to buy these items at prices which are below those
23 that are usually charged or will be charged for the items.

24 (5) That the seller is a person other than the person he or she is.

25 (6) That the items for sale are manufactured or supplied by a
26 person other than the actual manufacturer or supplier.

27 (7) That the seller is offering to sell the prospective purchaser
28 any gold, silver, or other metals, including coins, diamonds, rubies,
29 sapphires, or other stones, coal or other minerals, or any interest
30 in oil, gas, or mineral fields, wells, or exploration sites, or any
31 other investment opportunity of any type whatsoever.

32 (8) That the seller is offering to make a loan, or to arrange or
33 assist in arranging a loan or to assist in providing information
34 which may lead to the obtaining of a loan, unless no payment of
35 any kind is made until the loan proceeds are disbursed to the
36 borrower.

37 (9) That a prospective purchaser will receive a credit card, as
38 defined in subdivision (a) of Section 1747.02 of the Civil Code,
39 if the purchaser pays an up front or preapplication fee for the credit
40 card to the telephonic seller.

1 (b) A solicitation or attempted solicitation which is made by
2 telephone in response to inquiries generated by unrequested
3 notifications sent by the seller to persons who have not previously
4 purchased goods or services from the seller or who have not
5 previously requested credit from the seller, to a prospective
6 purchaser wherein the seller represents or implies to the recipient
7 of the notification that any of the following applies to the recipient:

8 (1) That the recipient has in any manner been specially selected
9 to receive the notification or the offer contained in the notification.

10 (2) That the recipient will receive a prize or gift if the recipient
11 calls the seller.

12 (3) That if the recipient buys one or more items from the seller,
13 the recipient will also receive additional or other items, whether
14 or not of the same type as purchased, without further cost or at a
15 cost which the seller states or implies is less than the regular price
16 of such items.

17 However, this subdivision does not apply to the solicitation of
18 sales by a catalog seller who periodically issues and delivers
19 catalogs to potential purchasers by mail or by other means. This
20 exception only applies if the catalog includes a written description
21 or illustration and the sales price of each item of merchandise
22 offered for sale, includes at least 24 full pages of written material
23 or illustrations, is distributed in more than one state, and has an
24 annual circulation of not less than 250,000 customers.

25 (c) A solicitation or attempted solicitation which is made by
26 telephone in response to inquiries generated by advertisements on
27 behalf of the telephonic seller wherein it is represented or implied
28 that the seller is offering to sell to the prospective purchaser any
29 gold, silver, or other metals, including coins, diamonds, rubies,
30 sapphires, or other stones, coal or other minerals, or any interest
31 in oil, gas, or mineral fields, wells, or exploration sites, or any
32 other investment opportunity of any type whatsoever.

33 (d) A solicitation or attempted solicitation which is made by
34 telephone in response to inquiries generated by advertisements on
35 behalf of the telephonic seller wherein it is represented or implied
36 that the seller is offering to make a loan or to arrange or assist in
37 arranging a loan or to assist in providing information which may
38 lead to the obtaining of a loan, unless no payment of any kind is
39 made until the loan proceeds are disbursed to the borrower.

1 (e) For purposes of this article, “telephonic seller” or “seller”
2 does not include any of the following:

3 (1) A person offering or selling a security qualified under
4 Section 25110, 25120, or 25130 of the Corporations Code or
5 exempt from qualification under Chapter 1 (commencing with
6 Section 25100) of Part 2 of Division 1 of Title 4 of the
7 Corporations Code. The fact that a notice claiming an exemption
8 under the Corporate Securities Law of 1968 is filed with the
9 Department of Business Oversight does not create an exemption
10 under this paragraph.

11 (2) A person licensed pursuant to Part 1 (commencing with
12 Section 10000) of Division 4, when the solicited transaction is
13 governed by that law.

14 (3) A person licensed pursuant to Chapter 9 (commencing with
15 Section 7000) of Division 3, when the solicited transaction is
16 governed by that law.

17 (4) A person licensed or certificated pursuant to Part 2
18 (commencing with Section 680) of Division 1 of the Insurance
19 Code, including a person licensed pursuant to Chapter 5
20 (commencing with Section 1621) thereof, when the solicited
21 transaction is governed by that law.

22 (5) A person offering or selling a franchise registered pursuant
23 to Section 31110 of the Corporations Code or exempt from
24 registration under Chapter 1 (commencing with Section 31100)
25 of Part 2 of Division 5 of Title 4 of the Corporations Code. The
26 fact that a notice claiming an exemption under the Franchise
27 Investment Law is filed with the Department of Business Oversight
28 does not create an exemption under this paragraph.

29 (6) A person soliciting the sale of a seller assisted marketing
30 plan, as defined in Title 2.7 (commencing with Section 1812.200)
31 of Part 4 of Division 3 of the Civil Code, who has filed with the
32 Attorney General the documents required by Section 1812.203 of
33 the Civil Code.

34 (7) A person primarily soliciting the sale of a newspaper of
35 general circulation, as defined in Article 1 (commencing with
36 Section 6000) of Chapter 1 of Division 7 of Title 1 of the
37 Government Code, a magazine, or membership in a book or record
38 club whose program operates in conformity with the requirements
39 of Section 1584.5 of the Civil Code.

1 (8) A person soliciting business from prospective purchasers
2 who have previously purchased from the business enterprise for
3 which the person is calling.

4 (9) A person soliciting without the intent to complete and who
5 does not complete the sales presentation during the telephone
6 solicitation but completes the sales presentation at a later
7 face-to-face meeting between the solicitor and the prospective
8 purchaser. However, if a seller, directly following a telephone
9 solicitation, causes an individual whose primary purpose it is to
10 go to the prospective purchaser to collect the payment or deliver
11 any item purchased, this exemption does not apply.

12 (10) Any supervised financial institution or parent, subsidiary,
13 or subsidiary of parent thereof. As used in this paragraph,
14 “supervised financial institution” means any commercial bank,
15 trust company, savings and loan association, credit union, industrial
16 loan company, personal property broker, consumer finance lender,
17 commercial finance lender, or insurer, provided that the institution
18 is subject to supervision by an official or agency of this state or of
19 the United States.

20 (11) A person soliciting the sale of a preneed funeral
21 arrangement regulated by Article 9 (commencing with Section
22 7735) of Chapter 12 of Division 3.

23 (12) A person licensed pursuant to Chapter 19 (commencing
24 with Section 9600) of Division 3 when acting pursuant to that
25 licensure.

26 (13) A person soliciting the sale of services provided by a cable
27 television system licensed or franchised pursuant to Section 53066
28 of the Government Code or any other authority.

29 (14) A person or an affiliate of a person whose business is
30 regulated by the Public Utilities Commission.

31 (15) A person soliciting the sale of a commodity pursuant to
32 Part 2 (commencing with Section 58601) of Division 21 of the
33 Food and Agricultural Code, if the solicitation neither intends to,
34 nor actually results in, a sale which costs the purchaser in excess
35 of one hundred dollars (\$100).

36 (16) An issuer or subsidiary of an issuer that has a security listed
37 on a national securities exchange or designated as a national market
38 system security on an interdealer quotation system by the National
39 Association of Securities Dealers, Inc., if the exchange or
40 interdealer quotation system has been certified by rule or order of

1 the Commissioner of Corporations under subdivision (o) of Section
2 25100 of the Corporations Code. A subsidiary of an issuer that
3 qualifies for exemption under this paragraph is not itself exempt
4 unless not less than 60 percent of the voting power of its shares is
5 owned by the qualifying issuer or issuers.

6 (17) A person soliciting exclusively the sale of telephone
7 answering services to be provided by that person or that person's
8 employer.

9 (18) A person soliciting a transaction regulated by the
10 Commodity Futures Trading Commission if the person is registered
11 or temporarily licensed for this activity with the Commodity
12 Futures Trading Commission under the Commodity Exchange Act
13 (7 U.S.C. Sec. 1 et seq.), and the registration or license has not
14 expired or been suspended or revoked.

15 (19) A person who sells coins or bullion at a price which is not
16 more than 25 percent more than the price at which the seller is
17 concurrently buying the same coins or bullion, if: (A) the seller
18 has had a retail location in California from which he or she has
19 been selling coins or bullion to the public in person for at least
20 three years; (B) the telephonic solicitations are not the person's
21 primary business and sales made telephonically make up less than
22 20 percent of the person's total retail sales; and (C) the person
23 claiming an exemption pursuant to this subdivision complies with
24 Section 17511.3, as applicable, and subdivision (p) of Section
25 17511.4.

26 (20) A person licensed pursuant to Chapter 14 (commencing
27 with Section 1800) of Division 1 of the Financial Code to receive
28 money for transmittal to foreign countries if the license has not
29 expired or been suspended or revoked.

30 (21) A person licensed as a residential mortgage lender or
31 servicer pursuant to Division 20 (commencing with Section 50000)
32 of the Financial Code, when acting under the authority of that
33 license.

34 (22) A corporation that meets all of the following conditions:

35 (A) It has been exempt from taxation under Section 23701e of
36 the Revenue and Taxation Code for a minimum of 10 years.

37 (B) It has maintained its principal purpose for a minimum of
38 10 years.

39 (C) It has been incorporated in the state for a minimum of 25
40 years.

1 (f) In any civil proceeding alleging a violation of this article,
2 the burden of proving an exemption or an exception from a
3 definition is upon the person claiming it, and in any criminal
4 proceeding alleging a violation of this article, the burden of
5 producing evidence to support a defense based upon an exemption
6 or an exception from a definition is upon the person claiming it.

7 (g) Compliance with this article does not satisfy nor substitute
8 for any requirements for license, registration, or regulation
9 mandated by other laws.

10 SEC. 2. Section 1632.5 of the Civil Code is amended to read:

11 1632.5. (a) A supervised financial organization that negotiates
12 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
13 whether orally or in writing, in the course of entering into a contract
14 or agreement for a loan or extension of credit secured by residential
15 real property, shall deliver to the other party to that contract or
16 agreement prior to the execution of the contract or agreement the
17 form described in subdivision (i) for that language.

18 (b) For purposes of this section:

19 (1) “Contract” or “agreement” shall have the same meaning as
20 defined in subdivision (g) of Section 1632.

21 (2) “Supervised financial organization” means a bank, savings
22 association, as defined in Section 5102 of the Financial Code,
23 credit union, or holding company, affiliate, or subsidiary thereof,
24 or any person subject to Division 7 (commencing with Section
25 18000), Division 9 (commencing with Section 22000), or Division
26 20 (commencing with Section 50000) of the Financial Code.

27 (c) (1) With respect to a contract or agreement for a loan or
28 extension of credit secured by residential real property as described
29 in subdivision (a), a supervised financial organization that complies
30 with this section shall be deemed in compliance with Section 1632.

31 (2) A supervised financial organization that complies with
32 Section 1632, with respect to a contract or agreement for a loan
33 or extension of credit secured by residential real property as
34 described in subdivision (a), shall be deemed in compliance with
35 this section.

36 (d) The supervised financial organization shall provide the form
37 described in subdivision (i) to the borrower no later than three
38 business days after receipt of the written application, and if any
39 of the loan terms summarized materially change after provision
40 of the translated form but prior to consummation of the loan, the

1 supervised financial organization shall provide an updated version
2 of the translated form prior to consummation of the loan.

3 (e) (1) This section does not apply to a supervised financial
4 organization that negotiates primarily in a language other than
5 English, as described by subdivision (a), if the party with whom
6 the supervised financial organization is negotiating, negotiates the
7 terms of the contract through his or her own interpreter.

8 (2) For purposes of this subdivision, “his or her own interpreter”
9 means a person, not a minor, able to speak fluently and read with
10 full understanding both the English language and one of the
11 languages specified in subdivision (a) that is the language in which
12 the contract was negotiated, who is not employed by, and whose
13 services are not made available through, the person engaged in the
14 trade or business.

15 (f) Notwithstanding subdivision (a), a translated form may retain
16 any of the following elements of the executed English language
17 contract or agreement without translation:

- 18 (1) Names and titles of individuals and other persons.
- 19 (2) Addresses, brand names, trade names, trademarks, or
20 registered service marks.
- 21 (3) Full or abbreviated designations of the make and model of
22 goods or services.
- 23 (4) Alphanumeric codes.
- 24 (5) Individual words or expressions having no generally accepted
25 non-English translation.

26 (g) The terms of the contract or agreement which is executed
27 in the English language shall determine the rights and obligations
28 of the parties. However, the translation of the form described in
29 subdivision (i) and required by subdivision (a) shall be admissible
30 in evidence only to show that no contract or agreement was entered
31 into because of a substantial difference in the material terms and
32 conditions of the contract or agreement and the prior translated
33 form provided to the borrower.

34 (h) (1) A licensing agency may, by order, after appropriate
35 notice and opportunity for hearing, levy administrative penalties
36 against a supervised financial organization that violates any
37 provision of this section, and the supervised financial organization
38 may be liable for administrative penalties, up to the amounts of
39 two thousand five hundred dollars (\$2,500) for the first violation,
40 five thousand dollars (\$5,000) for the second violation, and ten

1 thousand dollars (\$10,000) for each subsequent violation. Except
2 for licensing agencies exempt from the provisions of the
3 Administrative Procedure Act, any hearing shall be held in
4 accordance with the Administrative Procedure Act (Chapter 5
5 (commencing with Section 11500) of Part 1 of Division 3 of Title
6 2 of the Government Code), and the licensing agency shall have
7 all the powers granted under that act.

8 (2) A licensing agency may exercise any and all authority and
9 powers available to it under any other provisions of law to
10 administer and enforce this section, including, but not limited to,
11 investigating and examining the licensed person's books and
12 records, and charging and collecting the reasonable costs for these
13 activities. The licensing agency shall not charge a licensed person
14 twice for the same service. Any civil, criminal, and administrative
15 authority and remedies available to the licensing agency pursuant
16 to its licensing law may be sought and employed in any
17 combination deemed advisable by the licensing agency to enforce
18 the provisions of this section.

19 (3) Any supervised financial organization that violates any
20 provision of this section shall be deemed to have violated its
21 licensing law.

22 (4) Nothing in this section shall be construed to impair or impede
23 the Attorney General from bringing an action to enforce this
24 division.

25 (i) The Department of Business Oversight shall create a form
26 to be made available in each of the languages set forth in
27 subdivision (a) for use by a supervised financial organization to
28 summarize the terms of a mortgage loan pursuant to subdivision
29 (a). In creating the form, the Department of Business Oversight
30 may use as guidance the United States Department of Housing and
31 Urban Development's Good Faith Estimate disclosure form.

32 (j) This section shall not apply to federally chartered banks,
33 credit unions, savings banks, or thrifts.

34 (k) Except as otherwise provided in subdivision (h), this section
35 shall not be construed to create or enhance any claim, right of
36 action, or civil liability that did not previously exist under state
37 law, or limit any claim, right of action, or civil liability that
38 otherwise exists under state law.

1 (l) An action against a supervised financial organization for a
 2 violation of this section may only be brought by a licensing agency
 3 or by the Attorney General.

4 (m) This section shall become operative beginning on July 1,
 5 2010, or 90 days following the issuance of a form by the
 6 Department of Business Oversight pursuant to subdivision (i),
 7 whichever occurs later.

8 SEC. 3. Section 1748.13 of the Civil Code is amended to read:

9 1748.13. (a) A credit card issuer shall, with each billing
 10 statement provided to a cardholder in this state, provide the
 11 following on the front of the first page of the billing statement in
 12 type no smaller than that required for any other required disclosure,
 13 but in no case in less than 8-point capitalized type:

14 (1) A written statement in the following form: “Minimum
 15 Payment Warning: Making only the minimum payment will
 16 increase the interest you pay and the time it takes to repay your
 17 balance.”

18 (2) Either of the following:

19 (A) A written statement in the form of and containing the
 20 information described in clause (i) or (ii), as applicable, as follows:

21 (i) A written three-line statement, as follows:

22 “A one thousand dollar (\$1,000) balance will take 17 years and
 23 three months to pay off at a total cost of two thousand five hundred
 24 ninety dollars and thirty-five cents (\$2,590.35).

25 A two thousand five hundred dollar (\$2,500) balance will take 30
 26 years and three months to pay off at a total cost of seven thousand
 27 seven hundred thirty-three dollars and forty-nine cents (\$7,733.49).

28 A five thousand dollar (\$5,000) balance will take 40 years and two
 29 months to pay off at a total cost of sixteen thousand three hundred
 30 five dollars and thirty-four cents (\$16,305.34).

31 This information is based on an annual percentage rate of 17
 32 percent and a minimum payment of 2 percent or ten dollars (\$10),
 33 whichever is greater.”

34 In the alternative, a credit card issuer may provide this
 35 information for the three specified amounts at the annual percentage
 36 rate and required minimum payment which are applicable to the
 37 cardholder’s account. The statement provided shall be immediately
 38 preceded by the statement required by paragraph (1).

1 (ii) Instead of the information required by clause (i), retail credit
2 card issuers shall provide a written three-line statement to read, as
3 follows:

4 “A two hundred fifty dollar (\$250) balance will take two years
5 and eight months to pay off a total cost of three hundred
6 twenty-five dollars and twenty-four cents (\$325.24).

7 A five hundred dollar (\$500) balance will take four years and five
8 months to pay off at a total cost of seven hundred nine dollars and
9 ninety cents (\$709.90).

10 A seven hundred fifty dollar (\$750) balance will take five years
11 and five months to pay off at a total cost of one thousand
12 ninety-four dollars and forty-nine cents (\$1,094.49).

13 This information is based on an annual percentage rate of 21
14 percent and a minimum payment of 5 percent or ten dollars (\$10),
15 whichever is greater.”

16 In the alternative, a retail credit card issuer may provide this
17 information for the three specified amounts at the annual percentage
18 rate and required minimum payment which are applicable to the
19 cardholder’s account. The statement provided shall be immediately
20 preceded by the statement required by paragraph (1). A retail credit
21 card issuer is not required to provide this statement if the
22 cardholder has a balance of less than five hundred dollars (\$500).

23 (B) A written statement providing individualized information
24 indicating an estimate of the number of years and months and the
25 approximate total cost to pay off the entire balance due on an
26 open-end credit card account if the cardholder were to pay only
27 the minimum amount due on the open-ended account based upon
28 the terms of the credit agreement. For purposes of this
29 subparagraph only, if the account is subject to a variable rate, the
30 creditor may make disclosures based on the rate for the entire
31 balance as of the date of the disclosure and indicate that the rate
32 may vary. In addition, the cardholder shall be provided with
33 referrals or, in the alternative, with the “800” telephone number
34 of the National Foundation for Credit Counseling through which
35 the cardholder can be referred, to credit counseling services in, or
36 closest to, the cardholder’s county of residence. The credit
37 counseling service shall be in good standing with the National
38 Foundation for Credit Counseling or accredited by the Council on
39 Accreditation for Children and Family Services. The creditor is
40 required to provide, or continue to provide, the information

1 required by this paragraph only if the cardholder has not paid more
2 than the minimum payment for six consecutive months, after July
3 1, 2002.

4 (3) (A) A written statement in the following form: “For an
5 estimate of the time it would take to repay your balance, making
6 only minimum payments, and the total amount of those payments,
7 call this toll-free telephone number: (Insert toll-free telephone
8 number).” This statement shall be provided immediately following
9 the statement required by subparagraph (A) of paragraph (2). A
10 credit card issuer is not required to provide this statement if the
11 disclosure required by subparagraph (B) of paragraph (2) has been
12 provided.

13 (B) The toll-free telephone number shall be available between
14 the hours of 8 a.m. and 9 p.m., Pacific standard time, seven days
15 a week, and shall provide consumers with the opportunity to speak
16 with a person, rather than a recording, from whom the information
17 described in subparagraph (A) may be obtained.

18 (C) The Department of ~~Business~~ *Business Oversight* shall
19 establish a detailed table illustrating the approximate number of
20 months that it would take and the approximate total cost to repay
21 an outstanding balance if the consumer pays only the required
22 minimum monthly payments and if no other additional charges or
23 fees are incurred on the account, such as additional extension of
24 credit, voluntary credit insurance, late fees, or dishonored check
25 fees by assuming all of the following:

26 (i) A significant number of different annual percentage rates.

27 (ii) A significant number of different account balances, with
28 the difference between sequential examples of balances being no
29 greater than one hundred dollars (\$100).

30 (iii) A significant number of different minimum payment
31 amounts.

32 (iv) That only minimum monthly payments are made and no
33 additional charges or fees are incurred on the account, such as
34 additional extensions of credit, voluntary credit insurance, late
35 fees, or dishonored check fees.

36 (D) A creditor that receives a request for information described
37 in subparagraph (A) from a cardholder through the toll-free
38 telephone number disclosed under subparagraph (A), or who is
39 required to provide the information required by subparagraph (B)
40 of paragraph (2), may satisfy its obligation to disclose an estimate

1 of the time it would take and the approximate total cost to repay
2 the cardholder's balance by disclosing only the information set
3 forth in the table described in subparagraph (C). Including the full
4 chart along with a billing statement does not satisfy the obligation
5 under this section.

6 (b) For purposes of this section:

7 (1) "Credit card" has the same meaning as in paragraph (2) of
8 subdivision (a) of Section 1748.12.

9 (2) "Open-end credit card account" means an account in which
10 consumer credit is granted by a creditor under a plan in which the
11 creditor reasonably contemplates repeated transactions, the creditor
12 may impose a finance charge from time to time on an unpaid
13 balance, and the amount of credit that may be extended to the
14 consumer during the term of the plan is generally made available
15 to the extent that any outstanding balance is repaid and up to any
16 limit set by the creditor.

17 (3) "Retail credit card" means a credit card is issued by or on
18 behalf of a retailer, or a private label credit card that is limited to
19 customers of a specific retailer.

20 (c) (1) This section shall not apply in any billing cycle in which
21 the account agreement requires a minimum payment of at least 10
22 percent of the outstanding balance.

23 (2) This section shall not apply in any billing cycle in which
24 finance charges are not imposed.

25 SEC. 4. Section 1789.12 of the Civil Code is amended to read:
26 1789.12. As used in this title:

27 (a) "Credit services organization" means a person who, with
28 respect to the extension of credit by others, sells, provides, or
29 performs, or represents that he or she can or will sell, provide or
30 perform, any of the following services, in return for the payment
31 of money or other valuable consideration:

32 (1) Improving a buyer's credit record, history, or rating.

33 (2) Obtaining a loan or other extension of credit for a buyer.

34 (3) Providing advice or assistance to a buyer with regard to
35 either paragraph (1) or (2).

36 (b) "Credit services organization" does not include any of the
37 following:

38 (1) Any person holding a license to make loans or extensions
39 of credit pursuant to the laws of this state or the United States who
40 is subject to regulation and supervision with respect to the making

1 of those loans or extensions of credit by an official or agency of
2 this state or the United States and whose business is the making
3 of those loans or extensions of credit.

4 (2) Any bank, as defined in Section 102 of the Financial Code,
5 or any savings institution, as specified in subdivision (a) or (b) of
6 Section 5102 of the Financial Code, whose deposits or accounts
7 are eligible for insurance by the Federal Deposit Insurance
8 Corporation.

9 (3) Any person licensed as a prorater by the Department of
10 Business Oversight when the person is acting within the course
11 and scope of that license.

12 (4) Any person licensed as a real estate broker performing an
13 act for which a real estate license is required under the Real Estate
14 Law (Pt. 1 (commencing with Sec. 10000), Div. 4, B. & P.C.) and
15 who is acting within the course and scope of that license.

16 (5) Any attorney licensed to practice law in this state, where
17 the attorney renders services within the course and scope of the
18 practice of law, unless the attorney is an employee of, or otherwise
19 directly affiliated with, a credit services organization.

20 (6) Any broker-dealer registered with the Securities and
21 Exchange Commission or the Commodity Futures Trading
22 Commission where the broker-dealer is acting within the course
23 and scope of the regulation.

24 (7) Any nonprofit organization described in Section 501(c)(3)
25 of the Internal Revenue Code that, according to a final ruling or
26 determination by the Internal Revenue Service, is both of the
27 following:

28 (A) Exempt from taxation under Section 501(a) of the Internal
29 Revenue Code.

30 (B) Not a private foundation as defined in Section 509 of the
31 Internal Revenue Code.

32 An advance ruling or determination of tax-exempt or foundation
33 status by the Internal Revenue Service does not meet the
34 requirements of this paragraph.

35 (c) “Buyer” means any natural person who is solicited to
36 purchase or who purchases the services of a credit services
37 organization.

38 (d) “Extension of credit” means the right to defer payment of
39 debt or to incur debt and defer its payment, offered or granted
40 primarily for personal, family, or household purposes.

1 (e) “Consumer credit reporting agency” means a consumer credit
2 reporting agency subject to the Consumer Credit Reporting
3 Agencies Act, Title 1.6 (commencing with Section 1785.1).

4 (f) “Person” includes an individual, corporation, partnership,
5 joint venture, or any business entity.

6 SEC. 5. Section 1812.201 of the Civil Code is amended to
7 read:

8 1812.201. For the purposes of this title, the following
9 definitions shall apply:

10 (a) “Seller assisted marketing plan” means any sale or lease or
11 offer to sell or lease any product, equipment, supplies, or services
12 that requires a total initial payment exceeding five hundred dollars
13 (\$500), but requires an initial cash payment of less than fifty
14 thousand dollars (\$50,000), that will aid a purchaser or will be
15 used by or on behalf of the purchaser in connection with or
16 incidental to beginning, maintaining, or operating a business when
17 the seller assisted marketing plan seller has advertised or in any
18 other manner solicited the purchase or lease of the seller assisted
19 marketing plan and done any of the following acts:

20 (1) Represented that the purchaser will earn, is likely to earn,
21 or can earn an amount in excess of the initial payment paid by the
22 purchaser for participation in the seller assisted marketing plan.

23 (2) Represented that there is a market for the product, equipment,
24 supplies, or services, or any product marketed by the user of the
25 product, equipment, supplies, or services sold or leased or offered
26 for sale or lease to the purchaser by the seller, or anything, be it
27 tangible or intangible, made, produced, fabricated, grown, bred,
28 modified, or developed by the purchaser using, in whole or in part,
29 the product, supplies, equipment, or services that were sold or
30 leased or offered for sale or lease to the purchaser by the seller
31 assisted marketing plan seller.

32 (3) Represented that the seller will buy back or is likely to buy
33 back any product made, produced, fabricated, grown, or bred by
34 the purchaser using, in whole or in part, the product, supplies,
35 equipment, or services that were initially sold or leased or offered
36 for sale or lease to the purchaser by the seller assisted marketing
37 plan seller.

38 (b) A “seller assisted marketing plan” shall not include:

39 (1) A security, as defined in the Corporate Securities Law of
40 1968 (Division 1 (commencing with Section 25000) of Title 4 of

1 the Corporations Code), that has been qualified for sale by the
2 Department of Business Oversight, or is exempt under Chapter 1
3 (commencing with Section 25100) of Part 2 of Division 1 of Title
4 4 of the Corporations Code from the necessity to qualify.

5 (2) A franchise defined by the Franchise Investment Law
6 (Division 5 (commencing with Section 31000) of Title 4 of the
7 Corporations Code) that is registered with the Department of
8 Business Oversight or is exempt under Chapter 1 (commencing
9 with Section 31100) of Part 2 of Division 5 of Title 4 of the
10 Corporations Code from the necessity of registering.

11 (3) Any transaction in which either the seller or purchaser or
12 the lessor or lessee is licensed pursuant to and the transaction is
13 governed by the Real Estate Law, Division 4 (commencing with
14 Section 10000) of the Business and Professions Code.

15 (4) A license granted by a general merchandise retailer that
16 allows the licensee to sell goods, equipment, supplies, products,
17 or services to the general public under the retailer's trademark,
18 trade name, or service mark if all of the following criteria are
19 satisfied:

20 (A) The general merchandise retailer has been doing business
21 in this state continually for five years prior to the granting of the
22 license.

23 (B) The general merchandise retailer sells diverse kinds of
24 goods, equipment, supplies, products, or services.

25 (C) The general merchandise retailer also sells the same goods,
26 equipment, supplies, products, or services directly to the general
27 public.

28 (D) During the previous 12 months the general merchandise
29 retailer's direct sales of the same goods, equipment, supplies,
30 products, or services to the public account for at least 50 percent
31 of its yearly sales of these goods, equipment, supplies, products,
32 or services made under the retailer's trademark, trade name, or
33 service mark.

34 (5) A newspaper distribution system distributing newspapers
35 as defined in Section 6362 of the Revenue and Taxation Code.

36 (6) A sale or lease to an existing or beginning business enterprise
37 that also sells or leases equipment, products, supplies, or performs
38 services that are not supplied by the seller and that the purchaser
39 does not utilize with the equipment, products, supplies, or services
40 of the seller, if the equipment, products, supplies, or services not

1 supplied by the seller account for more than 25 percent of the
2 purchaser's gross sales.

3 (7) The sale in the entirety of an "ongoing business." For
4 purposes of this paragraph, an "ongoing business" means a business
5 that for at least six months previous to the sale has been operated
6 from a particular specific location, has been open for business to
7 the general public, and has had all equipment and supplies
8 necessary for operating the business located at that location. The
9 sale shall be of the entire "ongoing business" and not merely a
10 portion of the ongoing business.

11 (8) A sale or lease or offer to sell or lease to a purchaser (A)
12 who has for a period of at least six months previously bought
13 products, supplies, services, or equipment that were sold under the
14 same trademark or trade name or that were produced by the seller
15 and, (B) who has received on resale of the product, supplies,
16 services, or equipment an amount that is at least equal to the
17 amount of the initial payment.

18 (9) The renewal or extension of an existing seller assisted
19 marketing plan contract.

20 (10) A product distributorship that meets each of the following
21 requirements:

22 (A) The seller sells products to the purchaser for resale by the
23 purchaser, and it is reasonably contemplated that substantially all
24 of the purchaser's sales of the product will be at wholesale.

25 (B) The agreement between the parties does not require that the
26 purchaser pay the seller, or any person associated with the seller,
27 a fee or any other payment for the right to enter into the agreement,
28 and does not require the purchaser to buy a minimum or specified
29 quantity of the products, or to buy products for a minimum or
30 specified period of time. For purposes of this paragraph, a "person
31 associated with the seller" means a person, including an individual
32 or a business entity, controlling, controlled by, or under the same
33 control as the seller.

34 (C) The seller is a corporation, partnership, limited liability
35 company, joint venture, or any other business entity.

36 (D) The seller has a net worth of at least ten million dollars
37 (\$10,000,000) according to audited financial statements of the
38 seller done during the 18 months preceding the date of the initial
39 sale of products to the purchaser. Net worth may be determined
40 on a consolidated basis if the seller is a subsidiary of another

1 business entity that is permitted by generally accepted accounting
2 standards to prepare financial statements on a consolidated basis
3 and that business entity absolutely and irrevocably agrees in writing
4 to guarantee the seller's obligations to the purchaser. The seller's
5 net worth shall be verified by a certification to the Attorney General
6 from an independent certified public accountant that the audited
7 financial statement reflects a net worth of at least ten million dollars
8 (\$10,000,000). This certification shall be provided within 30 days
9 following receipt of a written request from the Attorney General.

10 (E) The seller grants the purchaser a license to use a trademark
11 that is registered under federal law.

12 (F) It is not an agreement or arrangement encouraging a
13 distributor to recruit others to participate in the program and
14 compensating the distributor for recruiting others into the program
15 or for sales made by others recruited into the program.

16 (c) "Person" includes an individual, corporation, partnership,
17 limited liability company, joint venture, or any business entity.

18 (d) "Seller" means a person who sells or leases or offers to sell
19 or lease a seller assisted marketing plan and who meets either of
20 the following conditions:

21 (1) Has sold or leased or represents or implies that the seller
22 has sold or leased, whether in California or elsewhere, at least five
23 seller assisted marketing plans within 24 months prior to a
24 solicitation.

25 (2) Intends or represents or implies that the seller intends to sell
26 or lease, whether in California or elsewhere, at least five seller
27 assisted marketing plans within 12 months following a solicitation.

28 For purposes of this title, the seller is the person to whom the
29 purchaser becomes contractually obligated. A "seller" does not
30 include a licensed real estate broker or salesman who engages in
31 the sale or lease of a "business opportunity" as that term is used
32 in Sections 10000 to 10030, inclusive, of the Business and
33 Professions Code, or elsewhere in Chapter 1 (commencing with
34 Section 10000), Chapter 2 (commencing with Section 10050), or
35 Chapter 6 (commencing with Section 10450) of Part 1 of Division
36 4 of the Business and Professions Code.

37 (e) "Purchaser" means a person who is solicited to become
38 obligated or does become obligated on a seller assisted marketing
39 plan contract.

1 (f) “Equipment” includes machines, all electrical devices, video
2 or audio devices, molds, display racks, vending machines, coin
3 operated game machines, machines that dispense products, and
4 display units of all kinds.

5 (g) “Supplies” includes any and all materials used to produce,
6 grow, breed, fabricate, modify, develop, or make any product or
7 item.

8 (h) “Product” includes any tangible chattel, including food or
9 living animals, that the purchaser intends to:

10 (1) Sell or lease.

11 (2) Use to perform a service.

12 (3) Resell or attempt to resell to the seller assisted marketing
13 plan seller.

14 (4) Provide or attempt to provide to the seller assisted marketing
15 plan seller or to any other person whom the seller suggests the
16 purchaser contact so that the seller assisted marketing plan seller
17 or that other person may assist, either directly or indirectly, the
18 purchaser in distributing, selling, leasing, or otherwise disposing
19 of the product.

20 (i) “Services” includes any assistance, guidance, direction, work,
21 labor, or services provided by the seller to initiate or maintain or
22 assist in the initiation or maintenance of a business.

23 (j) “Seller assisted marketing plan contract” or “contract” means
24 any contract or agreement that obligates a purchaser to a seller.

25 (k) “Initial payment” means the total amount a purchaser is
26 obligated to pay to the seller under the terms of the seller assisted
27 marketing plan contract prior to or at the time of delivery of the
28 equipment, supplies, products, or services or within six months of
29 the purchaser commencing operation of the seller assisted
30 marketing plan. If the contract sets forth a specific total sale price
31 for purchase of the seller assisted marketing plan which total price
32 is to be paid partially as a downpayment and then in specific
33 monthly payments, the “initial payment” means the entire total
34 sale price.

35 (l) “Initial cash payment” or “downpayment” means that portion
36 of the initial payment that the purchaser is obligated to pay to the
37 seller prior to or at the time of delivery of equipment, supplies,
38 products, or services. It does not include any amount financed by
39 or for which financing is to be obtained by the seller, or financing
40 that the seller assists in obtaining.

1 (m) “Buy-back” or “secured investment” means any
2 representation that implies in any manner that the purchaser’s
3 initial payment is protected from loss. These terms include a
4 representation or implication of any of the following:

5 (1) That the seller may repurchase either all or part of what it
6 sold to the purchaser.

7 (2) That the seller may at some future time pay the purchaser
8 the difference between what has been earned and the initial
9 payment.

10 (3) That the seller may in the ordinary course buy from the
11 purchaser items made, produced, fabricated, grown, bred, modified,
12 or developed by the purchaser using, in whole or in part, the
13 product, supplies, equipment, or services that were initially sold
14 or leased to the purchaser by the seller.

15 (4) That the seller or a person to whom the seller will refer the
16 purchaser may in the ordinary course sell, lease, or distribute the
17 items the purchaser has for sale or lease.

18 SEC. 6. Section 2923.3 of the Civil Code is amended to read:

19 2923.3. (a) With respect to residential real property containing
20 no more than four dwelling units, a mortgagee, trustee, beneficiary,
21 or authorized agent shall provide to the mortgagor or trustor a copy
22 of the recorded notice of default with an attached separate summary
23 document of the notice of default in English and the languages
24 described in Section 1632, as set forth in subdivision (c), and a
25 copy of the recorded notice of sale with an attached separate
26 summary document of the information required to be contained
27 in the notice of sale in English and the languages described in
28 Section 1632, as set forth in subdivision (d). These summaries are
29 not required to be recorded or published. This subdivision shall
30 become operative on April 1, 2013, or 90 days following the
31 issuance of the translations by the Department of Business
32 Oversight pursuant to subdivision (b), whichever is later.

33 (b) (1) The Department of Business Oversight shall provide a
34 standard translation of the statement in paragraph (1) of subdivision
35 (c), and of the summary of the notice of default, as set forth in
36 paragraph (2) of subdivision (c) in the languages described in
37 Section 1632.

38 (2) The Department of Business Oversight shall provide a
39 standard translation of the statement in paragraph (1) of subdivision

1 (d), and of the summary of the notice of sale, as set forth in
2 paragraph (2) of subdivision (d).

3 (3) The department shall make the translations described in
4 paragraphs (1) and (2) available without charge on its Internet Web
5 site. Any mortgagee, trustee, beneficiary, or authorized agent who
6 provides the department’s translations in the manner prescribed
7 by this section shall be in compliance with this section.

8 (c) (1) The following statement shall appear in the languages
9 described in Section 1632 at the beginning of the notice of default:

10

11 NOTE: THERE IS A SUMMARY OF THE INFORMATION
12 IN THIS DOCUMENT ATTACHED.

13

14 (2) The following summary of key information shall be attached
15 to the copy of the notice of default provided to the mortgagor or
16 trustor:

17

18

SUMMARY OF KEY INFORMATION

19 The attached notice of default was sent to [name of the trustor],
20 in relation to [description of the property that secures the mortgage
21 or deed of trust in default]. This property may be sold to satisfy
22 your obligation and any other obligation secured by the deed of
23 trust or mortgage that is in default. [Trustor] has, as described in
24 the notice of default, breached the mortgage or deed of trust on
25 the property described above.

26 IMPORTANT NOTICE: IF YOUR PROPERTY IS IN
27 FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR
28 PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT
29 ACTION, and you may have the legal right to bring your account
30 in good standing by paying all of your past due payments plus
31 permitted costs and expenses within the time permitted by law for
32 reinstatement of your account, which is normally five business
33 days prior to the date set for the sale of your property. No sale date
34 may be set until approximately 90 days from the date the attached
35 notice of default may be recorded (which date of recordation
36 appears on the notice).

37 This amount is _____ as of ___ (date) _____ and
38 will increase until your account becomes current.

39 While your property is in foreclosure, you still must pay other
40 obligations (such as insurance and taxes) required by your note

1 and deed of trust or mortgage. If you fail to make future payments
 2 on the loan, pay taxes on the property, provide insurance on the
 3 property, or pay other obligations as required in the note and deed
 4 of trust or mortgage, the beneficiary or mortgagee may insist that
 5 you do so in order to reinstate your account in good standing. In
 6 addition, the beneficiary or mortgagee may require as a condition
 7 to reinstatement that you provide reliable written evidence that
 8 you paid all senior liens, property taxes, and hazard insurance
 9 premiums.

10 Upon your written request, the beneficiary or mortgagee will
 11 give you a written itemization of the entire amount you must pay.
 12 You may not have to pay the entire unpaid portion of your account,
 13 even though full payment was demanded, but you must pay all
 14 amounts in default at the time payment is made. However, you
 15 and your beneficiary or mortgagee may mutually agree in writing
 16 prior to the time the notice of sale is posted (which may not be
 17 earlier than three months after this notice of default is recorded)
 18 to, among other things, (1) provide additional time in which to
 19 cure the default by transfer of the property or otherwise; or (2)
 20 establish a schedule of payments in order to cure your default; or
 21 both (1) and (2).

22 Following the expiration of the time period referred to in the
 23 first paragraph of this notice, unless the obligation being foreclosed
 24 upon or a separate written agreement between you and your creditor
 25 permits a longer period, you have only the legal right to stop the
 26 sale of your property by paying the entire amount demanded by
 27 your creditor.

28 To find out the amount you must pay, or to arrange for payment
 29 to stop the foreclosure, or if your property is in foreclosure for any
 30 other reason, contact:

- 31 _____
 32 (Name of beneficiary or mortgagee)
- 33 _____
 34 (Mailing address)
- 35 _____
 36 (Telephone)

37 If you have any questions, you should contact a lawyer or the
 38 governmental agency which may have insured your loan.

1 Notwithstanding the fact that your property is in foreclosure,
2 you may offer your property for sale, provided the sale is concluded
3 prior to the conclusion of the foreclosure.

4 Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO
5 NOT TAKE PROMPT ACTION.

6 If you would like additional copies of this summary, you may
7 obtain them by calling [insert telephone number].

8 (d) (1) The following statement shall appear in the languages
9 described in Section 1632 at the beginning of the notice of sale:

10

11 NOTE: THERE IS A SUMMARY OF THE INFORMATION
12 IN THIS DOCUMENT ATTACHED.

13

14 (2) The following summary of key information shall be attached
15 to the copy of the notice of sale provided to the mortgagor or
16 trustor:

17

18 SUMMARY OF KEY INFORMATION

19 The attached notice of sale was sent to [trustor], in relation to
20 [description of the property that secures the mortgage or deed of
21 trust in default].

22 YOU ARE IN DEFAULT UNDER A (Deed of trust or
23 mortgage) DATED _____. UNLESS YOU TAKE ACTION TO
24 PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A
25 PUBLIC SALE.

26 IF YOU NEED AN EXPLANATION OF THE NATURE OF
27 THE PROCEEDING AGAINST YOU, YOU SHOULD
28 CONTACT A LAWYER.

29 The total amount due in the notice of sale is _____.

30 Your property is scheduled to be sold on [insert date and time
31 of sale] at [insert location of sale].

32 However, the sale date shown on the attached notice of sale may
33 be postponed one or more times by the mortgagee, beneficiary,
34 trustee, or a court, pursuant to Section 2924g of the California
35 Civil Code. The law requires that information about trustee sale
36 postponements be made available to you and to the public, as a
37 courtesy to those not present at the sale. If you wish to learn
38 whether your sale date has been postponed, and, if applicable, the
39 rescheduled time and date for the sale of this property, you may
40 call [telephone number for information regarding the trustee's sale]

1 or visit this Internet Web site [Internet Web site address for
 2 information regarding the sale of this property], using the file
 3 number assigned to this case [case file number]. Information about
 4 postponements that are very short in duration or that occur close
 5 in time to the scheduled sale may not immediately be reflected in
 6 the telephone information or on the Internet Web site. The best
 7 way to verify postponement information is to attend the scheduled
 8 sale.

9 If you would like additional copies of this summary, you may
 10 obtain them by calling [insert telephone number].

11 (e) Failure to provide these summaries to the mortgagor or
 12 trustor shall have the same effect as if the notice of default or notice
 13 of sale were incomplete or not provided.

14 (f) This section sets forth a requirement for translation in
 15 languages other than English, and a document complying with the
 16 provisions of this section may be recorded pursuant to subdivision
 17 (b) of Section 27293 of the Government Code. A document that
 18 complies with this section shall not be rejected for recordation on
 19 the ground that some part of the document is in a language other
 20 than English.

21
 22 SEC. 7. Section 1101.1 of the Corporations Code is amended
 23 to read:

24 1101.1. Subdivision (c) of Section 1113 and subdivision (b)
 25 of Section 1101 do not apply to any transaction if the
 26 Commissioner of Business Oversight, the Insurance Commissioner
 27 or, the Public Utilities Commission has approved the terms and
 28 conditions of the transaction and the fairness of those terms and
 29 conditions pursuant to Section 25142 or Section 1209, 5750, or
 30 5802 of the Financial Code, Section 838.5 of the Insurance Code,
 31 or Section 822 of the Public Utilities Code.

32 SEC. 8. Section 2207 of the Corporations Code is amended to
 33 read:

34 2207. (a) A corporation is liable for a civil penalty in an
 35 amount not exceeding one million dollars (\$1,000,000) if the
 36 corporation does both of the following:

37 (1) Has actual knowledge that an officer, director, manager, or
 38 agent of the corporation does any of the following:

1 (A) Makes, publishes, or posts, or has made, published, or
2 posted, either generally or privately to the shareholders or other
3 persons, either of the following:

4 (i) An oral, written, or electronically transmitted report, exhibit,
5 notice, or statement of its affairs or pecuniary condition that
6 contains a material statement or omission that is false and intended
7 to give the shares of stock in the corporation a materially greater
8 or a materially less apparent market value than they really possess.

9 (ii) An oral, written, or electronically transmitted report,
10 prospectus, account, or statement of operations, values, business,
11 profits, or expenditures, that includes a material false statement or
12 omission intended to give the shares of stock in the corporation a
13 materially greater or a materially less apparent market value than
14 they really possess.

15 (B) Refuses or has refused to make any book entry or post any
16 notice required by law in the manner required by law.

17 (C) Misstates or conceals or has misstated or concealed from a
18 regulatory body a material fact in order to deceive a regulatory
19 body to avoid a statutory or regulatory duty, or to avoid a statutory
20 or regulatory limit or prohibition.

21 (2) Within 30 days after actual knowledge is acquired of the
22 actions described in paragraph (1), the corporation knowingly fails
23 to do both of the following:

24 (A) Notify the Attorney General or appropriate government
25 agency in writing, unless the corporation has actual knowledge
26 that the Attorney General or appropriate government agency has
27 been notified.

28 (B) Notify its shareholders in writing, unless the corporation
29 has actual knowledge that the shareholders have been notified.

30 (b) The requirement for notification under this section is not
31 applicable if the action taken or about to be taken by the
32 corporation, or by an officer, director, manager, or agent of the
33 corporation under paragraph (1) of subdivision (a), is abated within
34 the time prescribed for reporting, unless the appropriate
35 government agency requires disclosure by regulation.

36 (c) If the action reported to the Attorney General pursuant to
37 this section implicates the government authority of an agency other
38 than the Attorney General, the Attorney General shall promptly
39 forward the written notice to that agency.

1 (d) If the Attorney General was not notified pursuant to
2 subparagraph (A) of paragraph (2) of subdivision (a), but the
3 corporation reasonably and in good faith believed that it had
4 complied with the notification requirements of this section by
5 notifying a government agency listed in paragraph (5) of
6 subdivision (e), no penalties shall apply.

7 (e) For purposes of this section:

8 (1) “Manager” means a person having both of the following:

9 (A) Management authority over a business entity.

10 (B) Significant responsibility for an aspect of a business that
11 includes actual authority for the financial operations or financial
12 transactions of the business.

13 (2) “Agent” means a person or entity authorized by the
14 corporation to make representations to the public about the
15 corporation’s financial condition and who is acting within the
16 scope of the agency when the representations are made.

17 (3) “Shareholder” means a person or entity that is a shareholder
18 of the corporation at the time the disclosure is required pursuant
19 to subparagraph (B) of paragraph (2) of subdivision (a).

20 (4) “Notify its shareholders” means to give sufficient description
21 of an action taken or about to be taken that would constitute acts
22 or omissions as described in paragraph (1) of subdivision (a). A
23 notice or report filed by a corporation with the United States
24 Securities and Exchange Commission that relates to the facts and
25 circumstances giving rise to an obligation under paragraph (1) of
26 subdivision (a) shall satisfy all notice requirements arising under
27 paragraph (2) of subdivision (a), but shall not be the exclusive
28 means of satisfying the notice requirements, provided that the
29 Attorney General or appropriate agency is informed in writing that
30 the filing has been made together with a copy of the filing or an
31 electronic link where it is available online without charge.

32 (5) “Appropriate government agency” means an agency on the
33 following list that has regulatory authority with respect to the
34 financial operations of a corporation:

35 (A) Department of Business Oversight.

36 (B) Department of Insurance.

37 (C) Department of Managed Health Care.

38 (D) United States Securities and Exchange Commission.

39 (6) “Actual knowledge of the corporation” means the knowledge
40 an officer or director of a corporation actually possesses or does

1 not consciously avoid possessing, based on an evaluation of
2 information provided pursuant to the corporation’s disclosure
3 controls and procedures.

4 (7) “Refuse to make a book entry” means the intentional decision
5 not to record an accounting transaction when all of the following
6 conditions are satisfied:

7 (A) The independent auditors required recordation of an
8 accounting transaction during the course of an audit.

9 (B) The audit committee of the corporation has not approved
10 the independent auditor’s recommendation.

11 (C) The decision is made for the primary purpose of rendering
12 the financial statements materially false or misleading.

13 (8) “Refuse to post any notice required by law” means an
14 intentional decision not to post a notice required by law when all
15 of the following conditions exist:

16 (A) The decision not to post the notice has not been approved
17 by the corporation’s audit committee.

18 (B) The decision is intended to give the shares of stock in the
19 corporation a materially greater or a materially less apparent market
20 value than they really possess.

21 (9) “Misstate or conceal material facts from a regulatory body”
22 means an intentional decision not to disclose material facts when
23 all of the following conditions exist:

24 (A) The decision not to disclose material facts has not been
25 approved by the corporation’s audit committee.

26 (B) The decision is intended to give the shares of stock in the
27 corporation a materially greater or a materially less apparent market
28 value than they really possess.

29 (10) “Material false statement or omission” means an untrue
30 statement of material fact or an omission to state a material fact
31 necessary in order to make the statements made under the
32 circumstances under which they were made not misleading.

33 (11) “Officer” means any person as set forth in Rule 16A-1
34 promulgated under the Securities Exchange Act of 1934 or any
35 successor regulation thereto, except an officer of a subsidiary
36 corporation who is not also an officer of the parent corporation.

37 (f) This section only applies to corporations that are issuers, as
38 defined in Section 2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
39 Sec. 7201 and following).

1 (g) An action to enforce this section may only be brought by
2 the Attorney General or a district attorney or city attorney in the
3 name of the people of the State of California.

4 SEC. 9. Section 2510 of the Corporations Code is amended to
5 read:

6 2510. “Social purpose corporation subject to the Banking Law”
7 means any of the following:

8 (a) A social purpose corporation that, with the approval of the
9 Commissioner of Business Oversight, is incorporated for the
10 purpose of engaging in, or that is authorized by the Commissioner
11 of Business Oversight to engage in, the commercial banking
12 business under the Banking Law (Division 1 (commencing with
13 Section 99) of the Financial Code).

14 (b) Any social purpose corporation that, with the approval of
15 the Commissioner of Business Oversight, is incorporated for the
16 purpose of engaging in, or that is authorized by the Commissioner
17 of Business Oversight to engage in, the industrial banking business
18 under the Banking Law (Division 1 (commencing with Section
19 99) of the Financial Code).

20 (c) Any social purpose corporation, other than a social purpose
21 corporation described in subdivision (d), that, with the approval
22 of the Commissioner of Business Oversight, is incorporated for
23 the purpose of engaging in, or that is authorized by the
24 Commissioner of Business Oversight to engage in, the trust
25 business under the Banking Law (Division 1 (commencing with
26 Section 99) of the Financial Code).

27 (d) Any social purpose corporation that is authorized by the
28 Commissioner of Business Oversight and the Commissioner of
29 Insurance to maintain a title insurance department to engage in
30 title insurance business and a trust department to engage in trust
31 business.

32 (e) Any social purpose corporation that, with the approval of
33 the Commissioner of Business Oversight, is incorporated for the
34 purpose of engaging in, or that is authorized by the Commissioner
35 of Business Oversight to engage in, business under Article 1
36 (commencing with Section 3500) of Chapter 19 of Division 1 of
37 the Financial Code.

38 SEC. 10. Section 3100 of the Corporations Code is amended
39 to read:

1 3100. (a) A social purpose corporation may sell, lease, convey,
2 exchange, transfer, or otherwise dispose of all or substantially all
3 of its assets when the principal terms of the transaction are
4 approved by the board and are approved by an affirmative vote of
5 at least two-thirds of the outstanding shares of each class, or a
6 greater vote if required in the articles, regardless of whether that
7 class is entitled to vote thereon by the provisions of the articles,
8 either before or after approval by the board and before the
9 transaction. A transaction constituting a reorganization shall be
10 subject to Chapter 12 (commencing with Section 1200) of Division
11 1 and Chapter 10 (commencing with Section 3400) of this division
12 and shall not be subject to this section, other than subdivision (d).
13 A transaction constituting a conversion shall be subject to Chapter
14 11.5 (commencing with Section 1150) of Division 1 and Chapter
15 9 (commencing with Section 3300) of this division and shall not
16 be subject to this section.

17 (b) Notwithstanding approval of two-thirds of the outstanding
18 shares, the board may abandon the proposed transaction without
19 further action by the shareholders, subject to the contractual rights,
20 if any, of third parties.

21 (c) The sale, lease, conveyance, exchange, transfer, or other
22 disposition may be made upon those terms and conditions and for
23 that consideration as the board may deem in the best interests of
24 the social purpose corporation. The consideration may be money,
25 securities, or other property.

26 (d) If the acquiring party in a transaction pursuant to subdivision
27 (a) or subdivision (g) of Section 2001 is in control of or under
28 common control with the disposing social purpose corporation,
29 the principal terms of the sale shall be approved by at least 90
30 percent of the voting power of the disposing social purpose
31 corporation unless the disposition is to a domestic or foreign other
32 business entity or social purpose corporation, the articles of
33 incorporation of which specify materially the same purposes, in
34 consideration of the nonredeemable common shares or
35 nonredeemable equity securities of the acquiring party or its parent.

36 (e) Subdivision (d) shall not apply to a transaction if the
37 Commissioner of Business Oversight, the Insurance Commissioner,
38 or the Public Utilities Commission has approved the terms and
39 conditions of the transaction and the fairness of those terms and
40 conditions pursuant to Section 25142, Section 1209 of the Financial

1 Code, Section 838.5 of the Insurance Code, or Section 822 of the
2 Public Utilities Code.

3 SEC. 11. Section 17713.12 of the Corporations Code is
4 amended to read:

5 17713.12. (a) A limited liability company is liable for a civil
6 penalty in an amount not exceeding one million dollars
7 (\$1,000,000) if the limited liability company does both of the
8 following:

9 (1) Has actual knowledge that a member, officer, manager, or
10 agent of the limited liability company does any of the following:

11 (A) Makes, publishes, or posts, or has made, published, or
12 posted, either generally or privately to the shareholders or other
13 persons, either of the following:

14 (i) An oral, written, or electronically transmitted report, exhibit,
15 notice, or statement of its affairs or pecuniary condition that
16 contains a material statement or omission that is false and intended
17 to give membership shares in the limited liability company a
18 materially greater or a materially less apparent market value than
19 they really possess.

20 (ii) An oral, written, or electronically transmitted report,
21 prospectus, account, or statement of operations, values, business,
22 profits, or expenditures that includes a material false statement or
23 omission intended to give membership shares in the limited liability
24 company a materially greater or a materially less apparent market
25 value than they really possess.

26 (B) Refuses or has refused to make any book entry or post any
27 notice required by law in the manner required by law.

28 (C) Misstates or conceals or has misstated or concealed from a
29 regulatory body a material fact in order to deceive a regulatory
30 body to avoid a statutory or regulatory duty, or to avoid a statutory
31 or regulatory limit or prohibition.

32 (2) Within 30 days after actual knowledge is acquired of the
33 actions described in paragraph (1), the limited liability company
34 knowingly fails to do both of the following:

35 (A) Notify the Attorney General or appropriate government
36 agency in writing, unless the limited liability company has actual
37 knowledge that the Attorney General or appropriate government
38 agency has been notified.

1 (B) Notify its members and investors in writing, unless the
2 limited liability company has actual knowledge that the members
3 and investors have been notified.

4 (b) The requirement for notification under this section is not
5 applicable if the action taken or about to be taken by the limited
6 liability company, or by a member, officer, manager, or agent of
7 the limited liability company under paragraph (1) of subdivision
8 (a), is abated within the time prescribed for reporting, unless the
9 appropriate government agency requires disclosure by regulation.

10 (c) If the action reported to the Attorney General pursuant to
11 this section implicates the government authority of an agency other
12 than the Attorney General, the Attorney General shall promptly
13 forward the written notice to that agency.

14 (d) If the Attorney General was not notified pursuant to
15 subparagraph (A) of paragraph (2) of subdivision (a), but the
16 limited liability company reasonably and in good faith believed
17 that it had complied with the notification requirements of this
18 section by notifying a government agency listed in paragraph (5)
19 of subdivision (e), no penalties shall apply.

20 (e) For purposes of this section:

21 (1) “Manager” means a person defined by subdivision (m) of
22 Section 17701.01 having both of the following:

23 (A) Management authority over the limited liability company.

24 (B) Significant responsibility for an aspect of the limited liability
25 company that includes actual authority for the financial operations
26 or financial transactions of the limited liability company.

27 (2) “Agent” means a person or entity authorized by the limited
28 liability company to make representations to the public about the
29 limited liability company’s financial condition and who is acting
30 within the scope of the agency when the representations are made.

31 (3) “Member” means a person as defined by subdivision (o) of
32 Section 17701.01 that is a member of the limited liability company
33 at the time the disclosure is required pursuant to subparagraph (B)
34 of paragraph (2) of subdivision (a).

35 (4) “Notify its members” means to give sufficient description
36 of an action taken or about to be taken that would constitute acts
37 or omissions as described in paragraph (1) of subdivision (a). A
38 notice or report filed by a limited liability company with the United
39 States Securities and Exchange Commission that relates to the
40 facts and circumstances giving rise to an obligation under

1 paragraph (1) of subdivision (a) shall satisfy all notice requirements
2 arising under paragraph (2) of subdivision (a) but shall not be the
3 exclusive means of satisfying the notice requirements, provided
4 that the Attorney General or appropriate agency is informed in
5 writing that the filing has been made together with a copy of the
6 filing or an electronic link where it is available online without
7 charge.

8 (5) “Appropriate government agency” means an agency on the
9 following list that has regulatory authority with respect to the
10 financial operations of a limited liability company:

11 (A) Department of Business Oversight.

12 (B) Department of Insurance.

13 (C) Department of Managed Health Care.

14 (D) United States Securities and Exchange Commission.

15 (6) “Actual knowledge of the limited liability company” means
16 the knowledge a member, officer, or manager of a limited liability
17 company actually possesses or does not consciously avoid
18 possessing, based on an evaluation of information provided
19 pursuant to the limited liability company’s disclosure controls and
20 procedures.

21 (7) “Refuse to make a book entry” means the intentional decision
22 not to record an accounting transaction when all of the following
23 conditions are satisfied:

24 (A) The independent auditors required recordation of an
25 accounting transaction during the course of an audit.

26 (B) The audit committee of the limited liability company has
27 not approved the independent auditor’s recommendation.

28 (C) The decision is made for the primary purpose of rendering
29 the financial statements materially false or misleading.

30 (8) “Refuse to post any notice required by law” means an
31 intentional decision not to post a notice required by law when all
32 of the following conditions exist:

33 (A) The decision not to post the notice has not been approved
34 by the limited liability company’s audit committee.

35 (B) The decision is intended to give the membership shares in
36 the limited liability company a materially greater or a materially
37 less apparent market value than they really possess.

38 (9) “Misstate or conceal material facts from a regulatory body”
39 means an intentional decision not to disclose material facts when
40 all of the following conditions exist:

1 (A) The decision not to disclose material facts has not been
2 approved by the limited liability company’s audit committee.

3 (B) The decision is intended to give the membership shares in
4 the limited liability company a materially greater or a materially
5 less apparent market value than they really possess.

6 (10) “Material false statement or omission” means an untrue
7 statement of material fact or an omission to state a material fact
8 necessary in order to make the statements made under the
9 circumstances under which they were made not misleading.

10 (11) “Officer” means a person appointed pursuant to Section
11 17703.02, except an officer of a specified subsidiary limited
12 liability company who is not also an officer of the parent limited
13 liability company.

14 (f) This section only applies to limited liability companies that
15 are issuers, as defined in Section 2 of the federal Sarbanes-Oxley
16 Act of 2002 (15 U.S.C. Sec. 7201 et seq.).

17 (g) An action to enforce this section may only be brought by
18 the Attorney General or a district attorney or city attorney in the
19 name of the people of the State of California.

20 *SEC. 12. Section 25003 of the Corporations Code is amended*
21 *to read:*

22 25003. (a) “Agent” means any individual, other than a
23 broker-dealer or a partner of a licensed broker-dealer, who
24 represents a broker-dealer or who for compensation represents an
25 issuer in effecting or attempting to effect purchases or sales of
26 securities in this state.

27 (b) “Agent” does not include an individual who only represents
28 an issuer in effecting transactions in securities exempted by
29 subdivision (a), (b), (e), (f), (g), (j), (k) or (l) of Section 25100 or
30 in effecting transactions exempted by Section 25102, and does not
31 include an individual who has no place of business in this state if
32 he or she effects transactions in this state exclusively with
33 broker-dealers.

34 (c) “Agent” does not include an associated person of a broker
35 or dealer effecting transactions described in Section ~~15(h)(3)~~
36 *15(i)(4)* of the Securities Exchange Act of 1934, subject to the
37 provisions of Section ~~15(h)(2)~~ *15(i)(3)* of that act.

38 (d) An officer or director of a broker-dealer or issuer, or an
39 individual occupying a similar status or performing similar
40 functions, is an agent only if he otherwise comes within this

1 definition and receives compensation specifically related to
2 purchases or sales of securities.

3 *SEC. 13. Section 25018 of the Corporations Code is amended*
4 *to read:*

5 25018. “Securities Act of 1933,” “Securities Exchange Act of
6 1934,” ~~“Public Utility Holding Company Act of 1935,”~~
7 “Investment Advisers Act of 1940,” and “Investment Company
8 Act of 1940” mean the federal statutes of those names as amended
9 before or after the effective date of this law.

10 *SEC. 14. Section 25100 of the Corporations Code is amended*
11 *to read:*

12 25100. The following securities are exempted from Sections
13 25110, 25120, and 25130:

14 (a) Any security (including a revenue obligation) issued or
15 guaranteed by the United States, any state, any city, county, city
16 and county, public district, public authority, public corporation,
17 public entity, or political subdivision of a state or any agency or
18 corporate or other instrumentality of any one or more of the
19 foregoing; or any certificate of deposit for any of the foregoing.

20 (b) Any security issued or guaranteed by Canada, any Canadian
21 province, any political subdivision or municipality of that province,
22 or by any other foreign government with which the United States
23 currently maintains diplomatic relations, if the security is
24 recognized as a valid obligation by the issuer or guarantor; or any
25 certificate of deposit for any of the foregoing.

26 (c) Any security issued or guaranteed by and representing an
27 interest in or a direct obligation of a national bank or a bank or
28 trust company incorporated under the laws of this state, and any
29 security issued by a bank to one or more other banks and
30 representing an interest in an asset of the issuing bank.

31 (d) Any security issued or guaranteed by a federal savings
32 association or federal savings bank or federal land bank or joint
33 land bank or national farm loan association or by any savings
34 association, as defined in subdivision (a) of Section 5102 of the
35 Financial Code, which is subject to the supervision and regulation
36 of the Commissioner of Financial Institutions of this state.

37 (e) Any security (other than an interest in all or portions of a
38 parcel or parcels of real property which are subdivided land or a
39 subdivision or in a real estate development), the issuance of which
40 is subject to authorization by the Insurance Commissioner, the

1 Public Utilities Commission, or the Real Estate Commissioner of
2 this state.

3 (f) Any security consisting of any interest in all or portions of
4 a parcel or parcels of real property which are subdivided lands or
5 a subdivision or in a real estate development; provided that the
6 exemption in this subdivision shall not be applicable to: (1) any
7 investment contract sold or offered for sale with, or as part of, that
8 interest, or (2) any person engaged in the business of selling,
9 distributing, or supplying water for irrigation purposes or domestic
10 use that is not a public utility except that the exemption is
11 applicable to any security of a mutual water company (other than
12 an investment contract as described in paragraph (1)) offered or
13 sold in connection with subdivided lands pursuant to Chapter 2
14 (commencing with Section 14310) of Part 7 of Division 3 of Title
15 1.

16 (g) Any mutual capital certificates or savings accounts, as
17 defined in the Savings Association Law, issued by a savings
18 association, as defined by subdivision (a) of Section 5102 of the
19 Financial Code, and holding a license or certificate of authority
20 then in force from the Commissioner of Financial Institutions of
21 this state.

22 (h) Any security issued or guaranteed by any federal credit
23 union, or by any credit union organized and supervised, or
24 regulated, under the Credit Union Law.

25 (i) Any security issued or guaranteed by any railroad, other
26 common carrier, public utility, or public utility holding company
27 ~~which is (1) subject to the jurisdiction of the Interstate Commerce~~
28 ~~Commission or its successor or (2) a holding company registered~~
29 ~~with the Securities and Exchange Commission under the Public~~
30 ~~Utility Holding Company Act of 1935 or a subsidiary of that~~
31 ~~company within the meaning of that act~~ *subject to jurisdiction of*
32 *the Federal Energy Regulatory Commission under the Public*
33 *Utility Holding Company Act of 2005* ~~or (3) regulated in respect~~
34 ~~to its rates and charges by the United States or a state or (2)~~
35 regulated in respect of the issuance or guarantee of the security by
36 a governmental authority of the United States, of any state, of
37 Canada or of any Canadian province; and the security is subject
38 to registration with or authorization of issuance by that authority.

39 (j) Any security (except evidences of indebtedness, whether
40 interest bearing or not) of an issuer (1) organized exclusively for

1 educational, benevolent, fraternal, religious, charitable, social, or
2 reformatory purposes and not for pecuniary profit, if no part of the
3 net earnings of the issuer inures to the benefit of any private
4 shareholder or individual, or (2) organized as a chamber of
5 commerce or trade or professional association. The fact that
6 amounts received from memberships or dues or both will or may
7 be used to construct or otherwise acquire facilities for use by
8 members of the nonprofit organization does not disqualify the
9 organization for this exemption. This exemption does not apply
10 to the securities of any nonprofit organization if any promoter
11 thereof expects or intends to make a profit directly or indirectly
12 from any business or activity associated with the organization or
13 operation of that nonprofit organization or from remuneration
14 received from that nonprofit organization.

15 (k) Any agreement, commonly known as a “life income
16 contract,” of an issuer (1) organized exclusively for educational,
17 benevolent, fraternal, religious, charitable, social, or reformatory
18 purposes and not for pecuniary profit and (2) which the
19 commissioner designates by rule or order, with a donor in
20 consideration of a donation of property to that issuer and providing
21 for the payment to the donor or persons designated by him or her
22 of income or specified periodic payments from the donated
23 property or other property for the life of the donor or those other
24 persons.

25 (l) Any note, draft, bill of exchange, or banker’s acceptance
26 which is freely transferable and of prime quality, arises out of a
27 current transaction or the proceeds of which have been or are to
28 be used for current transactions, and which evidences an obligation
29 to pay cash within nine months of the date of issuance, exclusive
30 of days of grace, or any renewal of that paper which is likewise
31 limited, or any guarantee of that paper or of that renewal, provided
32 that the paper is not offered to the public in amounts of less than
33 twenty-five thousand dollars (\$25,000) in the aggregate to any one
34 purchaser. In addition, the commissioner may, by rule or order,
35 exempt any issuer of any notes, drafts, bills of exchange or banker’s
36 acceptances from qualification of those securities when the
37 commissioner finds that the qualification is not necessary or
38 appropriate in the public interest or for the protection of investors.

1 (m) Any security issued by any corporation organized and
2 existing under the provisions of Chapter 1 (commencing with
3 Section 54001) of Division 20 of the Food and Agricultural Code.

4 (n) Any beneficial interest in an employees' pension,
5 profit-sharing, stock bonus or similar benefit plan which meets the
6 requirements for qualification under Section 401 of the federal
7 Internal Revenue Code or any statute amendatory thereof or
8 supplementary thereto. A determination letter from the Internal
9 Revenue Service stating that an employees' pension, profit-sharing,
10 stock bonus or similar benefit plan meets those requirements shall
11 be conclusive evidence that the plan is an employees' pension,
12 profit-sharing, stock bonus or similar benefit plan within the
13 meaning of the first sentence of this subdivision until the date the
14 determination letter is revoked in writing by the Internal Revenue
15 Service, regardless of whether or not the revocation is retroactive.

16 (o) Any security listed or approved for listing upon notice of
17 issuance on a national securities exchange, if the exchange has
18 been certified by rule or order of the commissioner and any warrant
19 or right to purchase or subscribe to the security. The exemption
20 afforded by this subdivision does not apply to securities listed or
21 approved for listing upon notice of issuance on a national securities
22 exchange, in a rollup transaction unless the rollup transaction is
23 an eligible rollup transaction as defined in Section 25014.7.

24 That certification of any exchange shall be made by the
25 commissioner upon the written request of the exchange if the
26 commissioner finds that the exchange, in acting on applications
27 for listing of common stock, substantially applies the minimum
28 standards set forth in either subparagraph (A) or (B) of paragraph
29 (1), and, in considering suspension or removal from listing,
30 substantially applies each of the criteria set forth in paragraph (2).

31 (1) Listing standards:

32 (A) (i) Shareholders' equity of at least four million dollars
33 (\$4,000,000).

34 (ii) Pretax income of at least seven hundred fifty thousand
35 dollars (\$750,000) in the issuer's last fiscal year or in two of its
36 last three fiscal years.

37 (iii) Minimum public distribution of 500,000 shares (exclusive
38 of the holdings of officers, directors, controlling shareholders, and
39 other concentrated or family holdings), together with a minimum
40 of 800 public holders or minimum public distribution of 1,000,000

1 shares together with a minimum of 400 public holders. The
2 exchange may also consider the listing of a company's securities
3 if the company has a minimum of 500,000 shares publicly held, a
4 minimum of 400 shareholders and daily trading volume in the
5 issue has been approximately 2,000 shares or more for the six
6 months preceding the date of application. In evaluating the
7 suitability of an issue for listing under this trading provision, the
8 exchange shall review the nature and frequency of that activity
9 and any other factors as it may determine to be relevant in
10 ascertaining whether the issue is suitable for trading. A security
11 that trades infrequently shall not be considered for listing under
12 this paragraph even though average daily volume amounts to 2,000
13 shares per day or more.

14 Companies whose securities are concentrated in a limited
15 geographical area, or whose securities are largely held in block by
16 institutional investors, normally may not be considered eligible
17 for listing unless the public distribution appreciably exceeds
18 500,000 shares.

19 (iv) Minimum price of three dollars (\$3) per share for a
20 reasonable period of time prior to the filing of a listing application;
21 provided, however, in certain instances an exchange may favorably
22 consider listing an issue selling for less than three dollars (\$3) per
23 share after considering all pertinent factors, including market
24 conditions in general, whether historically the issue has sold above
25 three dollars (\$3) per share, the applicant's capitalization, and the
26 number of outstanding and publicly held shares of the issue.

27 (v) An aggregate market value for publicly held shares of at
28 least three million dollars (\$3,000,000).

29 (B) (i) Shareholders' equity of at least four million dollars
30 (\$4,000,000).

31 (ii) Minimum public distribution set forth in clause (iii) of
32 subparagraph (A) of paragraph (1).

33 (iii) Operating history of at least three years.

34 (iv) An aggregate market value for publicly held shares of at
35 least fifteen million dollars (\$15,000,000).

36 (2) Criteria for consideration of suspension or removal from
37 listing:

38 (i) If a company that (A) has shareholders' equity of less than
39 one million dollars (\$1,000,000) has sustained net losses in each
40 of its two most recent fiscal years, or (B) has net tangible assets

1 of less than three million dollars (\$3,000,000) and has sustained
2 net losses in three of its four most recent fiscal years.

3 (ii) If the number of shares publicly held (excluding the holdings
4 of officers, directors, controlling shareholders and other
5 concentrated or family holdings) is less than 150,000.

6 (iii) If the total number of shareholders is less than 400 or if the
7 number of shareholders of lots of 100 shares or more is less than
8 300.

9 (iv) If the aggregate market value of shares publicly held is less
10 than seven hundred fifty thousand dollars (\$750,000).

11 (v) If shares of common stock sell at a price of less than three
12 dollars (\$3) per share for a substantial period of time and the issuer
13 shall fail to effectuate a reverse stock split of the shares within a
14 reasonable period of time after being requested by the exchange
15 to take that action.

16 A national securities exchange, certified by rule or order of the
17 commissioner under this subdivision, shall file annual reports when
18 requested to do so by the commissioner. The annual reports shall
19 contain, by issuer: the variances granted to an exchange's listing
20 standards, including variances from corporate governance and
21 voting rights' standards, for any security of that issuer; the reasons
22 for the variances; a discussion of the review procedure instituted
23 by the exchange to determine the effect of the variances on
24 investors and whether the variances should be continued; and any
25 other information that the commissioner deems relevant. The
26 purpose of these reports is to assist the commissioner in
27 determining whether the quantitative and qualitative requirements
28 of this subdivision are substantially being met by the exchange in
29 general or with regard to any particular security.

30 The commissioner after appropriate notice and opportunity for
31 hearing in accordance with the provisions of the Administrative
32 Procedure Act, Chapter 5 (commencing with Section 11500) of
33 Part 1 of Division 3 of Title 2 of the Government Code, may, in
34 his or her discretion, by rule or order, decertify any exchange
35 previously certified that ceases substantially to apply the minimum
36 standards or criteria as set forth in paragraphs (1) and (2).

37 A rule or order of certification shall conclusively establish that
38 any security listed or approved for listing upon notice of issuance
39 on any exchange named in a rule or order of certification, and any
40 warrant or right to purchase or subscribe to that security, is exempt

1 under this subdivision until the adoption by the commissioner of
2 any rule or order decertifying the exchange.

3 (p) A promissory note secured by a lien on real property, which
4 is neither one of a series of notes of equal priority secured by
5 interests in the same real property nor a note in which beneficial
6 interests are sold to more than one person or entity.

7 (q) Any unincorporated interindemnity or reciprocal or
8 interinsurance contract, that qualifies under the provisions of
9 Section 1280.7 of the Insurance Code, between members of a
10 cooperative corporation, organized and operating under Part 2
11 (commencing with Section 12200) of Division 3 of Title 1, and
12 whose members consist only of physicians and surgeons licensed
13 in California, which contracts indemnify solely in respect to
14 medical malpractice claims against the members, and which do
15 not collect in advance of loss any moneys other than contributions
16 by each member to a collective reserve trust fund or for necessary
17 expenses of administration.

18 (1) Whenever it appears to the commissioner that any person
19 has engaged or is about to engage in any act or practice constituting
20 a violation of any provision of Section 1280.7 of the Insurance
21 Code, the commissioner may, in the commissioner's discretion,
22 bring an action in the name of the people of the State of California
23 in the superior court to enjoin the acts or practices or to enforce
24 compliance with Section 1280.7 of the Insurance Code. Upon a
25 proper showing a permanent or preliminary injunction, a restraining
26 order, or a writ of mandate shall be granted and a receiver or
27 conservator may be appointed for the defendant or the defendant's
28 assets.

29 (2) The commissioner may, in the commissioner's discretion,
30 (A) make public or private investigations within or outside of this
31 state as the commissioner deems necessary to determine whether
32 any person has violated or is about to violate any provision of
33 Section 1280.7 of the Insurance Code or to aid in the enforcement
34 of Section 1280.7, and (B) publish information concerning the
35 violation of Section 1280.7.

36 (3) For the purpose of any investigation or proceeding under
37 this section, the commissioner or any officer designated by the
38 commissioner may administer oaths and affirmations, subpoena
39 witnesses, compel their attendance, take evidence, and require the
40 production of any books, papers, correspondence, memoranda,

1 agreements, or other documents or records which the commissioner
2 deems relevant or material to the inquiry.

3 (4) In case of contumacy by, or refusal to obey a subpoena
4 issued to, any person, the superior court, upon application by the
5 commissioner, may issue to the person an order requiring the
6 person to appear before the commissioner, or the officer designated
7 by the commissioner, to produce documentary evidence, if so
8 ordered, or to give evidence touching the matter under investigation
9 or in question. Failure to obey the order of the court may be
10 punished by the court as a contempt.

11 (5) No person is excused from attending or testifying or from
12 producing any document or record before the commissioner or in
13 obedience to the subpoena of the commissioner or any officer
14 designated by the commissioner, or in any proceeding instituted
15 by the commissioner, on the ground that the testimony or evidence
16 (documentary or otherwise), required of the person may tend to
17 incriminate the person or subject the person to a penalty or
18 forfeiture, but no individual may be prosecuted or subjected to any
19 penalty or forfeiture for or on account of any transaction, matter,
20 or thing concerning which the person is compelled, after validly
21 claiming the privilege against self-incrimination, to testify or
22 produce evidence (documentary or otherwise), except that the
23 individual testifying is not exempt from prosecution and
24 punishment for perjury or contempt committed in testifying.

25 (6) The cost of any review, examination, audit, or investigation
26 made by the commissioner under Section 1280.7 of the Insurance
27 Code shall be paid to the commissioner by the person subject to
28 the review, examination, audit, or investigation, and the
29 commissioner may maintain an action for the recovery of these
30 costs in any court of competent jurisdiction. In determining the
31 cost, the commissioner may use the actual amount of the salary or
32 other compensation paid to the persons making the review,
33 examination, audit, or investigation plus the actual amount of
34 expenses including overhead reasonably incurred in the
35 performance of the work.

36 The recoverable cost of each review, examination, audit, or
37 investigation made by the commissioner under Section 1280.7 of
38 the Insurance Code shall not exceed twenty-five thousand dollars
39 (\$25,000), except that costs exceeding twenty-five thousand dollars
40 (\$25,000) shall be recoverable if the costs are necessary to prevent

1 a violation of any provision of Section 1280.7 of the Insurance
2 Code.

3 (r) Any shares or memberships issued by any corporation
4 organized and existing pursuant to the provisions of Part 2
5 (commencing with Section 12200) of Division 3 of Title 1,
6 provided the aggregate investment of any shareholder or member
7 in shares or memberships sold pursuant to this subdivision does
8 not exceed three hundred dollars (\$300). This exemption does not
9 apply to the shares or memberships of that corporation if any
10 promoter thereof expects or intends to make a profit directly or
11 indirectly from any business or activity associated with the
12 corporation or the operation of the corporation or from
13 remuneration, other than reasonable salary, received from the
14 corporation. This exemption does not apply to nonvoting shares
15 or memberships of that corporation issued to any person who does
16 not possess, and who will not acquire in connection with the
17 issuance of nonvoting shares or memberships, voting power
18 (Section 12253) in the corporation. This exemption also does not
19 apply to shares or memberships issued by a nonprofit cooperative
20 corporation organized to facilitate the creation of an unincorporated
21 interindemnity arrangement that provides indemnification for
22 medical malpractice to its physician and surgeon members as set
23 forth in subdivision (q).

24 (s) Any security consisting of or representing an interest in a
25 pool of mortgage loans that meets each of the following
26 requirements:

27 (1) The pool consists of whole mortgage loans or participation
28 interests in those loans, which loans were originated or acquired
29 in the ordinary course of business by a national bank or federal
30 savings association or federal savings bank having its principal
31 office in this state, by a bank incorporated under the laws of this
32 state or by a savings association as defined in subdivision (a) of
33 Section 5102 of the Financial Code and which is subject to the
34 supervision and regulation of the Commissioner of Financial
35 Institutions, and each of which at the time of transfer to the pool
36 is an authorized investment for the originating or acquiring
37 institution.

38 (2) The pool of mortgage loans is held in trust by a trustee which
39 is a financial institution specified in paragraph (1) as trustee or
40 otherwise.

1 (3) The loans are serviced by a financial institution specified in
2 paragraph (1).

3 (4) The security is not offered in amounts of less than
4 twenty-five thousand dollars (\$25,000) in the aggregate to any one
5 purchaser.

6 (5) The security is offered pursuant to a registration under the
7 Securities Act of 1933, or pursuant to an exemption under
8 Regulation A under that act, or in the opinion of counsel for the
9 issuer, is offered pursuant to an exemption under Section 4(2) of
10 that act.

11 (t) (1) Any security issued or guaranteed by and representing
12 an interest in or a direct obligation of an industrial loan company
13 incorporated under the laws of the state and authorized by the
14 Commissioner of Financial Institutions to engage in industrial loan
15 business.

16 (2) Any investment certificate in or issued by any industrial
17 loan company that is organized under the laws of a state of the
18 United States other than this state, that is insured by the Federal
19 Deposit Insurance Corporation, and that maintains a branch office
20 in this state.

21 ~~SEC. 12.~~

22 *SEC. 15.* Section 25207 of the Corporations Code is amended
23 to read:

24 25207. A financial institution that undertakes activities with
25 respect to an investment company pursuant to the provisions of
26 Section 1514, 6524, 14652.5, or 18022.5 of the Financial Code
27 shall not be subject to Section 25210 or 25230 in connection with
28 such activities but shall be subject to Sections 25218, 25234,
29 25235, and 25237 and to subdivisions (a), (b), and (d) of Section
30 25216, and such rules thereunder as the commissioner may specify
31 by rule. Nothing in this section shall affect the status of such a
32 financial institution as a broker-dealer or investment adviser, or
33 the employees of such persons, when engaged in the activities
34 authorized by the provisions of the Financial Code specified above.

35 ~~SEC. 13.~~

36 *SEC. 16.* Section 25243.5 of the Corporations Code is amended
37 to read:

38 25243.5. (a) A broker-dealer or investment adviser, or an agent
39 or representative thereof, shall not use a senior-specific
40 certification, credential, or professional designation in connection

1 with the offer, sale, or purchase of securities, or the provision of
2 advice as to the value of or the advisability of investing in,
3 purchasing, or selling securities, either directly or indirectly or
4 through publications or writings or by issuing or promulgating
5 analyses or reports relating to securities, that indicates or implies
6 that the broker-dealer, investment adviser, or an agent or
7 representative thereof, has special certification or training in
8 advising or servicing senior citizens or retirees, in such a way as
9 to mislead any person.

10 (b) The prohibited use of these certifications, credentials, or
11 professional designations includes, but is not limited to, the
12 following:

13 (1) The use of a certification, credential, or professional
14 designation by a person who has not actually earned or is otherwise
15 ineligible to use the certification, credential, or designation.

16 (2) The use of a nonexistent or self-conferred certification,
17 credential, or professional designation.

18 (3) The use of a certification, credential, or professional
19 designation that indicates or implies a level of occupational
20 qualifications obtained through education, training, or experience
21 that the person using the certification, credential, or professional
22 designation does not have.

23 (4) The use of a certification, credential, or professional
24 designation that was obtained from a designating, credentialing,
25 or certifying organization where any of the following apply:

26 (A) The organization is primarily engaged in the business of
27 instruction in sales marketing.

28 (B) The organization does not have reasonable standards or
29 procedures for assuring the competency of individuals to whom
30 it grants a certification, credential, or professional designation.

31 (C) The organization does not have reasonable standards or
32 procedures for monitoring and disciplining individuals with a
33 certification, credential, or professional designation for improper
34 or unethical conduct.

35 (D) The organization does not have reasonable continuing
36 education requirements for individuals with a certification,
37 credential, or professional designation in order to maintain the
38 certificate, credential, or professional designation.

39 (c) There is a rebuttable presumption that a designating,
40 credentialing, or certifying organization is not disqualified solely

1 for the purposes of paragraph (4) of subdivision (b) when the
2 organization has been accredited by the American National
3 Standards Institute, the National Commission for Certifying
4 Agencies, or an organization that is on the United States
5 Department of Education’s list entitled “Accrediting Agencies
6 Recognized for Title IV Purposes” and the certification, credential,
7 or professional designation issued therefrom does not primarily
8 apply to sales and/or marketing.

9 (d) In determining whether a combination of words, or an
10 acronym standing for a combination of words, constitutes a
11 certification, credential, or professional designation indicating or
12 implying that a person has special certification or training in
13 advising or serving senior citizens or retirees, factors to be
14 considered shall include both of the following:

15 (1) Use of one or more word such as “senior,” “retirement,”
16 “elder,” or like words combined with one or more words such as
17 “certified,” “registered,” “chartered,” “adviser,” “specialist,”
18 “consultant,” “planner,” or like words, in the name of the
19 certification, credential, or professional designation or credential.

20 (2) The manner in which those words are combined.

21 (e) This section shall not apply to the use of a job title by a
22 person within an organization that is licensed or registered by the
23 Department of Business Oversight or a federal financial services
24 regulatory agency, when that job title indicates seniority or standing
25 within the organization, or specifies a person’s area of
26 specialization within the organization. For the purposes of this
27 subdivision, federal financial services regulatory agency includes,
28 but is not limited to, an agency that regulates brokers or dealers,
29 investment advisers, or investment companies as described under
30 the Investment Company Act of 1940 (15 U.S.C. Sec. 809-1 et
31 seq.).

32 (f) (1) This section shall not apply to a broker or agent who is
33 licensed by the Department of Insurance and is in compliance with
34 the requirements of Section 787.1 of the Insurance Code.

35 (2) This subdivision shall be operative only if Assembly Bill
36 2150 of the 2007–08 Regular Session is chaptered and becomes
37 effective and that bill adds Section 787.1 to the Insurance Code.

38 (g) This section shall become operative on July 1, 2009.

1 ~~SEC. 14.~~

2 *SEC. 17.* Section 25247 of the Corporations Code is amended
3 to read:

4 25247. (a) Upon written or oral request, the commissioner
5 shall make available to any person the information specified in
6 Section 6254.12 of the Government Code and made available
7 through the Public Disclosure Program of the Financial Industry
8 Regulatory Authority with respect to any broker-dealer or agent
9 licensed or regulated under this part. The commissioner shall also
10 make available the current license status and the year of issuance
11 of the license of a broker-dealer. Any information disclosed
12 pursuant to this subdivision shall constitute a public record.
13 Notwithstanding any other provisions of law, the commissioner
14 may disclose either orally or in writing that information pursuant
15 to this subdivision. There shall be no liability on the part of and
16 no cause of action of any nature shall arise against the State of
17 California, the Department of Business Oversight, the
18 Commissioner of Business Oversight, or any officer, agent, or
19 employee of the state or of the Department of Business Oversight
20 for the release of any false or unauthorized information, unless the
21 release of that information was done with knowledge and malice.

22 (b) Any broker-dealer or agent licensed or regulated under this
23 part shall upon request deliver a written notice to any client when
24 a new account is opened stating that information about the license
25 status or disciplinary record of a broker-dealer or an agent may be
26 obtained from the Department of Corporations, or from any other
27 source that provides substantially similar information.

28 (c) The notice provided under subdivision (b) shall contain the
29 office location or telephone number where the information may
30 be obtained.

31 (d) A broker-dealer or agent shall be exempt from providing
32 the notice required under subdivision (b) if a person who does not
33 have a financial relationship with the broker-dealer or agent,
34 requests only general operational information such as the nature
35 of the broker-dealer's or agent's business, office location, hours
36 of operation, basic services, and fees, but does not solicit advice
37 regarding investments or other services offered.

38 (e) Upon written or oral request, the commissioner shall make
39 available to any person the disciplinary records maintained on the
40 Investment Adviser Registration Depository and made available

1 through the Investment Advisor Public Disclosure Web site with
2 respect to any investment adviser, investment adviser
3 representative, or associated person of an investment adviser
4 licensed or regulated under this part. The commissioner shall also
5 make available the current license status and the year of issuance
6 of the license of an investment adviser. Any information disclosed
7 pursuant to this subdivision shall constitute a public record.
8 Notwithstanding any other provision of law, the commissioner
9 may disclose that information either orally or in writing pursuant
10 to this subdivision. There shall be no liability on the part of and
11 no cause of action of any nature shall arise against the State of
12 California, the Department of Business Oversight, the
13 Commissioner of Business Oversight, or any officer, agent, or
14 employee of the state or of the Department of Business Oversight
15 for the release of any false or unauthorized information, unless the
16 release of that information was done with knowledge and malice.

17 (f) Section 461 of the Business and Professions Code shall not
18 be applicable to the Department of Corporations when using a
19 national, uniform application adopted or approved for use by the
20 Securities and Exchange Commission, the North American
21 Securities Administrators Association, or the Financial Industry
22 Regulatory Authority that is required for participation in the Central
23 Registration Depository or the Investment Adviser Registration
24 Depository.

25 (g) This section shall not require the disclosure of criminal
26 history record information maintained by the Federal Bureau of
27 Investigation pursuant to Section 534 of Title 28 of the United
28 States Code, and the rules thereunder, or information not otherwise
29 subject to disclosure under the Information Practices Act of 1977.

30 ~~SEC. 15.~~

31 *SEC. 18.* Section 25254 of the Corporations Code is amended
32 to read:

33 25254. (a) If the commissioner determines it is in the public
34 interest, the commissioner may include in any administrative action
35 brought under this part a claim for ancillary relief, including, but
36 not limited to, a claim for restitution or disgorgement or damages
37 on behalf of the persons injured by the act or practice constituting
38 the subject matter of the action, and the administrative law judge
39 shall have jurisdiction to award additional relief.

1 (b) In an administrative action brought under this part, the
2 commissioner is entitled to recover costs, which in the discretion
3 of the administrative law judge may include an amount representing
4 reasonable attorney's fees and investigative expenses for the
5 services rendered, for deposit into the State Corporations Fund for
6 the use of the Department of Business Oversight.

7 (c) After the exhaustion of the review procedures provided in
8 accordance with the provisions of the Administrative Procedure
9 Act, Chapter 5 (commencing with Section 11500) of Part 1 of
10 Division 3 of Title 2 of the Government Code, the commissioner
11 may apply to the appropriate superior court for a judgment in the
12 amount of the administrative penalty and costs awarded in a final
13 decision and order compelling the respondent, or the named or
14 cited person, to comply with the final decision of the commissioner
15 brought under this division. The application shall include a certified
16 copy of the final decision of the commission and shall constitute
17 a sufficient showing to warrant the issuance of the judgment and
18 order from superior court.

19 ~~SEC. 16.~~

20 *SEC. 19.* Section 25401 of the Corporations Code is amended
21 to read:

22 25401. It is unlawful for any person to offer or sell a security
23 in this state, or to buy or offer to buy a security in this state, by
24 means of any written or oral communication that includes an untrue
25 statement of a material fact or omits to state a material fact
26 necessary to make the statements made, in the light of the
27 circumstances under which the statements were made, not
28 misleading.

29 ~~SEC. 17.~~

30 *SEC. 20.* Section 25604 of the Corporations Code is amended
31 to read:

32 25604. The administration and enforcement of, and the
33 education of the public relative to, the laws and programs of the
34 Department of Business Oversight shall be supported from the
35 State Corporations Fund. Funds appropriated from the State
36 Corporations Fund and made available for expenditure for any law
37 or program of the department may come from fees collected from
38 the following:

39 (a) Section 25608, except for fees collected pursuant to
40 subdivisions (o) to (r), inclusive, of Section 25608.

1 (b) Section 25608.1.

2 ~~SEC. 18:~~

3 *SEC. 21.* Section 25607 of the Corporations Code is amended
4 to read:

5 25607. (a) Neither the commissioner nor any of the
6 commissioner's assistants, clerks, or deputies shall be interested
7 as a director, officer, shareholder, member (other than a member
8 of an organization formed for religious purposes), partner, agent,
9 or employee of any person who, during the period of the official's
10 or employee's association with the Department of Business
11 Oversight, (1) was licensed or applied for license as a broker-dealer
12 or investment adviser under this division, or (2) applied for or
13 secured the qualification of the sale of securities under this division.

14 (b) Nothing contained in subdivision (a) shall prohibit the
15 holding or purchasing of any securities by any assistant, clerk, or
16 deputy in accordance with rules as the commissioner shall adopt
17 for the purpose of protecting the public interest and avoiding
18 conflicts of interest.

19 (c) Nothing contained in subdivision (a) shall prohibit the
20 holding or purchasing of any securities by the commissioner if any
21 of the following criteria is met:

22 (1) The securities held or purchased by the commissioner are
23 exempt from the qualification requirements of Sections 25110,
24 25120, and 25130 by virtue of Section 25100, provided that the
25 holding or purchasing of those securities is in accordance with
26 rules adopted for the purpose of protecting the public interest and
27 avoiding conflicts of interest.

28 (2) The securities held or purchased by the commissioner are
29 not subject to Sections 25110, 25120, and 25130 by virtue of
30 Section 25100.1, provided that the holding or purchasing of those
31 securities is in accordance with rules adopted for the purpose of
32 protecting the public interest and avoiding conflicts of interest.

33 (3) The holding or purchasing of any securities by the
34 commissioner meets each of the following requirements:

35 (A) The securities are held or purchased through a management
36 account or trust administered by a bank or trust company authorized
37 to do business in this state, and the bank or trust company has sole
38 investment discretion regarding the holding, purchase, and sale of
39 securities.

1 (B) The commissioner did not, directly or indirectly, advise,
2 counsel, command, or suggest the holding, purchase, or sale of
3 any security or furnish any information relating to the security to
4 the bank or trust company.

5 (C) The account or trust does not at any time have more than
6 10 percent of its total assets invested in the securities of any one
7 issuer or hold more than 5 percent of the outstanding shares or
8 units of any class of securities of any one issuer.

9 (D) The commissioner shall report to the Attorney General not
10 less often than quarterly all holdings, purchases, and sales of
11 securities by him or her as authorized in paragraph (3), which
12 reports shall be retained by the Attorney General as public
13 documents.

14 ~~SEC. 19.~~

15 *SEC. 22.* Section 25612.5 of the Corporations Code is amended
16 to read:

17 25612.5. (a) To encourage uniform interpretation and
18 administration of this law and the Franchise Investment Law
19 (Division 5 (commencing with Section 31000)) and effective
20 securities and franchise regulation and enforcement, the
21 commissioner may cooperate with the securities agencies or
22 administrators of one or more states, Canadian provinces or
23 territories, or other countries, the Securities and Exchange
24 Commission, the Commodity Futures Trading Commission, the
25 Securities Investor Protection Corporation, any self-regulatory
26 organization, any national or international organization or securities
27 officials or agencies, and any governmental law enforcement or
28 regulatory agency.

29 (b) The cooperation authorized by subdivision (a) includes, but
30 is not limited to, the following actions:

31 (1) Prescribing rules and forms with a view to achieving
32 maximum uniformity in the form and content of registration
33 statements, applications, and reports wherever practicable.

34 (2) Participating in a nationwide central depository for
35 qualification or registration of securities under this law and for
36 documents or records required or allowed to be maintained under
37 this law.

38 (3) Participating in the Central Registration Depository, or any
39 successor or alternative nationwide or regional depository, for the

1 registering, certifying, or licensing of broker-dealers or agents, or
2 both.

3 (4) Participating in the Investment Adviser Registration
4 Depository, or any successor or alternative nationwide or regional
5 depository, for the registering, certifying, or licensing of investment
6 advisers or investment adviser representatives, or both.

7 (5) Cooperating in any regulatory activity necessary in the
8 administration of the Uniting and Strengthening America by
9 Providing Appropriate Tools Required to Intercept and Obstruct
10 Terrorism Act of 2001 (Public Law 107-56; USA Patriot Act),
11 consistent with state law.

12 (c) Notwithstanding any other provision of law, any application
13 for qualification, amendment to the application or related securities
14 qualification or registration document or notice under Sections
15 25100.1, 25101.1, 25102, 25102.1, 25110, 25120, 25130, and
16 25230.1 or record otherwise required to be signed that is filed in
17 this state as an electronic record pursuant to a nationwide central
18 depository for qualification or registration of securities, or any
19 electronic record filed through the Central Registration Depository
20 or the Investment Adviser Registration Depository, shall be deemed
21 to be a valid original document upon reproduction to paper form
22 by the Department of Business Oversight.

23 (d) For purposes of this section, “electronic record” has the
24 same meaning as in subdivision (g) of Section 1633.2 of the Civil
25 Code.

26 ~~SEC. 20.~~

27 *SEC. 23.* Section 25614 of the Corporations Code is amended
28 to read:

29 25614. All rules of the commissioner (other than those relating
30 solely to the internal administration of the Department of Business
31 Oversight) shall be made, ~~amended~~ *amended*, or rescinded in
32 accordance with the provisions of the Administrative Procedure
33 Act, Chapter 4 (commencing with Section 11370) of Part 1 of
34 Division 3 of Title 2 of the Government Code. Rules may be
35 adopted prior to the effective date of this law to become effective
36 upon its effective date.

37 ~~SEC. 21.~~

38 *SEC. 24.* Section 25702 of the Corporations Code is amended
39 to read:

1 25702. Whenever a person is entitled under this law to a hearing
 2 in accordance with the provisions of the Administrative Procedure
 3 Act, Chapter 5 (commencing with Section 11500) of Part 1 of
 4 Division 3 of Title 2 of the Government Code, a formal hearing
 5 before the Department of Business Oversight may be substituted
 6 with the consent of such person and of the commissioner for such
 7 hearing before an independent hearing officer; and in that case
 8 after such hearing before the Department of Business Oversight
 9 such person shall not be entitled to any further administrative
 10 remedy.

11 ~~SEC. 22.~~

12 *SEC. 25.* Section 29542 of the Corporations Code is amended
 13 to read:

14 29542. (a) If, in the opinion of the commissioner, any person
 15 is engaging in any activity in violation of any provision of this
 16 law, or rule or order under this law, the commissioner may order
 17 the person to desist and refrain from the activity unless and until
 18 the activity will not be in violation of any provision of this law or
 19 any rule or order under this law.

20 (b) If after an order has been made under subdivision (a), a
 21 request for hearing is filed in writing within 30 days of the date of
 22 service of the order by the person to whom the order was directed,
 23 a hearing shall be held in accordance with the Administrative
 24 Procedure Act (Chapter ~~5~~, 5 (commencing with Section 11500)
 25 of Part 1 of Division 3 of Title 2 of the Government Code), and
 26 the commissioner shall have all of the powers granted under the
 27 Administrative Procedure Act. Unless the hearing is commenced
 28 within 15 business days after the request is filed (or the person
 29 affected consents to a later date), the order is rescinded.

30 If that person fails to file a written request for a hearing within
 31 30 days from the date of service of the order, the order shall be
 32 deemed a final order of the commissioner and shall not be subject
 33 to review by any court or agency, notwithstanding Section 29563.

34 ~~SEC. 23.~~

35 *SEC. 26.* Section 31408 of the Corporations Code is amended
 36 to read:

37 31408. (a) If the commissioner determines it is in the public
 38 interest, the commissioner may include in any administrative action
 39 brought under this division, including a stop order, a claim for
 40 ancillary relief, including, but not limited to, a claim for rescission,

1 restitution or disgorgement or damages on behalf of the persons
2 injured by the act or practice constituting the subject matter of the
3 action, and the administrative law judge shall have jurisdiction to
4 award additional relief. The person affected may be required to
5 attend remedial education, as directed by the commissioner.

6 (b) In an administrative action brought under this part the
7 commissioner is entitled to recover costs, which in the discretion
8 of the administrative law judge may include any amount
9 representing reasonable attorney's fees and investigative expenses
10 for the services rendered, for deposit into the State Corporations
11 Fund for the use of the Department of Business Oversight.

12 ~~SEC. 24.~~

13 *SEC. 27.* Section 31503 of the Corporations Code is amended
14 to read:

15 31503. All rules of the commissioner, other than those relating
16 solely to the internal administration of the Department of Business
17 Oversight, shall be made, amended or rescinded in accordance
18 with the provisions of Chapter 4.5 (commencing with Section
19 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

20 ~~SEC. 25.~~

21 *SEC. 28.* Section 31513 of the Corporations Code is amended
22 to read:

23 31513. Whenever a person is entitled under this law to a hearing
24 in accordance with the provisions of Chapter 5 (commencing with
25 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
26 Code, a formal hearing before the Department of Business
27 Oversight may be substituted with the consent of such person and
28 of the commissioner for such hearing before an independent hearing
29 officer; and in that case after such hearing before the Department
30 of Business Oversight such person shall not be entitled to any
31 further administrative remedy.

32 ~~SEC. 26.~~

33 *SEC. 29.* Section 620 of the Financial Code is amended to read:

34 620. If the licensee whose property and business has been taken
35 pursuant to Section 592 is insured by a Federal Insurance Agency,
36 the commissioner may tender to the appropriate Federal Insurance
37 Agency an appointment as conservator, liquidator, or receiver of
38 the licensee. The commissioner shall determine whether the
39 licensee whose property and business has been taken shall be
40 liquidated or conserved. If the Federal Insurance Agency accepts

1 the appointment, the Federal Insurance Agency shall have, in
2 addition to any powers conferred by applicable federal law, the
3 powers conferred on the commissioner pursuant to this chapter.

4 ~~SEC. 27.~~

5 *SEC. 30.* Section 622 of the Financial Code is amended to read:

6 622. If the Federal Insurance Agency accepts the appointment
7 in accordance with Section 620, the rights of customers and other
8 creditors of the insured licensee shall be determined in accordance
9 with the applicable provisions of the laws of this state.

10 ~~SEC. 28.~~

11 *SEC. 31.* The heading of Article 4 (commencing with Section
12 670) of Chapter 7 of Division 1 of the Financial Code is amended
13 to read:

14
15 Article 4. Liquidation of an Uninsured Licensee

16
17 ~~SEC. 29.~~

18 *SEC. 32.* Section 1008 of the Financial Code is repealed.

19 ~~SEC. 30.~~

20 *SEC. 33.* Section 1070 of the Financial Code is amended to
21 read:

22 1070. For purposes of this chapter, the following definitions
23 apply:

24 (a) “Automated teller machine” means any electronic
25 information processing device used by a financial institution and
26 its customers for the primary purpose of executing transactions
27 solely between the financial institution and its customers, if the
28 transactions are not incidental to sales between the customer and
29 a business entity other than a financial institution.

30 (b) “Branch office” means any office at which core banking
31 business is conducted other than an automated teller machine, a
32 device used to facilitate check guarantee or check authorization,
33 or a remote service facility as defined in subsection (d) of Section
34 345.12 of Title 12 of the Code of Federal Regulations.

35 (c) “Core banking business” means the business of receiving
36 deposits, paying checks, making loans, and other activities that
37 the commissioner may specify by order or regulation. “Core
38 banking business,” when used to describe the trust business,
39 includes receiving fiduciary assets and administering fiduciary
40 accounts.

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

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

6 (f) “Noncore banking business” means all activities permissible
7 for banks, except core banking business, and except those activities
8 prohibited by law or determined by the commissioner by regulation
9 or order not to be noncore banking business.

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

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

19 ~~SEC. 31.~~

20 *SEC. 34.* Section 2105 of the Financial Code is amended to
21 read:

22 2105. (a) Each licensee or agent shall prominently post on the
23 premises of each branch office that conducts money transmission
24 a notice stating that:

25
26 “If you have complaints with respect to any aspect of the money
27 transmission activities conducted at this location, you may contact the
28 California Department of Business Oversight at its toll-free telephone
29 number, 1-866-275-2677, by email at consumer.services@dbo.ca.gov, or
30 by mail at the Department of Business Oversight, Consumer Services,
31 1515 K Street, Suite 200, Sacramento, CA 95814.”

32
33 (b) The commissioner may by order or regulation modify the
34 content of the notice required by this section. This notice shall be
35 printed in English and in the same language principally used by
36 the licensee or any agent of the licensee to advertise, solicit, or
37 negotiate either orally or in writing, with respect to money
38 transmission at that branch office. The information required in this
39 notice shall be clear, legible, and in letters not less than one-half
40 inch in height. The notice shall be posted in a conspicuous location

1 in the unobstructed view of the public within the premises. The
2 licensee shall provide to each of its agents the notice required by
3 this section. In those locations operated by an agent, the agent, and
4 not the licensee, shall be responsible for the failure to properly
5 post the required notice.

6 (c) In the event that a licensee or agent conducts money
7 transmission activity via an Internet Web site or a mobile
8 application that is not in a branch office, the commissioner may
9 authorize an alternative form of the notice required in subdivision

10 (a).

11 ~~SEC. 32.~~

12 *SEC. 35.* Section 4057 of the Financial Code is amended to
13 read:

14 4057. (a) An entity that negligently discloses or shares
15 nonpublic personal information in violation of this division shall
16 be liable, irrespective of the amount of damages suffered by the
17 consumer as a result of that violation, for a civil penalty not to
18 exceed two thousand five hundred dollars (\$2,500) per violation.
19 However, if the disclosure or sharing results in the release of
20 nonpublic personal information of more than one individual, the
21 total civil penalty awarded pursuant to this subdivision shall not
22 exceed five hundred thousand dollars (\$500,000).

23 (b) An entity that knowingly and willfully obtains, discloses,
24 shares, or uses nonpublic personal information in violation of this
25 division shall be liable for a civil penalty not to exceed two
26 thousand five hundred dollars (\$2,500) per individual violation,
27 irrespective of the amount of damages suffered by the consumer
28 as a result of that violation.

29 (c) In determining the penalty to be assessed pursuant to a
30 violation of this division, the court shall take into account the
31 following factors:

- 32 (1) The total assets and net worth of the violating entity.
- 33 (2) The nature and seriousness of the violation.
- 34 (3) The persistence of the violation, including any attempts to
35 correct the situation leading to the violation.
- 36 (4) The length of time over which the violation occurred.
- 37 (5) The number of times the entity has violated this division.
- 38 (6) The harm caused to consumers by the violation.
- 39 (7) The level of proceeds derived from the violation.

1 (8) The impact of possible penalties on the overall fiscal
2 solvency of the violating entity.

3 (d) In the event a violation of this division results in the identity
4 theft of a consumer, as defined by Section 530.5 of the Penal Code,
5 the civil penalties set forth in this section shall be doubled.

6 (e) The civil penalties provided for in this section shall be
7 exclusively assessed and recovered in a civil action brought in the
8 name of the people of the State of California in any court of
9 competent jurisdiction by any of the following:

10 (1) The Attorney General.

11 (2) The functional regulator with jurisdiction over regulation
12 of the financial institution as follows:

13 (A) In the case of banks, savings associations, credit unions,
14 commercial lending companies, and bank holding companies, by
15 the Department of Business Oversight, Division of Financial
16 Institutions or the appropriate federal authority; (B) in the case of
17 any person engaged in the business of insurance, by the Department
18 of Insurance; (C) in the case of any investment broker or dealer,
19 investment company, investment advisor, residential mortgage
20 lender or finance lender, by the Department of Business Oversight,
21 Division of Corporations; and (D) in the case of a financial
22 institution not subject to the jurisdiction of any functional regulator
23 listed under subparagraphs (A) to (C), inclusive, above, by the
24 Attorney General.

25 ~~SEC. 33.~~

26 *SEC. 36.* Section 12104 of the Financial Code is amended to
27 read:

28 12104. A nonprofit community service organization that meets
29 all of the following criteria shall be exempt from any requirements
30 imposed on proraters pursuant to this division:

31 (a) The nonprofit community service organization incorporates
32 in this state or any other state as a nonprofit corporation and
33 operates pursuant to either the Nonprofit Public Benefit
34 Corporation Law, Part 2 (commencing with Section 5110) of
35 Division 2 of Title 1 of the Corporations Code or the Nonprofit
36 Mutual Benefit Corporation Law, Part 3 (commencing with Section
37 7110) of Division 2 of Title 1 of the Corporations Code.

38 (b) The nonprofit community service organization limits its
39 membership to retailers, lenders in the consumer credit field,
40 educators, attorneys, social service organizations, employer and

1 employee organizations, and related groups that serve educational,
2 benevolent, fraternal, religious, charitable, social, or reformatory
3 purposes.

4 (c) The nonprofit community service organization has as its
5 principal functions the following:

6 (1) Consumer credit education.

7 (2) Counseling on consumer credit problems and family budgets.

8 (3) Arranging or administering debt management plans. “Debt
9 management plan” means a method of paying debtor’s obligations
10 in installments on a monthly basis.

11 (4) Arranging or administering debt settlement plans. “Debt
12 settlement plans” means a method of paying debtor’s obligations
13 in a negotiated amount to each creditor on a one-time basis.

14 (d) The nonprofit community service organization receives from
15 a debtor no more than the following maximum amounts to offset
16 the organization’s actual and necessary expenses for the services
17 described in subdivision (c): a one-time sum not to exceed fifty
18 dollars (\$50) for education and counseling combined in connection
19 with debt management or debt settlement services; and for debt
20 management plans, a sum not to exceed 8 percent of the money
21 disbursed monthly, or thirty-five dollars (\$35) per month,
22 whichever is less, and for debt settlement plans a sum not to exceed
23 15 percent of the amount of the debt forgiven for negotiated debt
24 settlement plans. Nonprofit community service organizations shall
25 not require any upfront payments or deposits on debt settlement
26 plans and may only require payment of fees once the debt has been
27 successfully settled. For purposes of this subdivision, a household
28 shall be considered one debtor. The fees allowed pursuant to this
29 subdivision shall be the only fees that may be charged by a
30 nonprofit community service organization for any services related
31 to a debt management plan or a debt settlement plan.

32 (e) The nonprofit community service organization maintains
33 and keeps current and accurate books, records, and accounts
34 relating to its business in accordance with generally accepted
35 accounting principles, and stores them in a readily accessible place
36 for a period of no less than five years from the end of the fiscal
37 year in which any transactions occurred.

38 (f) The nonprofit community service organization deposits any
39 money received from a debtor for the services described in
40 subdivision (c) in a noninterest-bearing trust account in a federally

1 insured state or federal bank, savings bank, savings and loan
2 association, or credit union, which account is maintained
3 specifically for purposes of administering a debt management plan
4 or debt settlement plan. The nonprofit community service
5 organization shall provide the commissioner the following prior
6 to engaging in business in this state and claiming this exemption:

7 (1) A written notice with the name, address, and telephone
8 number of the bank, savings bank, savings and loan association,
9 or credit union where the trust account is maintained, and the name
10 of the account and the account number. The account information
11 required in this paragraph shall be kept confidential pursuant to
12 the laws governing disclosure of public records, including the
13 California Public Records Act, Chapter 3.5 (commencing with
14 Section 6250) of Division 7 of Title 1 of the Government Code,
15 and the rules adopted thereunder.

16 (2) An irrevocable written consent providing that upon the
17 commissioner taking possession of the property and business of
18 the nonprofit community service organization, all books, records,
19 property and business, including trust accounts and any other
20 accounts holding debtors' funds, shall be immediately turned over
21 to the commissioner or receiver appointed pursuant to this division.
22 The consent shall be signed by the nonprofit community service
23 organization and the bank, savings bank, savings and loan
24 association, or credit union where the trust account is maintained.
25 The consent shall be binding upon the nonprofit community service
26 organization and the bank, savings bank, savings and loan
27 association, or credit union, and any objection to it must be raised
28 pursuant to the laws of the State of California and only in the forum
29 in which the proceeding to take possession or appointment of the
30 receiver has been filed. The nonprofit community service
31 organization and the bank, savings bank, savings and loan
32 association, or credit union shall further consent to the jurisdiction
33 of the commissioner for the purpose of any investigation or
34 proceeding under Sections 12105 and 12106 or any other provision
35 of this division. The consent required by this paragraph shall
36 include the name, title, and signature of an official of the bank,
37 savings bank, savings and loan association, or credit union holding
38 the authority to consent on behalf of that institution, and the name,
39 title, and signature of the chief executive officer or president of
40 the nonprofit community service organization.

1 (g) The nonprofit community service organization maintains at
2 all times a surety bond in the amount of twenty-five thousand
3 dollars (\$25,000), issued by an insurer licensed in this state. The
4 bond shall be conditioned upon the obligor faithfully conforming
5 to and abiding by the provisions of Section 12104 of the Financial
6 Code, honestly and faithfully applying all funds received, honestly
7 and faithfully performing all obligations and undertakings required
8 under this section, and paying to the state and to any person all
9 money that becomes due and owing to the state or to any person
10 owed by the obligor of the bond.

11 (h) The nonprofit community service organization reports all
12 of the following to the debtor at least once every three months, or
13 upon the debtor's request, for any debt management plan or debt
14 settlement plan:

15 (1) Total amount received from the debtor.

16 (2) Total amount paid to each creditor.

17 (3) Total amount any creditor has agreed to accept as payment
18 in full on any debt owed by the debtor.

19 (4) Any amount paid to the organization by the debtor.

20 (5) Any amount held in reserve.

21 (i) The nonprofit community service organization submits to
22 the commissioner, at the organization's expense, an audit report
23 containing audited financial statements covering the calendar year
24 or, if the organization has an established fiscal year, then for that
25 fiscal year, within 120 days after the close of the calendar or fiscal
26 year.

27 (j) The nonprofit community service organization submits with
28 the annual financial statements required under subdivision (i) a
29 declaration that conforms to Section 2015.5 of the Code of Civil
30 Procedure, is executed by an official authorized by the board of
31 the organization, and that states that the organization complies
32 with this section. The annual financial statements shall also include
33 a separate written statement that identifies the name, address,
34 contact person, and telephone number of the organization.

35 (k) The nonprofit community service organization maintains
36 accreditation by an independent accrediting organization, including
37 either the Council on Accreditation or the International Standards
38 Organization, with sector certification.

1 (l) The nonprofit community service organization does not
2 engage in any act or practice in violation of Section 17200 or 17500
3 of the Business and Professions Code.

4 (m) The nonprofit community service organization inserts the
5 following statement, in not less than 10-point type, in its debt
6 management plan and debt settlement plan agreements:
7 “Complaints related to this agreement may be directed to the
8 California Department of Business Oversight. This nonprofit
9 community service organization has adopted best practices for
10 debt management plans and debt settlement plans, and a copy will
11 be provided upon request.”

12 (n) The nonprofit community service organization adopts and
13 implements on a continuous basis policies or procedures of best
14 practices that are designed to prevent improper debt management
15 or debt settlement practices and prevent theft and misappropriation
16 of funds. Failure to do the following shall constitute improper debt
17 management or debt settlement practices, as applicable:

18 (1) Obtain counselor certification conducted by a nationally
19 recognized third-party certification program that certifies that all
20 of the agency’s counselors receive proper training and are qualified
21 to provide financial assistance prior to performing counseling
22 services in this state.

23 (2) Disburse funds no later than 15 days after receipt of valid
24 funds, or by a scheduled disbursement date, whichever is the
25 greater amount of time.

26 (3) Transmit funds utilizing electronic payment processing when
27 available.

28 (4) Implement an inception date policy, which shall include an
29 agreement that a consumer’s first disbursement pursuant to a debt
30 management plan shall be received within 90 days of agreeing to
31 the debt management plan service. The debt management plan
32 shall include all items described in subdivision (h) and shall be
33 provided to the consumer at the inception date of the plan. A
34 description of best practices of the agency and of the consumer
35 complaint resources shall be issued no later than the first payment
36 date.

37 (5) Respond to and research any complaint initiated by a
38 consumer within five business days of receipt of the complaint.

39 (6) Prohibit a policy requiring debt management plan consumers
40 from being required to utilize additional ancillary services.

- 1 (7) Provide consumer access to debt management plan services
2 regardless of the consumer's ability to pay fees related to the debt
3 management plan, lack of creditor participation, or the amount of
4 the consumer's outstanding debt.
- 5 (8) Implement policies that specifically prohibit credit
6 counselors from receiving financial incentives or additional
7 compensation based on the outcome of the counseling process.
- 8 (9) Prohibit the practice of paying referral fees to consumers or
9 other third parties who refer new clients to the agency.
- 10 (10) Disclose in all written contracts with consumers the portion
11 of funding for the agency that is provided by creditors.
- 12 (11) Disclose in all written contracts for debt management plans
13 or debt settlement plans that these plans are not suitable for all
14 consumers and that consumers may request information on other
15 options, including, but not limited to, bankruptcy.
- 16 (12) Fully disclose all services to be provided by the agency
17 and any initial and ongoing fees to be charged by the agency for
18 services, including, but not limited to, contributions to the agency.
- 19 (13) Prohibit the agency or any affiliate of the agency from
20 purchasing debt from a consumer.
- 21 (14) Prohibit the agency from offering loans to consumers
22 involving the charging of interest.
- 23 (15) Prominently disclose in written contracts with consumers
24 of any financial arrangement between the agency and any lender
25 or any provider of financial services if the agency receives any
26 form of compensation for referring consumers to that lender or
27 provider of financial services.
- 28 (16) Provide professional liability insurance coverage.
- 29 (17) Provide the debtor a written individualized evaluation of
30 his or her financial status and an initial debt management plan for
31 the debtor's debts with specific recommendations regarding actions
32 the debtor should take.
- 33 (18) Provide the debtor enrolling in a debt management plan a
34 written reliable estimate of the length of time it will take to
35 complete the plan and identifies the total debt owed to each creditor
36 included in the plan, the proposed payment to each creditor, and
37 any fees that would be charged for administering the plan. The
38 estimate shall be provided prior to receipt of the debtor's first
39 deposit.

1 (o) The nonprofit community service organization provides a
2 copy of the best practices described in subdivision (n) to its debtor,
3 upon request.

4 (p) The nonprofit community service organization resolves in
5 a prompt and reasonable manner complaints from debtors relating
6 to the organization’s debt management plans or debt settlement
7 plans.

8 (q) The nonprofit community service organization provides
9 written notice to the commissioner within 30 days of dissolution
10 or termination of engaging in the activities of a prorater, as defined
11 in Section 12002.1.

12 (r) This section shall become inoperative upon the enactment
13 of a statute requiring the licensure and regulation of nonprofit
14 community service organizations providing consumer credit
15 counseling.

16 ~~SEC. 34.~~

17 *SEC. 37.* Section 17210.2 of the Financial Code is amended
18 to read:

19 17210.2. (a) No escrow agent shall disseminate, or cause or
20 permit to be disseminated, in any manner whatsoever, any
21 statement or representation which is false, misleading, or deceptive,
22 or which omits to state material information, or which refers to
23 the supervision of that agent by the State of California or any
24 department or official thereof.

25 (b) A licensed escrow agent, in referring to the corporation’s
26 licensure under this law in any written or printed communication
27 or any communication by means of recorded telephone messages
28 or spoken on radio, television, or similar communications media,
29 shall include the following statement: “This escrow company holds
30 California Department Business Oversight Escrow License No.
31 _____.”

32 (c) The commissioner may order any person to desist from any
33 conduct which the commissioner finds to be a violation of this
34 section.

35 ~~SEC. 35.~~

36 *SEC. 38.* Section 17214 of the Financial Code is amended to
37 read:

38 17214. (a) There is established in the Department of Business
39 Oversight an Escrow Law Advisory Committee consisting of 11
40 members. The members shall consist of the commissioner or his

1 or her designee; the chairman of the board and the immediate past
2 chairman of the board for the Escrow Agents' Fidelity Corporation;
3 the current chairman of the board and the immediate past chairman
4 of the board for the Escrow Institute of California; a person selected
5 by the commissioner to represent a different type of business
6 ownership under this division; a person selected by the
7 commissioner to represent a different type of business
8 specialization; a person selected by the commissioner to represent
9 small businesses operating pursuant to this division; a person
10 selected by the commissioner to represent medium-sized businesses
11 operating pursuant to this division; an attorney at law experienced
12 in escrow matters selected by the commissioner; and a certified
13 public accountant experienced in the escrow business selected by
14 the commissioner.

15 Except for the members from the Escrow Agents' Fidelity
16 Corporation and the Escrow Institute of California, members
17 appointed by the commissioner shall serve for a term of two years.

18 The committee shall meet at least quarterly. The commissioner
19 or his or her designee shall chair the committee. All members shall
20 serve without compensation or reimbursement for expenses.

21 Where the chairman of the board or the immediate past chairman
22 of the board of the Escrow Agents' Fidelity Corporation is the
23 same person, or is unable to serve on the advisory committee, then
24 ~~the commissioner~~ *commissioner*, after consultation with the board
25 of directors of the Escrow Agents' Fidelity Corporation, shall
26 choose a member of the board of directors to serve on the
27 committee. Where the president or past president of the Escrow
28 Institute of California is the same person, or is unable to serve on
29 the advisory committee, then ~~the commissioner~~ *commissioner*,
30 after consultation with the board of directors of the Escrow Institute
31 of California, shall choose a member of the board of directors to
32 serve on the committee.

33 (b) The purpose of the committee is to assist the commissioner
34 in the implementation of the commissioner's duties under this
35 chapter.

36 ~~SEC. 36.~~

37 *SEC. 39.* Section 17311 of the Financial Code is amended to
38 read:

39 17311. (a) Persons licensed pursuant to this division shall
40 maintain a corporation under the Nonprofit Mutual Benefit

1 Corporation Law (Part 3 (commencing with Section 7110) of
2 Division 2 of Title 1 of the Corporations Code) operating under
3 the name Escrow Agents' Fidelity Corporation.

4 (b) The State of California, the Department of Business
5 Oversight, or any officer, agent, or employee of either shall not
6 be liable in any way for the conduct of Fidelity Corporation, its
7 directors, officers, agents, employees, or members.

8 ~~SEC. 37:~~

9 *SEC. 40.* Section 17320 of the Financial Code is amended to
10 read:

11 17320. Fidelity Corporation shall establish and maintain the
12 following funds for payment of claims and for payment of costs
13 of administration: the membership fund, the operations fund, and
14 the fidelity fund.

15 (a) An applicant or a licensee shall, at the time an application
16 is filed for a license, pay to Fidelity Corporation a membership
17 fee of three thousand dollars (\$3,000) for each location for which
18 a license is applied. If the application is denied, withdrawn, or
19 abandoned, Fidelity Corporation may retain two hundred dollars
20 (\$200) from the membership fee to cover costs of administration.

21 (1) The membership fund shall be reserved for payment of
22 claims which exceed the fidelity fund balance and for payment of
23 extraordinary operational costs.

24 (2) Any member who, on the effective date of this section, has
25 an account balance which exceeds the three thousand dollars
26 (\$3,000) membership fee times the number of its licensed locations
27 shall be credited in a special reserve account for the excess amount.
28 This balance shall be credited against future assessments made
29 pursuant to subdivision (b) of Section 17321 in an amount not
30 exceeding four hundred dollars (\$400) per licensed location per
31 year. Any member whose account balance is less than three
32 thousand dollars (\$3,000) times the number of its licensed locations
33 shall, on or before December 1, 1988, pay to Fidelity Corporation
34 an amount sufficient to allow the member's account to be
35 maintained at three thousand dollars (\$3,000) times the number
36 of licensed locations. Fidelity Corporation shall provide each
37 member with an accounting of the amounts being reserved for the
38 members' membership account and amounts being held as a special
39 reserve.

1 (3) The membership fee, less any unpaid assessments and related
2 costs, shall be refunded to the member in accordance with Fidelity
3 Corporation’s bylaws not less than 30 months and no more than
4 36 months after the effective date of surrender of a license.

5 (4) Any member who does not engage in any escrow transactions
6 pursuant to subdivision (c) of Section 17312 may terminate its
7 membership in Fidelity Corporation by written notice to Fidelity
8 Corporation and the Department of Business Oversight, as provided
9 in the Fidelity Corporation’s bylaws and rules and regulations.
10 The membership fee, less any unpaid assessments and related
11 costs, shall be refunded to the member in accordance with Fidelity
12 Corporation’s bylaws not less than 30 months and no more than
13 36 months after the effective date of the member’s written request
14 to terminate its membership in Fidelity Corporation. Before a
15 licensee resumes those escrow transactions, it shall first be required
16 to become a member of Fidelity Corporation, as provided in this
17 subdivision.

18 (b) Fidelity Corporation shall prepare, prior to its fiscal year
19 end, an estimated annual operational budget projecting the costs
20 of operations and administration for the succeeding fiscal year,
21 excluding the amount paid for claims and premiums paid for excess
22 coverage bonding. The amount of the assessment shall be 150
23 percent of the budgetary projection. In succeeding years, the
24 assessment shall be adjusted by adding the prior year’s deficit or
25 deducting unused surplus from the prior year.

26 (c) Fidelity Corporation shall establish a fidelity fund for the
27 payment of claims and for the payment of the premium for the
28 fidelity bond or insurance policy, if any. All claims shall be paid
29 from the fidelity fund, provided that, to the extent that the fidelity
30 fund balance is not sufficient to pay claims, the claim shall be paid
31 from the membership fund by charging each member’s membership
32 account a pro rata share of the excess.

33 (d) All interest earned on the membership fund and the
34 operations fund shall be credited to the fidelity fund.

35 ~~SEC. 38.~~

36 *SEC. 41.* Section 17331 of the Financial Code is amended to
37 read:

38 17331. (a) An applicant applying for licensure as an escrow
39 agent under this division is required to apply for a Fidelity
40 Corporation Certificate, prepared and issued by Fidelity

1 Corporation, for each proposed shareholder, officer, director,
2 trustee, manager, or employee who is to be directly or indirectly
3 compensated by the escrow agent, prior to licensure of the escrow
4 agent by the commissioner.

5 (b) A shareholder, officer, director, trustee, manager, or
6 employee of an escrow agent, directly or indirectly compensated
7 by an escrow agent within this state, is required to complete and
8 execute a Fidelity Corporation Certificate application, prepared
9 and issued by Fidelity Corporation, as a condition of his or her
10 employment or entitlement to compensation, before the person
11 may continue the regular discharge of his or her duties, or have
12 access to moneys or negotiable securities belonging to or in the
13 possession of the escrow agent, or draw checks upon the escrow
14 agent or the trust funds of the escrow agent.

15 (c) Fidelity Corporation Certificates may also be known as
16 Escrow Agent's Fidelity Corporation Certificates or EAFC
17 Certificates. The certificate at all times remains the property of
18 Fidelity Corporation, and is not transferable by either a member
19 or employee. The certificate is not a warranty or guarantee by
20 Fidelity Corporation of the integrity, veracity, or competence of
21 the person.

22 (d) An application for a Fidelity Corporation Certificate shall
23 be in writing and in the form prescribed by Fidelity Corporation.
24 The application may include (1) a fee not to exceed fifty dollars
25 (\$50), (2) two passport-size photographs, and (3) a set of fingerprint
26 images and related information using the process established by
27 the Department of Justice for requesting state summary criminal
28 history information, plus the fee charged by the Department of
29 Justice for processing noncriminal applicant fingerprint images
30 and related information, in a manner established by the Department
31 of Justice pursuant to subdivision (l). The Department of Justice
32 shall honor the Fidelity Corporation report request form and issue
33 a report to Fidelity Corporation, notwithstanding any other
34 provision of law or regulation to the contrary. Fidelity Corporation
35 is also entitled to submit a set of fingerprint images and related
36 information in the Department of Justice specified noncriminal
37 applicant fingerprint format for the purpose of requesting and
38 obtaining a report from the Department of Justice, for the officers
39 and employees of Fidelity Corporation. A member shall cause the
40 filing of applications for all existing employees as required by this

1 section within 30 days of written notice by Fidelity Corporation
2 to the member.

3 (e) The application form shall include a provision for binding
4 arbitration to allow for arbitration of any appeal or dispute as to a
5 decision by Fidelity Corporation concerning the certificate, as
6 follows:

7 A DISPUTE AS TO WHETHER THE DENIAL OF THIS
8 CERTIFICATE APPLICATION OR ANY SUBSEQUENT
9 SUSPENSION OR REVOCATION OF THE CERTIFICATE IS
10 UNNECESSARY OR UNAUTHORIZED OR WAS
11 IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY
12 RENDERED, MAY BE DETERMINED BY SUBMISSION TO
13 ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND
14 NOT BY A LAWSUIT OR RESORT TO COURT PROCESS
15 EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL
16 REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT
17 AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL
18 CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT,
19 SUBMIT ANY ISSUE ARISING FROM A DECISION BY
20 FIDELITY CORPORATION TO DENY THIS CERTIFICATE
21 APPLICATION OR TO SUSPEND OR REVOKE THE
22 CERTIFICATE TO BE DECIDED BY BINDING NEUTRAL
23 ARBITRATION. UPON AN AGREEMENT TO SUBMIT TO
24 BINDING NEUTRAL ARBITRATION, THE APPLICANT HAS
25 NO RIGHT TO HAVE ANY DISPUTE CONCERNING THIS
26 CERTIFICATE APPLICATION LITIGATED IN A COURT OR
27 JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY
28 AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN
29 THE ESCROW LAW. ARBITRATION MAY BE COMPELLED
30 AS PROVIDED BY LAW.

31 (f) There is no liability on the part of and no cause of action of
32 any nature may arise against Fidelity Corporation or its members,
33 directors, officers, employees, or agents, the State of California,
34 the Department of Business Oversight, or any officer, agent, or
35 employee of the state or the Department of Business Oversight for
36 statements made by Fidelity Corporation in reports or
37 recommendations made pursuant to this division, or for reports or
38 recommendations made pursuant to this division to Fidelity
39 Corporation by its members, directors, officers, ~~employees~~
40 *employee*, or agents, the State of California, the Department of

1 Business ~~Oversight~~ *Oversight*, or any officer, agent, or employee
2 of the state or the Department of Business Oversight, unless the
3 information provided is false and the party making the statement
4 or providing the false information does so with knowledge and
5 malice. Reports or recommendations made pursuant to this section,
6 or Section 17331.1, 17331.2, or 17331.3, are not public documents.

7 (g) There is no liability on the part of and no cause of action of
8 any nature may arise against Fidelity Corporation or its members,
9 directors, officers, employees, or agents, the State of California,
10 the Department of Business Oversight, or an officer, agent, or
11 employee of the state or the Department of Business Oversight for
12 the release of any information furnished to Fidelity Corporation
13 pursuant to this section unless the information released is false and
14 the party, including Fidelity Corporation, its members, directors,
15 officers, employees, or agents, the state, the Department of
16 Business Oversight, or any officer, agent, or employee of the state
17 or the Department of Business Oversight, who releases the false
18 information does so with knowledge and malice.

19 (h) There is no liability on the part of and no cause of action of
20 any nature may arise against Fidelity Corporation or its directors,
21 officers, employees, or agents, for any decision to deny an
22 application for a certificate or to suspend or revoke the certificate
23 of any person or for the timing of any decision or the timing of
24 any notice to persons or members thereof, or for any failure to
25 deny an application under subdivision (a) of Section 17331.2. This
26 subdivision does not apply to acts performed in bad faith or with
27 malice.

28 (i) Fidelity Corporation, any member of Fidelity Corporation,
29 an agent of Fidelity Corporation or of its members, or any person
30 who uses any information obtained under this section for any
31 purpose not authorized by this chapter is guilty of a misdemeanor.

32 (j) Section 17331, 17331.1, or 17331.2 does not constitute a
33 restriction or limitation upon the obligation of Fidelity Corporation
34 to indemnify members against loss, as provided in Sections 17310
35 and 17314. The failure to obtain a certificate, the denial of an
36 application for a certificate, or the suspension, cancellation, or
37 revocation of a certificate does not limit the obligation of Fidelity
38 Corporation to indemnify a member against loss.

39 (k) Notwithstanding Section 11105 of the Penal Code, Fidelity
40 Corporation is entitled to receive state summary criminal history

1 information and subsequent arrest notification from the Department
 2 of Justice as a result of fingerprint images and related information
 3 submitted to the Department of Justice by the Department of
 4 Business Oversight, pursuant to subdivision (g) of Section 17209,
 5 Section 17212.1, and subdivision (d) of Section 17414.1, by or on
 6 behalf of escrow agents, shareholders, officers, directors, trustees,
 7 managers, or employees of an escrow agent, directly or indirectly
 8 compensated by an escrow agent. The Department of Justice and
 9 Fidelity Corporation shall enter into an agreement to implement
 10 this subdivision. The Department of Business Oversight shall
 11 forward to Fidelity Corporation, weekly, a list of names of
 12 individual fingerprints submitted to the Department of Justice.

13 (l) (1) The fingerprint images and related information required
 14 pursuant to subdivision (d) shall be submitted by the Department
 15 of Business Oversight to the Department of Justice, in a manner
 16 established by the Department of Justice, for the purposes of
 17 obtaining information as to the existence and content of a record
 18 of state or federal convictions, state or federal arrests, and
 19 information as to the existence of and content of a record of state
 20 or federal arrests for which the Department of Justice establishes
 21 that the person is free on bail or on his or her own recognizance
 22 pending trial or appeal.

23 (2) Upon receipt, the Department of Justice shall forward to the
 24 Federal Bureau of Investigation requests for federal summary
 25 criminal history information received pursuant to this section. The
 26 Department of Justice shall review the information returned from
 27 the Federal Bureau of Investigation and compile and disseminate
 28 a response to the Department of Business Oversight and a fitness
 29 determination to Fidelity Corporation pursuant to subdivision (p)
 30 of Section 11105 of the Penal Code.

31 (3) The Department of Justice shall charge a fee sufficient to
 32 cover the costs of processing the requests pursuant to this
 33 subdivision.

34 ~~SEC. 39.~~

35 *SEC. 42.* Section 18405 of the Financial Code is amended to
 36 read:

37 18405. (a) On or before the 15th day of March of every year,
 38 each industrial loan company shall file with the commissioner an
 39 audit report containing audited financial statements together with
 40 such other relevant information as the commissioner may require

1 relating to the company and to each place of business of the
2 company. The audited financial statements shall include a balance
3 sheet of the company prepared as of the last day of the preceding
4 calendar year and statements of income and of surplus for such
5 calendar year.

6 (b) The reports and financial statements referred to in
7 subdivision (a) shall be prepared in accordance with generally
8 accepted accounting principles and shall be accompanied by a
9 report, certificate, or opinion of an independent certified public
10 accountant or independent public accountant, and shall contain
11 such relevant information as the commissioner may require. The
12 audits shall be conducted in accordance with generally accepted
13 auditing standards and the rules and regulations of the
14 commissioner.

15 (c) For good cause and upon written request, the commissioner
16 may extend the time for compliance with subdivision (a).

17 (d) If the report, ~~certificate~~ *certificate*, or opinion of the
18 independent accountant referred to in subdivision (b) hereof is in
19 any way qualified, the commissioner may require the company to
20 take such action as he deems appropriate to permit an independent
21 accountant to remove such qualification from the report, ~~certificate~~
22 *certificate*, or opinion.

23 (e) The commissioner may reject any financial statement, report,
24 ~~certificate~~ *certificate*, or opinion filed pursuant to this section by
25 notifying the company required to make such filing of its rejection
26 and the cause thereof. Within 30 days after the receipt of such
27 notice, the company shall correct such deficiency, and the failure
28 so to do shall be deemed a violation of this division. The
29 commissioner shall retain a copy of all filings so rejected.

30 ~~SEC. 40.~~

31 *SEC. 43.* Section 22105.1 of the Financial Code is amended
32 to read:

33 22105.1. (a) An applicant for a mortgage loan originator
34 license shall apply by submitting the uniform form prescribed for
35 such purpose by the Nationwide Mortgage Licensing System and
36 Registry. The commissioner may require the submission of
37 additional information or supporting documentation to the
38 department.

39 (b) Section 461 of the Business and Professions Code shall not
40 be applicable to the Department of Business Oversight when using

1 a national uniform application adopted or approved for use by the
2 Nationwide Mortgage Licensing System and Registry in connection
3 with the SAFE Act.

4 (c) In connection with an application for a license as a mortgage
5 loan originator, the applicant shall, at a minimum, furnish to the
6 Nationwide Mortgage Licensing System and Registry information
7 concerning the applicant's identity, including the following:

8 (1) Fingerprint images and related information, for purposes of
9 performing a federal, or both a state and federal, criminal history
10 background check.

11 (2) Personal history and experience in a form prescribed by the
12 Nationwide Mortgage Licensing System and Registry, including
13 the submission of authorization for the Nationwide Mortgage
14 Licensing System and Registry and the commissioner to obtain
15 both of the following:

16 (A) An independent credit report obtained from a consumer
17 reporting agency.

18 (B) Information related to any administrative, civil, or criminal
19 findings by any governmental jurisdiction.

20 (d) The commissioner may ask the Nationwide Mortgage
21 Licensing System and Registry to obtain state criminal history
22 background check information on applicants described in
23 subdivision (a) using the procedures set forth in subdivisions (e)
24 and (f).

25 (e) If the Nationwide Mortgage Licensing System and Registry
26 electronically submits fingerprint images and related information,
27 as required by the Department of Justice, for an applicant for a
28 mortgage loan originator license, for the purposes of obtaining
29 information as to the existence and content of a record of state
30 convictions and state arrests and to the existence and content of a
31 record of state arrests for which the Department of Justice
32 establishes that the person is free on bail or on his or her
33 recognizance pending trial or appeal, the Department of Justice
34 shall provide an electronic response to the Nationwide Mortgage
35 Licensing System and Registry pursuant to paragraph (1) of
36 subdivision (p) of Section 11105 of the Penal Code, and shall
37 provide the same electronic response to the commissioner.

38 (f) The Nationwide Mortgage Licensing System and Registry
39 may request from the Department of Justice subsequent arrest
40 notification service, as provided pursuant to Section 11105.2 of

1 the Penal Code, for persons described in subdivision (a). The
2 Department of Justice shall provide the same electronic response
3 to the commissioner.

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

6 ~~SEC. 41.~~

7 *SEC. 44.* Section 22159.5 of the Financial Code is amended
8 to read:

9 22159.5. (a) The commissioner may, as he or she deems
10 necessary, require licensees to provide reports concerning their
11 residential mortgage loan servicing activities, including, but not
12 limited to, information similar to that collected in connection with
13 the Mortgage Servicers Survey, first published by the Department
14 of Business Oversight in December 2007. The commissioner is
15 additionally authorized to seek and accept information provided
16 on a voluntary basis by residential mortgage loan servicers not
17 subject to the commissioner's jurisdiction. The commissioner shall
18 post only aggregated survey results on the department's Internet
19 Web site, and shall note the number of loan servicers submitting
20 data included in the aggregated totals and the estimated percentage
21 of outstanding mortgage loans to Californians that are serviced by
22 these loan servicers, to the extent information on the number of
23 outstanding loans is available from a reliable source. Nothing in
24 this section is intended to reduce or change the commissioner's
25 authority to request and demand reports under Sections 22150 and
26 22159.

27 (b) For purposes of this section, "mortgage loan servicing
28 activity" means receiving more than three installment payments
29 of principal, interest, or other amounts placed in escrow, pursuant
30 to the terms of a mortgage loan, and performing services relating
31 to that receipt or the enforcement of its receipt, on behalf of the
32 holder of the note evidencing that loan.

33 ~~SEC. 42.~~

34 *SEC. 45.* Section 22160 of the Financial Code is amended to
35 read:

36 22160. The commissioner shall make and file annually with
37 the Department of Business Oversight as a public record a
38 composite of the annual reports and any comments on the reports
39 that he or she deems to be in the public interest.

1 ~~SEC. 43.~~

2 *SEC. 46.* Section 22756 of the Financial Code is amended to
3 read:

4 22756. Notwithstanding any other law, any application for
5 licensure, amendment to the application or registration document
6 or notice filed under any of the laws administered by the
7 Department of Business Oversight, or record otherwise required
8 to be filed in this state as an electronic record pursuant to a
9 nationwide central depository for information regarding licensees,
10 including mortgage loan originators, or any electronic record filed
11 through the Nationwide Mortgage Licensing System and Registry,
12 shall be deemed to be a valid original document upon reproduction
13 to paper form by the Department of Business Oversight.

14 ~~SEC. 44.~~

15 *SEC. 47.* Section 23070 of the Financial Code is amended to
16 read:

17 23070. (a) The Legislature finds and declares that it is in the
18 public interest for the administration and enforcement of this
19 division to be undertaken by the Department of Business Oversight.

20 (b) It is therefore the intent of the Legislature to transfer the
21 existing responsibilities relating to administration and enforcement
22 of check cashers that engage in activities subject to this division
23 from the Department of Justice to the Department of Business
24 Oversight.

25 ~~SEC. 45.~~

26 *SEC. 48.* Section 23071 of the Financial Code is amended to
27 read:

28 23071. The Commissioner of Business Oversight and the
29 Department of Business Oversight shall succeed to, and are vested
30 with, all duties, powers, purposes, responsibilities, and jurisdiction
31 of the Department of Justice as they relate to check cashers who
32 engage in the activities subject to this division.

33 ~~SEC. 46.~~

34 *SEC. 49.* Section 23072 of the Financial Code is amended to
35 read:

36 23072. The Department of Business Oversight may use the
37 unexpended balance of funds available for use in connection with
38 the performance of duties of the Department of Justice to which
39 the Department of Business Oversight succeeds pursuant to Section
40 23071.

1 ~~SEC. 47.~~

2 *SEC. 50.* Section 23073 of the Financial Code is amended to
3 read:

4 23073. All officers and employees of the Department of Justice
5 who, on the operative date of this division, are performing any
6 duty, power, purpose, responsibility, or jurisdiction to which the
7 Department of Business Oversight succeeds, and who are serving
8 in the civil service, other than as temporary employees or persons
9 in positions exempted from civil service, shall be transferred to
10 the Department of Business Oversight. The status, position, and
11 rights of those persons shall not be affected by the transfer and
12 shall be retained by those persons as officers and employees of
13 the Department of Business Oversight, pursuant to Part 2
14 (commencing with Section 18500) of Division 5 of Title 2 of the
15 Government Code.

16 ~~SEC. 48.~~

17 *SEC. 51.* Section 23074 of the Financial Code is amended to
18 read:

19 23074. The Department of Business Oversight shall have
20 possession and control of all records, criminal history information,
21 papers, equipment, supplies, moneys, funds, appropriations,
22 licenses, permits, contracts, claims, judgments, land, and other
23 property, real or personal, connected with the administration of,
24 or held for the benefit or use of, the Department of Justice for the
25 performance of the functions transferred to the Department of
26 Business Oversight pursuant to Section 23071.

27 ~~SEC. 49.~~

28 *SEC. 52.* Section 23102 of the Financial Code is amended to
29 read:

30 23102. The deferred deposits made pursuant to a permit issued
31 under Section 1789.37 of the Civil Code prior to December 31,
32 2004, shall be subject to and enforced to the extent valid under
33 Sections 1789.30 to 1789.37, inclusive, of the Civil Code, as if
34 those sections were not repealed. Any regulation, order, or other
35 action adopted, prescribed, taken, or performed by the Department
36 of Justice or by an officer of that department in connection with
37 deferred deposit transactions made prior to December 31, 2004,
38 shall continue to apply to those transactions. No suit, action, or
39 other proceeding lawfully commenced by or against the Department
40 of Justice or any other officer of the state in relation to deferred

1 deposit transactions made prior to December 31, 2004, shall abate
2 by reason of the transfer of authority concerning deferred deposit
3 transactions to the Department of Business Oversight pursuant to
4 Section 23071.

5 ~~SEC. 50.~~

6 *SEC. 53.* Section 30217 of the Financial Code is amended to
7 read:

8 30217. The commissioner may from time to time make, amend,
9 and rescind such rules, forms, and orders as are necessary to carry
10 out the provisions of this law, including rules defining any terms,
11 whether or not used in this law, insofar as the definitions are not
12 inconsistent with the provisions of this law. For the purposes of
13 rules and forms, the commissioner may classify persons and matters
14 within his jurisdiction and may prescribe different requirements
15 for different classes. The commissioner may in his discretion waive
16 any requirement of any rule or form in situations where in his
17 opinion such requirement is not necessary in the public interest or
18 for the protection of investors. All rules of the commissioner other
19 than those relating solely to the internal administration of the
20 Department of Business Oversight shall be made, amended, or
21 rescinded in accordance with the provisions of Chapter 4.5
22 (commencing with Section 11371) of Part 1 of Division 3 of Title
23 2 of the Government Code.

24 ~~SEC. 51.~~

25 *SEC. 54.* Section 50140 of the Financial Code is amended to
26 read:

27 50140. (a) An applicant for a license as a mortgage loan
28 originator shall apply by submitting the uniform form prescribed
29 for that purpose by the Nationwide Mortgage Licensing System
30 and Registry. The commissioner may require the submission of
31 additional information or supporting documentation to the
32 department.

33 (b) Section 461 of the Business and Professions Code shall not
34 be applicable to the Department of Business Oversight when using
35 a national uniform application adopted or approved for use by the
36 Nationwide Mortgage Licensing System and Registry in connection
37 with the SAFE Act.

38 (c) The commissioner shall, by rule, establish the timelines,
39 fees, and assessments applicable to applicants for original mortgage

1 loan originator licenses, license renewals, and license changes
2 under this division.

3 (d) The commissioner may, by rule, require mortgage loan
4 originator licensees to pay assessments through the Nationwide
5 Mortgage Licensing System and Registry.

6 (e) In connection with an application for a license as a mortgage
7 loan originator, the applicant shall, at a minimum, furnish to the
8 Nationwide Mortgage Licensing System and Registry information
9 concerning the applicant's identity, including the following:

10 (1) Fingerprint images and related information, for purposes of
11 performing a federal, or both a state and federal, criminal history
12 background check.

13 (2) Personal history and experience in a form prescribed by the
14 Nationwide Mortgage Licensing System and Registry, including
15 the submission of authorization for the Nationwide Mortgage
16 Licensing System and Registry and the commissioner to obtain
17 both of the following:

18 (A) An independent credit report obtained from a consumer
19 reporting agency.

20 (B) Information related to any administrative, civil, or criminal
21 findings by any governmental jurisdiction.

22 (f) The commissioner may ask the Nationwide Mortgage
23 Licensing System and Registry to obtain state criminal history
24 background check information on applicants described in
25 subdivision (a) using the procedures set forth in subdivisions (g)
26 and (h).

27 (g) If the Nationwide Mortgage Licensing System and Registry
28 electronically submits fingerprint images and related information,
29 as required by the Department of Justice, for an applicant for a
30 mortgage loan originator license, for the purposes of obtaining
31 information as to the existence and content of a record of state
32 convictions and state arrests and to the existence and content of a
33 record of state arrests for which the Department of Justice
34 establishes that the person is free on bail or on his or her
35 recognizance pending trial or appeal, the Department of Justice
36 shall provide an electronic response to the Nationwide Mortgage
37 Licensing System and Registry pursuant to paragraph (1) of
38 subdivision (p) of Section 11105 of the Penal Code, and shall
39 provide the same electronic response to the commissioner.

1 (h) The Nationwide Mortgage Licensing System and Registry
2 may request from the Department of Justice subsequent arrest
3 notification service, as provided pursuant to Section 11105.2 of
4 the Penal Code, for persons described in subdivision (a). The
5 Department of Justice shall provide the same electronic response
6 to the commissioner.

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

9 ~~SEC. 52.~~

10 *SEC. 55.* Section 50303 of the Financial Code is amended to
11 read:

12 50303. Neither the commissioner nor any employee of the
13 Department of Business Oversight shall be precluded from
14 obtaining a residential mortgage loan from a lender licensed under
15 this division, subject to the rules that may be adopted hereunder
16 or pursuant to other proper authority.

17 ~~SEC. 53.~~

18 *SEC. 56.* Section 50307.1 of the Financial Code is amended
19 to read:

20 50307.1. The commissioner may, as he or she deems necessary,
21 require licensees to provide reports concerning their residential
22 mortgage loan servicing activities, including, but not limited to,
23 information similar to that collected in connection with the
24 Mortgage Servicers Survey, first published by the Department of
25 Business Oversight in December 2007. The commissioner is
26 additionally authorized to seek and accept information provided
27 on a voluntary basis by residential mortgage loan servicers not
28 subject to the commissioner's jurisdiction. The commissioner shall
29 post only aggregated survey results on the department's Internet
30 Web site, and shall note the number of loan servicers submitting
31 data included in the aggregated totals and the estimated percentage
32 of outstanding mortgage loans to Californians that are serviced by
33 these loan servicers, to the extent information on the number of
34 outstanding loans is available from a reliable source. Nothing in
35 this section is intended to reduce or change the commissioner's
36 authority to request and demand reports under Section 50307.

37 ~~SEC. 54.~~

38 *SEC. 57.* Section 50316.5 of the Financial Code is amended
39 to read:

1 50316.5. Notwithstanding any other law, any application for
2 licensure, amendment to the application or registration document
3 or notice filed under any of the laws administered by the
4 Department of Business ~~Oversight~~. *Oversight*, or record otherwise
5 required to be filed in this state as an electronic record pursuant
6 to a nationwide central depository for information regarding
7 licensees, including mortgage loan originators, or any electronic
8 record filed through the Nationwide Mortgage Licensing System
9 and Registry, shall be deemed to be a valid original document upon
10 reproduction to paper form by the Department of Business
11 Oversight.

12 ~~SEC. 55.~~

13 *SEC. 58.* Section 5970 of the Government Code is amended
14 to read:

15 5970. As used in this chapter, the following phrases have the
16 following meanings:

17 (a) "Person" means any broker, dealer, municipal securities
18 dealer, investment advisor, or investment firm.

19 (b) "Regulatory agency" means the Department of Business
20 Oversight, the securities administrators or other similar regulatory
21 authority in any other state, the Securities and Exchange
22 Commission, the National Association of Securities Dealers, the
23 Municipal Securities Rulemaking Board, the Commodity Futures
24 Trading Commission, or any other self-regulatory organization.

25 (c) "State or local government" means the state, any department,
26 agency, board, commission, or authority of the state, or any city,
27 city and county, county, public district, public corporation,
28 authority, agency, board, commission, or other public entity.

29 ~~SEC. 56.~~

30 *SEC. 59.* Section 6254.5 of the Government Code is amended
31 to read:

32 6254.5. Notwithstanding any other provisions of law, whenever
33 a state or local agency discloses a public record which is otherwise
34 exempt from this chapter, to any member of the public, this
35 disclosure shall constitute a waiver of the exemptions specified in
36 ~~Sections~~ *Section* 6254, 6254.7, or other similar provisions of law.
37 For purposes of this section, "agency" includes a member, agent,
38 officer, or employee of the agency acting within the scope of his
39 or her membership, agency, office, or employment.

40 This section, however, shall not apply to disclosures:

- 1 (a) Made pursuant to the Information Practices Act (commencing
2 with Section 1798 of the Civil Code) or discovery proceedings.
- 3 (b) Made through other legal proceedings or as otherwise
4 required by law.
- 5 (c) Within the scope of disclosure of a statute which limits
6 disclosure of specified writings to certain purposes.
- 7 (d) Not required by law, and prohibited by formal action of an
8 elected legislative body of the local agency which retains the
9 writings.
- 10 (e) Made to any governmental agency which agrees to treat the
11 disclosed material as confidential. Only persons authorized in
12 writing by the person in charge of the agency shall be permitted
13 to obtain the information. Any information obtained by the agency
14 shall only be used for purposes which are consistent with existing
15 law.
- 16 (f) Of records relating to a financial institution or an affiliate
17 thereof, if the disclosures are made to the financial institution or
18 affiliate by a state agency responsible for the regulation or
19 supervision of the financial institution or affiliate.
- 20 (g) Of records relating to any person that is subject to the
21 jurisdiction of the Department of Business Oversight, if the
22 disclosures are made to the person that is the subject of the records
23 for the purpose of corrective action by that person, or if a
24 corporation, to an officer, director, or other key personnel of the
25 corporation for the purpose of corrective action, or to any other
26 person to the extent necessary to obtain information from that
27 person for the purpose of an investigation by the Department of
28 Business Oversight.
- 29 (h) Made by the Commissioner of Business Oversight under
30 Section 450, 452, 8009, or 18396 of the Financial Code.
- 31 (i) Of records relating to any person that is subject to the
32 jurisdiction of the Department of Managed Health Care, if the
33 disclosures are made to the person that is the subject of the records
34 for the purpose of corrective action by that person, or if a
35 corporation, to an officer, director, or other key personnel of the
36 corporation for the purpose of corrective action, or to any other
37 person to the extent necessary to obtain information from that
38 person for the purpose of an investigation by the Department of
39 Managed Health Care.

1 ~~SEC. 57.~~

2 ~~SEC. 60.~~ Section 6254.12 of the Government Code is amended
3 to read:

4 6254.12. Any information reported to the North American
5 Securities Administrators Association/National Association of
6 Securities Dealers' Central Registration Depository and compiled
7 as disciplinary records which are made available to the Department
8 of Business Oversight through a computer system, shall constitute
9 a public record. Notwithstanding any other provision of law, the
10 Department of Business Oversight may disclose that information
11 and the current license status and the year of issuance of the license
12 of a broker-dealer upon written or oral request pursuant to Section
13 25247 of the Corporations Code.

14 ~~SEC. 58.~~

15 ~~SEC. 61.~~ Section 6254.22 of the Government Code is amended
16 to read:

17 6254.22. Nothing in this chapter or any other provision of law
18 shall require the disclosure of records of a health plan that is
19 licensed pursuant to the Knox-Keene Health Care Service Plan
20 Act of 1975 (Chapter 2.2 (commencing with Section 1340) of
21 Division 2 of the Health and Safety Code) and that is governed by
22 a county board of supervisors, whether paper records, records
23 maintained in the management information system, or records in
24 any other form, that relate to provider rate or payment
25 determinations, allocation or distribution methodologies for
26 provider payments, formulae or calculations for these payments,
27 and contract negotiations with providers of health care for
28 alternative rates for a period of three years after the contract is
29 fully executed. The transmission of the records, or the information
30 contained therein in an alternative form, to the board of supervisors
31 shall not constitute a waiver of exemption from disclosure, and
32 the records and information once transmitted to the board of
33 supervisors shall be subject to this same exemption. The provisions
34 of this section shall not prevent access to any records by the Joint
35 Legislative Audit Committee in the exercise of its powers pursuant
36 to Article 1 (commencing with Section 10500) of Chapter 4 of
37 Part 2 of Division 2 of Title 2. The provisions of this section also
38 shall not prevent access to any records by the Department of
39 Business Oversight in the exercise of its powers pursuant to Article

1 1 (commencing with Section 1340) of Chapter 2.2 of Division 2
2 of the Health and Safety Code.

3 ~~SEC. 59.~~

4 *SEC. 62.* Section 11840 of the Government Code is amended
5 to read:

6 11840. The Legislature finds and declares all of the following:

7 (a) The current regulatory responsibility for medical services
8 is spread among many governmental entities including all of the
9 following:

10 (1) The Medical Board of California.

11 (2) The Department of Business Oversight.

12 (3) The State Department of Health Services.

13 (b) This overlapping jurisdiction has resulted in multiple and
14 duplicative audits of many physician offices, additional expense
15 and hiring of additional staff to respond to duplicate requests for
16 medical records, and the review of confidential medical records
17 by a growing number of governmental entities.

18 (c) In the interest of reducing the number of separate times
19 various public and private agencies review confidential medical
20 records, streamlining the regulatory process, and reducing the
21 redundant reviews of the offices of physicians, it is the intent of
22 the Legislature to coordinate, to the extent feasible, as many of
23 these regulatory functions as possible.

24 (d) In addition to government audits of physician offices,
25 numerous private entities also conduct reviews of physician offices.

26 (e) It is in the public interest to achieve ultimately a uniform
27 system of private and public auditing of physician offices and,
28 thus, streamline the process as much as possible.

29 ~~SEC. 60.~~

30 *SEC. 63.* Section 53344.1 of the Government Code is amended
31 to read:

32 53344.1. (a) The legislative body may provide in the resolution
33 of intention or the resolution of consideration, and in documents
34 setting forth the rights of the debtholders that it shall reserve to
35 itself, the right and authority to allow any interested owner of
36 property within the district, subject to the provisions of this section
37 and to those conditions as it may impose, and any applicable
38 prepayment penalties as prescribed in the bond indenture or
39 comparable instrument or document, to tender to the district
40 treasurer in full payment or part payment of any installment of the

1 special taxes or the interest or penalties thereon which may be due
2 or delinquent, but for which a bill has been received, any bond or
3 other obligation secured thereby, the bond or other obligation to
4 be taken at par and credit to be given for the accrued interest shown
5 thereby computed to the date of tender. The district treasurer shall
6 thereupon cancel the bond debt and shall cause proper credit
7 therefor to be entered on the records of the district and in the office
8 of the auditor and tax collector. If the legislative body agrees to
9 allow bond tenders pursuant to this section or to Section 53356.8,
10 the legislative body may, at its discretion, agree to distribute or
11 direct its trustee or other agent to distribute by any means an offer
12 to purchase bonds or other related inquiry to the holders of the
13 bonds of the district, at the expense of the person requesting the
14 mailing. Neither the legislative body, nor any of its officers, agents,
15 or trustees shall be liable in any way for that distribution.

16 (b) The provisions of this subdivision apply to any tender of
17 bonds pursuant to this section by an owner of property within the
18 district who is delinquent in paying special taxes levied by this
19 district when due. Bonds may be tendered pursuant to this
20 subdivision only after all of the following conditions have been
21 satisfied:

22 (1) The delinquent lot or parcel has been offered for sale as a
23 result of a foreclosure judgment and the minimum price required
24 to be paid for the lot or parcel was not received.

25 (2) The bonds to be tendered to the district were obtained by
26 the property owner only after their prior owner was presented with
27 a tender offer or solicitation as defined in this subdivision.

28 (A) For purposes of this subdivision, a “tender offer” or
29 “solicitation” is a solicitation by any person or that person’s agent
30 by offering circular, memoranda, tender, or solicitation, or any
31 other document or written, oral, or electronic communication for
32 the purchase of the bonds from their then current owner. A person
33 includes a natural person, corporation, company, partnership,
34 limited liability company, limited liability partnership, association,
35 or any other entity and a “tendering party” includes any person
36 making a tender offer for bonds.

37 (B) Any tender offer or solicitation shall include all material
38 information as required under federal and state securities laws and
39 shall also include the following information, to the extent
40 applicable:

- 1 (i) The name of the tendering party.
- 2 (ii) An individual who can be contacted to provide further
3 information with respect to the tender.
- 4 (iii) The current holdings of bonds of the district by the tendering
5 party and its affiliates.
- 6 (iv) The total face amount of the bonds being solicited.
- 7 (v) The price or method of determining the price per one
8 thousand dollars (\$1,000) in bonds being offered by the tendering
9 party.
- 10 (vi) Whether the tendering party or any person affiliated with
11 or related to the tendering party, or any employee, agent, or
12 representative of the tendering party, is a property owner within
13 the district that issued the bonds.
- 14 (vii) Whether the present intentions of the tendering party are
15 to use the bonds for payment of special taxes or the purchase of
16 property at a foreclosure sale pursuant to this section or Section
17 53356.8. This statement of present intentions shall not be construed
18 to be binding on the tendering party.
- 19 (viii) The status of the bond redemption fund, construction fund,
20 reserve fund, and any other funds of the district, and the special
21 tax delinquency rate of the district, all of which data shall be the
22 most recent available from the district and, in any event, shall
23 apply to the state of the funds after the most recent payment of
24 principal and interest on the bonds. The district shall provide the
25 necessary data to the property owner within 10 days of receiving
26 a written request and may charge a reasonable fee not to exceed
27 its actual costs of providing the data. The district shall
28 simultaneously release the same information to the general public.
29 The property shall also provide the percentage of the delinquency
30 attributable to the tendering party or any person affiliated with or
31 related to the tendering party, or any employee, agent, or
32 representative of the tendering party, for each of the three most
33 recent fiscal years.
- 34 (ix) If the tendering party owns or leases property in the district
35 that issued the bonds, the development plans for that property and
36 an update on the current status of development of that property
37 and of any zoning, planning, or other permits or approvals needed
38 for development of the property to proceed.

1 (x) Any other material information available to the tendering
2 party and not generally available to the public that would
3 significantly affect the market value of the bonds of the district.

4 (C) The tendering party shall notify the legislative body of his
5 or her intent to make a tender offer or solicitation at least
6 simultaneously with making any offer or solicitation.

7 (D) The tendering party shall provide a copy of the solicitation
8 to the Department of Business Oversight prior to five working
9 days after notifying the legislative body pursuant to subparagraph
10 (C).

11 (3) The tendering property owner provides the legislative body
12 with a negative assurance from counsel representing the property
13 owner that no misleading or other information has come to the
14 opining party's attention after reasonable investigation, that would
15 lead the party providing the negative assurance to believe that the
16 tender was in violation of federal or state securities laws.

17 (4) The tendering property owner delivers to the legislative body
18 of the district that issued the bonds subject to the tender, a
19 certificate to the effect that the tender information is accurate in
20 all material respects and does not omit to state a material fact
21 necessary in order to make the statements included in the tender
22 information not misleading, except that the certificate need not
23 provide any assurances as to the accuracy of the information as to
24 the bond fund balances and tax payment information provided by
25 the district.

26 (c) The provisions of this subdivision apply to any tender of
27 bonds pursuant to this section by any owner of property within the
28 district who is not delinquent in paying special taxes on any
29 property within the district. A person subject to this subdivision
30 shall be deemed to be a person whose relationship to the issuer
31 may give him or her access, directly or indirectly, to material
32 information about the issuer not generally available to the public,
33 and the provisions of Section 25402 of the Corporations Code
34 apply to any purchase or sale of securities by that person in
35 connection with the tender transaction. For purposes of this
36 subdivision, the "issuer" includes the district, the local agency that
37 created the district, and any owner of property within the district.
38 At any time prior to tendering bonds to the district pursuant to this
39 section, any person subject to this subdivision shall deliver to the
40 legislative body of the district a certificate that he or she has

1 complied with this subdivision and applicable federal and state
2 securities laws.

3 ~~SEC. 61.~~

4 *SEC. 64.* Section 53638 of the Government Code is amended
5 to read:

6 53638. (a) The deposit shall not exceed the shareholder’s
7 equity of any depository bank. For the purposes of this subdivision,
8 shareholder’s equity shall be determined in accordance with Section
9 463 of the Financial Code, but shall be deemed to include capital
10 notes and debentures.

11 (b) The deposit shall not exceed the total of the net worth of
12 any depository savings association or federal association, except
13 that deposits not exceeding a total of five hundred thousand dollars
14 (\$500,000) may be made to a savings association or federal
15 association without regard to the net worth of that depository, if
16 such deposits are insured or secured as required by law.

17 (c) The deposit to the share accounts of any regularly chartered
18 credit union shall not exceed the total of the unimpaired capital
19 and surplus of the credit union, as defined by rule of the
20 Commissioner of Financial Institutions, except that the deposit to
21 any credit union share account in an amount not exceeding five
22 hundred thousand dollars (\$500,000) may be made if the share
23 accounts of that credit union are insured or guaranteed pursuant
24 to Section 14858 of the Financial Code or are secured as required
25 by law.

26 (d) The deposit in investment certificates of a federally insured
27 industrial loan company shall not exceed the total of the unimpaired
28 capital and surplus of the insured industrial loan company.

29 ~~SEC. 62.~~

30 *SEC. 65.* Section 54956.87 of the Government Code is amended
31 to read:

32 54956.87. (a) Notwithstanding any other provision of this
33 chapter, the records of a health plan that is licensed pursuant to
34 the Knox-Keene Health Care Service Plan Act of 1975 (Chapter
35 2.2 (commencing with Section 1340) of Division 2 of the Health
36 and Safety Code) and that is governed by a county board of
37 supervisors, whether paper records, records maintained in the
38 management information system, or records in any other form,
39 that relate to provider rate or payment determinations, allocation
40 or distribution methodologies for provider payments, formulas or

1 calculations for these payments, and contract negotiations with
2 providers of health care for alternative rates are exempt from
3 disclosure for a period of three years after the contract is fully
4 executed. The transmission of the records, or the information
5 contained therein in an alternative form, to the board of supervisors
6 shall not constitute a waiver of exemption from disclosure, and
7 the records and information once transmitted to the board of
8 supervisors shall be subject to this same exemption.

9 (b) Notwithstanding any other provision of law, the governing
10 board of a health plan that is licensed pursuant to the Knox-Keene
11 Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing
12 with Section 1340) of Division 2 of the Health and Safety Code)
13 and that is governed by a county board of supervisors may order
14 that a meeting held solely for the purpose of discussion or taking
15 action on health plan trade secrets, as defined in subdivision (f),
16 shall be held in closed session. The requirements of making a
17 public report of action taken in closed session, and the vote or
18 abstention of every member present, may be limited to a brief
19 general description without the information constituting the trade
20 secret.

21 (c) Notwithstanding any other provision of law, the governing
22 board of a health plan may meet in closed session to consider and
23 take action on matters pertaining to contracts and contract
24 negotiations by the health plan with providers of health care
25 services concerning all matters related to rates of payment. The
26 governing board may delete the portion or portions containing
27 trade secrets from any documents that were finally approved in
28 the closed session held pursuant to subdivision (b) that are provided
29 to persons who have made the timely or standing request.

30 (d) Nothing in this section shall be construed as preventing the
31 governing board from meeting in closed session as otherwise
32 provided by law.

33 (e) The provisions of this section shall not prevent access to any
34 records by the Joint Legislative Audit Committee in the exercise
35 of its powers pursuant to Article 1 (commencing with Section
36 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The
37 provisions of this section also shall not prevent access to any
38 records by the Department of Business Oversight in the exercise
39 of its powers pursuant to Article 1 (commencing with Section
40 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

1 (f) For purposes of this section, “health plan trade secret” means
2 a trade secret, as defined in subdivision (d) of Section 3426.1 of
3 the Civil Code, that also meets both of the following criteria:

4 (1) The secrecy of the information is necessary for the health
5 plan to initiate a new service, program, marketing strategy, business
6 plan, or technology, or to add a benefit or product.

7 (2) Premature disclosure of the trade secret would create a
8 substantial probability of depriving the health plan of a substantial
9 economic benefit or opportunity.

10 ~~SEC. 63. Section 1341.9 of the Health and Safety Code, as~~
11 ~~added by Section 31 of Chapter 525 of the Statutes of 1999, is~~
12 ~~repealed.~~

13 ~~SEC. 64.~~

14 *SEC. 66.* Section 1341.10 of the Health and Safety Code is
15 amended to read:

16 1341.10. The department may use the unexpended balance of
17 funds available for use in connection with the performance of the
18 functions of the Department of Business Oversight to which the
19 department succeeds pursuant to Section 1341.9.

20 ~~SEC. 65.~~

21 *SEC. 67.* Section 1341.11 of the Health and Safety Code is
22 amended to read:

23 1341.11. All officers and employees of the Department of
24 Business Oversight who, on the operative date of this section, are
25 performing any duty, power, purpose, responsibility, or jurisdiction
26 to which the department succeeds, who are serving in the state
27 civil service, other than as temporary employees, and engaged in
28 the performance of a function vested by the department by Section
29 1341.9, shall be transferred to the department. The status, positions,
30 and rights of those persons shall not be affected by the transfer
31 and shall be retained by those persons as officers and employees
32 of the department, pursuant to the State Civil Service Act (Part 2
33 (commencing with Section 18500) of Division 5 of Title 2 of the
34 Government Code), except as to positions exempted from civil
35 service.

36 ~~SEC. 66.~~

37 *SEC. 68.* Section 1341.12 of the Health and Safety Code is
38 amended to read:

39 1341.12. The department shall have possession and control of
40 all records, papers, offices, equipment, supplies, moneys, funds,

1 appropriations, licenses, permits, agreements, contracts, claims,
2 judgments, land, and other property, real or personal, connected
3 with the administration of, or held for the benefit or use of, the
4 Department of Business Oversight for the performance of the
5 functions transferred to the department by Section 1341.9.

6 ~~SEC. 67.~~

7 *SEC. 69.* Section 1341.14 of the Health and Safety Code is
8 amended to read:

9 1341.14. (a) Any regulation, order, or other action, adopted,
10 prescribed, taken, or performed by the Department of Business
11 Oversight or by an officer of the Department of Business Oversight
12 in the administration of a program or the performance of a duty,
13 responsibility, or authorization transferred to the department by
14 Section 1341.9 shall remain in effect and shall be deemed to be a
15 regulation, order, or action of the department.

16 (b) No suit, action, or other proceeding lawfully commenced
17 by or against the Department of Business Oversight or any other
18 officer of the state, in relation to the administration of any program
19 or the discharge of any duty, responsibility, or authorization
20 transferred to the department by Section 1341.9 shall abate by
21 reason of the transfer of the program, duty, responsibility, or
22 authorization.

23 ~~SEC. 68.~~

24 *SEC. 70.* Section 1280.7 of the Insurance Code is amended to
25 read:

26 1280.7. This chapter and the other provisions of this code,
27 except as set forth in this paragraph, shall not apply to or affect
28 unincorporated interindemnity or reciprocal or interinsurance
29 contracts between members of a cooperative corporation, organized
30 and operating under Part 2 (commencing with Section 12200) of
31 Division 3 of Title 1 of the Corporations Code, whose members
32 consist solely of physicians and surgeons licensed in California,
33 which contracts indemnify solely in respect to medical malpractice
34 claims against those members, and which do not collect in advance
35 of loss any moneys other than contributions by each member to a
36 collective reserve trust fund or for necessary expenses of
37 administration. However, interindemnity, reciprocal, or
38 interinsurance contracts with respect to the following types of
39 claims, in addition to medical malpractice claims, may be entered
40 into in conjunction with contracts with respect to medical

1 malpractice claims if the reserve trust fund is at least twenty million
2 dollars (\$20,000,000):

3 (1) Bodily injury or property damage arising out of the conduct
4 and of the operations of the member's professional practice
5 occurring on the member's premises.

6 (2) Officers', directors', and administrators' liability, to the
7 extent that the member's professional practice is operated as a
8 professional corporation or group.

9 (3) Nonowned automobile coverage.

10 The provisions of Chapter 3 (commencing with Section 330) of
11 Part 1 of Division 1 shall apply to unincorporated interindemnity
12 or reciprocal or interinsurance contracts. Those unincorporated
13 interindemnity or reciprocal or interinsurance contracts shall
14 comply with all of the following requirements:

15 (a) Each participating member shall enter into and, concurrently
16 therewith, receive an executed copy of a trust agreement, which
17 shall govern the collection and disposition of all funds of the
18 interindemnity arrangement.

19 The trust agreement shall, at a minimum, contain provision for
20 all the following matters:

21 (1) An initial trust corpus of not less than ten million dollars
22 (\$10,000,000), which corpus shall be a trust fund to secure
23 enforcement of the interindemnity arrangement. The average
24 contribution to the initial trust corpus shall be not less than twenty
25 thousand dollars (\$20,000) per member participating in the
26 interindemnity arrangement. The average contribution to the trust
27 fund shall continue at all times to be not less than twenty thousand
28 dollars (\$20,000) per participating member unless the
29 interindemnity arrangement is qualified to admit members under
30 the terms of subdivision (k). No such interindemnity arrangement
31 shall become operative until the requisite minimum reserve trust
32 fund has been established by contributions from not fewer than
33 500 participating members.

34 (2) The reserve trust fund created by the trust agreement shall
35 be administered by a board of trustees of three or more members,
36 all of whom shall be physicians and surgeons licensed in California,
37 participating members in the interindemnity arrangement, and
38 elected biennially or more frequently by at least a majority of all
39 members participating in the interindemnity arrangement.

1 (3) The members of the board of trustees are fiduciaries and the
2 board shall be the custodian of all funds of the interindemnity
3 arrangement, and all those funds shall be deposited in the bank or
4 banks and savings and loan associations in California as the board
5 may designate. Each account shall require two or more signatories
6 for withdrawal of funds in excess of ten thousand dollars (\$10,000).
7 The authorized signatories shall be appointed by the board and, as
8 to any withdrawal in excess of one hundred thousand dollars
9 (\$100,000), at least one of the two or more authorized signatories
10 shall be a physician and surgeon licensed in California and a
11 participating member in the interindemnity arrangement. Each
12 signatory on those accounts shall maintain, at all times while
13 empowered to draw on those funds, for the benefit of the
14 interindemnity arrangement, a bond against loss suffered through
15 embezzlement, mysterious disappearance, holdup or burglary, or
16 other loss issued by a bonding company licensed to do business
17 in California in a penal sum of not less than one hundred thousand
18 dollars (\$100,000).

19 (4) All funds held in trust that are in excess of current financial
20 needs shall be invested and reinvested from time to time, under
21 the direction of the board of trustees, in eligible securities, as
22 defined in Section 16430 of the Government Code, in portfolios
23 of eligible securities, in exchange traded financial futures contracts
24 or exchange traded options contracts to hedge investment in those
25 eligible securities, or in certificates of deposits or time deposits
26 issued by banks and savings and loan associations in California
27 duly insured by instrumentalities of the United States government.

28 Pursuant to the authority contained in Section 1 of Article XV
29 of the California Constitution, the restrictions upon rates of interest
30 contained in Section 1 of Article XV of the California Constitution
31 shall not apply to any obligations of, loans made by, or
32 forbearances of, any trust established by a cooperative corporation
33 providing indemnity pursuant to this section.

34 (5) The income earned on the corpus of the trust fund shall be
35 the source for the payment of the claims, costs, judgments,
36 settlements, and costs of administration contemplated by the
37 interindemnity arrangement, and to the extent the income is
38 insufficient for those purposes, the board of trustees shall have the
39 power and authority to assess participating members for all
40 amounts necessary to meet the obligations of the interindemnity

1 arrangement in accordance with the terms thereof. If necessary in
2 the best interests of the interindemnity arrangement, the board of
3 trustees may make assessments to increase the corpus of the trust
4 fund in accordance with the terms of the interindemnity
5 arrangement. Any assessment levied against a member shall be
6 the personal obligation of the member. Any person who obtains a
7 final judgment of recovery for medical malpractice or other liability
8 authorized by this section against a member of the interindemnity
9 arrangement shall have, in addition to any other remedy, the right
10 to assert directly all rights to indemnification that the judgment
11 debtor has under the interindemnity arrangement. The final
12 judgment shall be a lien on the reserve trust fund to secure payment
13 of the judgment, limited to the extent of the judgment debtor's
14 rights to indemnification.

15 Any change in the assessment agreement between the
16 interindemnity arrangement and its membership shall be submitted
17 to the entire membership for ratification. If the ratification process
18 is to be performed by a mail ballot, a ballot shall be sent to each
19 member by first-class mail, postage prepaid. Within 45 days after
20 the posted date on the mail ballot, each member who decides to
21 vote on the assessment change shall return his or her ballot to the
22 interindemnity arrangement for the tallying of the ballots. An
23 affirmative vote of 75 percent of those voting shall be required to
24 effectuate any change in the assessment agreement.

25 If a change in the assessment agreement is to be submitted to
26 members at a properly called meeting, the membership shall be
27 notified of the meeting and the proposed assessment change by
28 first-class mail, postage prepaid, posted at least 45 days prior to
29 the meeting. Seventy-five percent of those present in person or by
30 proxy at the meeting shall be required to effectuate any change in
31 the assessment agreement.

32 (6) Each participating member shall be covered by the
33 interindemnity arrangement for not less than one million dollars
34 (\$1,000,000) for each occurrence of professional negligence or
35 other liability authorized by this section, with the terms and
36 conditions of the coverage to be specified in the trust agreement,
37 except that the interindemnity arrangement may provide
38 participating members with an aggregate limit for all payments on
39 behalf of the member and may provide participating members with
40 less than one million dollars (\$1,000,000) of coverage for each

1 occurrence of professional negligence or other liability authorized
2 by this section if the interindemnity arrangement obtains for the
3 benefit of the members reinsurance of excess limits coverage in
4 an amount that when added to the coverage provided by the
5 interindemnity arrangement would equal not less than one million
6 dollars (\$1,000,000) for each occurrence of professional negligence
7 or other liability authorized by this section.

8 Any change in the coverage provided by the trust agreement
9 between the interindemnity arrangement and its membership shall
10 be submitted to the entire membership for ratification. If the
11 ratification process is to be performed by a mail ballot, a ballot
12 shall be sent to each member by first-class mail, postage prepaid.
13 Within 45 days after the posted date on the mail ballot, each
14 member who decides to vote on the coverage change shall return
15 his or her ballot to the interindemnity arrangement for the tallying
16 of the ballot. An affirmative vote of 75 percent of those voting
17 shall be required to effectuate any change in the coverage provided
18 by the trust agreement, except that at least 50 percent of the entire
19 membership must agree to any change.

20 If any change is to be submitted to members at a properly called
21 meeting, the membership shall be notified of the meeting and the
22 proposed coverage change by first-class mail, postage prepaid,
23 posted at least 45 days prior to the meeting. An affirmative vote
24 of 75 percent of the membership present at the meeting, in person
25 or by proxy, shall be required to effectuate any change, except that
26 at least 50 percent of the entire membership must agree to any
27 change.

28 (7) Withdrawal of all, or any portion of, the corpus of the reserve
29 trust fund shall be upon the written authorization signed by at least
30 two-thirds of the members of the board of trustees.

31 (8) The board of trustees shall cause both of the following to
32 be furnished to each member participating in the interindemnity
33 arrangement, and to be filed with the Commissioner of Business
34 Oversight:

35 (A) Within 90 days after the end of each fiscal year, a statement
36 of the assets and liabilities of the interindemnity arrangement as
37 of the end of that year, a statement of the revenue and expenditures
38 of the interindemnity arrangement, and a statement of the changes
39 in corpus of the reserve trust for that year, in each case
40 accompanied by a certificate signed by a firm of independent

1 certified public accountants selected by the board of trustees
2 indicating that the firm has conducted an audit of those statements
3 in accordance with generally accepted auditing standards and
4 indicating the results of the audit.

5 (B) Within 45 days after the end of each of the first three
6 quarterly periods of each fiscal year, a statement of the assets and
7 liabilities of the interindemnity arrangement as of the end of the
8 quarterly period, a statement of the revenue and expenditures of
9 the interindemnity arrangement, and a statement of the changes in
10 corpus of the reserve trust for the period, in each case accompanied
11 by a certificate signed by a majority of the members of the board
12 of trustees to the effect that the statements were prepared from the
13 official books and records of the interindemnity arrangement.

14 (C) In addition to the statements required to be filed pursuant
15 to this paragraph, the board of trustees shall annually file with the
16 Commissioner of Business Oversight an authorization for
17 disclosure to the commissioner of all financial records pertaining
18 to the interindemnity arrangement. For the purpose of this
19 subparagraph, the authorization for disclosure shall also include
20 the financial records of any association, partnership, or corporation
21 that has management or control of the funds or the operation of
22 the interindemnity arrangement.

23 (9) The trust agreement shall also provide for all the following:

24 (A) In the event a participating member who is in full
25 compliance with the trust agreement, including the payment of all
26 outstanding dues and assessments, dies, the initial contribution
27 made by the decedent shall be returned to the member's estate or
28 designated beneficiary; the indemnity coverage shall continue for
29 the benefit of the decedent's estate in respect of occurrences during
30 the time the decedent was a participating member; and neither the
31 person receiving the repayment of the initial contribution nor the
32 decedent's estate shall be responsible for any assessments levied
33 following the death of the member.

34 (B) A participating member who is then in full compliance with
35 the trust agreement and who has reached the age of 65 *years* and
36 who has retired completely from the practice of medicine may
37 elect to retire from the interindemnity arrangement, in which case
38 the member shall not be responsible for assessments levied
39 following the date notice of retirement is given to the trust.
40 Following that retirement, the indemnity coverage shall continue

1 for the benefit of the member in respect of occurrences prior to
2 the time the member retired from the interindemnity arrangement.
3 That retired member's initial contribution shall be repaid 10 years
4 from the date the notice of retirement is received by the trust, or
5 an earlier date as specified in the trust agreement. The board of
6 trustees may reduce the age for retirement to not less than 55 years
7 subject to all other requirements in this paragraph and any
8 additional requirements deemed necessary by the board.

9 (C) During any period in which a participating member, who
10 is then in full compliance with the trust agreement, has, in the
11 judgment of the board of trustees, become unable to perform any
12 and every duty of his or her regular professional occupation, the
13 participating member may request disability status in accordance
14 with the terms of the interindemnity arrangement. During any
15 period of disability status, the member shall not be responsible for
16 assessments levied during the period and, if so provided in the
17 interindemnity arrangement, all indemnity coverage, both as to
18 defense and payment of claims, shall terminate as to occurrences
19 arising out of the actions of the participating member during the
20 period of disability status.

21 (D) In the event a participating member fails to pay any
22 assessment when due, the board of trustees may terminate that
23 person's membership status if the failure to pay is not cured within
24 30 days from the date the assessment was due. Upon that
25 termination the former participating member shall not be entitled
26 to the return of all or any part of his or her initial contribution, and
27 the indemnity coverage shall thereupon terminate as to all claims
28 then pending against that person and in respect to all occurrences
29 prior to the date of that termination of membership. However, in
30 the event the interindemnity arrangement is then providing legal
31 defense services to that person, the interindemnity arrangement
32 shall continue to provide those services for a period of 10 days
33 following that termination.

34 (E) In the event a participating member fails to comply with
35 any provision of the trust agreement (other than a failure to pay
36 assessments when due), the board of trustees may terminate that
37 person's membership status if the failure to comply is not cured
38 within 60 days from the date the person is notified of the failure,
39 provided that before that membership status may be terminated
40 the person shall be given the right to call for a hearing before the

1 board of trustees (to be held before the expiration of the 60-day
2 period), at which hearing the person shall be given the opportunity
3 to demonstrate to the board of trustees that no failure to comply
4 has occurred or, if it has occurred, that it has been cured. Upon
5 that termination, the former participating member shall not be
6 entitled to the return of all or any part of his or her initial
7 contribution, and the indemnity coverage shall thereupon terminate
8 as to all claims then pending against the person and in respect to
9 all occurrences prior to the date of the termination of membership.
10 However, in the event the interindemnity arrangement is then
11 providing legal defense services to that person, the interindemnity
12 arrangement shall continue to provide those services for a period
13 of 10 days following the termination.

14 (F) A participating member who is then in full compliance with
15 the trust agreement may elect voluntarily to terminate his or her
16 membership in the interindemnity arrangement. Upon that
17 voluntary termination, that person may further elect to cease being
18 responsible for future assessments, or to continue to pay those
19 assessments until the time as the person's initial contribution is
20 repaid. In the event the person elects to cease being responsible
21 for future assessments, the indemnity coverage shall thereupon
22 terminate and the person shall either be responsible for his or her
23 own exposure for acts committed while a participating member in
24 the interindemnity arrangement, or he or she may request the
25 interindemnity arrangement to purchase or provide, at the cost of
26 the person, coverage for that exposure. The initial contribution of
27 the person shall be repaid on the 10th anniversary of the date the
28 contribution was made. In the event the person elects to continue
29 to be responsible for assessments, the indemnity coverage shall
30 continue in respect of occurrences prior to the date of the voluntary
31 termination, and the initial contribution of the person shall be
32 repaid at the time as the board of trustees is satisfied that (i) there
33 are no claims pending against the person in respect of occurrences
34 during the time the person was a participating member, and (ii)
35 the statute of limitations has run on all claims that might be asserted
36 against that person in respect of occurrences during that time. In
37 no event shall that repayment be made earlier than the 10th
38 anniversary of the date the contribution was made.

39 Any person whose membership in an interindemnity arrangement
40 is involuntarily terminated for failure to pay assessments or who

1 voluntarily terminates that membership and elects to be responsible
2 for his or her own exposure for acts committed while a participating
3 member, shall not be eligible to become a member of any other
4 interindemnity arrangement for a period of five years after the
5 termination unless, on the effective date of the act which amended
6 this section during the 1985–86 Regular Session, the person had
7 on file with the Department of Business Oversight a copy of a
8 subscription agreement signifying the person’s agreement to
9 transfer membership or had paid a minimum of ten thousand dollars
10 (\$10,000) to another interindemnity arrangement that was granted
11 a permit to organize prior to January 1, 1985.

12 (G) The board of trustees shall have the right to terminate the
13 membership of a participating member if the board of trustees
14 determines that the termination is in the best interests of the
15 interindemnity arrangement even though that person has complied
16 with all of the provisions of the trust agreement. A termination
17 may be effected only if at least two-thirds of the members of the
18 board of trustees indicate in writing their decision to terminate. If
19 the board of trustees proposes to terminate a member, the member
20 shall have the right to call a special meeting of all participating
21 members in accordance with the rules established by the board of
22 trustees for the purpose of voting on whether or not the member
23 shall be terminated. The member shall not be terminated if at least
24 two-thirds of the participating members present, in person or by
25 proxy, indicate that the member should not be terminated. In the
26 event a member is terminated, the person shall elect either: (i) to
27 request the return of his or her initial contribution, in which case
28 the contribution shall be repaid and the indemnity coverage shall
29 thereupon terminate as to all claims then pending against the person
30 and in respect to all occurrences prior to the date of the termination
31 of membership. However, in the event the interindemnity
32 arrangement is then providing legal defense services to the person,
33 the interindemnity arrangement shall continue to provide those
34 services for a period of 30 days to enable the person to assume his
35 or her own defense; or (ii) to release all rights to the return of the
36 initial contribution, in which case the indemnity coverage shall
37 continue for the benefit of the member in respect of occurrences
38 during the time the person was a participating member and the
39 person shall have no responsibility for assessments levied following
40 that termination. The interindemnity arrangement may provide

1 that if a member is terminated and fails to make the election set
2 forth herein within 45 days of the date of notification of termination
3 of membership, the participating member shall be deemed to have
4 elected to release all rights to a return of his or her initial
5 contribution, in which case indemnity coverage shall apply for the
6 benefit of the member with respect to occurrences occurring prior
7 to the termination.

8 (10) Each member participating in the interindemnity
9 arrangement shall have the right of access to, and the inspection
10 of, the books and records of the interindemnity arrangement, which
11 rights shall be similar to the corporate shareholders pursuant to
12 Section 3003 of the Corporations Code, or, commencing January
13 1, 1977, Sections 1600 to 1605, inclusive, of the Corporations
14 Code.

15 (11) There shall be a meeting of all members participating in
16 the interindemnity arrangement, at least annually, after not less
17 than 10 days' written notice has been given, at a location
18 reasonably convenient to the participating members and on a date
19 that is within a reasonable period of time following the distribution
20 of the annual financial statements.

21 (12) Notwithstanding Sections 12453 and 12703 of the
22 Corporations Code, on any matter to be voted upon by the
23 membership at either a regular or special meeting, a member shall
24 have the right to vote in person or by written proxy filed with the
25 corporate secretary prior to the meeting. No proxy shall be made
26 irrevocable, nor be valid beyond the earliest of the following dates:

- 27 (A) The date of expiration set forth in the proxy.
28 (B) The date of termination of membership.
29 (C) Eleven months from the date of execution of the proxy.
30 (D) Such time as may be specified in the bylaws, not to exceed
31 11 months.

32 (13) The interindemnity arrangement, and the reserve trust fund
33 incident thereto, shall be subject to termination at any time by the
34 vote or written consent of not less than three-fourths of the
35 participating members.

36 (b) The board of trustees shall cause to be recorded with the
37 office of the county recorder of the county of the principal place
38 of business of the interindemnity arrangement within 90 days
39 following the end of each fiscal year, a written statement, executed
40 by a majority of the board of trustees under penalty of perjury,

1 reciting that each member participating in the interindemnity
2 arrangement was mailed a copy of the annual financial statement
3 and quarterly audit certificates by first-class mail, postage prepaid,
4 required pursuant to paragraph (8) of subdivision (a).

5 (c) Each person solicited to become a participating member in
6 an interindemnity arrangement shall receive in writing, at least 48
7 hours prior to the execution by the prospective participating
8 member of the trust agreement, and at least 48 hours prior to the
9 payment by the prospective participating member of any
10 consideration in connection with the interindemnity ~~arrangements,~~
11 *arrangement*, the following information:

12 (1) A copy of the articles of incorporation and bylaws of the
13 cooperative corporation and a copy of the form of trust agreement
14 to be executed by the prospective participating member.

15 (2) A disclosure statement regarding the interindemnity
16 arrangement. The disclosure statement shall contain on the first
17 or cover page a legend in boldface type reading substantially as
18 follows:

19 “THE INTERINDEMNITY ARRANGEMENT
20 CONTEMPLATED HEREIN PROVIDES THAT
21 PARTICIPATING MEMBERS HAVE UNLIMITED PERSONAL
22 LIABILITY FOR ASSESSMENTS THAT MAY BE LEVIED
23 TO PAY FOR THE PROFESSIONAL NEGLIGENCE OR
24 OTHER LIABILITY AUTHORIZED BY THIS SECTION. NO
25 ASSURANCES CAN BE GIVEN REGARDING THE AMOUNT
26 OR FREQUENCY OF ASSESSMENTS WHICH MAY BE
27 LEVIED, OR THAT ALL PARTICIPATING MEMBERS WILL
28 MAKE TIMELY PAYMENT OF THEIR ASSESSMENTS TO
29 COVER THE PROFESSIONAL NEGLIGENCE OR OTHER
30 LIABILITY AUTHORIZED BY THIS SECTION.”

31 (3) The disclosure statement shall further contain all of the
32 following information:

33 (A) The amount, nature, and terms and conditions of the
34 professional negligence or other liability relating to a member’s
35 professional practice coverage available under the interindemnity
36 arrangement.

37 (B) The amount of the initial contribution required of each
38 participating member and a statement of the minimum number of
39 members and aggregate contributions required for the
40 interindemnity arrangement to commence.

- 1 (C) The names, addresses, and professional experience of each
2 member of the board of trustees.
- 3 (D) The requirements for admission as a participating member.
- 4 (E) A statement of the services to be provided under the
5 interindemnity arrangement to each participating member.
- 6 (F) A statement regarding the obligation of each member to pay
7 assessments and the consequences for failure to do so.
- 8 (G) A statement of the rights and obligations of a participating
9 member in the event the member dies, retires, becomes disabled,
10 or terminates participation for any reason, or the interindemnity
11 arrangement terminates for any reason.
- 12 (H) A statement regarding the services to be provided, indicating
13 whether these services will be delegated to others pursuant to a
14 contractual arrangement. For those services delegated to others
15 pursuant to a contractual arrangement, a statement fully disclosing
16 and itemizing all consideration received directly or indirectly under
17 the arrangement, and indicating what the consideration is for, and
18 how, when, and to whom the consideration will be paid.
- 19 (I) A statement of the voting rights of the members and the
20 circumstances under which participation of a member may be
21 terminated and under which the interindemnity arrangement may
22 be terminated.
- 23 (J) If any statement of estimated or projected financial
24 information for the interindemnity arrangement is used, a statement
25 of the estimation or projection and a summary of the data and
26 assumptions upon which it is based.
- 27 (4) A list with the names and addresses of current participating
28 members of the interindemnity arrangement.
- 29 (d) No officer, director, trustee, employee, or member of the
30 interindemnity arrangement or the cooperative corporation shall
31 receive, or be entitled to receive, any payment, bonus, salary,
32 income, compensation, or other benefit whatsoever, either from
33 the reserve trust fund or the income therefrom or from any other
34 funds of the interindemnity arrangement or the members thereof
35 based on the number of participating members, or the amount of
36 the reserve trust fund or other funds of the interindemnity
37 arrangement.
- 38 (e) A peer review committee or committees shall be established
39 by the trust agreement to review the qualifications of any physician
40 and surgeon to participate or continue to participate in the

1 interindemnity arrangement, and to review the quality of medical
2 services rendered by any participating member, as well as the
3 validity of medical malpractice claims made against participating
4 members. Any physician and surgeon, prior to becoming a
5 participating member of the interindemnity arrangement, shall be
6 reviewed and approved by a majority of the members of the peer
7 review committee. No peer review committee, or any of its
8 members, shall be liable for any action taken by the committee in
9 reviewing the qualifications of a physician and surgeon to
10 participate or continue to participate, or the quality of medical
11 services rendered, or the validity of a medical malpractice claim,
12 unless it is alleged and proved that the action was taken with actual
13 malice.

14 (f) The following are hereby defined as unfair methods of
15 competition and deceptive acts or practices with respect to
16 cooperative corporations or interindemnity arrangements provided
17 for in this section:

18 (1) Making any false or misleading statement as to, or issuing,
19 circulating, or causing to be made, issued, or circulated, any
20 estimate, illustration, circular, or statement misrepresenting the
21 terms of any interindemnity arrangement or the benefits or
22 advantages promised thereby, or making any misleading
23 representation or any misrepresentation as to the financial condition
24 of the interindemnity arrangement, or making any
25 misrepresentation to any participating member for the purpose of
26 inducing or tending to induce the member to lapse, forfeit, or
27 surrender his or her rights to indemnification under the
28 interindemnity arrangement. It shall be a false or misleading
29 statement to state or represent that a cooperative corporation or
30 interindemnity arrangement is or constitutes “insurance” or an
31 “insurance company” or an “insurance policy.”

32 (2) Making or disseminating or causing to be made or
33 disseminated before the public in this state, in any newspaper or
34 other publication, or any advertising device, or by public outcry
35 or proclamation, or in any other manner or means whatsoever, any
36 statement containing any assertion, representation, or statement
37 with respect to those cooperative corporations or interindemnity
38 arrangements, or with respect to any person in the conduct of those
39 cooperative corporations or interindemnity arrangements, which
40 is untrue, deceptive, or misleading, and which is known, or which

1 by the exercise of reasonable care should be known, to be untrue,
 2 deceptive, or misleading. It shall be a false or misleading statement
 3 to state or represent that a cooperative corporation or
 4 interindemnity arrangement is or constitutes “insurance” or an
 5 “insurance company” or an “insurance policy.”

6 (3) Entering into any agreement to commit, or by any concerted
 7 action committing, any act of boycott, coercion, or intimidation
 8 resulting in or tending to result in an unreasonable restraint of, or
 9 monopoly in, those cooperative corporations or interindemnity
 10 arrangements.

11 (4) Filing with any supervisory or other public official, or
 12 making, publishing, disseminating, circulating, or delivering to
 13 any person, or placing before the public, or causing directly or
 14 indirectly, to be made, published, disseminated, circulated, or
 15 delivered to any person, or placed before the public any false
 16 statement of financial condition of a cooperative corporation or
 17 interindemnity arrangement with intent to deceive.

18 (5) Making any false entry in any book, report, or statement of
 19 a cooperative corporation or interindemnity arrangement with
 20 intent to deceive any agent or examiner lawfully appointed to
 21 examine into its condition or into any of its affairs, or any public
 22 official to whom a cooperative corporation or interindemnity
 23 arrangement is required by law to report, or who has authority by
 24 law to examine into its condition or into any of its affairs, or, with
 25 like intent, willfully omitting to make a true entry of any material
 26 fact pertaining to a cooperative corporation or interindemnity
 27 arrangement in any book, report, or statement of a cooperative
 28 corporation or interindemnity arrangement.

29 (6) Making or disseminating, or causing to be made or
 30 disseminated, before the public in this state, in any newspaper or
 31 other publication, or any other advertising device, or by public
 32 outcry or proclamation, or in any other manner or means ~~whatever,~~
 33 *whatsoever*, whether directly or by implication, any statement that
 34 a cooperative corporation or interindemnity arrangement is a
 35 member of the California Insurance Guarantee Association, or
 36 insured against insolvency as defined in Section 119.5. This
 37 paragraph shall not be interpreted to prohibit any activity of the
 38 California Insurance Guarantee Association or of the commissioner
 39 authorized, directly or by implication, by Article 14.2 (commencing
 40 with Section 1063) of Chapter 1.

1 (7) Knowingly committing or performing with a frequency as
2 to indicate a general business practice any of the following unfair
3 claims settlement practices:

4 (A) Misrepresenting to claimants pertinent facts or provisions
5 relating to any coverage at issue.

6 (B) Failing to acknowledge and act promptly upon
7 communications with respect to claims arising under those
8 interindemnity arrangements.

9 (C) Failing to adopt and implement reasonable standards for
10 the prompt investigation and processing of claims arising under
11 those interindemnity arrangements.

12 (D) Failing to affirm or deny coverage of claims within a
13 reasonable time after proof of claim requirements have been
14 completed and submitted by the participating member.

15 (E) Not attempting in good faith to effectuate prompt, fair, and
16 equitable settlements of claims in which liability has become
17 reasonably clear.

18 (F) Compelling participating members to institute litigation to
19 recover amounts due under an interindemnity arrangement by
20 offering substantially less than the amounts ultimately recovered
21 in actions brought by those participating members when those
22 participating members have made claims under those
23 interindemnity arrangements for amounts reasonably similar to
24 the amounts ultimately recovered.

25 (G) Attempting to settle a claim by a participating member for
26 less than the amount to which a reasonable person would have
27 believed he or she was entitled by reference to written or printed
28 advertising material accompanying or made part of an application
29 for membership in an interindemnity arrangement.

30 (H) Attempting to settle claims on the basis of an interindemnity
31 arrangement that was altered without notice to the participating
32 member.

33 (I) Failing, after payment of a claim, to inform participating
34 members, upon request by them, of the coverage under which
35 payment has been made.

36 (J) Making known to claimants a practice of the cooperative
37 corporation or interindemnity arrangement of appealing from
38 arbitration awards in favor of claimants for the purpose of
39 compelling them to accept settlements or compromises less than
40 the amount awarded in arbitration.

- 1 (K) Delaying the investigation or payment of claims by requiring
2 a claimant, or his or her physician, to submit a preliminary claim
3 report, and then requiring the subsequent submission of formal
4 proof of loss forms, both of which submissions contain
5 substantially the same information.
- 6 (L) Failing to settle claims promptly, where liability has become
7 apparent, under one portion of an interindemnity arrangement in
8 order to influence settlements under other portions of the
9 interindemnity arrangement.
- 10 (M) Failing to provide promptly a reasonable explanation of
11 the basis relied on in the interindemnity arrangement, in relation
12 to the facts of applicable law, for the denial of a claim or for the
13 offer of a compromise settlement.
- 14 (N) Directly advising a claimant not to obtain the services of
15 an attorney.
- 16 (O) Misleading a claimant as to the applicable statute of
17 limitations.
- 18 (g) Notwithstanding any contrary provisions of Part 2
19 (commencing with Section 12200) of Division 3 of Title 1 of the
20 Corporations Code, it shall not be necessary to hold a meeting of
21 members of the cooperative corporation for the purpose of electing
22 directors if the bylaws provide the election may be held by
23 first-class mail balloting. First-class mail balloting may also be
24 used in conjunction with a meeting at which directors are to be
25 elected and all mail ballots shall count toward establishing a
26 quorum for the meeting for the limited purpose of the issues set
27 forth in the mail ballot. Directors shall be elected as follows:
 - 28 (1) The candidates receiving the highest number of votes, up to
29 the number of directors to be elected, by a specified date at least
30 45 days but not later than 60 days after the ballots are first mailed,
31 postage prepaid, to the members (or the date of a meeting of
32 members held in conjunction therewith) shall be elected.
 - 33 (2) In the event that no candidate receives a majority of the
34 votes cast for a vacant office, a runoff election shall be held
35 between the two candidates receiving the highest number of votes
36 cast. The runoff election shall be held at least 45 days but not more
37 than 60 days after the ballots for the election are mailed, postage
38 prepaid. In the event that there is more than one office for which
39 no candidate receives a majority of the votes cast, the candidates

1 for the runoff shall be twice the number of vacant offices, and shall
2 be those persons who received the highest number of votes therefor.

3 Those first-class mail ballots shall be kept on file for a period
4 of three months after all vacant board positions have been filled,
5 and shall be subject to inspection at any reasonable time by any
6 members of the cooperative corporation.

7 (h) No officer, director, trustee, or member of the interindemnity
8 arrangement or the cooperative corporation, or any entity in which
9 that person has a material financial interest, shall enter into or
10 renew any transaction or contract with the trust unless the material
11 facts as to the transaction or contract and as to the interest of the
12 person are fully disclosed to the participating members, and the
13 transaction or contract is approved by an affirmative vote of at
14 least 75 percent of the membership present at a meeting, in person
15 or by proxy. If any transaction or contract is to be submitted to
16 members at a properly called meeting, the membership shall be
17 notified of the meeting and of the transaction or contract by
18 first-class mail, postage prepaid, at least 45 days prior to the
19 meeting.

20 (i) Services provided to the trust pursuant to a delegated
21 contractual arrangement shall be embodied in a written contract.
22 Each written contract shall provide for reasonable consideration
23 to the parties. In addition, each written contract shall be disclosed
24 annually to participating members in a disclosure report containing
25 the information described in subparagraph (H) of paragraph (3) of
26 subdivision (c). The disclosure report shall be sent to participating
27 members by first-class mail, postage prepaid, and shall be mailed
28 separately from any statements, records, or other documents. The
29 disclosure requirements of this subdivision shall apply to all
30 existing and future written contracts.

31 (j) Upon request of the Commissioner of Business Oversight,
32 an interindemnity arrangement shall immediately forward to the
33 commissioner a current list of participating members, including
34 the names, addresses, and telephone numbers of those members.

35 (k) Notwithstanding any provision to the contrary, whenever
36 the membership of a cooperative organization, organized pursuant
37 to Part 2 (commencing with Section 12200) of Division 3 of Title
38 1 of the Corporations Code and consisting solely of physicians
39 and surgeons licensed in this state amounts to 2,000 or more
40 members and the trust fund is at least forty million dollars

1 (\$40,000,000), which is available to the public for malpractice
2 claims or other claims authorized by this section, the cooperative
3 is authorized to admit members without a contribution to that trust
4 fund if assessments are charged to each of those members within
5 the first 50 months in an amount equal to the amount of the
6 contribution to the reserve fund that would otherwise be required.

7 ~~SEC. 69.~~

8 *SEC. 71.* Section 12693.35 of the Insurance Code is amended
9 to read:

10 12693.35. Participating health, dental, and vision plans shall
11 have, but need not be limited to, all of the following operating
12 characteristics satisfactory to the board in consultation with the
13 plan's licensing or regulatory oversight agency:

14 (a) Strong financial condition, including the ability to assume
15 the risk of providing and paying for covered services. A
16 participating plan may utilize reinsurance, provider risk sharing,
17 and other appropriate mechanisms to share a portion of the risk.

18 (b) Adequate administrative management.

19 (c) A satisfactory grievance procedure.

20 (d) Participating plans that contract with or employ health care
21 providers shall have mechanisms to accomplish all of the following,
22 in a manner satisfactory to the board:

23 (1) Review the quality of care covered.

24 (2) Review the appropriateness of care covered.

25 (3) Provide accessible health care services.

26 (e) (1) Before the effective date of the contract, the participating
27 health plan shall have devised a system for identifying in a simple
28 and clear fashion both in its own records and in the medical records
29 of subscribers the fact that the services provided are provided under
30 the program.

31 (2) Throughout the duration of the contract, the plan shall use
32 the system described in paragraph (1).

33 (f) Plans licensed by the Department of Business Oversight shall
34 be deemed to meet the requirements of subdivisions (a) to (d),
35 inclusive, of this section.

36 ~~SEC. 70.~~

37 *SEC. 72.* Section 14053 of the Insurance Code is amended to
38 read:

39 14053. In lieu of the surety bond required by this article there
40 may be deposited with the State of California the sum of two

1 thousand dollars (\$2,000) in cash, or evidence of deposit of the
2 sum of two thousand dollars (\$2,000) in banks authorized to do
3 business in this state and insured by the Federal Deposit Insurance
4 Corporation, or investment certificates or share accounts in the
5 amount of two thousand dollars (\$2,000) issued by a savings
6 association doing business in this state and insured by the Federal
7 Deposit Insurance Corporation, or evidence of a certificate of funds
8 or share account of the sum of two thousand dollars (\$2,000) in a
9 credit union, as defined in Section 14000 of the Financial Code,
10 whose share deposits are guaranteed by the National Credit Union
11 Administration or guaranteed by any other agency approved by
12 the Department of Business Oversight.

13 ~~SEC. 71.~~

14 *SEC. 73.* Section 15036 of the Insurance Code is amended to
15 read:

16 15036. In lieu of the surety bond required by this chapter there
17 may be deposited with the State of California the sum of twenty
18 thousand dollars (\$20,000) in cash, or evidence of deposit of the
19 sum of twenty thousand dollars (\$20,000) in banks authorized to
20 do business in this state and insured by the Federal Deposit
21 Insurance Corporation, or investment certificates or share accounts
22 in the amount of twenty thousand dollars (\$20,000) issued by a
23 savings association doing business in this state and insured by the
24 Federal Deposit Insurance Corporation, or evidence of a certificate
25 of funds or share account of the sum of twenty thousand dollars
26 (\$20,000) in a credit union as defined in Section 14000 of the
27 Financial Code whose share deposits are guaranteed by the
28 National Credit Union Administration or guaranteed by any other
29 agency approved by the Department of Business Oversight.

30 ~~SEC. 72.~~

31 *SEC. 74.* Section 4600.5 of the Labor Code is amended to read:

32 4600.5. (a) Any health care service plan licensed pursuant to
33 the Knox-Keene Health Care Service Plan Act, a disability insurer
34 licensed by the Department of Insurance, or any entity, including,
35 but not limited to, workers' compensation insurers and third-party
36 administrators authorized by the administrative director under
37 subdivision (e), may make written application to the administrative
38 director to become certified as a health care organization to provide
39 health care to injured employees for injuries and diseases
40 compensable under this article.

1 (b) Each application for certification shall be accompanied by
2 a reasonable fee prescribed by the administrative director, sufficient
3 to cover the actual cost of processing the application. A certificate
4 is valid for the period that the director may prescribe unless sooner
5 revoked or suspended.

6 (c) If the health care organization is a health care service plan
7 licensed pursuant to the Knox-Keene Health Care Service Plan
8 Act, and has provided the Managed Care Unit of the Division of
9 Workers' Compensation with the necessary documentation to
10 comply with this subdivision, that organization shall be deemed
11 to be a health care organization able to provide health care pursuant
12 to Section 4600.3, without further application duplicating the
13 documentation already filed with the Department of Managed
14 Health Care. These plans shall be required to remain in good
15 standing with the Department of Managed Health Care, and shall
16 meet the following additional requirements:

17 (1) Proposes to provide all medical and health care services that
18 may be required by this article.

19 (2) Provides a program involving cooperative efforts by the
20 employees, the employer, and the health plan to promote workplace
21 health and safety, consultative and other services, and early return
22 to work for injured employees.

23 (3) Proposes a timely and accurate method to meet the
24 requirements set forth by the administrative director for all carriers
25 of workers' compensation coverage to report necessary information
26 regarding medical and health care service cost and utilization, rates
27 of return to work, average time in medical treatment, and other
28 measures as determined by the administrative director to enable
29 the director to determine the effectiveness of the plan.

30 (4) Agrees to provide the administrative director with
31 information, reports, and records prepared and submitted to the
32 Department of Managed Health Care in compliance with the
33 Knox-Keene Health Care Service Plan Act, relating to financial
34 solvency, provider accessibility, peer review, utilization review,
35 and quality assurance, upon request, if the administrative director
36 determines the information is necessary to verify that the plan is
37 providing medical treatment to injured employees in compliance
38 with the requirements of this code.

39 Disclosure of peer review proceedings and records to the
40 administrative director shall not alter the status of the proceedings

1 or records as privileged and confidential communications pursuant
2 to Sections 1370 and 1370.1 of the Health and Safety Code.

3 (5) Demonstrates the capability to provide occupational
4 medicine and related disciplines.

5 (6) Complies with any other requirement the administrative
6 director determines is necessary to provide medical services to
7 injured employees consistent with the intent of this article,
8 including, but not limited to, a written patient grievance policy.

9 (d) If the health care organization is a disability insurer licensed
10 by the Department of Insurance, and is in compliance with
11 subdivision (d) of Sections 10133 and 10133.5 of the Insurance
12 Code, the administrative director shall certify the organization to
13 provide health care pursuant to Section 4600.3 if the director finds
14 that the plan is in good standing with the Department of Insurance
15 and meets the following additional requirements:

16 (1) Proposes to provide all medical and health care services that
17 may be required by this article.

18 (2) Provides a program involving cooperative efforts by the
19 employees, the employer, and the health plan to promote workplace
20 health and safety, consultative and other services, and early return
21 to work for injured employees.

22 (3) Proposes a timely and accurate method to meet the
23 requirements set forth by the administrative director for all carriers
24 of workers' compensation coverage to report necessary information
25 regarding medical and health care service cost and utilization, rates
26 of return to work, average time in medical treatment, and other
27 measures as determined by the administrative director to enable
28 the director to determine the effectiveness of the plan.

29 (4) Agrees to provide the administrative director with
30 information, reports, and records prepared and submitted to the
31 Department of Insurance in compliance with the Insurance Code
32 relating to financial solvency, provider accessibility, peer review,
33 utilization review, and quality assurance, upon request, if the
34 administrative director determines the information is necessary to
35 verify that the plan is providing medical treatment to injured
36 employees consistent with the intent of this article.

37 Disclosure of peer review proceedings and records to the
38 administrative director shall not alter the status of the proceedings
39 or records as privileged and confidential communications pursuant
40 to subdivision (d) of Section 10133 of the Insurance Code.

- 1 (5) Demonstrates the capability to provide occupational
2 medicine and related disciplines.
- 3 (6) Complies with any other requirement the administrative
4 director determines is necessary to provide medical services to
5 injured employees consistent with the intent of this article,
6 including, but not limited to, a written patient grievance policy.
- 7 (e) If the health care organization is a workers' compensation
8 insurer, third-party administrator, or any other entity that the
9 administrative director determines meets the requirements of
10 Section 4600.6, the administrative director shall certify the
11 organization to provide health care pursuant to Section 4600.3 if
12 the director finds that it meets the following additional
13 requirements:
 - 14 (1) Proposes to provide all medical and health care services that
15 may be required by this article.
 - 16 (2) Provides a program involving cooperative efforts by the
17 employees, the employer, and the health plan to promote workplace
18 health and safety, consultative and other services, and early return
19 to work for injured employees.
 - 20 (3) Proposes a timely and accurate method to meet the
21 requirements set forth by the administrative director for all carriers
22 of workers' compensation coverage to report necessary information
23 regarding medical and health care service cost and utilization, rates
24 of return to work, average time in medical treatment, and other
25 measures as determined by the administrative director to enable
26 the director to determine the effectiveness of the plan.
 - 27 (4) Agrees to provide the administrative director with
28 information, reports, and records relating to provider accessibility,
29 peer review, utilization review, quality assurance, advertising,
30 disclosure, medical and financial audits, and grievance systems,
31 upon request, if the administrative director determines the
32 information is necessary to verify that the plan is providing medical
33 treatment to injured employees consistent with the intent of this
34 article.
35 Disclosure of peer review proceedings and records to the
36 administrative director shall not alter the status of the proceedings
37 or records as privileged and confidential communications pursuant
38 to subdivision (d) of Section 10133 of the Insurance Code.
 - 39 (5) Demonstrates the capability to provide occupational
40 medicine and related disciplines.

1 (6) Complies with any other requirement the administrative
2 director determines is necessary to provide medical services to
3 injured employees consistent with the intent of this article,
4 including, but not limited to, a written patient grievance policy.

5 (7) Complies with the following requirements:

6 (A) An organization certified by the administrative director
7 under this subdivision may not provide or undertake to arrange
8 for the provision of health care to employees, or to pay for or to
9 reimburse any part of the cost of that health care in return for a
10 prepaid or periodic charge paid by or on behalf of those employees.

11 (B) Every organization certified under this subdivision shall
12 operate on a fee-for-service basis. As used in this section, fee for
13 service refers to the situation where the amount of reimbursement
14 paid by the employer to the organization or providers of health
15 care is determined by the amount and type of health care rendered
16 by the organization or provider of health care.

17 (C) An organization certified under this subdivision is prohibited
18 from assuming risk.

19 (f) (1) A workers' compensation health care provider
20 organization authorized by the Department of Business Oversight
21 on December 31, 1997, shall be eligible for certification as a health
22 care organization under subdivision (e).

23 (2) An entity that had, on December 31, 1997, submitted an
24 application with the Commissioner of Business Oversight under
25 Part 3.2 (commencing with Section 5150) shall be considered an
26 applicant for certification under subdivision (e) and shall be entitled
27 to priority in consideration of its application. The Commissioner
28 of Business Oversight shall provide complete files for all pending
29 applications to the administrative director on or before January
30 31, 1998.

31 (g) The provisions of this section shall not affect the
32 confidentiality or admission in evidence of a claimant's medical
33 treatment records.

34 (h) Charges for services arranged for or provided by health care
35 service plans certified by this section and that are paid on a
36 per-enrollee-periodic-charge basis shall not be subject to the
37 schedules adopted by the administrative director pursuant to
38 Section 5307.1.

39 (i) Nothing in this section shall be construed to expand or
40 constrict any requirements imposed by law on a health care service

1 plan or insurer when operating as other than a health care
2 organization pursuant to this section.

3 (j) In consultation with interested parties, including the
4 Department of Business Oversight and the Department of
5 Insurance, the administrative director shall adopt rules necessary
6 to carry out this section.

7 (k) The administrative director shall refuse to certify or may
8 revoke or suspend the certification of any health care organization
9 under this section if the director finds that:

10 (1) The plan for providing medical treatment fails to meet the
11 requirements of this section.

12 (2) A health care service plan licensed by the Department of
13 Managed Health Care, a workers' compensation health care
14 provider organization authorized by the Department of Business
15 Oversight, or a carrier licensed by the Department of Insurance is
16 not in good standing with its licensing agency.

17 (3) Services under the plan are not being provided in accordance
18 with the terms of a certified plan.

19 (l) (1) When an injured employee requests chiropractic
20 treatment for work-related injuries, the health care organization
21 shall provide the injured worker with access to the services of a
22 chiropractor pursuant to guidelines for chiropractic care established
23 by paragraph (2). Within five working days of the employee's
24 request to see a chiropractor, the health care organization and any
25 person or entity who directs the kind or manner of health care
26 services for the plan shall refer an injured employee to an affiliated
27 chiropractor for work-related injuries that are within the guidelines
28 for chiropractic care established by paragraph (2). Chiropractic
29 care rendered in accordance with guidelines for chiropractic care
30 established pursuant to paragraph (2) shall be provided by duly
31 licensed chiropractors affiliated with the plan.

32 (2) The health care organization shall establish guidelines for
33 chiropractic care in consultation with affiliated chiropractors who
34 are participants in the health care organization's utilization review
35 process for chiropractic care, which may include qualified medical
36 evaluators knowledgeable in the treatment of chiropractic
37 conditions. The guidelines for chiropractic care shall, at a
38 minimum, explicitly require the referral of any injured employee
39 who so requests to an affiliated chiropractor for the evaluation or
40 treatment, or both, of neuromusculoskeletal conditions.

1 (3) Whenever a dispute concerning the appropriateness or
2 necessity of chiropractic care for work-related injuries arises, the
3 dispute shall be resolved by the health care organization's
4 utilization review process for chiropractic care in accordance with
5 the health care organization's guidelines for chiropractic care
6 established by paragraph (2).

7 Chiropractic utilization review for work-related injuries shall be
8 conducted in accordance with the health care organization's
9 approved quality assurance standards and utilization review process
10 for chiropractic care. Chiropractors affiliated with the plan shall
11 have access to the health care organization's provider appeals
12 process and, in the case of chiropractic care for work-related
13 injuries, the review shall include review by a chiropractor affiliated
14 with the health care organization, as determined by the health care
15 organization.

16 (4) The health care organization shall inform employees of the
17 procedures for processing and resolving grievances, including
18 those related to chiropractic care, including the location and
19 telephone number where grievances may be submitted.

20 (5) All guidelines for chiropractic care and utilization review
21 shall be consistent with the standards of this code that require care
22 to cure or relieve the effects of the industrial injury.

23 (m) Individually identifiable medical information on patients
24 submitted to the division shall not be subject to the California
25 Public Records Act (Chapter 3.5 (commencing with Section 6250)
26 of Division 7 of Title 1 of the Government Code).

27 (n) (1) When an injured employee requests acupuncture
28 treatment for work-related injuries, the health care organization
29 shall provide the injured worker with access to the services of an
30 acupuncturist pursuant to guidelines for acupuncture care
31 established by paragraph (2). Within five working days of the
32 employee's request to see an acupuncturist, the health care
33 organization and any person or entity who directs the kind or
34 manner of health care services for the plan shall refer an injured
35 employee to an affiliated acupuncturist for work-related injuries
36 that are within the guidelines for acupuncture care established by
37 paragraph (2). Acupuncture care rendered in accordance with
38 guidelines for acupuncture care established pursuant to paragraph
39 (2) shall be provided by duly licensed acupuncturists affiliated
40 with the plan.

1 (2) The health care organization shall establish guidelines for
 2 acupuncture care in consultation with affiliated acupuncturists who
 3 are participants in the health care organization’s utilization review
 4 process for acupuncture care, which may include qualified medical
 5 evaluators. The guidelines for acupuncture care shall, at a
 6 minimum, explicitly require the referral of any injured employee
 7 who so requests to an affiliated acupuncturist for the evaluation
 8 or treatment, or both, of neuromusculoskeletal conditions.

9 (3) Whenever a dispute concerning the appropriateness or
 10 necessity of acupuncture care for work-related injuries arises, the
 11 dispute shall be resolved by the health care organization’s
 12 utilization review process for acupuncture care in accordance with
 13 the health care organization’s guidelines for acupuncture care
 14 established by paragraph (2).

15 Acupuncture utilization review for work-related injuries shall
 16 be conducted in accordance with the health care organization’s
 17 approved quality assurance standards and utilization review process
 18 for acupuncture care. Acupuncturists affiliated with the plan shall
 19 have access to the health care organization’s provider appeals
 20 process and, in the case of acupuncture care for work-related
 21 injuries, the review shall include review by an acupuncturist
 22 affiliated with the health care organization, as determined by the
 23 health care organization.

24 (4) The health care organization shall inform employees of the
 25 procedures for processing and resolving grievances, including
 26 those related to acupuncture care, including the location and
 27 telephone number where grievances may be submitted.

28 (5) All guidelines for acupuncture care and utilization review
 29 shall be consistent with the standards of this code that require care
 30 to cure or relieve the effects of the industrial injury.

31 ~~SEC. 73.~~

32 *SEC. 75.* Section 11604.5 of the Probate Code is amended to
 33 read:

34 11604.5. (a) This section applies when distribution from a
 35 decedent’s estate is made to a transferee for value who acquires
 36 any interest of a beneficiary in exchange for cash or other
 37 consideration.

38 (b) For purposes of this section, a transferee for value is a person
 39 who satisfies both of the following criteria:

1 (1) He or she purchases the interest from a beneficiary for
2 consideration pursuant to a written agreement.

3 (2) He or she, directly or indirectly, regularly engages in the
4 purchase of beneficial interests in estates for consideration.

5 (c) This section does not apply to any of the following:

6 (1) A transferee who is a beneficiary of the estate or a person
7 who has a claim to distribution from the estate under another
8 instrument or by intestate succession.

9 (2) A transferee who is either the registered domestic partner
10 of the beneficiary, or is related by blood, marriage, or adoption to
11 the beneficiary or the decedent.

12 (3) A transaction made in conformity with the California Finance
13 Lenders Law (Division 9 (commencing with Section 22000) of
14 the Financial Code) and subject to regulation by the Department
15 of Business Oversight.

16 (4) A transferee who is engaged in the business of locating
17 missing or unknown heirs and who acquires an interest from a
18 beneficiary solely in exchange for providing information or services
19 associated with locating the heir or beneficiary.

20 (d) A written agreement is effective only if all of the following
21 conditions are met:

22 (1) The executed written agreement is filed with the court not
23 later than 30 days following the date of its execution or, if
24 administration of the decedent's estate has not commenced, then
25 within 30 days of issuance of the letters of administration or letters
26 testamentary, but in no event later than 15 days prior to the hearing
27 on the petition for final distribution. Prior to filing or serving that
28 written agreement, the transferee for value shall redact any
29 personally identifying information about the beneficiary, other
30 than the name and address of the beneficiary, and any financial
31 information provided by the beneficiary to the transferee for value
32 on the application for cash or other consideration, from the
33 agreement.

34 (2) If the negotiation or discussion between the beneficiary and
35 the transferee for value leading to the execution of the written
36 agreement by the beneficiary was conducted in a language other
37 than English, the beneficiary shall receive the written agreement
38 in English, together with a copy of the agreement translated into
39 the language in which it was negotiated or discussed. The written

1 agreement and the translated copy, if any, shall be provided to the
2 beneficiary.

3 (3) The documents signed by, or provided to, the beneficiary
4 are printed in at least 10-point type.

5 (4) The transferee for value executes a declaration or affidavit
6 attesting that the requirements of this section have been satisfied,
7 and the declaration or affidavit is filed with the court within 30
8 days of execution of the written agreement or, if administration of
9 the decedent’s estate has not commenced, then within 30 days of
10 issuance of the letters of administration or letters testamentary,
11 but in no event later than 15 days prior to the hearing on the petition
12 for final distribution.

13 (5) Notice of the assignment is served on the personal
14 representative or the attorney of record for the personal
15 representative within 30 days of execution of the written agreement
16 or, if general or special letters of administration or letters
17 testamentary have not been issued, then within 30 days of issuance
18 of the letters of administration or letters testamentary, but in no
19 event later than 15 days prior to the hearing on the petition for
20 final distribution.

21 (e) The written agreement shall include the following terms, in
22 addition to any other terms:

23 (1) The amount of consideration paid to the beneficiary.

24 (2) A description of the transferred interest.

25 (3) If the written agreement so provides, the amount by which
26 the transferee for value would have its distribution reduced if the
27 beneficial interest assigned is distributed prior to a specified date.

28 (4) A statement of the total of all costs or fees charged to the
29 beneficiary resulting from the transfer for value, including, but not
30 limited to, transaction or processing fees, credit report costs, title
31 search costs, due diligence fees, filing fees, bank or electronic
32 transfer costs, or any other fees or costs. If all the costs and fees
33 are paid by the transferee for value and are included in the amount
34 of the transferred interest, then the statement of costs need not
35 itemize any costs or fees. This subdivision shall not apply to costs,
36 fees, or damages arising out of a material breach of the agreement
37 or fraud by or on the part of the beneficiary.

38 (f) A written agreement shall not contain any of the following
39 provisions and, if any such provision is included, that provision
40 shall be null and void:

1 (1) A provision holding harmless the transferee for value, other
2 than for liability arising out of fraud by the beneficiary.

3 (2) A provision granting to the transferee for value agency
4 powers to represent the beneficiary's interest in the decedent's
5 estate beyond the interest transferred.

6 (3) A provision requiring payment by the beneficiary to the
7 transferee for value for services not related to the written agreement
8 or services other than the transfer of interest under the written
9 agreement.

10 (4) A provision permitting the transferee for value to have
11 recourse against the beneficiary if the distribution from the estate
12 in satisfaction of the beneficial interest is less than the beneficial
13 interest assigned to the transferee for value, other than recourse
14 for any expense or damage arising out of the material breach of
15 the agreement or fraud by the beneficiary.

16 (g) The court on its own motion, or on the motion of the personal
17 representative or other interested person, may inquire into the
18 circumstances surrounding the execution of, and the consideration
19 for, the written agreement to determine that the requirements of
20 this section have been satisfied.

21 (h) The court may refuse to order distribution under the written
22 agreement, or may order distribution on any terms that the court
23 considers equitable, if the court finds that the transferee for value
24 did not substantially comply with the requirements of this section,
25 or if the court finds that any of the following conditions existed at
26 the time of transfer:

27 (1) The fees, charges, or consideration paid or agreed to be paid
28 by the beneficiary were grossly unreasonable.

29 (2) The transfer of the beneficial interest was obtained by duress,
30 fraud, or undue influence.

31 (i) In addition to any remedy specified in this section, for any
32 willful violation of the requirements of this section found to be
33 committed in bad faith, the court may require the transferee for
34 value to pay to the beneficiary up to twice the value paid for the
35 assignment.

36 (j) Notice of the hearing on any motion brought under this
37 section shall be served on the beneficiary and on the transferee for
38 value at least 15 days before the hearing in the manner provided
39 in Section 415.10 or 415.30 of the Code of Civil Procedure.

1 (k) If the decedent’s estate is not subject to a pending court
 2 proceeding under the Probate Code in California, but is the subject
 3 of a probate proceeding in another state, the transferee for value
 4 shall not be required to submit to the court a copy of the written
 5 agreement as required under paragraph (1) of subdivision (d). If
 6 the written agreement is entered into in California or if the
 7 beneficiary is domiciled in California, that written agreement shall
 8 otherwise conform to the provisions of subdivisions (d), (e), and
 9 (f) in order to be effective.

10 ~~SEC. 74.~~

11 *SEC. 76.* Section 408 of the Revenue and Taxation Code is
 12 amended to read:

13 408. (a) Except as otherwise provided in subdivisions (b), (c),
 14 (d), (e), and (g), any information and records in the assessor’s
 15 office that are not required by law to be kept or prepared by the
 16 assessor, disabled veterans’ exemption claims, and homeowners’
 17 exemption claims, are not public documents and shall not be open
 18 to public inspection. Property receiving the homeowners’
 19 exemption shall be clearly identified on the assessment roll. The
 20 assessor shall maintain records which shall be open to public
 21 inspection to identify those claimants who have been granted the
 22 homeowners’ exemption.

23 (b) The assessor may provide any appraisal data in his or her
 24 possession to the assessor of any county.

25 The assessor shall disclose information, furnish abstracts, or
 26 permit access to all records in his or her office to law enforcement
 27 agencies, the county grand jury, the board of supervisors or their
 28 duly authorized agents, employees, or representatives when
 29 conducting an investigation of the assessor’s office pursuant to
 30 Section 25303 of the Government Code, the county recorder when
 31 conducting an investigation to determine whether a documentary
 32 transfer tax is imposed, the Controller, employees of the Controller
 33 for property tax postponement purposes, probate referees,
 34 employees of the Franchise Tax Board for tax administration
 35 purposes only, staff appraisers of the Department of Financial
 36 Institutions, the Department of Transportation, the Department of
 37 General Services, the State Board of Equalization, the State Lands
 38 Commission, the State Department of Social Services, the
 39 Department of Child Support Services, the Department of Water
 40 Resources, and other duly authorized legislative or administrative

1 bodies of the state pursuant to their authorization to examine the
2 records. Whenever the assessor discloses information, furnishes
3 abstracts, or permits access to records in his or her office to staff
4 appraisers of the Department of Business Oversight, the
5 Department of Transportation, the Department of General Services,
6 the State Lands Commission, or the Department of Water
7 Resources pursuant to this section, the department shall reimburse
8 the assessor for any costs incurred as a result thereof.

9 (c) Upon the request of the tax collector, the assessor shall
10 disclose and provide to the tax collector information used in the
11 preparation of that portion of the unsecured roll for which the taxes
12 thereon are delinquent. The tax collector shall certify to the assessor
13 that he or she needs the information requested for the enforcement
14 of the tax lien in collecting those delinquent taxes. Information
15 requested by the tax collector may include social security numbers,
16 and the assessor shall recover from the tax collector his or her
17 actual and reasonable costs for providing the information. The tax
18 collector shall add the costs described in the preceding sentence
19 to the assessee's delinquent tax lien and collect those costs subject
20 to subdivision (e) of Section 2922.

21 (d) The assessor shall, upon the request of an assessee or his or
22 her designated representative, permit the assessee or representative
23 to inspect or copy any market data in the assessor's possession.
24 For purposes of this subdivision, "market data" means any
25 information in the assessor's possession, whether or not required
26 to be prepared or kept by him or her, relating to the sale of any
27 property comparable to the property of the assessee, if the assessor
28 bases his or her assessment of the assessee's property, in whole
29 or in part, on that comparable sale or sales. The assessor shall
30 provide the names of the seller and buyer of each property on
31 which the comparison is based, the location of that property, the
32 date of the sale, and the consideration paid for the property, whether
33 paid in money or otherwise. However, for purposes of providing
34 market data, the assessor may not display any document relating
35 to the business affairs or property of another.

36 (e) (1) With respect to information, documents, and records,
37 other than market data as defined in subdivision (d), the assessor
38 shall, upon request of an assessee of property, or his or her
39 designated representative, permit the assessee or representative to
40 inspect or copy all information, documents, and records, including

1 auditors' narrations and workpapers, whether or not required to
2 be kept or prepared by the assessor, relating to the appraisal and
3 the assessment of the assessee's property, and any penalties and
4 interest thereon.

5 (2) After enrolling an assessment, the assessor shall respond to
6 a written request for information supporting the assessment,
7 including, but not limited to, any appraisal and other data requested
8 by the assessee.

9 (3) Except as provided in Section 408.1, an assessee, or his or
10 her designated representative, may not be permitted to inspect or
11 copy information and records that also relate to the property or
12 business affairs of another, unless that disclosure is ordered by a
13 competent court in a proceeding initiated by a taxpayer seeking to
14 challenge the legality of the assessment of his or her property.

15 (f) (1) Permission for the inspection or copying requested
16 pursuant to subdivision (d) or (e) shall be granted as soon as
17 reasonably possible to the assessee or his or her designated
18 representative.

19 (2) If the assessee, or his or her designated representative,
20 requests the assessor to make copies of any of the requested
21 records, the assessee shall reimburse the assessor for the reasonable
22 costs incurred in reproducing and providing the copies.

23 (3) If the assessor fails to permit the inspection or copying of
24 materials or information as requested pursuant to subdivision (d)
25 or (e) and the assessor introduces any requested materials or
26 information at any assessment appeals board hearing, the assessee
27 or his or her representative may request and shall be granted a
28 continuance for a reasonable period of time. The continuance shall
29 extend the two-year period specified in subdivision (c) of Section
30 1604 for a period of time equal to the period of continuance.

31 (g) Upon the written request of the tax collector, the assessor
32 shall provide to the tax collector information for the preparation
33 and enforcement of Part 6 (commencing with Section 3351). The
34 tax collector shall certify to the assessor that he or she needs the
35 contact information to assist with the preparation and enforcement
36 of Part 6 (commencing with Section 3351). The assessor shall
37 provide the information, which may not include social security
38 numbers. Any information provided to the tax collector pursuant
39 to this subdivision shall not become a public record and shall not
40 be open to public inspection. The tax collector shall reimburse the

1 assessor for the actual and reasonable costs incurred by the assessor
2 for providing the information to administer this subdivision. The
3 tax collector shall add the costs described in the preceding sentence
4 to the assessee's delinquent taxes and include the costs incurred
5 subject to Sections 4112 and 4672.2. The tax collector or his or
6 her designated employee shall, under penalty of perjury, certify
7 to the assessor that he or she needs the information to assist with
8 the preparation and enforcement of Part 6 (commencing with
9 Section 3351), and that the information provided pursuant to this
10 subdivision that is not public record and that is not open to public
11 inspection shall not become public record and shall not be open
12 to public inspection.

13 ~~SEC. 75.~~

14 *SEC. 77.* Section 22005.1 of the Welfare and Institutions Code
15 is amended to read:

16 22005.1. (a) The State Department of Health Services shall
17 only certify a long-term care insurance policy that substantially
18 meets the requirements of Chapter 2.6 (commencing with Section
19 10230) of Part 2 of Division 2 of the Insurance Code, except the
20 requirements of Sections 10232.1, 10232.2, 10232.25, 10232.8,
21 10232.9, and 10232.92 of the Insurance Code, and that provides
22 all of the items specified in subdivision (b). The State Department
23 of Health Services shall only certify a health care service plan
24 contract that has been approved by the Department of Business
25 Oversight pursuant to Chapter 2.2 (commencing with Section
26 1340) of Division 2 of the Health and Safety Code as providing
27 substantially equivalent coverage to that required by Chapter 2.6
28 (commencing with Section 10230) of Part 2 of Division 2 of the
29 Insurance Code, and that provides all of the items specified in
30 subdivision (b). Policies issued by organizations subject to the
31 Insurance Code and regulated by the Department of Insurance
32 shall also be approved by the Department of Insurance.

33 (b) Only policies and contracts that provide all of the following
34 items shall be certified by the department:

35 (1) Individual assessment and case management by a
36 coordinating entity designated and approved by the department.

37 (2) Levels and durations of benefits that meet minimum
38 standards set by the State Department of Health Services pursuant
39 to Section 22009.

40 (3) Protection against loss of benefits due to inflation.

1 (4) A periodic record issued to the insured including an
2 explanation of insurance payments or benefits paid that count
3 toward Medi-Cal asset protection under this division.

4 (5) Compliance with any other requirements imposed by
5 regulations adopted by the State Department of Health Services
6 or the State Department of Social Services and consistent with the
7 purposes of this division.

O