

AMENDED IN SENATE APRIL 4, 2000

SENATE BILL

No. 1466

Introduced by Senator Leslie

February 9, 2000

An act to amend *Section 4406 of the Commercial Code, and to amend Sections 505, 506, and 507 of the Financial Code, relating to financial institutions.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1466, as amended, Leslie. Bank and trust company branch offices.

Existing law establishes requirements for a bank or trust company to open a branch office, including filing an application with the Commissioner of Financial Institutions for approval and payment of a fee. The commissioner may authorize the bank or trust company additional one-year increments of time to open the branch office for good cause after the payment of a fee of \$100.

This bill would increase that fee from \$100 to \$250.

Existing law requires that a bank or trust company obtain the commissioner's approval prior to opening a branch office, or be liable for a \$100 per day penalty.

This bill would increase that per day penalty from \$100 to \$250.

Existing law authorizes a bank or trust company to change the location of a branch office by submitting an application to the commissioner for authorization and payment of a \$250 fee.

This bill would increase that fee from \$250 to \$500.

Existing law requires a depository institution to provide periodic account statements to its customers and requires that the depository institution either return or make available items paid from the account, or provide information in the statement sufficient to allow the customer reasonably to identify the items paid, including, for example, the item number, the amount, and the date the item was paid. The alternative provision of listing the information sufficient to identify the items paid will cease to be operative on January 1, 2001.

This bill would extend the operation of that alternative provision until January 1, 2006.

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 4406 of the Commercial Code, as*
2 *amended by Section 13 of Chapter 442 of the Statutes of*
3 *1997, is amended to read:*

4 4406. (a) A bank that sends or makes available to a
5 customer a statement of account showing payment of
6 items for the account shall either return or make available
7 to the customer the items paid or provide information in
8 the statement of account sufficient to allow the customer
9 reasonably to identify the items paid. The statement of
10 account provides sufficient information if the item is
11 described by item number, amount, and date of payment.
12 If the bank does not return the items, it shall provide in
13 the statement of account the telephone number that the
14 customer may call to request an item or a legible copy
15 thereof pursuant to subdivision (b).

16 (b) If the items are not returned to the customer, the
17 person retaining the items shall either retain the items or,
18 if the items are destroyed, maintain the capacity to
19 furnish legible copies of the items until the expiration of
20 seven years after receipt of the items. A customer may
21 request an item from the bank that paid the item, and that
22 bank shall provide in a reasonable time either the item or,
23 if the item has been destroyed or is not otherwise



1 obtainable, a legible copy of the item. A bank shall
2 provide, upon request and without charge to the
3 customer, at least two items or a legible copy thereof with
4 respect to each statement of account sent to the
5 customer.

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

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

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

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

33 (e) If subdivision (d) applies and the customer proves
34 that the bank failed to exercise ordinary care in paying
35 the item and that the failure contributed to loss, the loss
36 is allocated between the customer precluded and the
37 bank asserting the preclusion according to the extent to
38 which the failure of the customer to comply with
39 subdivision (c) and the failure of the bank to exercise
40 ordinary care contributed to the loss. If the customer



1 proves that the bank did not pay the item in good faith,
2 the preclusion under subdivision (d) does not apply.

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

14 (g) This section shall remain in effect only until
15 January 1, ~~2001~~ 2006, and as of that date is repealed, unless
16 a later enacted statute, which is enacted before January
17 1, ~~2001~~ 2006, deletes or extends that date.

18 *SEC. 2. Section 4406 of the Commercial Code, as*
19 *amended by Section 14 of Chapter 442 of the Statutes of*
20 *1997, is amended to read:*

21 4406. (a) A bank that sends or makes available to a
22 customer a statement of account showing payment of
23 items for the account shall either return or make available
24 to the customer the items paid or provide information in
25 the statement of account sufficient to allow the customer
26 to identify the items paid. If the bank does not return the
27 items, it shall provide in the statement of account the
28 telephone number that the customer may call to request
29 an item or a legible copy thereof pursuant to subdivision
30 (b).

31 (b) If the items are not returned to the customer, the
32 person retaining the items shall either retain the items or,
33 if the items are destroyed, maintain the capacity to
34 furnish legible copies of the items until the expiration of
35 seven years after receipt of the items. A customer may
36 request an item from the bank that paid the item, and that
37 bank shall provide in a reasonable time either the item or,
38 if the item has been destroyed or is not otherwise
39 obtainable, a legible copy of the item. A bank shall
40 provide, upon request and without charge to the



1 customer, at least two items or a legible copy thereof with
2 respect to each statement of account sent to the
3 customer.

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

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

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

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

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



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

12 (g) This section shall become operative on January 1,
13 ~~2001~~ 2006.

14 *SEC. 3.* Section 505 of the Financial Code is amended
15 to read:

16 505. The failure of a bank or trust company to open
17 and operate a branch office within one year after the
18 commissioner approves the application therefor shall
19 automatically terminate the right of the bank or trust
20 company to open the branch office except that the
21 commissioner, for good cause on written application
22 made before the expiration of the one-year period and
23 accompanied by a fee of two hundred fifty dollars (\$250),
24 may extend for additional periods not in excess of one
25 year each the time within which the branch office may be
26 opened.

27 ~~*SEC. 2.*~~

28 *SEC. 4.* Section 506 of the Financial Code is amended
29 to read:

30 506. A bank or trust company which opens a branch
31 office without first obtaining the approval of the
32 commissioner shall forfeit to the people of the state the
33 sum of two hundred fifty dollars (\$250) for every day
34 during which the branch office is maintained without
35 authority.

36 ~~*SEC. 3.*~~

37 *SEC. 5.* Section 507 of the Financial Code is amended
38 to read:

39 507. When authorized by the commissioner a bank or
40 trust company may change the location of a branch office



1 from one location to another in the same vicinity. An
2 application for that authorization shall be in the form and
3 contain ~~such information as~~ *the information that* the
4 commissioner may require and be accompanied by a fee
5 of five hundred dollars (\$500).

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