

ASSEMBLY BILL

No. 2907

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

March 8, 2016

An act to amend Sections 7574.14 and 17511.1 of the Business and Professions Code, to amend Sections 2510, 25100, 25254, and 25532 of the Corporations Code, to amend Sections 5100.2 and 18427.9 of the Financial Code, and to amend Section 53638 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2907, as introduced, Committee on Banking and Finance. State government: omnibus technical changes.

(1) Existing law abolished the Department of Corporations, the Commissioner of Corporations, the Department of Financial Institutions, and the Commissioner of Financial Institutions and transferred the powers, duties, responsibilities, and functions of those entities and officers to the Department of Business Oversight and the Commissioner of Business Oversight.

This bill would make technical, nonsubstantive changes to update references from these abolished entities and officers to the successor Department of Business Oversight and the Commissioner of Business Oversight.

(2) Existing law reorganized the provisions of the Financial Code.

This bill would make technical, nonsubstantive changes to update cross-references to the prior organization of the Financial Code to its current organization.

(3) Existing law regulates telephonic sellers, as defined, and requires, among other things, a telephonic seller to, not less than 10 days prior to doing business in this state, register specific information with the Department of Justice.

This bill would modify the definition of “telephonic seller” or “seller” to remove an outdated reference.

(4) The Corporate Securities Law of 1968 authorizes the Commissioner of Business Oversight to enforce its provisions, including the power to issue an order for a violation of that law, and, under certain conditions, make claim for ancillary relief.

This bill would make a technical, nonsubstantive change to include a cross-reference to a specific type of order issued by the commissioner within a procedure for a person to request a hearing regarding that order. The bill would also make a technical, nonsubstantive change to update a reference to the commissioner seeking administrative relief to instead refer to seeking ancillary relief.

(5) Under federal law, the Office of Thrift Supervision merged with the Office of the Comptroller of the Currency.

This bill would make technical, nonsubstantive changes to update references to the Office of Thrift Supervision to instead refer to the Office of the Comptroller of the Currency.

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

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

- 1 SECTION 1. Section 7574.14 of the Business and Professions
- 2 Code is amended to read:
- 3 7574.14. This chapter shall not apply to the following:
- 4 (a) An officer or employee of the United States of America, or
- 5 of this state or a political subdivision thereof, while the officer or
- 6 employee is engaged in the performance of his or her official
- 7 duties, including uniformed peace officers employed part time by
- 8 a public agency pursuant to a written agreement between a chief
- 9 of police or sheriff and the public agency, provided the part-time
- 10 employment does not exceed 50 hours in a calendar month.

1 (b) A person engaged exclusively in the business of obtaining
2 and furnishing information as to the financial rating of persons.

3 (c) A charitable philanthropic society or association incorporated
4 under the laws of this state that is organized and duly maintained
5 for the public good and not for private profit.

6 (d) Patrol special police officers appointed by the police
7 commission of a city, county, or city and county under the express
8 terms of its charter who also under the express terms of the charter
9 (1) are subject to suspension or dismissal after a hearing on charges
10 duly filed with the commission after a fair and impartial trial, (2)
11 must be not less than 18 years of age nor more than 40 years of
12 age, (3) must possess physical qualifications prescribed by the
13 commission, and (4) are designated by the police commission as
14 the owners of a certain beat or territory as may be fixed from time
15 to time by the police commission.

16 (e) An attorney at law in performing his or her duties as an
17 attorney at law.

18 (f) A collection agency or an employee thereof while acting
19 within the scope of his or her employment, while making an
20 investigation incidental to the business of the agency, including
21 an investigation of the location of a debtor or his or her property
22 where the contract with an assignor creditor is for the collection
23 of claims owed or due or asserted to be owed or due or the
24 equivalent thereof.

25 (g) Admitted insurers and agents and insurance brokers licensed
26 by the state, performing duties in connection with insurance
27 transacted by them.

28 (h) A bank subject to the jurisdiction of the Commissioner of
29 ~~Financial Institutions of the State of California~~ *Business Oversight*
30 ~~under Division 1.1 (commencing with Section 99) 1000~~ of the
31 Financial Code or the Comptroller of *the* Currency of the United
32 States.

33 (i) A person engaged solely in the business of securing
34 information about persons or property from public records.

35 (j) A peace officer of this state or a political subdivision thereof
36 while the peace officer is employed by a private employer to
37 engage in off-duty employment in accordance with Section 1126
38 of the Government Code. However, nothing herein shall exempt
39 such a peace officer who either contracts for his or her services or
40 the services of others as a private patrol operator or contracts for

1 his or her services as or is employed as an armed private security
2 officer. For purposes of this subdivision, “armed security officer”
3 means an individual who carries or uses a firearm in the course
4 and scope of that contract or employment.

5 (k) A retired peace officer of the state or political subdivision
6 thereof when the retired peace officer is employed by a private
7 employer in employment approved by the chief law enforcement
8 officer of the jurisdiction where the employment takes place,
9 provided that the retired officer is in a uniform of a public law
10 enforcement agency, has registered with the bureau on a form
11 approved by the director, and has met any training requirements
12 or their equivalent as established for security personnel under
13 Section 7583.5. This officer may not carry an unloaded and
14 exposed handgun unless he or she is exempted under the provisions
15 of Article 2 (commencing with Section 26361) of Chapter 6 of
16 Division 5 of Title 4 of Part 6 of the Penal Code, may not carry
17 an unloaded firearm that is not a handgun unless he or she is
18 exempted under the provisions of Article 2 (commencing with
19 Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of
20 the Penal Code, and may not carry a loaded or concealed firearm
21 unless he or she is exempted under the provisions of Sections
22 25450 to 25475, inclusive, of the Penal Code or Sections 25900
23 to 25910, inclusive, of the Penal Code or has met the requirements
24 set forth in subdivision (d) of Section 26030 of the Penal Code.
25 However, nothing herein shall exempt the retired peace officer
26 who contracts for his or her services or the services of others as a
27 private patrol operator.

28 (l) A licensed insurance adjuster in performing his or her duties
29 within the scope of his or her license as an insurance adjuster.

30 (m) A savings association subject to the jurisdiction of the
31 Commissioner of ~~Financial Institutions~~ *Business Oversight* or the
32 Office of ~~Thrift Supervision~~ *the Comptroller of the Currency*.

33 (n) A secured creditor engaged in the repossession of the
34 creditor’s collateral and a lessor engaged in the repossession of
35 leased property in which it claims an interest.

36 (o) A peace officer in his or her official police uniform acting
37 in accordance with subdivisions (c) and (d) of Section 70 of the
38 Penal Code.

39 (p) An unarmed, uniformed security person employed
40 exclusively and regularly by a motion picture studio facility

1 employer who does not provide contract security services for other
2 entities or persons in connection with the affairs of that employer
3 only and where there exists an employer-employee relationship if
4 that person at no time carries or uses a deadly weapon, as defined
5 in subdivision (a), in the performance of his or her duties, which
6 may include, but are not limited to, the following business
7 purposes:

8 (1) The screening and monitoring access of employees of the
9 same employer.

10 (2) The screening and monitoring access of prearranged and
11 preauthorized invited guests.

12 (3) The screening and monitoring of vendors and suppliers.

13 (4) Patrolling the private property facilities for the safety and
14 welfare of all who have been legitimately authorized to have access
15 to the facility.

16 (q) An armored contract carrier operating armored vehicles
17 pursuant to the authority of the Department of the California
18 Highway Patrol or the Public Utilities Commission, or an armored
19 vehicle guard employed by an armored contract carrier.

20 SEC. 2. Section 17511.1 of the Business and Professions Code
21 is amended to read:

22 17511.1. As used in this article, “telephonic seller” or “seller”
23 means a person who, on his or her own behalf or through
24 salespersons or through the use of an automatic dialing-announcing
25 device, as defined in Section 2871 of the Public Utilities Code,
26 causes a telephone solicitation or attempted telephone solicitation
27 to occur which meets the criteria specified in subdivision (a), (b),
28 (c), or (d) and who is not exempted by subdivision (e), as follows:

29 (a) A telephone solicitation or attempted telephone solicitation
30 wherein the telephonic seller initiates telephonic contact with a
31 prospective purchaser and represents or implies one or more of
32 the following:

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

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

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

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

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

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

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

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

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

22 (8) That the seller is offering to make a loan, or to arrange or
23 assist in arranging a loan or to assist in providing information
24 which may lead to the obtaining of a loan, unless no payment of
25 any kind is made until the loan proceeds are disbursed to the
26 borrower.

27 (9) That a prospective purchaser will receive a credit card, as
28 defined in subdivision (a) of Section 1747.02 of the Civil Code,
29 if the purchaser pays an upfront or preapplication fee for the credit
30 card to the telephonic seller.

31 (b) A solicitation or attempted solicitation which is made by
32 telephone in response to inquiries generated by unrequested
33 notifications sent by the seller to persons who have not previously
34 purchased goods or services from the seller or who have not
35 previously requested credit from the seller, to a prospective
36 purchaser wherein the seller represents or implies to the recipient
37 of the notification that any of the following applies to the recipient:

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

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

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

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

16 (c) A solicitation or attempted solicitation which is made by
17 telephone in response to inquiries generated by advertisements on
18 behalf of the telephonic seller wherein it is represented or implied
19 that the seller is offering to sell to the prospective purchaser any
20 gold, silver, or other metals, including coins, diamonds, rubies,
21 sapphires, or other stones, coal or other minerals, or any interest
22 in oil, gas, or mineral fields, wells, or exploration sites, or any
23 other investment opportunity of any type whatsoever.

24 (d) A solicitation or attempted solicitation which is made by
25 telephone in response to inquiries generated by advertisements on
26 behalf of the telephonic seller wherein it is represented or implied
27 that the seller is offering to make a loan or to arrange or assist in
28 arranging a loan or to assist in providing information which may
29 lead to the obtaining of a loan, unless no payment of any kind is
30 made until the loan proceeds are disbursed to the borrower.

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

33 (1) A person offering or selling a security qualified under
34 Section 25110, 25120, or 25130 of the Corporations Code or
35 exempt from qualification under Chapter 1 (commencing with
36 Section 25100) of Part 2 of Division 1 of Title 4 of the
37 Corporations Code. The fact that a notice claiming an exemption
38 under the Corporate Securities Law of 1968 is filed with the
39 Department of Business Oversight does not create an exemption
40 under this paragraph.

- 1 (2) A person licensed pursuant to Part 1 (commencing with
2 Section 10000) of Division 4, when the solicited transaction is
3 governed by that law.
- 4 (3) A person licensed pursuant to Chapter 9 (commencing with
5 Section 7000) of Division 3, when the solicited transaction is
6 governed by that law.
- 7 (4) A person licensed or certificated pursuant to Part 2
8 (commencing with Section 680) of Division 1 of the Insurance
9 Code, including a person licensed pursuant to Chapter 5
10 (commencing with Section 1621) thereof, when the solicited
11 transaction is governed by that law.
- 12 (5) A person offering or selling a franchise registered pursuant
13 to Section 31110 of the Corporations Code or exempt from
14 registration under Chapter 1 (commencing with Section 31100)
15 of Part 2 of Division 5 of Title 4 of the Corporations Code. The
16 fact that a notice claiming an exemption under the Franchise
17 Investment Law is filed with the Department of Business Oversight
18 does not create an exemption under this paragraph.
- 19 (6) A person soliciting the sale of a seller assisted marketing
20 plan, as defined in Title 2.7 (commencing with Section 1812.200)
21 of Part 4 of Division 3 of the Civil Code, who has filed with the
22 Attorney General the documents required by Section 1812.203 of
23 the Civil Code.
- 24 (7) A person primarily soliciting the sale of a newspaper of
25 general circulation, as defined in Article 1 (commencing with
26 Section 6000) of Chapter 1 of Division 7 of Title 1 of the
27 Government Code, a magazine, or membership in a book or record
28 club whose program operates in conformity with the requirements
29 of Section 1584.5 of the Civil Code.
- 30 (8) A person soliciting business from prospective purchasers
31 who have previously purchased from the business enterprise for
32 which the person is calling.
- 33 (9) A person soliciting without the intent to complete and who
34 does not complete the sales presentation during the telephone
35 solicitation but completes the sales presentation at a later
36 face-to-face meeting between the solicitor and the prospective
37 purchaser. However, if a seller, directly following a telephone
38 solicitation, causes an individual whose primary purpose it is to
39 go to the prospective purchaser to collect the payment or deliver
40 any item purchased, this exemption does not apply.

1 (10) Any supervised financial institution or parent, subsidiary,
2 or subsidiary of parent thereof. As used in this paragraph,
3 “supervised financial institution” means any commercial bank,
4 trust company, savings and loan association, credit union, industrial
5 loan company, finance lender or broker, or insurer, provided that
6 the institution is subject to supervision by an official or agency of
7 this state or of the United States.

8 (11) A person soliciting the sale of a preneed funeral
9 arrangement regulated by Article 9 (commencing with Section
10 7735) of Chapter 12 of Division 3.

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

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

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

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

24 (16) An issuer or subsidiary of an issuer that has a security listed
25 on a national securities exchange or designated as a national market
26 system security on an interdealer quotation system by the National
27 Association of Securities Dealers, Inc., *exchange* if the exchange
28 or interdealer quotation system has been certified by rule or order
29 of the Commissioner of ~~Corporations~~ *Business Oversight* under
30 subdivision (o) of Section 25100 of the Corporations Code. A
31 subsidiary of an issuer that qualifies for exemption under this
32 paragraph is not itself exempt unless not less than 60 percent of
33 the voting power of its shares is owned by the qualifying issuer or
34 issuers.

35 (17) A person soliciting exclusively the sale of telephone
36 answering services to be provided by that person or that person’s
37 employer.

38 (18) A person soliciting a transaction regulated by the
39 Commodity Futures Trading Commission if the person is registered
40 or temporarily licensed for this activity with the Commodity

1 Futures Trading Commission under the Commodity Exchange Act
2 (7 U.S.C. Sec. 1 et seq.), and the registration or license has not
3 expired or been suspended or revoked.

4 (19) A person who sells coins or bullion at a price which is not
5 more than 25 percent more than the price at which the seller is
6 concurrently buying the same coins or bullion, if: (A) the seller
7 has had a retail location in California from which he or she has
8 been selling coins or bullion to the public in person for at least
9 three years; (B) the telephonic solicitations are not the person’s
10 primary business and sales made telephonically make up less than
11 20 percent of the person’s total retail sales; and (C) the person
12 claiming an exemption pursuant to this subdivision complies with
13 Section 17511.3, as applicable, and subdivision (p) of Section
14 17511.4.

15 (20) A person licensed pursuant to Division 1.2 (commencing
16 with Section 2000) of the Financial Code to engage in the business
17 of money transmission if the license has not expired or been
18 suspended or revoked.

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

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

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

26 (B) It has maintained its principal purpose for a minimum of
27 10 years.

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

30 (f) In any civil proceeding alleging a violation of this article,
31 the burden of proving an exemption or an exception from a
32 definition is upon the person claiming it, and in any criminal
33 proceeding alleging a violation of this article, the burden of
34 producing evidence to support a defense based upon an exemption
35 or an exception from a definition is upon the person claiming it.

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

39 SEC. 3. Section 2510 of the Corporations Code is amended to
40 read:

1 2510. “Social purpose corporation subject to the Banking Law”
2 means any of the following:

3 (a) A social purpose corporation that, with the approval of the
4 Commissioner of Business Oversight, is incorporated for the
5 purpose of engaging in, or that is authorized by the Commissioner
6 of Business Oversight to engage in, the commercial banking
7 business under the Banking Law (Division~~† 1.1~~ (commencing
8 with Section~~99~~ 1000) of the Financial Code).

9 (b) Any social purpose corporation that, with the approval of
10 the Commissioner of Business Oversight, is incorporated for the
11 purpose of engaging in, or that is authorized by the Commissioner
12 of Business Oversight to engage in, the industrial banking business
13 under the Banking Law (Division~~† 1.1~~ (commencing with Section
14 ~~99~~ 1000) of the Financial Code).

15 (c) Any social purpose corporation, other than a social purpose
16 corporation described in subdivision (d), that, with the approval
17 of the Commissioner of Business Oversight, is incorporated for
18 the purpose of engaging in, or that is authorized by the
19 Commissioner of Business Oversight to engage in, the trust
20 business under the Banking Law (Division~~† 1.1~~ (commencing
21 with Section~~99~~ 1000) of the Financial Code).

22 (d) Any social purpose corporation that is authorized by the
23 Commissioner of Business Oversight and the Commissioner of
24 Insurance to maintain a title insurance department to engage in
25 title insurance business and a trust department to engage in trust
26 business.

27 (e) Any social purpose corporation that, with the approval of
28 the Commissioner of Business Oversight, is incorporated for the
29 purpose of engaging in, or that is authorized by the Commissioner
30 of Business Oversight to engage in, business under Article 1
31 (commencing with Section~~3500~~ 1850) of Chapter~~19~~ 21 of
32 Division~~† 1.1~~ of the Financial Code.

33 SEC. 4. Section 25100 of the Corporations Code is amended
34 to read:

35 25100. The following securities are exempted from Sections
36 25110, 25120, and 25130:

37 (a) Any security (including a revenue obligation) issued or
38 guaranteed by the United States, any state, any city, county, city
39 and county, public district, public authority, public corporation,
40 public entity, or political subdivision of a state or any agency or

1 corporate or other instrumentality of any one or more of the
 2 foregoing; or any certificate of deposit for any of the foregoing.

3 (b) Any security issued or guaranteed by Canada, any Canadian
 4 province, any political subdivision or municipality of that province,
 5 or by any other foreign government with which the United States
 6 currently maintains diplomatic relations, if the security is
 7 recognized as a valid obligation by the issuer or guarantor; or any
 8 certificate of deposit for any of the foregoing.

9 (c) Any security issued or guaranteed by and representing an
 10 interest in or a direct obligation of a national bank or a bank or
 11 trust company incorporated under the laws of this state, and any
 12 security issued by a bank to one or more other banks and
 13 representing an interest in an asset of the issuing bank.

14 (d) Any security issued or guaranteed by a federal savings
 15 association or federal savings bank or federal land bank or joint
 16 land bank or national farm loan association or by any savings
 17 association, as defined in subdivision (a) of Section 5102 of the
 18 Financial Code, which is subject to the supervision and regulation
 19 of the Commissioner of Business Oversight of this state.

20 (e) Any security (other than an interest in all or portions of a
 21 parcel or parcels of real property which are subdivided land or a
 22 subdivision or in a real estate development), the issuance of which
 23 is subject to authorization by the Insurance Commissioner, the
 24 Public Utilities Commission, or the Real Estate Commissioner of
 25 this state.

26 (f) Any security consisting of any interest in all or portions of
 27 a parcel or parcels of real property that are subdivided lands or a
 28 subdivision or in a real estate development; provided that the
 29 exemption in this subdivision shall not be applicable to: (1) any
 30 investment contract sold or offered for sale with, or as part of, that
 31 interest, or (2) any person engaged in the business of selling,
 32 distributing, or supplying water for irrigation purposes or domestic
 33 use that is not a public utility except that the exemption is
 34 applicable to any security of a mutual water company (other than
 35 an investment contract as described in paragraph (1)) offered or
 36 sold in connection with subdivided lands pursuant to Chapter 2
 37 (commencing with Section 14310) of Part 7 of Division 3 of Title
 38 1.

39 (g) Any mutual capital certificates or savings accounts, as
 40 defined in the Savings Association Law, issued by a savings

1 association, as defined by subdivision (a) of Section 5102 of the
2 Financial Code, and holding a license or certificate of authority
3 then in force from the Commissioner of Business Oversight of this
4 state.

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

8 (i) Any security issued or guaranteed by any railroad, other
9 common carrier, public utility, or public utility holding company
10 which is (1) subject to the jurisdiction of the Interstate Commerce
11 Commission or its successor or (2) a holding company registered
12 with the Securities and Exchange Commission under the Public
13 Utility Holding Company Act of 1935 or a subsidiary of that
14 company within the meaning of that act or (3) regulated in respect
15 of the issuance or guarantee of the security by a governmental
16 authority of the United States, of any state, of Canada or of any
17 Canadian province; and the security is subject to registration with
18 or authorization of issuance by that authority.

19 (j) Any security (except evidences of indebtedness, whether
20 interest bearing or not) of an issuer (1) organized exclusively for
21 educational, benevolent, fraternal, religious, charitable, social, or
22 reformatory purposes and not for pecuniary profit, if no part of the
23 net earnings of the issuer inures to the benefit of any private
24 shareholder or individual, or (2) organized as a chamber of
25 commerce or trade or professional association. The fact that
26 amounts received from memberships or dues or both will or may
27 be used to construct or otherwise acquire facilities for use by
28 members of the nonprofit organization does not disqualify the
29 organization for this exemption. This exemption does not apply
30 to the securities of any nonprofit organization if any promoter
31 thereof expects or intends to make a profit directly or indirectly
32 from any business or activity associated with the organization or
33 operation of that nonprofit organization or from remuneration
34 received from that nonprofit organization.

35 (k) Any agreement, commonly known as a “life income
36 contract,” of an issuer (1) organized exclusively for educational,
37 benevolent, fraternal, religious, charitable, social, or reformatory
38 purposes and not for pecuniary profit and (2) which the
39 commissioner designates by rule or order, with a donor in
40 consideration of a donation of property to that issuer and providing

1 for the payment to the donor or persons designated by him or her
2 of income or specified periodic payments from the donated
3 property or other property for the life of the donor or those other
4 persons.

5 (l) Any note, draft, bill of exchange, or banker's acceptance
6 which is freely transferable and of prime quality, arises out of a
7 current transaction or the proceeds of which have been or are to
8 be used for current transactions, and which evidences an obligation
9 to pay cash within nine months of the date of issuance, exclusive
10 of days of grace, or any renewal of that paper which is likewise
11 limited, or any guarantee of that paper or of that renewal, provided
12 that the paper is not offered to the public in amounts of less than
13 twenty-five thousand dollars (\$25,000) in the aggregate to any one
14 purchaser. In addition, the commissioner may, by rule or order,
15 exempt any issuer of any notes, drafts, bills of exchange or banker's
16 acceptances from qualification of those securities when the
17 commissioner finds that the qualification is not necessary or
18 appropriate in the public interest or for the protection of investors.

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

22 (n) Any beneficial interest in an employees' pension,
23 profit-sharing, stock bonus, or similar benefit plan which meets
24 the requirements for qualification under Section 401 of the federal
25 Internal Revenue Code or any statute amendatory thereof or
26 supplementary thereto. A determination letter from the Internal
27 Revenue Service stating that an employees' pension, profit-sharing,
28 stock bonus, or similar benefit plan meets those requirements shall
29 be conclusive evidence that the plan is an employees' pension,
30 profit-sharing, stock bonus, or similar benefit plan within the
31 meaning of the first sentence of this subdivision until the date the
32 determination letter is revoked in writing by the Internal Revenue
33 Service, regardless of whether or not the revocation is retroactive.

34 (o) Any security listed or approved for listing upon notice of
35 issuance on a national securities exchange, if the exchange has
36 been certified by rule or order of the commissioner and any warrant
37 or right to purchase or subscribe to the security. The exemption
38 afforded by this subdivision does not apply to securities listed or
39 approved for listing upon notice of issuance on a national securities

1 exchange, in a rollup transaction unless the rollup transaction is
2 an eligible rollup transaction as defined in Section 25014.7.

3 That certification of any exchange shall be made by the
4 commissioner upon the written request of the exchange if the
5 commissioner finds that the exchange, in acting on applications
6 for listing of common stock, substantially applies the minimum
7 standards set forth in either subparagraph (A) or (B) of paragraph
8 (1), and, in considering suspension or removal from listing,
9 substantially applies each of the criteria set forth in paragraph (2).

10 (1) Listing standards:

11 (A) (i) Shareholders' equity of at least four million dollars
12 (\$4,000,000).

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

16 (iii) Minimum public distribution of 500,000 shares (exclusive
17 of the holdings of officers, directors, controlling shareholders, and
18 other concentrated or family holdings), together with a minimum
19 of 800 public holders or minimum public distribution of 1,000,000
20 shares together with a minimum of 400 public holders. The
21 exchange may also consider the listing of a company's securities
22 if the company has a minimum of 500,000 shares publicly held, a
23 minimum of 400 shareholders and daily trading volume in the
24 issue has been approximately 2,000 shares or more for the six
25 months preceding the date of application. In evaluating the
26 suitability of an issue for listing under this trading provision, the
27 exchange shall review the nature and frequency of that activity
28 and any other factors as it may determine to be relevant in
29 ascertaining whether the issue is suitable for trading. A security
30 that trades infrequently shall not be considered for listing under
31 this paragraph even though average daily volume amounts to 2,000
32 shares per day or more.

33 Companies whose securities are concentrated in a limited
34 geographical area, or whose securities are largely held in block by
35 institutional investors, normally may not be considered eligible
36 for listing unless the public distribution appreciably exceeds
37 500,000 shares.

38 (iv) Minimum price of three dollars (\$3) per share for a
39 reasonable period of time prior to the filing of a listing application;
40 provided, however, in certain instances an exchange may favorably

1 consider listing an issue selling for less than three dollars (\$3) per
2 share after considering all pertinent factors, including market
3 conditions in general, whether historically the issue has sold above
4 three dollars (\$3) per share, the applicant's capitalization, and the
5 number of outstanding and publicly held shares of the issue.

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

8 (B) (i) Shareholders' equity of at least four million dollars
9 (\$4,000,000).

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

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

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

15 (2) Criteria for consideration of suspension or removal from
16 listing:

17 (A) If a company that (A) has shareholders' equity of less than
18 one million dollars (\$1,000,000) has sustained net losses in each
19 of its two most recent fiscal years, or (B) has net tangible assets
20 of less than three million dollars (\$3,000,000) and has sustained
21 net losses in three of its four most recent fiscal years.

22 (B) If the number of shares publicly held (excluding the holdings
23 of officers, directors, controlling shareholders, and other
24 concentrated or family holdings) is less than 150,000.

25 (C) If the total number of shareholders is less than 400 or if the
26 number of shareholders of lots of 100 shares or more is less than
27 300.

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

30 (E) If shares of common stock sell at a price of less than three
31 dollars (\$3) per share for a substantial period of time and the issuer
32 shall fail to effectuate a reverse stock split of the shares within a
33 reasonable period of time after being requested by the exchange
34 to take that action.

35 A national securities exchange, certified by rule or order of the
36 commissioner under this subdivision, shall file annual reports when
37 requested to do so by the commissioner. The annual reports shall
38 contain, by issuer: the variances granted to an exchange's listing
39 standards, including variances from corporate governance and
40 voting rights' standards, for any security of that issuer; the reasons

1 for the variances; a discussion of the review procedure instituted
2 by the exchange to determine the effect of the variances on
3 investors and whether the variances should be continued; and any
4 other information that the commissioner deems relevant. The
5 purpose of these reports is to assist the commissioner in
6 determining whether the quantitative and qualitative requirements
7 of this subdivision are substantially being met by the exchange in
8 general or with regard to any particular security.

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

16 A rule or order of certification shall conclusively establish that
17 any security listed or approved for listing upon notice of issuance
18 on any exchange named in a rule or order of certification, and any
19 warrant or right to purchase or subscribe to that security, is exempt
20 under this subdivision until the adoption by the commissioner of
21 any rule or order decertifying the exchange.

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

26 (q) Any unincorporated interindemnity or reciprocal or
27 interinsurance contract, that qualifies under the provisions of
28 Section 1280.7 of the Insurance Code, between members of a
29 cooperative corporation, organized and operating under Part 2
30 (commencing with Section 12200) of Division 3 of Title 1, and
31 whose members consist only of physicians and surgeons licensed
32 in California, which contracts indemnify solely in respect to
33 medical malpractice claims against the members, and which do
34 not collect in advance of loss any moneys other than contributions
35 by each member to a collective reserve trust fund or for necessary
36 expenses of administration.

37 (1) Whenever it appears to the commissioner that any person
38 has engaged or is about to engage in any act or practice constituting
39 a violation of any provision of Section 1280.7 of the Insurance
40 Code, the commissioner may, in the commissioner's discretion,

1 bring an action in the name of the people of the State of California
2 in the superior court to enjoin the acts or practices or to enforce
3 compliance with Section 1280.7 of the Insurance Code. Upon a
4 proper showing a permanent or preliminary injunction, a restraining
5 order, or a writ of mandate shall be granted and a receiver or
6 conservator may be appointed for the defendant or the defendant's
7 assets.

8 (2) The commissioner may, in the commissioner's discretion,
9 (A) make public or private investigations within or outside of this
10 state as the commissioner deems necessary to determine whether
11 any person has violated or is about to violate any provision of
12 Section 1280.7 of the Insurance Code or to aid in the enforcement
13 of Section 1280.7, and (B) publish information concerning the
14 violation of Section 1280.7.

15 (3) For the purpose of any investigation or proceeding under
16 this section, the commissioner or any officer designated by the
17 commissioner may administer oaths and affirmations, subpoena
18 witnesses, compel their attendance, take evidence, and require the
19 production of any books, papers, correspondence, memoranda,
20 agreements, or other documents or records which the commissioner
21 deems relevant or material to the inquiry.

22 (4) In case of contumacy by, or refusal to obey a subpoena
23 issued to, any person, the superior court, upon application by the
24 commissioner, may issue to the person an order requiring the
25 person to appear before the commissioner, or the officer designated
26 by the commissioner, to produce documentary evidence, if so
27 ordered, or to give evidence touching the matter under investigation
28 or in question. Failure to obey the order of the court may be
29 punished by the court as a contempt.

30 (5) No person is excused from attending or testifying or from
31 producing any document or record before the commissioner or in
32 obedience to the subpoena of the commissioner or any officer
33 designated by the commissioner, or in any proceeding instituted
34 by the commissioner, on the ground that the testimony or evidence
35 (documentary or otherwise), required of the person may tend to
36 incriminate the person or subject the person to a penalty or
37 forfeiture, but no individual may be prosecuted or subjected to any
38 penalty or forfeiture for or on account of any transaction, matter,
39 or thing concerning which the person is compelled, after validly
40 claiming the privilege against self-incrimination, to testify or

1 produce evidence (documentary or otherwise), except that the
2 individual testifying is not exempt from prosecution and
3 punishment for perjury or contempt committed in testifying.

4 (6) The cost of any review, examination, audit, or investigation
5 made by the commissioner under Section 1280.7 of the Insurance
6 Code shall be paid to the commissioner by the person subject to
7 the review, examination, audit, or investigation, and the
8 commissioner may maintain an action for the recovery of these
9 costs in any court of competent jurisdiction. In determining the
10 cost, the commissioner may use the actual amount of the salary or
11 other compensation paid to the persons making the review,
12 examination, audit, or investigation plus the actual amount of
13 expenses including overhead reasonably incurred in the
14 performance of the work.

15 The recoverable cost of each review, examination, audit, or
16 investigation made by the commissioner under Section 1280.7 of
17 the Insurance Code shall not exceed twenty-five thousand dollars
18 (\$25,000), except that costs exceeding twenty-five thousand dollars
19 (\$25,000) shall be recoverable if the costs are necessary to prevent
20 a violation of any provision of Section 1280.7 of the Insurance
21 Code.

22 (r) Any shares or memberships issued by any corporation
23 organized and existing pursuant to the provisions of Part 2
24 (commencing with Section 12200) of Division 3 of Title 1,
25 provided the aggregate investment of any shareholder or member
26 in shares or memberships sold pursuant to this subdivision does
27 not exceed one thousand dollars (\$1,000). This exemption does
28 not apply to the shares or memberships of that corporation if any
29 promoter thereof expects or intends to make a profit directly or
30 indirectly from any business or activity associated with the
31 corporation or the operation of the corporation or from
32 remuneration, other than reasonable salary, received from the
33 corporation. This exemption does not apply to nonvoting shares
34 or memberships of that corporation issued to any person who does
35 not possess, and who will not acquire in connection with the
36 issuance of nonvoting shares or memberships, voting power
37 (Section 12253) in the corporation. This exemption also does not
38 apply to shares or memberships issued by a nonprofit cooperative
39 corporation organized to facilitate the creation of an unincorporated
40 interindemnity arrangement that provides indemnification for

1 medical malpractice to its physician and surgeon members as set
2 forth in subdivision (q).

3 (s) Any security consisting of or representing an interest in a
4 pool of mortgage loans that meets each of the following
5 requirements:

6 (1) The pool consists of whole mortgage loans or participation
7 interests in those loans, which loans were originated or acquired
8 in the ordinary course of business by a national bank or federal
9 savings association or federal savings bank having its principal
10 office in this state, by a bank incorporated under the laws of this
11 state or by a savings association as defined in subdivision (a) of
12 Section 5102 of the Financial Code and which is subject to the
13 supervision and regulation of the Commissioner of ~~Financial~~
14 ~~Institutions~~, *Business Oversight*, and each of which at the time of
15 transfer to the pool is an authorized investment for the originating
16 or acquiring institution.

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

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

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

25 (5) The security is offered pursuant to a registration under the
26 Securities Act of 1933, or pursuant to an exemption under
27 Regulation A under that act, or in the opinion of counsel for the
28 issuer, is offered pursuant to an exemption under Section 4(2) of
29 that act.

30 (t) (1) Any security issued or guaranteed by and representing
31 an interest in or a direct obligation of an industrial loan company
32 incorporated under the laws of the state and authorized by the
33 Commissioner of ~~Financial Institutions~~ *Business Oversight* to
34 engage in industrial loan business.

35 (2) Any investment certificate in or issued by any industrial
36 loan company that is organized under the laws of a state of the
37 United States other than this state, that is insured by the Federal
38 Deposit Insurance Corporation, and that maintains a branch office
39 in this state.

1 SEC. 5. Section 25254 of the Corporations Code is amended
2 to read:

3 25254. (a) If the commissioner determines it is in the public
4 interest, the commissioner may include in any administrative action
5 brought under this part a claim for ancillary relief, including, but
6 not limited to, a claim for restitution or disgorgement or damages
7 on behalf of the persons injured by the act or practice constituting
8 the subject matter of the action, and the administrative law judge
9 shall have jurisdiction to award additional relief.

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

16 (c) After the exhaustion of the review procedures provided in
17 accordance with the provisions of the Administrative Procedure
18 Act, Chapter 5 (commencing with Section 11500) of Part 1 of
19 Division 3 of Title 2 of the Government Code, the commissioner
20 may apply to the appropriate superior court for a judgment in the
21 amount of the ~~administrative penalty~~ *ancillary relief* and costs
22 awarded in a final decision and order compelling the respondent,
23 or the named or cited person, to comply with the final decision of
24 the commissioner brought under this division. The application
25 shall include a certified copy of the final decision of the
26 commission and shall constitute a sufficient showing to warrant
27 the issuance of the judgment and order from superior court.

28 SEC. 6. Section 25532 of the Corporations Code is amended
29 to read:

30 25532. (a) If, in the opinion of the commissioner, (1) the sale
31 of a security is subject to qualification under this law and it is being
32 or has been offered or sold without first being qualified, the
33 commissioner may order the issuer or offeror of the security to
34 desist and refrain from the further offer or sale of the security until
35 qualification has been made under this law or (2) the sale of a
36 security is subject to the requirements of Section 25100.1, 25101.1,
37 or 25102.1 and the security is being or has been offered or sold
38 without first meeting the requirements of those sections, the
39 commissioner may order the issuer or offeror of that security to

1 desist and refrain from the further offer or sale of the security until
2 those requirements have been met.

3 (b) If, in the opinion of the commissioner, a person has been or
4 is acting as a broker-dealer or investment adviser, or has been or
5 is engaging in broker-dealer or investment adviser activities, in
6 violation of Section 25210, 25230, or 25230.1, the commissioner
7 may order that person to desist and refrain from the activity until
8 the person has been appropriately licensed or the required filing
9 has been made under this law.

10 (c) If, in the opinion of the commissioner, a person has violated
11 or is violating Section 25401, the commissioner may order that
12 person to desist and refrain from the violation.

13 (d) If the commissioner determines that a person has engaged,
14 is engaging, or is about to engage in an act, practice, or course of
15 business constituting a violation of this division or a rule adopted
16 or order issued under this division, the commissioner may issue
17 an order directing the person to desist and refrain from engaging
18 in the act, practice, or course of business, or take other action
19 necessary or appropriate to comply with this division.

20 (e) If the commissioner determines it is in the public interest,
21 the commissioner may include in any administrative action brought
22 under this division a claim for ancillary relief, including, but not
23 limited to, a claim for restitution or disgorgement or damages on
24 behalf of the persons injured by the act or practice constituting the
25 subject matter of the action, and the administrative law judge shall
26 have jurisdiction to award additional relief.

27 (f) If, after an order has been served under subdivision (a), (b),
28 ~~or~~ (c), *or* (d), a request for hearing is filed in writing within 30
29 days of the date of service of the order by the person to whom the
30 order was directed, a hearing shall be held in accordance with
31 provisions of the Administrative Procedure Act, Chapter 5
32 (commencing with Section 11500) of Part 1 of Division 3 of Title
33 2 of the Government Code, and the commissioner shall have all
34 of the powers granted under that chapter. Unless the hearing is
35 commenced within 15 business days after the request is filed (or
36 the person affected consents to a later date), the order is rescinded.

37 If that person fails to file a written request for a hearing within
38 30 days from the date of service of the order, the order shall be
39 deemed a final order of the commissioner and is not subject to
40 review by any court or agency, notwithstanding Section 25609.

1 The commissioner may file a certified copy of the final order
2 with the clerk of the superior court or any court of competent
3 jurisdiction. The order so filed has the same effect as a judgment
4 of the court and may be recorded, enforced, or satisfied in the same
5 manner as a judgment of the court.

6 If a person does not comply with an order under this section, the
7 commissioner may petition the superior court or any court of
8 competent jurisdiction to enforce the order. The court may not
9 require the commissioner to post a bond in an action or proceeding
10 under this section. If the court finds, after service and opportunity
11 for hearing, that the person was not in compliance with the order,
12 the court may adjudge the person in civil contempt of the order.
13 The court may impose a further civil penalty against the person
14 for contempt and may grant any other relief the court determines
15 is just and proper in the circumstances.

16 SEC. 7. Section 5100.2 of the Financial Code is amended to
17 read:

18 5100.2. For purposes of this division:

19 (a) Any reference to regulations of the federal Office of ~~Thrift~~
20 ~~Supervision~~ *the Comptroller of the Currency* or the Federal Deposit
21 Insurance Corporation shall also be deemed to include and refer
22 to regulations adopted by the Federal Home Loan Bank Board or
23 the Federal Savings and Loan Insurance Corporation, to the extent
24 these regulations have been continued in effect and made
25 enforceable by the Office of ~~Thrift Supervision~~ *the Comptroller*
26 *of the Currency* or Federal Deposit Insurance Corporation,
27 respectively, pursuant to the Financial Institutions Reform,
28 Recovery, and Enforcement Act of 1989 (Public Law 101-73).

29 (b) Any reference to charters issued by the Office of ~~Thrift~~
30 ~~Supervision~~ *the Comptroller of the Currency* shall also be deemed
31 to include and refer to charters issued by the Federal Home Loan
32 Bank Board.

33 SEC. 8. Section 18427.9 of the Financial Code is amended to
34 read:

35 18427.9. There shall be exempted from the provisions of
36 Section 18427.1 all of the following:

37 (a) (1) Any offer, not involving a public offering, to an affiliate
38 or to a person of the type described in subdivision (i) of Section
39 25102 of the Corporations Code or in the regulations of the

1 Commissioner of ~~Corporations~~ *Business Oversight* adopted
2 thereunder.

3 (2) The execution and delivery of an agreement for the sale of
4 securities to any person of the type described in paragraph (1),
5 subject to all of the following:

6 (A) The agreement shall contain substantially the following
7 provision:

8 “The sale of the securities which are the subject of this agreement
9 has not been authorized by a permit issued by the Commissioner
10 of ~~Financial Institutions of the State of California~~. *Business*
11 *Oversight*. The issuance of the securities or the payment or receipt
12 of any part of the consideration therefor prior to the issuance of a
13 permit is unlawful, unless the sale of securities is exempt from
14 Section 18427.1 of the California Financial Code. The rights of
15 all parties to this agreement are expressly conditioned upon the
16 issuance of a permit, unless the sale is so exempt.”

17 (B) No part of the purchase price may be paid or received, and
18 none of the securities may be issued, until a permit authorizing the
19 sale of the securities is issued, unless the sale is exempt from
20 Section 18427.1.

21 (b) Any transaction or security which the commissioner by
22 regulation or order exempts as not being comprehended within the
23 purposes of this article and the regulation of which he or she finds
24 is not necessary or appropriate in the public interest or for the
25 protection of investors.

26 SEC. 9. Section 53638 of the Government Code is amended
27 to read:

28 53638. (a) The deposit shall not exceed the shareholder’s
29 equity of any depository bank. For the purposes of this subdivision,
30 shareholder’s equity shall be determined in accordance with Section
31 463 of the Financial Code, but shall be deemed to include capital
32 notes and debentures.

33 (b) The deposit shall not exceed the total of the net worth of
34 any depository savings association or federal association, except
35 that deposits not exceeding a total of five hundred thousand dollars
36 (\$500,000) may be made to a savings association or federal
37 association without regard to the net worth of that depository, if
38 such deposits are insured or secured as required by law.

39 (c) The deposit to the share accounts of any regularly chartered
40 credit union shall not exceed the total of the unimpaired capital

1 and surplus of the credit union, as defined by rule of the
2 Commissioner of ~~Financial Institutions~~, *Business Oversight*, except
3 that the deposit to any credit union share account in an amount not
4 exceeding five hundred thousand dollars (\$500,000) may be made
5 if the share accounts of that credit union are insured or guaranteed
6 pursuant to Section 14858 of the Financial Code or are secured as
7 required by law.

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