

Senate Bill No. 1637

CHAPTER 176

An act to amend Sections 253, 261, and 10000 of, to add Article 2 (commencing with Section 1520) to Chapter 12 of Division 1 of, and to repeal Section 1239 of, the Financial Code, relating to financial institutions.

[Approved by Governor July 19, 2004. Filed with
Secretary of State July 19, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1637, Committee on Banking, Commerce, and International Trade. Financial institutions.

(1) Existing law provides for the licensing and regulation of financial institutions by the Commissioner of Financial Institutions. Existing law authorizes the commissioner to charge a fee of \$25 for certifying a copy of any paper filed with him or her and affixing his or her official seal. Existing law also authorizes the commissioner to deliver the fingerprints of specified persons related to financial institutions, including existing or proposed controlling persons of financial institutions, to local, state, or federal law enforcement agencies.

This bill would revise the provisions authorizing the commissioner to charge the \$25 certification fee. The bill would expand the persons whose fingerprints the commissioner may deliver to include persons licensed or proposed to be licensed, and to include persons who are directors, officers, or employees of a proposed controlling person, an existing affiliate, or a proposed affiliate, of financial institutions. The bill would also define controlling persons to include persons owning financial institutions by sole proprietorship, partnership, or other similar means.

(2) Existing law authorizes a bank to make an amortized loan upon the security of real property in an amount in excess of 80% of the appraised value of the real property if the loan includes amounts to rehabilitate structures for residential use for one family, and meets other conditions.

This bill would delete this provision.

(3) Existing federal regulations set forth standards that apply to the fiduciary activities of national banks.

This bill would adopt these provisions into state law.

(4) Existing law prohibits a foreign savings association from conducting the business of an association in California or from acquiring

control of a California savings association without the written approval of the commissioner. Existing law makes it a crime to engage in certain transactions with respect to a foreign savings and loan association that has not complied with the applicable requirements. Existing law defines a foreign savings association as an insured institution other than a California savings association or federal association.

This bill would revise the definition of an insured institution for these purposes.

Because changing the definitions of a foreign savings and loan association creates additional crimes, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 253 of the Financial Code is amended to read:

253. (a) Whenever it is necessary for the commissioner to approve any instrument and to affix his or her official seal thereto, the commissioner shall charge a fee of twenty-five dollars (\$25) therefor.

(b) Whenever it is proper for the department to furnish a copy of any paper that has been filed therein and to certify to the paper, the commissioner may charge twenty-five cents (\$0.25) for each page copied.

(c) Whenever the commissioner is required or requested to certify copies of documents, the commissioner may charge a fee of twenty-five dollars (\$25) for certifying the copied documents and for affixing his or her official seal.

SEC. 2. Section 261 of the Financial Code is amended to read:

261. (a) For the purposes of this section the following definitions shall apply:

(1) "Control" has the meaning set forth in subdivision (b) of Section 700. "Control" also means the ownership of a subject person by means of sole proprietorship, partnership, or by any other similar means.

(2) "Controlling person" means a person who, directly or indirectly, controls a subject person.

(3) "Subject person" means any of the following:

(A) A commercial bank, industrial bank, trust company, savings association, or credit union incorporated under the laws of this state.



(B) A person licensed by the commissioner under Chapter 14 (commencing with Section 1800) to receive money for transmission to foreign countries.

(C) A person authorized by the commissioner pursuant to Section 1803 to act as an agent of a person licensed by the commissioner to receive money for transmission to foreign countries.

(D) A person licensed by the commissioner pursuant to Division 7 (commencing with Section 18000) to transact business as a premium finance agency.

(E) A person licensed by the commissioner pursuant to Division 15 (commencing with Section 31000) to transact business as a business and industrial development corporation.

(F) A person licensed by the commissioner pursuant to Division 16 (commencing with Section 33000) to engage in the business of selling payment instruments in this state issued by the licensee.

(G) A corporation incorporated under the laws of this state for the purpose of engaging in, or that is authorized by the commissioner to engage in, business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(H) A foreign corporation that is licensed by the commissioner pursuant to Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business pursuant to Article 1 (commencing with Section 3500) of Chapter 19.

(b) Notwithstanding any other provision of law, and subject to subdivision (c), the commissioner may deliver, or cause to be delivered, to local, state, or federal law enforcement agencies fingerprints taken of any of the following:

- (1) An applicant for employment with the department.
- (2) A person licensed, or proposed to be licensed, as a subject person.
- (3) A director, officer, or employee of an existing or proposed subject person.
- (4) An existing or proposed controlling person of a subject person.
- (5) A director, officer, or employee of an existing or proposed controlling person of a subject person.
- (6) A director, officer, or employee of an existing or proposed affiliate of a subject person.

(c) The authorization in subdivision (b) may only be used by the department for the purpose of obtaining information regarding an individual as to the existence and nature of the criminal record, if any, of that individual relating to convictions, and to any arrest for which the individual is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking,



receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(d) No request shall be submitted pursuant to this section without the written consent of the person affected.

(e) Any criminal history information obtained pursuant to this section shall be confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 3. Section 1239 of the Financial Code is repealed.

SEC. 4. Article 2 (commencing with Section 1520) is added to Chapter 12 of Division 1 of the Financial Code, to read:

Article 2. Fiduciary Activities

1520. It is the intent of the Legislature that the provisions of this article, insofar as they are contained in the regulations regarding fiduciary activities of national banks (12 C.F.R. Sec. 9.1 and following) of the Office of the Comptroller of the Currency, conform, and be interpreted by anyone construing the provisions of this article to so conform, to those regulations, any rule or interpretation promulgated thereunder by the Office of the Comptroller of the Currency, and to any interpretation issued by an official or employee of the Office of Comptroller of the Currency duly authorized to issue the interpretation.

1521. As used in this article, the following terms have the following meanings:

(a) “Bank” means any of the following:

(1) A commercial bank, industrial bank, or trust company incorporated under the laws of this state.

(2) A foreign (other state) bank that may establish a branch office in this state in accordance with Article 2 (commencing with Section 3820) of Chapter 22 of Division 1.

(b) “Fiduciary Regulations” means the regulations regarding fiduciary activities of national banks promulgated by the Office of the Comptroller of the Currency (Part 9 (commencing with Section 9.1) of Title 12 of the Code of Federal Regulations) of the Office of the Comptroller of the Currency, as amended from time to time.

(c) All reference to the term “national bank” or “national banks” used in the Fiduciary Regulations shall mean “bank” or “banks” for purposes of this article.

1522. Sections 9.1 to 9.20, inclusive, of the Fiduciary Regulations in all of their particular, including footnotes, are hereby referred to, incorporated by reference into this article, and adopted.

SEC. 5. Section 10000 of the Financial Code is amended to read:



10000. Terms not expressly defined in this chapter have the meaning given in Chapter 1 (commencing with Section 5000) or as the commissioner may provide by regulation. For the purposes of this chapter:

(a) “California savings association” means either (1) an association or (2) a foreign association or successor thereof that was licensed to do the business of an association in California on September 15, 1935.

(b) “Foreign holding company” means a savings and loan holding company as defined in Section 10 of the Home Owners Loan Act, as amended (12 U.S.C. Sec. 1467a) or bank holding company as defined in Section 3 of the federal Bank Holding Company Act, as amended, (12 U.S.C. Sec. 1841 et seq.), which savings and loan or bank holding company (1) has its principal place of deposits outside of California and (2) does not control a subsidiary California savings association or a subsidiary federal association with, or a subsidiary foreign savings association with, an authorized home or branch office in California at which accounts may lawfully be opened and deposits may lawfully be accepted.

(c) “Foreign savings association” means an insured institution other than a California savings association and other than a federal association.

(d) “Insured institution” means an entity: (1) that is organized and licensed as a savings association, savings and loan association, or savings bank under the laws of another state of the United States and the deposits of which are insured by the Federal Deposit Insurance Corporation or (2) that is chartered by the Office of Thrift Supervision. However, “insured institution” does not include any savings bank of the type defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(g)).

(e) The “principal place of deposits” of an entity is that state in which the total deposits of all of that entity’s depository operations and those of its affiliates are largest.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

