

AMENDED IN SENATE JUNE 13, 2016

AMENDED IN SENATE MAY 23, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 Section 4406 of the Commercial Code*, to amend Sections 2510, 2601, 25100, 25254, and 25532 of the Corporations Code, to amend Sections 5100.2, 18139, 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 amended, Committee on Banking and Finance. ~~State government: omnibus technical changes.~~ *Financial institutions and services: regulation.*

(1) The Uniform Commercial Code—Bank Deposits and Collections, among other things, limits the time in which a customer, who receives a sufficient statement of account, as specified, from a bank regarding the payments of items for the customer's account, is able to assert a claim against the bank based on an unauthorized signature or alteration against the account.

This bill would specify that a statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(1)

(2) 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)

(3) 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)

(4) 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)

(5) 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)

(6) 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.

(6)

(7) Existing law prohibits the Secretary of State from filing articles of incorporation setting forth a name in which “bank,” “trust,” “trustee,” or related words appear, except as specified.

This bill would remove a duplicate exception that does not prohibit the Secretary of State from filing these types of articles if a certificate of approval of the Commissioner of Business Oversight is attached to the articles.

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.

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

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

16 (d) Patrol special police officers appointed by the police
17 commission of a city, county, or city and county under the express
18 terms of its charter who also under the express terms of the charter
19 (1) are subject to suspension or dismissal after a hearing on charges
20 duly filed with the commission after a fair and impartial trial, (2)
21 must be not less than 18 years of age nor more than 40 years of
22 age, (3) must possess physical qualifications prescribed by the
23 commission, and (4) are designated by the police commission as

1 the owners of a certain beat or territory as may be fixed from time
2 to time by the police commission.

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

5 (f) A collection agency or an employee thereof while acting
6 within the scope of his or her employment, while making an
7 investigation incidental to the business of the agency, including
8 an investigation of the location of a debtor or his or her property
9 where the contract with an assignor creditor is for the collection
10 of claims owed or due or asserted to be owed or due or the
11 equivalent thereof.

12 (g) Admitted insurers and agents and insurance brokers licensed
13 by the state, performing duties in connection with insurance
14 transacted by them.

15 (h) A bank subject to the jurisdiction of the Commissioner of
16 Business Oversight under Division 1.1 (commencing with Section
17 1000) of the Financial Code or the Comptroller of the Currency
18 of the United States.

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

21 (j) A peace officer of this state or a political subdivision thereof
22 while the peace officer is employed by a private employer to
23 engage in off-duty employment in accordance with Section 1126
24 of the Government Code. However, nothing herein shall exempt
25 such a peace officer who either contracts for his or her services or
26 the services of others as a private patrol operator or contracts for
27 his or her services as or is employed as an armed private security
28 officer. For purposes of this subdivision, "armed security officer"
29 means an individual who carries or uses a firearm in the course
30 and scope of that contract or employment.

31 (k) A retired peace officer of the state or political subdivision
32 thereof when the retired peace officer is employed by a private
33 employer in employment approved by the chief law enforcement
34 officer of the jurisdiction where the employment takes place,
35 provided that the retired officer is in a uniform of a public law
36 enforcement agency, has registered with the bureau on a form
37 approved by the director, and has met any training requirements
38 or their equivalent as established for security personnel under
39 Section 7583.5. This officer may not carry an unloaded and
40 exposed handgun unless he or she is exempted under the provisions

1 of Article 2 (commencing with Section 26361) of Chapter 6 of
2 Division 5 of Title 4 of Part 6 of the Penal Code, may not carry
3 an unloaded firearm that is not a handgun unless he or she is
4 exempted under the provisions of Article 2 (commencing with
5 Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of
6 the Penal Code, and may not carry a loaded or concealed firearm
7 unless he or she is exempted under the provisions of Sections
8 25450 to 25475, inclusive, of the Penal Code or Sections 25900
9 to 25910, inclusive, of the Penal Code or has met the requirements
10 set forth in subdivision (d) of Section 26030 of the Penal Code.
11 However, nothing herein shall exempt the retired peace officer
12 who contracts for his or her services or the services of others as a
13 private patrol operator.

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

16 (m) A savings association subject to the jurisdiction of the
17 Commissioner of Business Oversight or the Office of the
18 Comptroller of the Currency.

19 (n) A secured creditor engaged in the repossession of the
20 creditor's collateral and a lessor engaged in the repossession of
21 leased property in which it claims an interest.

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

25 (p) An unarmed, uniformed security person employed
26 exclusively and regularly by a motion picture studio facility
27 employer who does not provide contract security services for other
28 entities or persons in connection with the affairs of that employer
29 only and where there exists an employer-employee relationship if
30 that person at no time carries or uses a deadly weapon, as defined
31 in subdivision (a), in the performance of his or her duties, which
32 may include, but are not limited to, the following business
33 purposes:

34 (1) The screening and monitoring access of employees of the
35 same employer.

36 (2) The screening and monitoring access of prearranged and
37 preauthorized invited guests.

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

1 (4) Patrolling the private property facilities for the safety and
2 welfare of all who have been legitimately authorized to have access
3 to the facility.

4 (q) An armored contract carrier operating armored vehicles
5 pursuant to the authority of the Department of the California
6 Highway Patrol or the Public Utilities Commission, or an armored
7 vehicle guard employed by an armored contract carrier.

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

10 17511.1. As used in this article, “telephonic seller” or “seller”
11 means a person who, on his or her own behalf or through
12 salespersons or through the use of an automatic dialing-announcing
13 device, as defined in Section 2871 of the Public Utilities Code,
14 causes a telephone solicitation or attempted telephone solicitation
15 to occur which meets the criteria specified in subdivision (a), (b),
16 (c), or (d) and who is not exempted by subdivision (e), as follows:

17 (a) A telephone solicitation or attempted telephone solicitation
18 wherein the telephonic seller initiates telephonic contact with a
19 prospective purchaser and represents or implies one or more of
20 the following:

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

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

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

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

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

38 (4) That a prospective purchaser who buys office equipment or
39 supplies will, because of some unusual event or imminent price

1 increase, be able to buy these items at prices which are below those
2 that are usually charged or will be charged for the items.

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

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

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

11 (8) That the seller is offering to make a loan, or to arrange or
12 assist in arranging a loan or to assist in providing information
13 which may lead to the obtaining of a loan, unless no payment of
14 any kind is made until the loan proceeds are disbursed to the
15 borrower.

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

20 (b) A solicitation or attempted solicitation which is made by
21 telephone in response to inquiries generated by unrequested
22 notifications sent by the seller to persons who have not previously
23 purchased goods or services from the seller or who have not
24 previously requested credit from the seller, to a prospective
25 purchaser wherein the seller represents or implies to the recipient
26 of the notification that any of the following applies to the recipient:

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

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

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

36 However, this subdivision does not apply to the solicitation of
37 sales by a catalog seller who periodically issues and delivers
38 catalogs to potential purchasers by mail or by other means. This
39 exception only applies if the catalog includes a written description
40 or illustration and the sales price of each item of merchandise

1 offered for sale, includes at least 24 full pages of written material
2 or illustrations, is distributed in more than one state, and has an
3 annual circulation of not less than 250,000 customers.

4 (c) A solicitation or attempted solicitation which is made by
5 telephone in response to inquiries generated by advertisements on
6 behalf of the telephonic seller wherein it is represented or implied
7 that the seller is offering to sell to the prospective purchaser any
8 gold, silver, or other metals, including coins, diamonds, rubies,
9 sapphires, or other stones, coal or other minerals, or any interest
10 in oil, gas, or mineral fields, wells, or exploration sites, or any
11 other investment opportunity of any type whatsoever.

12 (d) A solicitation or attempted solicitation which is made by
13 telephone in response to inquiries generated by advertisements on
14 behalf of the telephonic seller wherein it is represented or implied
15 that the seller is offering to make a loan or to arrange or assist in
16 arranging a loan or to assist in providing information which may
17 lead to the obtaining of a loan, unless no payment of any kind is
18 made until the loan proceeds are disbursed to the borrower.

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

21 (1) A person offering or selling a security qualified under
22 Section 25110, 25120, or 25130 of the Corporations Code or
23 exempt from qualification under Chapter 1 (commencing with
24 Section 25100) of Part 2 of Division 1 of Title 4 of the
25 Corporations Code. The fact that a notice claiming an exemption
26 under the Corporate Securities Law of 1968 is filed with the
27 Department of Business Oversight does not create an exemption
28 under this paragraph.

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

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

35 (4) A person licensed or certificated pursuant to Part 2
36 (commencing with Section 680) of Division 1 of the Insurance
37 Code, including a person licensed pursuant to Chapter 5
38 (commencing with Section 1621) thereof, when the solicited
39 transaction is governed by that law.

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

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

13 (7) A person primarily soliciting the sale of a newspaper of
14 general circulation, as defined in Article 1 (commencing with
15 Section 6000) of Chapter 1 of Division 7 of Title 1 of the
16 Government Code, a magazine, or membership in a book or record
17 club whose program operates in conformity with the requirements
18 of Section 1584.5 of the Civil Code.

19 (8) A person soliciting business from prospective purchasers
20 who have previously purchased from the business enterprise for
21 which the person is calling.

22 (9) A person soliciting without the intent to complete and who
23 does not complete the sales presentation during the telephone
24 solicitation but completes the sales presentation at a later
25 face-to-face meeting between the solicitor and the prospective
26 purchaser. However, if a seller, directly following a telephone
27 solicitation, causes an individual whose primary purpose it is to
28 go to the prospective purchaser to collect the payment or deliver
29 any item purchased, this exemption does not apply.

30 (10) Any supervised financial institution or parent, subsidiary,
31 or subsidiary of parent thereof. As used in this paragraph,
32 “supervised financial institution” means any commercial bank,
33 trust company, savings and loan association, credit union, industrial
34 loan company, finance lender or broker, or insurer, provided that
35 the institution is subject to supervision by an official or agency of
36 this state or of the United States.

37 (11) A person soliciting the sale of a preneed funeral
38 arrangement regulated by Article 9 (commencing with Section
39 7735) of Chapter 12 of Division 3.

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

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

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

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

14 (16) An issuer or subsidiary of an issuer that has a security listed
15 on a national securities exchange if the exchange has been certified
16 by rule or order of the Commissioner of Business Oversight under
17 subdivision (o) of Section 25100 of the Corporations Code. A
18 subsidiary of an issuer that qualifies for exemption under this
19 paragraph is not itself exempt unless not less than 60 percent of
20 the voting power of its shares is owned by the qualifying issuer or
21 issuers.

22 (17) A person soliciting exclusively the sale of telephone
23 answering services to be provided by that person or that person's
24 employer.

25 (18) A person soliciting a transaction regulated by the
26 Commodity Futures Trading Commission if the person is registered
27 or temporarily licensed for this activity with the Commodity
28 Futures Trading Commission under the Commodity Exchange Act
29 (7 U.S.C. Sec. 1 et seq.), and the registration or license has not
30 expired or been suspended or revoked.

31 (19) A person who sells coins or bullion at a price which is not
32 more than 25 percent more than the price at which the seller is
33 concurrently buying the same coins or bullion, if: (A) the seller
34 has had a retail location in California from which he or she has
35 been selling coins or bullion to the public in person for at least
36 three years; (B) the telephonic solicitations are not the person's
37 primary business and sales made telephonically make up less than
38 20 percent of the person's total retail sales; and (C) the person
39 claiming an exemption pursuant to this subdivision complies with

1 Section 17511.3, as applicable, and subdivision (p) of Section
2 17511.4.

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

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

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

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

14 (B) It has maintained its principal purpose for a minimum of
15 10 years.

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

18 (f) In any civil proceeding alleging a violation of this article,
19 the burden of proving an exemption or an exception from a
20 definition is upon the person claiming it, and in any criminal
21 proceeding alleging a violation of this article, the burden of
22 producing evidence to support a defense based upon an exemption
23 or an exception from a definition is upon the person claiming it.

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

27 *SEC. 3. Section 4406 of the Commercial Code is amended to*
28 *read:*

29 4406. (a) A bank that sends or makes available to a customer
30 a statement of account showing payment of items for the account
31 shall either return or make available to the customer the items paid
32 or provide information in the statement of account sufficient to
33 allow the customer to *reasonably* identify the items paid. *The*
34 *statement of account provides sufficient information if the item is*
35 *described by item number, amount, and date of payment.* If the
36 bank does not return the items, it shall provide in the statement of
37 account the telephone number that the customer may call to request
38 an item, a substitute check, or a legible copy thereof pursuant to
39 subdivision (b).

1 (b) If the items are not returned to the customer, the person
2 retaining the items shall either retain the items or, if the items are
3 destroyed, maintain the capacity to furnish legible copies of the
4 items until the expiration of seven years after receipt of the items.
5 A customer may request an item from the bank that paid the item,
6 and that bank shall provide in a reasonable time either the item or,
7 if the item has been destroyed or is not otherwise obtainable, a
8 legible copy of the item. If the paid item requested by a customer
9 was presented as a substitute check, the bank shall provide, in a
10 reasonable time, either the substitute check or, if the substitute
11 check has been destroyed or is not otherwise obtainable, a legible
12 copy of the substitute check. A bank shall provide, upon request,
13 and without charge to the customer, at least two items, substitute
14 checks, or legible copies thereof, with respect to each statement
15 of account sent to the customer.

16 (c) If a bank sends or makes available a statement of account
17 or items pursuant to subdivision (a), the customer shall exercise
18 reasonable promptness in examining the statement or the items to
19 determine whether any payment was not authorized because of an
20 alteration of an item or because a purported signature by or on
21 behalf of the customer was not authorized. If, based on the
22 statement or items provided, the customer should reasonably have
23 discovered the unauthorized payment, the customer shall promptly
24 notify the bank of the relevant facts.

25 (d) If the bank proves that the customer failed, with respect to
26 an item, to comply with the duties imposed on the customer by
27 subdivision (c), the customer is precluded from asserting any of
28 the following against the bank:

29 (1) The customer's unauthorized signature or any alteration on
30 the item if the bank also proves that it suffered a loss by reason of
31 the failure.

32 (2) The customer's unauthorized signature or alteration by the
33 same wrongdoer on any other item paid in good faith by the bank
34 if the payment was made before the bank received notice from the
35 customer of the unauthorized signature or alteration and after the
36 customer had been afforded a reasonable period of time, not
37 exceeding 30 days, in which to examine the item or statement of
38 account and notify the bank.

39 (e) If subdivision (d) applies and the customer proves that the
40 bank failed to exercise ordinary care in paying the item and that

1 the failure contributed to loss, the loss is allocated between the
2 customer precluded and the bank asserting the preclusion according
3 to the extent to which the failure of the customer to comply with
4 subdivision (c) and the failure of the bank to exercise ordinary
5 care contributed to the loss. If the customer proves that the bank
6 did not pay the item in good faith, the preclusion under subdivision
7 (d) does not apply.

8 (f) Without regard to care or lack of care of either the customer
9 or the bank, a customer who does not within one year after the
10 statement or items are made available to the customer (subdivision
11 (a)) discover and report the customer's unauthorized signature on
12 or any alteration on the item is precluded from asserting against
13 the bank the unauthorized signature or alteration. If there is a
14 preclusion under this subdivision, the payer bank may not recover
15 for breach of warranty under Section 4208 with respect to the
16 unauthorized signature or alteration to which the preclusion applies.

17 (g) As used in this section, "substitute check" shall have the
18 same meaning as used in Section 229.2 of Title 12 of the Code of
19 Federal Regulations.

20 (h) This section shall become operative on January 1, 2015.

21 ~~SEC. 3.~~

22 *SEC. 4.* Section 2510 of the Corporations Code is amended to
23 read:

24 2510. "Social purpose corporation subject to the Banking Law"
25 means any of the following:

26 (a) A social purpose corporation that, with the approval of the
27 Commissioner of Business Oversight, is incorporated for the
28 purpose of engaging in, or that is authorized by the Commissioner
29 of Business Oversight to engage in, the commercial banking
30 business under the Banking Law (Division 1.1 (commencing with
31 Section 1000) of the Financial Code).

32 (b) 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, the industrial banking business
36 under the Banking Law (Division 1.1 (commencing with Section
37 1000) of the Financial Code).

38 (c) Any social purpose corporation, other than a social purpose
39 corporation described in subdivision (d), that, with the approval
40 of the Commissioner of Business Oversight, is incorporated for

1 the purpose of engaging in, or that is authorized by the
2 Commissioner of Business Oversight to engage in, the trust
3 business under the Banking Law (Division 1.1 (commencing with
4 Section 1000) of the Financial Code).

5 (d) Any social purpose corporation that is authorized by the
6 Commissioner of Business Oversight and the Commissioner of
7 Insurance to maintain a title insurance department to engage in
8 title insurance business and a trust department to engage in trust
9 business.

10 (e) Any social purpose corporation that, with the approval of
11 the Commissioner of Business Oversight, is incorporated for the
12 purpose of engaging in, or that is authorized by the Commissioner
13 of Business Oversight to engage in, business under Article 1
14 (commencing with Section 1850) of Chapter 21 of Division 1.1
15 of the Financial Code.

16 ~~SEC. 4.~~

17 *SEC. 5.* Section 2601 of the Corporations Code is amended to
18 read:

19 2601. (a) The Secretary of State shall not file articles setting
20 forth a name in which “bank,” “trust,” “trustee,” or related words
21 appear, unless the certificate of approval of the Commissioner of
22 Business Oversight is attached to the articles. This subdivision
23 does not apply to the articles of any social purpose corporation
24 subject to the Banking Law on which is endorsed the approval of
25 the Commissioner of Business Oversight.

26 (b) (1) The Secretary of State shall not file articles that set forth
27 a name that is likely to mislead the public or that is the same as,
28 or resembles so closely as to tend to deceive, the name of a
29 domestic corporation, the name of a domestic social purpose
30 corporation, or the name of a foreign corporation that is authorized
31 to transact intrastate business or has registered its name pursuant
32 to Section 2101, a name that a foreign corporation has assumed
33 under subdivision (b) of Section 2106, a name that will become
34 the record name of a corporation or social purpose corporation or
35 a foreign corporation upon the effective date of a filed corporate
36 instrument where there is a delayed effective date pursuant to
37 subdivision (c) of Section 110 or subdivision (c) of Section 5008,
38 or a name that is under reservation for another corporation or social
39 purpose corporation pursuant to this title, except that a social
40 purpose corporation may adopt a name that is substantially the

1 same as an existing corporation or social purpose corporation,
2 foreign or domestic, which is authorized to transact intrastate
3 business or has registered its name pursuant to Section 2101, upon
4 proof of consent by the domestic or foreign corporation or social
5 purpose corporation and a finding by the Secretary of State that
6 under the circumstances the public is not likely to be misled. The
7 use by a social purpose corporation of a name in violation of this
8 section may be enjoined notwithstanding the filing of its articles
9 by the Secretary of State.

10 (2) A corporation formed pursuant to this division before
11 January 1, 2015, may elect to change its status from a flexible
12 purpose corporation to a social purpose corporation by amending
13 its articles of incorporation to change its name to replace “flexible
14 purpose corporation” with “social purpose corporation” and to
15 replace the term “flexible purpose corporation” with “social
16 purpose corporation” as applicable in any statements contained in
17 the articles. For any flexible purpose corporation formed prior to
18 January 1, 2015, that has not amended its articles of incorporation
19 to change its status to a social purpose corporation, any reference
20 in this division to social purpose corporation shall be deemed a
21 reference to “flexible purpose corporation.”

22 (c) Any applicant may, upon payment of the fee prescribed in
23 Article 3 (commencing with Section 12180) of Chapter 3 of Part
24 2 of Division 3 of Title 2 of the Government Code, obtain from
25 the Secretary of State a certificate of reservation of any name not
26 prohibited by subdivision (b), and upon the issuance of the
27 certificate the name stated in the certificate shall be reserved for
28 a period of 60 days. The Secretary of State shall not, however,
29 issue certificates reserving the same name for two or more
30 consecutive 60-day periods to the same applicant or for the use or
31 benefit of the same person. No consecutive reservations shall be
32 made by or for the use or benefit of the same person of names so
33 similar as to fall within the prohibitions of subdivision (b).

34 ~~SEC. 5.~~

35 *SEC. 6.* Section 25100 of the Corporations Code is amended
36 to read:

37 25100. The following securities are exempted from Sections
38 25110, 25120, and 25130:

39 (a) Any security (including a revenue obligation) issued or
40 guaranteed by the United States, any state, any city, county, city

1 and county, public district, public authority, public corporation,
2 public entity, or political subdivision of a state or any agency or
3 corporate or other instrumentality of any one or more of the
4 foregoing; or any certificate of deposit for any of the foregoing.

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

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

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

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

28 (f) Any security consisting of any interest in all or portions of
29 a parcel or parcels of real property that are subdivided lands or a
30 subdivision or in a real estate development; provided that the
31 exemption in this subdivision shall not be applicable to: (1) any
32 investment contract sold or offered for sale with, or as part of, that
33 interest, or (2) any person engaged in the business of selling,
34 distributing, or supplying water for irrigation purposes or domestic
35 use that is not a public utility except that the exemption is
36 applicable to any security of a mutual water company (other than
37 an investment contract as described in paragraph (1)) offered or
38 sold in connection with subdivided lands pursuant to Chapter 2
39 (commencing with Section 14310) of Part 7 of Division 3 of Title
40 1.

1 (g) Any mutual capital certificates or savings accounts, as
2 defined in the Savings Association Law, issued by a savings
3 association, as defined by subdivision (a) of Section 5102 of the
4 Financial Code, and holding a license or certificate of authority
5 then in force from the Commissioner of Business Oversight of this
6 state.

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

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

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

37 (k) Any agreement, commonly known as a “life income
38 contract,” of an issuer (1) organized exclusively for educational,
39 benevolent, fraternal, religious, charitable, social, or reformatory
40 purposes and not for pecuniary profit and (2) which the

1 commissioner designates by rule or order, with a donor in
2 consideration of a donation of property to that issuer and providing
3 for the payment to the donor or persons designated by him or her
4 of income or specified periodic payments from the donated
5 property or other property for the life of the donor or those other
6 persons.

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

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

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

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

1 approved for listing upon notice of issuance on a national securities
2 exchange, in a rollup transaction unless the rollup transaction is
3 an eligible rollup transaction as defined in Section 25014.7.

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

11 (1) Listing standards:

12 (A) (i) Shareholders' equity of at least four million dollars
13 (\$4,000,000).

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

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

34 Companies whose securities are concentrated in a limited
35 geographical area, or whose securities are largely held in block by
36 institutional investors, normally may not be considered eligible
37 for listing unless the public distribution appreciably exceeds
38 500,000 shares.

39 (iv) Minimum price of three dollars (\$3) per share for a
40 reasonable period of time prior to the filing of a listing application;

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

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

9 (B) (i) Shareholders' equity of at least four million dollars
10 (\$4,000,000).

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

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

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

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

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

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

26 (C) If the total number of shareholders is less than 400 or if the
27 number of shareholders of lots of 100 shares or more is less than
28 300.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 claiming the privilege against self-incrimination, to testify or
2 produce evidence (documentary or otherwise), except that the
3 individual testifying is not exempt from prosecution and
4 punishment for perjury or contempt committed in testifying.

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

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

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

1 interindemnity arrangement that provides indemnification for
2 medical malpractice to its physician and surgeon members as set
3 forth in subdivision (q).

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

7 (1) The pool consists of whole mortgage loans or participation
8 interests in those loans, which loans were originated or acquired
9 in the ordinary course of business by a national bank or federal
10 savings association or federal savings bank having its principal
11 office in this state, by a bank incorporated under the laws of this
12 state or by a savings association as defined in subdivision (a) of
13 Section 5102 of the Financial Code and which is subject to the
14 supervision and regulation of the Commissioner of Business
15 Oversight, and each of which at the time of transfer to the pool is
16 an authorized investment for the originating 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 Business Oversight to engage in industrial loan
34 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. 6.~~

2 *SEC. 7.* Section 25254 of the Corporations Code is amended
3 to read:

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

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

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

29 ~~SEC. 7.~~

30 *SEC. 8.* Section 25532 of the Corporations Code is amended
31 to read:

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

1 commissioner may order the issuer or offeror of that security to
2 desist and refrain from the further offer or sale of the security until
3 those requirements have been met.

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

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

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

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

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

38 If that person fails to file a written request for a hearing within
39 30 days from the date of service of the order, the order shall be

1 deemed a final order of the commissioner and is not subject to
2 review by any court or agency, notwithstanding Section 25609.

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

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

18 ~~SEC. 8.~~

19 *SEC. 9.* Section 5100.2 of the Financial Code is amended to
20 read:

21 5100.2. For purposes of this division:

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

32 (b) Any reference to charters issued by the Office of the
33 Comptroller of the Currency shall also be deemed to include and
34 refer to charters issued by the Federal Home Loan Bank Board.

35 ~~SEC. 9.~~

36 *SEC. 10.* Section 18139 of the Financial Code is amended to
37 read:

38 18139. A sale, merger, or conversion involving an industrial
39 loan company and another industrial loan company, a bank, or a

1 savings association is subject to Division 1.6 (commencing with
2 Section 4800).

3 ~~SEC. 10.~~

4 *SEC. 11.* Section 18427.9 of the Financial Code is amended
5 to read:

6 18427.9. There shall be exempted from the provisions of
7 Section 18427.1 all of the following:

8 (a) (1) Any offer, not involving a public offering, to an affiliate
9 or to a person of the type described in subdivision (i) of Section
10 25102 of the Corporations Code or in the regulations of the
11 Commissioner of Business Oversight adopted thereunder.

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

15 (A) The agreement shall contain substantially the following
16 provision:

17 “The sale of the securities which are the subject of this agreement
18 has not been authorized by a permit issued by the Commissioner
19 of Business Oversight. The issuance of the securities or the
20 payment or receipt of any part of the consideration therefor prior
21 to the issuance of a permit is unlawful, unless the sale of securities
22 is exempt from Section 18427.1 of the California Financial Code.
23 The rights of all parties to this agreement are expressly conditioned
24 upon the issuance of a permit, unless the sale is so exempt.”

25 (B) No part of the purchase price may be paid or received, and
26 none of the securities may be issued, until a permit authorizing the
27 sale of the securities is issued, unless the sale is exempt from
28 Section 18427.1.

29 (b) Any transaction or security which the commissioner by
30 regulation or order exempts as not being comprehended within the
31 purposes of this article and the regulation of which he or she finds
32 is not necessary or appropriate in the public interest or for the
33 protection of investors.

34 ~~SEC. 11.~~

35 *SEC. 12.* Section 53638 of the Government Code is amended
36 to read:

37 53638. (a) The deposit shall not exceed the shareholder’s
38 equity of any depository bank. For the purposes of this subdivision,
39 shareholder’s equity shall be determined in accordance with Section

1 463 of the Financial Code, but shall be deemed to include capital
2 notes and debentures.

3 (b) The deposit shall not exceed the total of the net worth of
4 any depository savings association or federal association, except
5 that deposits not exceeding a total of five hundred thousand dollars
6 (\$500,000) may be made to a savings association or federal
7 association without regard to the net worth of that depository, if
8 such deposits are insured or secured as required by law.

9 (c) The deposit to the share accounts of any regularly chartered
10 credit union shall not exceed the total of the unimpaired capital
11 and surplus of the credit union, as defined by rule of the
12 Commissioner of Business Oversight, except that the deposit to
13 any credit union share account in an amount not exceeding five
14 hundred thousand dollars (\$500,000) may be made if the share
15 accounts of that credit union are insured or guaranteed pursuant
16 to Section 14858 of the Financial Code or are secured as required
17 by law.

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