

AMENDED IN SENATE JUNE 22, 2016

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. 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.

(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.

(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.

(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.

(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.

(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.

(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
24 the owners of a certain beat or territory as may be fixed from time
25 to time by the police commission.

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

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

8 (g) Admitted insurers and agents and insurance brokers licensed
9 by the state, performing duties in connection with insurance
10 transacted by them.

11 (h) A bank subject to the jurisdiction of the Commissioner of
12 Business Oversight under Division 1.1 (commencing with Section
13 1000) of the Financial Code or the Comptroller of the Currency
14 of the United States.

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

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

27 (k) A retired peace officer of the state or political subdivision
28 thereof when the retired peace officer is employed by a private
29 employer in employment approved by the chief law enforcement
30 officer of the jurisdiction where the employment takes place,
31 provided that the retired officer is in a uniform of a public law
32 enforcement agency, has registered with the bureau on a form
33 approved by the director, and has met any training requirements
34 or their equivalent as established for security personnel under
35 Section 7583.5. This officer may not carry an unloaded and
36 exposed handgun unless he or she is exempted under the provisions
37 of Article 2 (commencing with Section 26361) of Chapter 6 of
38 Division 5 of Title 4 of Part 6 of the Penal Code, may not carry
39 an unloaded firearm that is not a handgun unless he or she is
40 exempted under the provisions of Article 2 (commencing with

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

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

12 (m) A savings association subject to the jurisdiction of the
13 Commissioner of Business Oversight or the Office of the
14 Comptroller of the Currency.

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

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

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

30 (1) The screening and monitoring access of employees of the
31 same employer.

32 (2) The screening and monitoring access of prearranged and
33 preauthorized invited guests.

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

35 (4) Patrolling the private property facilities for the safety and
36 welfare of all who have been legitimately authorized to have access
37 to the facility.

38 (q) An armored contract carrier operating armored vehicles
39 pursuant to the authority of the Department of the California

1 Highway Patrol or the Public Utilities Commission, or an armored
2 vehicle guard employed by an armored contract carrier.

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

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

12 (a) A telephone solicitation or attempted telephone solicitation
13 wherein the telephonic seller initiates telephonic contact with a
14 prospective purchaser and represents or implies one or more of
15 the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (c) A solicitation or attempted solicitation which is made by
40 telephone in response to inquiries generated by advertisements on

1 behalf of the telephonic seller wherein it is represented or implied
2 that the seller is offering to sell to the prospective purchaser any
3 gold, silver, or other metals, including coins, diamonds, rubies,
4 sapphires, or other stones, coal or other minerals, or any interest
5 in oil, gas, or mineral fields, wells, or exploration sites, or any
6 other investment opportunity of any type whatsoever.

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

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

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

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

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

30 (4) A person licensed or certificated pursuant to Part 2
31 (commencing with Section 680) of Division 1 of the Insurance
32 Code, including a person licensed pursuant to Chapter 5
33 (commencing with Section 1621) thereof, when the solicited
34 transaction is governed by that law.

35 (5) A person offering or selling a franchise registered pursuant
36 to Section 31110 of the Corporations Code or exempt from
37 registration under Chapter 1 (commencing with Section 31100)
38 of Part 2 of Division 5 of Title 4 of the Corporations Code. The
39 fact that a notice claiming an exemption under the Franchise

1 Investment Law is filed with the Department of Business Oversight
2 does not create an exemption under this paragraph.

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

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

14 (8) A person soliciting business from prospective purchasers
15 who have previously purchased from the business enterprise for
16 which the person is calling.

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

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

32 (11) A person soliciting the sale of a preneed funeral
33 arrangement regulated by Article 9 (commencing with Section
34 7735) of Chapter 12 of Division 3.

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

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

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

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

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

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

19 (18) A person soliciting a transaction regulated by the
20 Commodity Futures Trading Commission if the person is registered
21 or temporarily licensed for this activity with the Commodity
22 Futures Trading Commission under the Commodity Exchange Act
23 (7 U.S.C. Sec. 1 et seq.), and the registration or license has not
24 expired or been suspended or revoked.

25 (19) A person who sells coins or bullion at a price which is not
26 more than 25 percent more than the price at which the seller is
27 concurrently buying the same coins or bullion, if: (A) the seller
28 has had a retail location in California from which he or she has
29 been selling coins or bullion to the public in person for at least
30 three years; (B) the telephonic solicitations are not the person's
31 primary business and sales made telephonically make up less than
32 20 percent of the person's total retail sales; and (C) the person
33 claiming an exemption pursuant to this subdivision complies with
34 Section 17511.3, as applicable, and subdivision (p) of Section
35 17511.4.

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

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

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

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

8 (B) It has maintained its principal purpose for a minimum of
9 10 years.

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

12 (f) In any civil proceeding alleging a violation of this article,
13 the burden of proving an exemption or an exception from a
14 definition is upon the person claiming it, and in any criminal
15 proceeding alleging a violation of this article, the burden of
16 producing evidence to support a defense based upon an exemption
17 or an exception from a definition is upon the person claiming it.

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

21 SEC. 3. Section 4406 of the Commercial Code is amended to
22 read:

23 4406. (a) A bank that sends or makes available to a customer
24 a statement of account showing payment of items for the account
25 shall either return or make available to the customer the items paid
26 or provide information in the statement of account sufficient to
27 allow the customer to reasonably identify the items paid. The
28 statement of account provides sufficient information if the item is
29 described by item number, amount, and date of payment. If the
30 bank does not return the items, it shall provide in the statement of
31 account the telephone number that the customer may call to request
32 an item, a substitute check, or a legible copy thereof pursuant to
33 subdivision (b).

34 (b) If the items are not returned to the customer, the person
35 retaining the items shall either retain the items or, if the items are
36 destroyed, maintain the capacity to furnish legible copies of the
37 items until the expiration of seven years after receipt of the items.
38 A customer may request an item from the bank that paid the item,
39 and that bank shall provide in a reasonable time either the item or,
40 if the item has been destroyed or is not otherwise obtainable, a

1 legible copy of the item. If the paid item requested by a customer
2 was presented as a substitute check, the bank shall provide, in a
3 reasonable time, either the substitute check or, if the substitute
4 check has been destroyed or is not otherwise obtainable, a legible
5 copy of the substitute check. A bank shall provide, upon request,
6 and without charge to the customer, at least two items, substitute
7 checks, or legible copies thereof, with respect to each statement
8 of account sent to the customer.

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

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

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

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

32 (e) If subdivision (d) applies and the customer proves that the
33 bank failed to exercise ordinary care in paying the item and that
34 the failure contributed to loss, the loss is allocated between the
35 customer precluded and the bank asserting the preclusion according
36 to the extent to which the failure of the customer to comply with
37 subdivision (c) and the failure of the bank to exercise ordinary
38 care contributed to the loss. If the customer proves that the bank
39 did not pay the item in good faith, the preclusion under subdivision
40 (d) does not apply.

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

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

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

14 SEC. 4. Section 2510 of the Corporations Code is amended to
15 read:

16 2510. "Social purpose corporation subject to the Banking Law"
17 means any of the following:

18 (a) A social purpose corporation that, with the approval of the
19 Commissioner of Business Oversight, is incorporated for the
20 purpose of engaging in, or that is authorized by the Commissioner
21 of Business Oversight to engage in, the commercial banking
22 business under the Banking Law (Division 1.1 (commencing with
23 Section 1000) of the Financial Code).

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

30 (c) Any social purpose corporation, other than a social purpose
31 corporation described in subdivision (d), that, with the approval
32 of the Commissioner of Business Oversight, is incorporated for
33 the purpose of engaging in, or that is authorized by the
34 Commissioner of Business Oversight to engage in, the trust
35 business under the Banking Law (Division 1.1 (commencing with
36 Section 1000) of the Financial Code).

37 (d) Any social purpose corporation that is authorized by the
38 Commissioner of Business Oversight and the Commissioner of
39 Insurance to maintain a title insurance department to engage in

1 title insurance business and a trust department to engage in trust
2 business.

3 (e) Any social purpose corporation that, with the approval of
4 the 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, business under Article 1
7 (commencing with Section 1850) of Chapter 21 of Division 1.1
8 of the Financial Code.

9 SEC. 5. Section 2601 of the Corporations Code is amended to
10 read:

11 2601. (a) The Secretary of State shall not file articles setting
12 forth a name in which “bank,” “trust,” “trustee,” or related words
13 appear, unless the certificate of approval of the Commissioner of
14 Business Oversight is attached to the articles. This subdivision
15 does not apply to the articles of any social purpose corporation
16 subject to the Banking Law on which is endorsed the approval of
17 the Commissioner of Business Oversight.

18 (b) (1) The Secretary of State shall not file articles that set forth
19 a name that is likely to mislead the public or that is the same as,
20 or resembles so closely as to tend to deceive, the name of a
21 domestic corporation, the name of a domestic social purpose
22 corporation, or the name of a foreign corporation that is authorized
23 to transact intrastate business or has registered its name pursuant
24 to Section 2101, a name that a foreign corporation has assumed
25 under subdivision (b) of Section 2106, a name that will become
26 the record name of a corporation or social purpose corporation or
27 a foreign corporation upon the effective date of a filed corporate
28 instrument where there is a delayed effective date pursuant to
29 subdivision (c) of Section 110 or subdivision (c) of Section 5008,
30 or a name that is under reservation for another corporation or social
31 purpose corporation pursuant to this title, except that a social
32 purpose corporation may adopt a name that is substantially the
33 same as an existing corporation or social purpose corporation,
34 foreign or domestic, which is authorized to transact intrastate
35 business or has registered its name pursuant to Section 2101, upon
36 proof of consent by the domestic or foreign corporation or social
37 purpose corporation and a finding by the Secretary of State that
38 under the circumstances the public is not likely to be misled. The
39 use by a social purpose corporation of a name in violation of this

1 section may be enjoined notwithstanding the filing of its articles
2 by the Secretary of State.

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

15 (c) Any applicant may, upon payment of the fee prescribed in
16 Article 3 (commencing with Section 12180) of Chapter 3 of Part
17 2 of Division 3 of Title 2 of the Government Code, obtain from
18 the Secretary of State a certificate of reservation of any name not
19 prohibited by subdivision (b), and upon the issuance of the
20 certificate the name stated in the certificate shall be reserved for
21 a period of 60 days. The Secretary of State shall not, however,
22 issue certificates reserving the same name for two or more
23 consecutive 60-day periods to the same applicant or for the use or
24 benefit of the same person. No consecutive reservations shall be
25 made by or for the use or benefit of the same person of names so
26 similar as to fall within the prohibitions of subdivision (b).

27 SEC. 6. Section 25100 of the Corporations Code is amended
28 to read:

29 25100. The following securities are exempted from Sections
30 25110, 25120, and 25130:

31 (a) Any security (including a revenue obligation) issued or
32 guaranteed by the United States, any state, any city, county, city
33 and county, public district, public authority, public corporation,
34 public entity, or political subdivision of a state or any agency or
35 corporate or other instrumentality of any one or more of the
36 foregoing; or any certificate of deposit for any of the foregoing.

37 (b) Any security issued or guaranteed by Canada, any Canadian
38 province, any political subdivision or municipality of that province,
39 or by any other foreign government with which the United States
40 currently maintains diplomatic relations, if the security is

1 recognized as a valid obligation by the issuer or guarantor; or any
2 certificate of deposit for any of the foregoing.

3 (c) Any security issued or guaranteed by and representing an
4 interest in or a direct obligation of a national bank or a bank or
5 trust company incorporated under the laws of this state, and any
6 security issued by a bank to one or more other banks and
7 representing an interest in an asset of the issuing bank.

8 (d) Any security issued or guaranteed by a federal savings
9 association or federal savings bank or federal land bank or joint
10 land bank or national farm loan association or by any savings
11 association, as defined in subdivision (a) of Section 5102 of the
12 Financial Code, which is subject to the supervision and regulation
13 of the Commissioner of Business Oversight of this state.

14 (e) Any security (other than an interest in all or portions of a
15 parcel or parcels of real property which are subdivided land or a
16 subdivision or in a real estate development), the issuance of which
17 is subject to authorization by the Insurance Commissioner, the
18 Public Utilities Commission, or the Real Estate Commissioner of
19 this state.

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

33 (g) Any mutual capital certificates or savings accounts, as
34 defined in the Savings Association Law, issued by a savings
35 association, as defined by subdivision (a) of Section 5102 of the
36 Financial Code, and holding a license or certificate of authority
37 then in force from the Commissioner of Business Oversight of this
38 state.

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

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

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

31 (k) Any agreement, commonly known as a “life income
32 contract,” of an issuer (1) organized exclusively for educational,
33 benevolent, fraternal, religious, charitable, social, or reformatory
34 purposes and not for pecuniary profit and (2) which the
35 commissioner designates by rule or order, with a donor in
36 consideration of a donation of property to that issuer and providing
37 for the payment to the donor or persons designated by him or her
38 of income or specified periodic payments from the donated
39 property or other property for the life of the donor or those other
40 persons.

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

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

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

30 (o) Any security listed or approved for listing upon notice of
 31 issuance on a national securities exchange, if the exchange has
 32 been certified by rule or order of the commissioner and any warrant
 33 or right to purchase or subscribe to the security. The exemption
 34 afforded by this subdivision does not apply to securities listed or
 35 approved for listing upon notice of issuance on a national securities
 36 exchange, in a rollup transaction unless the rollup transaction is
 37 an eligible rollup transaction as defined in Section 25014.7.

38 That certification of any exchange shall be made by the
 39 commissioner upon the written request of the exchange if the
 40 commissioner finds that the exchange, in acting on applications

1 for listing of common stock, substantially applies the minimum
2 standards set forth in either subparagraph (A) or (B) of paragraph
3 (1), and, in considering suspension or removal from listing,
4 substantially applies each of the criteria set forth in paragraph (2).

5 (1) Listing standards:

6 (A) (i) Shareholders' equity of at least four million dollars
7 (\$4,000,000).

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

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

28 Companies whose securities are concentrated in a limited
29 geographical area, or whose securities are largely held in block by
30 institutional investors, normally may not be considered eligible
31 for listing unless the public distribution appreciably exceeds
32 500,000 shares.

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

- 1 (v) An aggregate market value for publicly held shares of at
2 least three million dollars (\$3,000,000).
- 3 (B) (i) Shareholders' equity of at least four million dollars
4 (\$4,000,000).
- 5 (ii) Minimum public distribution set forth in clause (iii) of
6 subparagraph (A) of paragraph (1).
- 7 (iii) Operating history of at least three years.
- 8 (iv) An aggregate market value for publicly held shares of at
9 least fifteen million dollars (\$15,000,000).
- 10 (2) Criteria for consideration of suspension or removal from
11 listing:
- 12 (A) If a company that (A) has shareholders' equity of less than
13 one million dollars (\$1,000,000) has sustained net losses in each
14 of its two most recent fiscal years, or (B) has net tangible assets
15 of less than three million dollars (\$3,000,000) and has sustained
16 net losses in three of its four most recent fiscal years.
- 17 (B) If the number of shares publicly held (excluding the holdings
18 of officers, directors, controlling shareholders, and other
19 concentrated or family holdings) is less than 150,000.
- 20 (C) If the total number of shareholders is less than 400 or if the
21 number of shareholders of lots of 100 shares or more is less than
22 300.
- 23 (D) If the aggregate market value of shares publicly held is less
24 than seven hundred fifty thousand dollars (\$750,000).
- 25 (E) If shares of common stock sell at a price of less than three
26 dollars (\$3) per share for a substantial period of time and the issuer
27 shall fail to effectuate a reverse stock split of the shares within a
28 reasonable period of time after being requested by the exchange
29 to take that action.
- 30 A national securities exchange, certified by rule or order of the
31 commissioner under this subdivision, shall file annual reports when
32 requested to do so by the commissioner. The annual reports shall
33 contain, by issuer: the variances granted to an exchange's listing
34 standards, including variances from corporate governance and
35 voting rights' standards, for any security of that issuer; the reasons
36 for the variances; a discussion of the review procedure instituted
37 by the exchange to determine the effect of the variances on
38 investors and whether the variances should be continued; and any
39 other information that the commissioner deems relevant. The
40 purpose of these reports is to assist the commissioner in

1 determining whether the quantitative and qualitative requirements
2 of this subdivision are substantially being met by the exchange in
3 general or with regard to any particular security.

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

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

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

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

32 (1) Whenever it appears to the commissioner that any person
33 has engaged or is about to engage in any act or practice constituting
34 a violation of any provision of Section 1280.7 of the Insurance
35 Code, the commissioner may, in the commissioner's discretion,
36 bring an action in the name of the people of the State of California
37 in the superior court to enjoin the acts or practices or to enforce
38 compliance with Section 1280.7 of the Insurance Code. Upon a
39 proper showing a permanent or preliminary injunction, a restraining
40 order, or a writ of mandate shall be granted and a receiver or

1 conservator may be appointed for the defendant or the defendant's
2 assets.

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

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

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

25 (5) No person is excused from attending or testifying or from
26 producing any document or record before the commissioner or in
27 obedience to the subpoena of the commissioner or any officer
28 designated by the commissioner, or in any proceeding instituted
29 by the commissioner, on the ground that the testimony or evidence
30 (documentary or otherwise), required of the person may tend to
31 incriminate the person or subject the person to a penalty or
32 forfeiture, but no individual may be prosecuted or subjected to any
33 penalty or forfeiture for or on account of any transaction, matter,
34 or thing concerning which the person is compelled, after validly
35 claiming the privilege against self-incrimination, to testify or
36 produce evidence (documentary or otherwise), except that the
37 individual testifying is not exempt from prosecution and
38 punishment for perjury or contempt committed in testifying.

39 (6) The cost of any review, examination, audit, or investigation
40 made by the commissioner under Section 1280.7 of the Insurance

1 Code shall be paid to the commissioner by the person subject to
2 the review, examination, audit, or investigation, and the
3 commissioner may maintain an action for the recovery of these
4 costs in any court of competent jurisdiction. In determining the
5 cost, the commissioner may use the actual amount of the salary or
6 other compensation paid to the persons making the review,
7 examination, audit, or investigation plus the actual amount of
8 expenses including overhead reasonably incurred in the
9 performance of the work.

10 The recoverable cost of each review, examination, audit, or
11 investigation made by the commissioner under Section 1280.7 of
12 the Insurance Code shall not exceed twenty-five thousand dollars
13 (\$25,000), except that costs exceeding twenty-five thousand dollars
14 (\$25,000) shall be recoverable if the costs are necessary to prevent
15 a violation of any provision of Section 1280.7 of the Insurance
16 Code.

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

38 (s) Any security consisting of or representing an interest in a
39 pool of mortgage loans that meets each of the following
40 requirements:

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

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

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

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

19 (5) The security is offered pursuant to a registration under the
 20 Securities Act of 1933, or pursuant to an exemption under
 21 Regulation A under that act, or in the opinion of counsel for the
 22 issuer, is offered pursuant to an exemption under Section 4(2) of
 23 that act.

24 (t) (1) Any security issued or guaranteed by and representing
 25 an interest in or a direct obligation of an industrial loan company
 26 incorporated under the laws of the state and authorized by the
 27 Commissioner of Business Oversight to engage in industrial loan
 28 business.

29 (2) Any investment certificate in or issued by any industrial
 30 loan company that is organized under the laws of a state of the
 31 United States other than this state, that is insured by the Federal
 32 Deposit Insurance Corporation, and that maintains a branch office
 33 in this state.

34 SEC. 7. Section 25254 of the Corporations Code is amended
 35 to read:

36 25254. (a) If the commissioner determines it is in the public
 37 interest, the commissioner may include in any administrative action
 38 brought under this part a claim for ancillary relief, including, but
 39 not limited to, a claim for restitution or disgorgement or damages
 40 on behalf of the persons injured by the act or practice constituting

1 the subject matter of the action, and the administrative law judge
2 shall have jurisdiction to award additional relief.

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

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

21 SEC. 8. Section 25532 of the Corporations Code is amended
22 to read:

23 25532. (a) If, in the opinion of the commissioner, (1) the sale
24 of a security is subject to qualification under this law and it is being
25 or has been offered or sold without first being qualified, the
26 commissioner may order the issuer or offeror of the security to
27 desist and refrain from the further offer or sale of the security until
28 qualification has been made under this law or (2) the sale of a
29 security is subject to the requirements of Section 25100.1, 25101.1,
30 or 25102.1 and the security is being or has been offered or sold
31 without first meeting the requirements of those sections, the
32 commissioner may order the issuer or offeror of that security to
33 desist and refrain from the further offer or sale of the security until
34 those requirements have been met.

35 (b) If, in the opinion of the commissioner, a person has been or
36 is acting as a broker-dealer or investment adviser, or has been or
37 is engaging in broker-dealer or investment adviser activities, in
38 violation of Section 25210, 25230, or 25230.1, the commissioner
39 may order that person to desist and refrain from the activity until

1 the person has been appropriately licensed or the required filing
2 has been made under this law.

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

6 (d) If the commissioner determines that a person has engaged,
7 is engaging, or is about to engage in an act, practice, or course of
8 business constituting a violation of this division or a rule adopted
9 or order issued under this division, the commissioner may issue
10 an order directing the person to desist and refrain from engaging
11 in the act, practice, or course of business, or take other action
12 necessary or appropriate to comply with this division.

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

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

30 If that person fails to file a written request for a hearing within
31 30 days from the date of service of the order, the order shall be
32 deemed a final order of the commissioner and is not subject to
33 review by any court or agency, notwithstanding Section 25609.

34 The commissioner may file a certified copy of the final order
35 with the clerk of the superior court or any court of competent
36 jurisdiction. The order so filed has the same effect as a judgment
37 of the court and may be recorded, enforced, or satisfied in the same
38 manner as a judgment of the court.

39 If a person does not comply with an order under this section, the
40 commissioner may petition the superior court or any court of

1 competent jurisdiction to enforce the order. The court may not
2 require the commissioner to post a bond in an action or proceeding
3 under this section. If the court finds, after service and opportunity
4 for hearing, that the person was not in compliance with the order,
5 the court may adjudge the person in civil contempt of the order.
6 The court may impose a further civil penalty against the person
7 for contempt and may grant any other relief the court determines
8 is just and proper in the circumstances.

9 SEC. 9. Section 5100.2 of the Financial Code is amended to
10 read:

11 5100.2. For purposes of this division:

12 (a) Any reference to regulations of the federal Office of the
13 Comptroller of the Currency or the Federal Deposit Insurance
14 Corporation shall also be deemed to include and refer to regulations
15 adopted by the Federal Home Loan Bank Board or the Federal
16 Savings and Loan Insurance Corporation, to the extent these
17 regulations have been continued in effect and made enforceable
18 by the Office of the Comptroller of the Currency or Federal Deposit
19 Insurance Corporation, respectively, pursuant to the Financial
20 Institutions Reform, Recovery, and Enforcement Act of 1989
21 (Public Law 101-73).

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

25 SEC. 10. Section 18139 of the Financial Code is amended to
26 read:

27 18139. A sale, merger, or conversion involving an industrial
28 loan company and another industrial loan company, a bank, or a
29 savings association is subject to Division 1.6 (commencing with
30 Section 4800).

31 SEC. 11. Section 18427.9 of the Financial Code is amended
32 to read:

33 18427.9. There shall be exempted from the provisions of
34 Section 18427.1 all of the following:

35 (a) (1) Any offer, not involving a public offering, to an affiliate
36 or to a person of the type described in subdivision (i) of Section
37 25102 of the Corporations Code or in the regulations of the
38 Commissioner of Business Oversight adopted thereunder.

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

4 (A) The agreement shall contain substantially the following
5 provision:

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

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

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

23 SEC. 12. Section 53638 of the Government Code is amended
24 to read:

25 53638. (a) The deposit shall not exceed the shareholder’s
26 equity of any depository bank. For the purposes of this subdivision,
27 shareholder’s equity shall be determined in accordance with Section
28 463 of the Financial Code, but shall be deemed to include capital
29 notes and debentures.

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

36 (c) The deposit to the share accounts of any regularly chartered
37 credit union shall not exceed the total of the unimpaired capital
38 and surplus of the credit union, as defined by rule of the
39 Commissioner of Business Oversight, except that the deposit to
40 any credit union share account in an amount not exceeding five

1 hundred thousand dollars (\$500,000) may be made if the share
2 accounts of that credit union are insured or guaranteed pursuant
3 to Section 14858 of the Financial Code or are secured as required
4 by law.

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

O