

ASSEMBLY BILL

No. 1432

Introduced by Assembly Member Papan

February 28, 1997

An act to amend Sections 134, 272, 1801, 1852.2, 1901, 3100, 3804, 4839, 31115, and 33301 of, to add Section 600.3 to, and to repeal Sections 183, 600.2, and 662 of, the Financial Code, and to amend Section 53651.4 of the Government Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1432, as introduced, Papan. Financial institutions: banks.

(1) The Banking Law provides for the regulation of banks by the Commissioner of Financial Institutions. Under these provisions, the articles of incorporation of a bank are required to provide for assessment by the bank of its common shares upon order of the commissioner for the purpose of correcting an impairment of contributed capital, as defined.

This bill would repeal these and other related provisions.

(2) The Banking Law authorizes the commissioner to take possession of the property and business of a bank under certain circumstances.

This bill would additionally authorize the commissioner to take possession if the bank's tangible shareholders' equity is less than certain specified amounts.

(3) The Banking Law and other provisions of existing law authorize the commissioner to charge fees for bank examinations on a per diem basis.

This bill would instead provide for fees to be charged on an hourly basis.

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

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

1 SECTION 1. Section 134 of the Financial Code is
2 amended to read:

3 134. (a) “Contributed capital” means all of
4 shareholders’ equity other than retained earnings.
5 However, nothing in this ~~subdivision~~ *section* shall
6 prohibit a bank from transferring amounts from time to
7 time from its retained earnings to its contributed capital,
8 subject to any applicable statutes, regulations, and
9 generally accepted accounting principles.

10 (b) ~~For purposes of this division, the contributed~~
11 ~~capital of a bank shall be deemed to be impaired~~
12 ~~whenever such bank has deficit retained earnings in an~~
13 ~~amount exceeding 40 percent of such contributed capital.~~

14 SEC. 2. Section 183 of the Financial Code is repealed.

15 ~~183. Section 662 of the revised Banking Law shall~~
16 ~~apply to any subject institution existing on January 1, 1979,~~
17 ~~whether or not such subject institution amends its articles~~
18 ~~to conform to the provisions of Section 600.2 of the new~~
19 ~~Banking Law.~~

20 SEC. 3. Section 272 of the Financial Code is amended
21 to read:

22 272. The commissioner in addition to the annual
23 assessment shall collect from each bank authorized to
24 engage in the trust business, to defray the cost of
25 examination, a fee not to exceed ~~two hundred dollars~~
26 ~~(\$200) per diem, seventy dollars (\$70) per hour~~ for each
27 examiner necessarily engaged in the examination of the
28 trust company, trust business, or trust department. The
29 commissioner shall assess the fee upon completion of the
30 examination of the trust company or trust business and
31 shall mail or otherwise deliver an invoice for the fee to the
32 institution. The institution shall pay the fee within 30 days
33 after the invoice is mailed or otherwise delivered to it.



1 SEC. 4. Section 600.2 of the Financial Code is
2 repealed.

3 ~~600.2. The articles of each bank shall provide that the
4 common shares of the bank are subject to assessment by
5 the bank upon order of the commissioner for the purpose
6 of correcting an impairment of contributed capital in the
7 manner and to the extent provided in this division.~~

8 SEC. 5. Section 600.3 is added to the Financial Code,
9 to read:

10 600.3. (a) In this section:

11 (1) "Assessment provision" means the provision in the
12 articles of a bank that complies with the requirements of
13 Section 600.2, as in effect immediately before the
14 effective date of this section, or any predecessor statute.

15 (2) "Bank" means any (A) California state bank or (B)
16 corporation organized under the laws of this state for the
17 purpose of transacting business pursuant to Article 1
18 (commencing with Section 3500) of Chapter 19.

19 (b) On and after the effective date of this section, the
20 assessment provision in the articles of a bank shall no
21 longer be of any force or effect.

22 (c) Notwithstanding Sections 902 and 903 of the
23 Corporations Code, a bank may, on or after the effective
24 date of this section, amend its articles by deleting the
25 assessment provision with the approval of its board alone
26 and without any approval of its outstanding shares.

27 (d) (1) Any order issued before the effective date of
28 this section by the commissioner pursuant to Section 662,
29 as in effect immediately before the effective date of this
30 section or any predecessor statute, shall, if and to the
31 extent that the bank has not before that date levied and
32 collected through sale of shares or otherwise, an
33 assessment on its common shares, be deemed rescinded.

34 (2) Any proceeding commenced before the effective
35 date of this section by a bank to assess its common shares
36 in accordance with an order issued by the commissioner
37 pursuant to Section 662, as in effect immediately before
38 the effective date of this section or any predecessor
39 statute, shall be terminated on the effective date of this
40 section. On and after the effective date of this section, the



1 bank shall take no further action to levy or collect the
2 assessment on its common shares, and any lien on the
3 common shares created by the assessment shall be
4 deemed extinguished.

5 SEC. 6. Section 662 of the Financial Code is repealed.

6 ~~662. (a) Whenever it appears that the contributed
7 capital of a bank or trust company is impaired, the
8 commissioner shall order the bank to correct such
9 impairment within 60 days of the date of his or her order.~~

10 ~~(b) The bank or trust company to which an order is
11 issued pursuant to subdivision (a), unless the impairment
12 of contributed capital is otherwise corrected, shall levy
13 and collect an assessment upon its common shares
14 pursuant to Section 423 of the Corporations Code. The
15 date on which the bank or trust company levies the
16 assessment shall be not more than 60 days after the date
17 of the order; the date on which the assessment is payable
18 shall be not more than 60 days after the date of the levy
19 of the assessment; the date on which the assessment
20 becomes delinquent if not paid shall be not later than the
21 time prescribed in Section 423 of the Corporations Code;
22 and the date on which delinquent shares are sold shall be
23 not later than the time prescribed in Section 423 of the
24 Corporations Code. However, the commissioner may, for
25 good cause, shorten any such time period.~~

26 ~~(c) The common shares of every corporation doing a
27 banking business in this state are subject to assessment as
28 provided in this section, whether or not the fact that the
29 shares are subject to such assessment is noted on the
30 certificates representing such shares, and if the shares are
31 subject to assessment only upon order of the
32 commissioner as provided in this section no statement of
33 that fact need be noted on the certificates.~~

34 SEC. 7. Section 1801 of the Financial Code is amended
35 to read:

36 1801. (a) Fees shall be paid to, and collected by, the
37 commissioner, as follows:

38 (1) The fee for filing with the commissioner an
39 application for a license is five thousand dollars (\$5,000).



1 ~~(2) The fee for filing with the commissioner an~~
2 ~~application for authorization to appoint an agent is~~
3 ~~seventy-five dollars (\$75). This paragraph shall become~~
4 ~~inoperative as of July 1, 1991.~~

5 ~~(3) The fee for filing with the commissioner an~~
6 ~~application for approval to acquire control of a licensee~~
7 ~~is three thousand five hundred dollars (\$3,500).~~

8 ~~(4) —~~

9 (3) The fee for filing with the commissioner an
10 application for approval to establish a branch office of a
11 licensee is two hundred fifty dollars (\$250).

12 ~~(5) —~~

13 (4) The fee for filing with the commissioner an
14 application for approval to establish a branch office of an
15 agent is fifty dollars (\$50).

16 ~~(6) —~~

17 (5) The fee for filing with the commissioner an
18 application for extension of an approval to establish a
19 branch office is one hundred dollars (\$100).

20 ~~(7) —~~

21 (6) A licensee shall pay to the commissioner annually
22 on or before July 1, a licensee fee of two thousand five
23 hundred dollars (\$2,500).

24 ~~(8) —~~

25 (7) A licensee shall pay to the commissioner annually
26 on or before July 1, one hundred twenty-five dollars
27 (\$125) for each licensee branch office.

28 ~~(9) —~~

29 (8) A licensee shall pay to the commissioner annually
30 on or before July 1, twenty-five dollars (\$25) for each
31 agent headquarter office and each agent branch office.

32 ~~(10) —~~

33 (9) Whenever the commissioner examines a licensee
34 or any agent of a licensee, the licensee shall pay, within
35 10 days after receipt of a statement from the
36 commissioner, a fee of ~~four hundred dollars (\$400) per~~
37 ~~day~~ *seventy dollars (\$70) per hour* for each examiner
38 engaged in the examination plus, if it is necessary for any
39 examiner engaged in the examination to travel outside
40 this state, the travel expenses of the examiner.



1 (b) (1) Each fee for filing an application with the
2 commissioner shall be paid at the time the application is
3 filed with the commissioner.

4 (2) No fee for filing an application with the
5 commissioner shall be refundable, regardless of whether
6 the application is approved, denied, or withdrawn.

7 SEC. 8. Section 1852.2 of the Financial Code is
8 amended to read:

9 1852.2. Fees shall be paid to, and collected by, the
10 commissioner, as follows:

11 (a) The fee for filing with the commissioner an
12 application for a license shall be two thousand dollars
13 (\$2,000).

14 (b) The fee for issuing a license shall be twenty-five
15 dollars (\$25).

16 (c) Whenever the commissioner examines any
17 licensee or any California agent of a licensee, such
18 licensee shall pay, within 10 days after receipt of a
19 statement from the commissioner, a fee of ~~two hundred~~
20 ~~dollars (\$200) per day~~ *seventy dollars (\$70) per hour* for
21 each examiner engaged in such examination plus, in case
22 it is necessary for any examiner engaged in such
23 examination to travel outside this state, the travel
24 expenses of such examiner.

25 SEC. 9. Section 1901 of the Financial Code is amended
26 to read:

27 1901. (a) Whenever, in the judgment of the
28 commissioner, ~~the condition of any bank, trust company,~~
29 ~~or foreign banking corporation renders it is necessary or~~
30 ~~expedient advisable to make an extra examination of or~~
31 ~~to devote any extraordinary attention to its affairs~~ *any*
32 *bank, any foreign bank, or any office of a foreign bank,* he
33 or she has the authority to ~~make any necessary extra~~
34 ~~examinations and to devote any necessary extra attention~~
35 ~~to the conduct of its affairs~~ *do so* and to charge for ~~extra~~
36 ~~services and collect from the bank or foreign bank, in the~~
37 ~~case of an extra examination,~~ an amount not exceeding
38 ~~two hundred dollars (\$200) a day~~ *seventy dollars (\$70)*
39 *per hour* for each examiner engaged in the examination
40 ~~of the bank and, in the case of extraordinary attention, an~~



1 amount not exceeding the department's expenses in
2 providing the extraordinary attention, including, but not
3 limited to, compensation of employees.

4 (b) Whenever in the judgment of the commissioner it
5 is necessary or expedient for any examiner engaged in
6 any examination to travel outside this state, the
7 commissioner may charge for the travel expenses of the
8 examiner.

9 SEC. 10. Section 3100 of the Financial Code is
10 amended to read:

11 3100. ~~Whenever~~ *The commissioner may, whenever it*
12 *appears to the commissioner him or her that: any of the*
13 *conditions described in subdivisions (a) to (h), inclusive,*
14 *exist with respect to a bank, forthwith take possession of*
15 *the property and business of the bank and retain*
16 *possession until the bank resumes business or its affairs*
17 *are finally liquidated as herein provided. The bank, with*
18 *the consent of the commissioner, may resume business*
19 *subject to conditions prescribed by the commissioner.*
20 *The term "bank" wherever used in this chapter includes*
21 *trust companies.*

22 (a) ~~The contributed capital~~ *tangible shareholders'*
23 *equity of any bank is impaired; less than:*

24 (1) *In case the bank is a commercial bank, the*
25 *greater of three percent of the bank's total assets or one*
26 *million dollars (\$1,000,000); or*

27 (2) *In case the bank is trust company other than a*
28 *commercial bank authorized to engage in trust*
29 *business, one million dollars (\$1,000,000).*

30 (b) *Any bank that has violated its articles or any law*
31 *of this state;*

32 (c) *Any bank that is conducting its business in an*
33 *unsafe or unauthorized manner;*

34 (d) *Any bank that refuses to submit its books,*
35 *papers, and affairs to the inspection of any examiner;*

36 (e) *Any officer of any bank who refuses to be*
37 *examined upon oath touching the concerns of such the*
38 *bank;*

39 (f) ~~Any bank has suspended payment of that has~~
40 *failed to pay any of its obligations; as they came due or*



1 that is reasonably expected to be unable to pay its
2 obligations as they come due.

3 (g) Any bank *that* is in such condition that it is
4 unsound, unsafe, or inexpedient for it to transact
5 business;~~or~~

6 (h) Any bank *that* neglects or refuses to observe any
7 order of the commissioner made pursuant to Section
8 1913 unless the enforcement of ~~such~~*the* order is
9 restrained in a proceeding brought by the bank;

10 ~~the commissioner may forthwith take possession of the~~
11 ~~property and business of such bank and retain possession~~
12 ~~until such bank resumes business or its affairs are finally~~
13 ~~liquidated as herein provided. Such bank, with the~~
14 ~~consent of the commissioner, may resume business upon~~
15 ~~such conditions as the commissioner may prescribe. The~~
16 ~~term "bank" wherever used in this chapter includes trust~~
17 ~~companies.~~

18 SEC. 11. Section 3804 of the Financial Code is
19 amended to read:

20 3804. Fees shall be paid to and collected by the
21 commissioner as follows:

22 (a) The fee for filing with the commissioner an
23 application by an uninsured foreign (other state) bank
24 for approval to establish a facility is two hundred fifty
25 dollars (\$250).

26 (b) The fee for filing with the commissioner an
27 application by an uninsured foreign (other state) bank
28 that is licensed pursuant to Article 4 (commencing with
29 Section 3860) to maintain a facility for approval to
30 relocate or to close the facility is one hundred dollars
31 (\$100).

32 (c) The fee for issuing a license pursuant to Article 4
33 (commencing with Section 3860) is twenty-five dollars
34 (\$25).

35 (d) Each foreign (other state) state bank that on June
36 1 of any year maintains one or more California branch
37 offices shall pay, on or before the following July 1, a fee of
38 one thousand dollars (\$1,000) per California branch
39 office; ~~provided, however, that. However,~~ the minimum
40 fee paid by a foreign (other state) state bank under this



1 subdivision shall be not less than three thousand dollars
2 (\$3,000) and the maximum fee shall be not more than fifty
3 thousand dollars (\$50,000).

4 (e) Each foreign (other state) bank that on June 1 of
5 any year maintains a facility but no California branch
6 office shall pay, on or before the following July 1, a fee of
7 two hundred fifty dollars (\$250) for each facility.

8 (f) If the commissioner makes an examination in
9 connection with a pending application, as described in
10 subdivision (a) or (b), the applicant shall pay a fee for the
11 examination of ~~two hundred dollars (\$200) per day~~
12 *seventy dollars (\$70) per hour* for each examiner
13 engaged in the examination plus, if in the opinion of the
14 commissioner it is necessary for any examiner engaged in
15 the examination to travel outside this state, the travel
16 expenses of the examiner.

17 (g) If the commissioner makes an examination of a
18 foreign (other state) state bank that maintains a
19 California branch office, the bank shall pay a fee for the
20 examination of ~~fifty dollars (\$50)~~ *seventy dollars (\$70)*
21 per hour for each examiner engaged in the examination
22 plus, if in the opinion of the commissioner it is necessary
23 for any examiner engaged in the examination to travel
24 outside this state, the travel expenses of the examiner.

25 (h) If the commissioner makes an examination of a
26 facility of an uninsured foreign (other state) bank
27 licensed under Article 4 (commencing with Section
28 3860), the bank shall pay a fee for the examination of ~~fifty~~
29 ~~dollars (\$50)~~ *seventy dollars (\$70)* per hour for each
30 examiner engaged in the examination plus, if in the
31 opinion of the commissioner it is necessary for any
32 examiner engaged in the examination to travel outside
33 this state, the travel expenses of the examiner.

34 (i) If the commissioner makes an examination of a
35 facility of an insured foreign (other state) bank that does
36 not maintain a California branch office, the bank shall pay
37 a fee for the examination of ~~fifty dollars (\$50)~~ *seventy*
38 *dollars (\$70)* per hour for each examiner engaged in the
39 examination plus, if in the opinion of the commissioner it
40 is necessary for any examiner engaged in the examination



1 to travel outside this state, the travel expenses of the
2 examiner.

3 SEC. 12. Section 4839 of the Financial Code is
4 amended to read:

5 4839. Fees shall be paid to, and collected by, the
6 commissioner, as follows:

7 (a) The fee for filing an application for approval of a
8 sale under this division shall be two thousand five
9 hundred dollars (\$2,500).

10 (b) The fee for filing an application for approval of a
11 merger under this division shall be two thousand five
12 hundred dollars (\$2,500).

13 (c) (1) The fee for filing an application for approval
14 of a conversion under this division shall be five thousand
15 dollars (\$5,000).

16 (2) The fee for issuing a certificate of authority or
17 license under *subdivision (a) of Section 4928(a) 4928* or
18 ~~4948(a)~~ *subdivision (a) of Section 4948* shall be two
19 thousand five hundred dollars (\$2,500).

20 (d) The fee for issuing a certificate of authority or
21 license under any other provision of this division shall be
22 twenty-five dollars (\$25).

23 (e) The fee for issuing a certificate under Section 4862,
24 4879.17, 4891, 4930, or 4952 shall be twenty-five dollars
25 (\$25).

26 (f) In case the commissioner makes an examination in
27 connection with a pending application, as described in
28 paragraph (1), (2), (3), or (4), the applicant shall pay a
29 fee for the examination in the sum of ~~two hundred dollars~~
30 ~~(\$200) per day~~ *seventy dollars (\$70) per hour* for each
31 examiner engaged in the examination plus, if in the
32 opinion of the commissioner it is necessary for any
33 examiner engaged in the examination to travel outside
34 this state, the travel expenses of the examiner.

35 (1) Examination of the selling depository corporation
36 in connection with a pending application for approval of
37 a sale of a whole business unit (as defined in Section 4840)
38 under Article 2 (commencing with Section 4845) of
39 Chapter 3 ~~of this division~~.



1 (2) Examination of the partial business unit (as
2 defined in Section 4840) to be sold and any related affairs
3 of the selling depository corporation in connection with
4 a pending application for approval of a sale of a partial
5 business unit (as defined in Section 4840) under Article
6 2 (commencing with Section 4845) of Chapter 3 ~~of this~~
7 ~~division.~~

8 (3) Examination of the purchasing depository
9 corporation in connection with a pending application for
10 approval of a sale of a whole business unit (as defined in
11 Section 4880) under Article 3.5 (commencing with
12 Section 4876.01) of Chapter 3 or of a partial business unit
13 (as defined in Section 4880) under Article 4.5
14 (commencing with Section 4878.01) of Chapter 3.

15 (4) Examination of the surviving depository
16 corporation in connection with a pending application for
17 approval of a merger under Article 4 (commencing with
18 Section 4908.01) of Chapter 4.

19 (5) Examination of the disappearing depository
20 corporation in connection with a pending application for
21 approval of a merger under Article 1 (commencing with
22 Section 4880) or Article 2 (commencing with Section
23 4895.01) of Chapter 4 ~~of this division.~~

24 (6) Examination of the converting depository
25 corporation in connection with a pending application for
26 approval of a conversion under Article 1 (commencing
27 with Section 4920) or Article 2 (commencing with
28 Section 4940) of Chapter 5 ~~of this division.~~

29 SEC. 13. Section 31115 of the Financial Code is
30 amended to read:

31 31115. (a) Fees shall be paid to, and collected by, the
32 commissioner, as follows:

33 (1) The fee for filing with the commissioner an
34 application for a license shall be two thousand dollars
35 (\$2,000).

36 (2) The fee for filing with the commissioner an
37 application for approval to acquire control of a licensee
38 shall be one thousand dollars (\$1,000).

39 (3) The fee for filing with the commissioner an
40 application for approval for a licensee to merge with



1 another corporation; an application for approval for a
2 licensee to purchase all or substantially all of the business
3 of another person, or an application for approval for a
4 licensee to sell all or substantially all of its business or of
5 the business of any of its offices to another licensee, shall
6 be one thousand dollars (\$1,000); ~~provided, however,~~
7 ~~that.~~ *However*, whenever two or more such applications
8 relating to the same merger, purchase, or sale are filed
9 with the commissioner, the fee for filing each application
10 shall be the quotient determined by dividing one
11 thousand dollars (\$1,000) by the number of the
12 applications.

13 (4) The fee for filing with the commissioner an
14 application for approval to relocate the head office of a
15 licensee shall be one hundred dollars (\$100).

16 (5) The fee for issuing a license shall be twenty-five
17 dollars (\$25).

18 (6) Each person which is licensed under this division
19 on June 1 of any year shall pay, on or before the following
20 July 1, a fee of two thousand dollars (\$2,000).

21 (7) Whenever the commissioner examines any
22 licensee or any affiliate of a licensee, such licensee shall
23 pay, within 10 days after receipt of a statement from the
24 commissioner, a fee of ~~two hundred dollars (\$200) per~~
25 ~~day~~ *seventy dollars (\$70) per hour* for each examiner
26 engaged in such examination plus, in case it is necessary
27 for any examiner engaged in such examination to travel
28 outside this state, the travel expenses of such examiner.

29 (b) (1) Each fee for filing an application with the
30 commissioner shall be paid at the time when such
31 application is filed with the commissioner.

32 (2) No fee for filing an application with the
33 commissioner shall be refundable, regardless of whether
34 such application is approved, denied, withdrawn, or
35 abandoned.

36 SEC. 14. Section 33301 of the Financial Code is
37 amended to read:

38 33301. Fees shall be paid to, and collected by, the
39 commissioner, as follows:



1 (a) The fee for filing with the commissioner an
2 application for a license shall be two thousand dollars
3 (\$2,000).

4 (b) The fee for issuing a license shall be twenty-five
5 dollars (\$25).

6 (c) Whenever the commissioner examines any
7 licensee or any California agent of a licensee, such
8 licensee shall pay, within 10 days after receipt of a
9 statement from the commissioner, a fee of ~~two hundred~~
10 ~~dollars (\$200) per day~~ *seventy dollars (\$70) per hour* for
11 each examiner engaged in such examination plus, in case
12 it is necessary for any examiner engaged in such
13 examination to travel outside this state, the travel
14 expenses of such examiner.

15 SEC. 15. Section 53651.4 of the Government Code is
16 amended to read:

17 53651.4. (a) A depository which uses eligible
18 securities of the class described in subdivision (m) of
19 Section 53651 shall, within 90 days after the close of each
20 calendar year or within a longer period as the
21 administrator may specify, file with the administrator a
22 report of an independent certified public accountant
23 regarding compliance with this article and with
24 regulations and orders issued by the administrator under
25 this article with respect to eligible securities of that class.
26 The report shall be based upon the audit, shall contain the
27 information, and shall be in the form the administrator
28 may prescribe. The depository shall provide a copy of the
29 report to the treasurer on request.

30 (b) If a depository which is a state bank files with the
31 administrator, not less than 90 days before the beginning
32 of the calendar year, a notice that it elects to be examined
33 by the administrator instead of filing a report of an
34 independent certified public accountant under
35 subdivision (a) for that calendar year, the depository shall
36 be exempt from subdivision (a) for that calendar year and
37 shall for that calendar year be subject to examination by
38 the administrator regarding compliance with this article
39 and with regulations and orders under this article with
40 respect to eligible securities of the class described in



1 subdivision (m) of Section 53651. The administrator shall
2 provide a report to a treasurer with deposits in the
3 examined state bank upon request of the treasurer.

4 (c) A national bank may apply to the administrator to
5 be examined, and the administrator, in his or her
6 discretion, may examine a national bank for the purposes
7 of satisfying the requirements of subdivision (a). The
8 administrator shall provide a report to a treasurer with
9 deposits in the examined national bank upon request of
10 the treasurer.

11 (d) Whenever the administrator examines a
12 depository pursuant to subdivision (b) or (c), the
13 depository shall pay, within 30 days after receipt of a
14 statement from the administrator, a fee of ~~two hundred~~
15 ~~dollars (\$200) per day~~ *seventy dollars (\$70) per hour* for
16 each examiner engaged in the examination.

