

AMENDED IN ASSEMBLY MAY 16, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 537

**Introduced by Committee on Banking and Financial Institutions
(Senators ~~Hill~~ *Correa* (Chair), *Beall*, *Berryhill*, *Calderon*, ~~Corbett~~,
Hill, *Hueso*, *Lara*, *Roth*, and *Walters*)**

February 22, 2013

An act to amend Sections 31101, 31107, 31109.1, 31114, and 31119 of the Corporations Code, and to amend Sections 101, 103, *129*, 133, 155, 171, 185, 189, 326, 329, 331, 376, 377, 379, 405, 413, 563, 589, 590, 600, 672, 1024, 1026, 1080, 1255, 1331, 1473, 1485, 1495, 1515, 1702, 1805, 1806, 1835, 1858, 4805.01, 4805.02, 4805.05, 4805.10, 4821.5, 4822, 4823, 4824, 4826.5, 4827, 4827.3, 4827.7, 4871.5, 4877.03, 4901.5, 4961.5, 4970, 4982, 4990, 4995, and 18003 of, to amend the heading of Article 4 (commencing with Section 670) of Chapter 7 of Division 1 of, to add Sections 186, 188, and 190 to, and to repeal and add Section 187 of, the Financial Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 537, as amended, Committee on Banking and Financial Institutions. Business and finance.

(1) Existing law provides for the regulation of specified financial institutions pursuant to the Financial Institutions Law.

This bill would revise and recast provisions of the Financial Institutions Law. The bill would, among other things, make changes to cross-references and definitions that apply to the Financial Institutions Law, as specified, in accordance with changes made to the law pursuant

to Chapter 243 of the Statutes of 2011. The bill would make changes to provisions related to foreign (other nation) banks, as specified.

(2) The Franchise Investment Law generally provides for the regulation of the offer and sale of franchises. The law requires specific written disclosures, including, but not limited to, an offering circular, and authorizes the sale of a franchise to be exempt from specified requirements if the franchisor meets certain disclosure and notice requirements.

This bill, for that exemption to apply, would modify the requirement that certain written disclosures be made by a franchisor at least 10 business days prior to the sale or material modification of a franchise, and instead require those disclosures to be made at least 14 days prior to the sale or modification. The bill also would replace the term for a written document called an “offering circular” with the term “franchise disclosure document.”

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 31101 of the Corporations Code is
2 amended to read:

3 31101. There shall be exempted from the provisions of Chapter
4 2 (commencing with Section 31110) of this part the offer and sale
5 of a franchise if the franchisor complies with each of the following
6 minimum net worth, experience, disclosure, and notice filing
7 requirements:

8 (a) Net worth. The franchisor and, when necessary, a corporation
9 owning at least 80 percent of the franchisor (parent) meet one of
10 the following net worth requirements, according to financial
11 statements for the fiscal year just ended. The franchisor and the
12 parent, when necessary, may rely upon the immediately preceding
13 fiscal year’s audited financial statement for 15 months from that
14 fiscal year end date.

15 (1) The franchisor has a net worth on a consolidated basis of
16 not less than five million dollars (\$5,000,000), according to its
17 audited financial statement.

18 (2) The franchisor has a net worth of not less than one million
19 dollars (\$1,000,000) and its parent has a net worth of five million

1 dollars (\$5,000,000), according to the audited financial statements
2 of the franchisor and its parent, respectively.

3 (3) The franchisor has a net worth of one million dollars
4 (\$1,000,000), according to its unaudited financial statement, and
5 the parent has a net worth on a consolidated basis of not less than
6 five million dollars (\$5,000,000), according to its audited financial
7 statement, and the parent absolutely and unconditionally guarantees
8 to assume the duties and obligations of the franchisor under the
9 franchise agreement should the franchisor become unable to
10 perform its duties and obligations.

11 (b) Experience. The franchisor or a corporation owning at least
12 80 percent of the franchisor (parent) complies with one or more
13 of the following conditions throughout the five-year period
14 immediately preceding the offer and sale of the franchise, or
15 complies with one of the following conditions during part of the
16 period and one or more of the following conditions during the
17 balance of the period:

18 (1) The franchisor has had at least 25 franchisees conducting
19 business which is the subject of the franchise.

20 (2) The franchisor has conducted business which is the subject
21 of the franchise.

22 (3) The parent has had at least 25 franchisees conducting
23 business which is the subject of the franchise.

24 (4) The parent has conducted business which is the subject of
25 the franchise.

26 (c) Disclosure. (1) Except as provided in subparagraph (2), the
27 franchisor discloses in writing to each prospective franchisee, at
28 least 14 days prior to the execution by the prospective franchisee
29 of any binding franchise or other agreement, or at least 14 days
30 prior to the receipt of any consideration, the following information:

31 (A) The name of the franchisor, the name under which the
32 franchisor is doing or intends to do business, and the name of any
33 parent or affiliated company that will engage in business
34 transactions with franchisees.

35 (B) The franchisor's principal business address and the name
36 and address of its agent in the State of California authorized to
37 receive service of process.

38 (C) The business form of the franchisor, whether corporate,
39 partnership, or otherwise.

1 (D) The business experience of the franchisor, including the
2 length of time the franchisor (i) has conducted a business of the
3 type to be operated by the franchisees, (ii) has granted franchises
4 for such business, and (iii) has granted franchises in other lines of
5 business.

6 (E) A copy of the typical franchise contract or agreement
7 proposed for use or in use in this state.

8 (F) A statement of the franchise fee charged, the proposed
9 application of the proceeds of such fee by the franchisor, and the
10 formula by which the amount of the fee is determined if the fee is
11 not the same in all cases.

12 (G) A statement describing any payments or fees other than
13 franchise fees that the franchisee or subfranchisor is required to
14 pay to the franchisor, including royalties and payments or fees
15 which the franchisor collects in whole or in part on behalf of a
16 third party or parties.

17 (H) A statement of the conditions under which the franchise
18 agreement may be terminated or renewal refused, or repurchased
19 at the option of the franchisor.

20 (I) A statement as to whether, by the terms of the franchise
21 agreement or by other device or practice, the franchisee or
22 subfranchisor is required to purchase from the franchisor or his or
23 her designee services, supplies, products, fixtures, or other goods
24 relating to the establishment or operation of the franchise business,
25 together with a description thereof.

26 (J) A statement as to whether, by the terms of the franchise
27 agreement or other device or practice, the franchisee is limited in
28 the goods or services offered by him or her to his or her customers.

29 (K) A statement of the terms and conditions of any financing
30 arrangements when offered directly or indirectly by the franchisor
31 or his or her agent or affiliate.

32 (L) A statement of any past or present practice or of any intent
33 of the franchisor to sell, assign, or discount to a third party any
34 note, contract, or other obligation of the franchisee or subfranchisor
35 in whole or in part.

36 (M) If any statement of estimated or projected franchisee
37 earnings is used, a statement of such estimation or projection and
38 the data upon which it is based.

39 (N) A statement as to whether franchisees or subfranchisors
40 receive an exclusive area or territory.

1 (O) A copy of the financial statement or statements required by
2 subdivision (a).

3 (P) A copy of the unconditional guaranty, if applicable, required
4 by paragraph (3) of subdivision (a).

5 (2) In the case of a material modification of an existing
6 franchise, the franchisor discloses in writing to each franchisee
7 information concerning the specific sections of the franchise
8 agreement proposed to be modified and such additional information
9 as may be required by rule or order of the commissioner. Any
10 agreement by such franchisee to such material modifications shall
11 not be binding upon the franchisee if the franchisee, within 14
12 days after the receipt of such writing identifying the material
13 modification, notifies the franchisor in writing that the agreement
14 to such modification is rescinded. A writing identifying the material
15 modification is received when delivered to the franchisee. A written
16 notice by the franchisee rescinding an agreement to a material
17 modification is effective when delivered to the franchisor or when
18 deposited in the mail, postage prepaid, and addressed to the
19 franchisor in accordance with any notice provisions in the franchise
20 agreement, or when delivered or mailed to the person designated
21 in the franchise agreement for the receipt of notices on behalf of
22 the franchisor.

23 (d) Notice filing. The franchisor has filed with the commissioner
24 a notice of exemption and paid the fee required by subdivision (f)
25 of Section 31500 prior to an offer or sale of a franchise in this state
26 during any calendar year in which one or more franchises are sold,
27 excluding any material modification.

28 SEC. 2. Section 31107 of the Corporations Code is amended
29 to read:

30 31107. There shall be exempted from the provisions of Chapter
31 2 (commencing with Section 31110) of this part, any offer (but
32 not the sale) by a franchisor of a franchise while an application
33 for renewal or amendment is pending if the prospective franchisee
34 receives all of the following:

35 (a) The franchise disclosure document and its exhibits as filed
36 with the commissioner with the application for renewal or
37 amendment.

38 (b) A written statement from the franchisor that (1) the filing
39 has been made but is not effective, (2) the information in the
40 franchise disclosure document and exhibits has not been reviewed

1 by the commissioner, and (3) the franchisor will deliver to the
2 prospective franchisee an effective franchise disclosure document
3 and exhibits at least 14 days prior to execution by the prospective
4 franchisee of a binding agreement or payment of any consideration
5 to the franchisor, or any person affiliated with the franchisor,
6 whichever occurs first, showing all material changes from the
7 franchise disclosure document and exhibits received by the
8 prospective franchisee under subdivision (a) of this section.

9 (c) The franchise disclosure document and exhibits in
10 accordance with paragraph (3) of subdivision (b) of this section.

11 SEC. 3. Section 31109.1 of the Corporations Code is amended
12 to read:

13 31109.1. (a) There shall be exempted from the provisions of
14 Chapter 2 (commencing with Section 31110) the offer and sale of
15 a franchise registered under Section 31111, 31121, or 31123 on
16 terms different from the terms of the offer registered thereunder
17 if all of the following requirements are met:

18 (1) The initial offer is the offer registered under Section 31111,
19 31121, or 31123.

20 (2) The prospective franchisee receives all of the following in
21 a separate written appendix to the franchise disclosure document:

22 (A) A summary description of each material negotiated term
23 that was negotiated by the franchisor for a California franchise
24 during the 12-month period ending in the calendar month
25 immediately preceding the month in which the negotiated offer or
26 sale is made under this section.

27 (B) A statement indicating that copies of the negotiated terms
28 are available upon written request.

29 (C) The name, telephone number, and address of the
30 representative of the franchisor to whom requests for a copy of
31 the negotiated terms may be obtained.

32 (3) The franchisor certifies or declares in an appendix to its
33 application for renewal that it has complied with all of the
34 requirements of this section, in the event this exemption is claimed.

35 (4) The negotiated terms, on the whole, confer additional
36 benefits on the franchisee.

37 (b) The franchisor shall provide a copy of the negotiated terms
38 described in subdivision (a) to the prospective franchisee within
39 five business days following the request of the franchisee.

1 (c) The franchisor shall maintain copies of all material
2 negotiated terms for which this exemption is claimed for a period
3 of five years from the effective date of the first agreement
4 containing the relevant negotiated term. Upon the request of the
5 commissioner, the franchisor shall make the copies available to
6 the commissioner for review. For purposes of this section, the
7 commissioner may prescribe by rule or order the format and content
8 of the summary description of the negotiated terms required by
9 subparagraph (A) of paragraph (2) of subdivision (a).

10 (d) For purposes of this section, “material” means that a
11 reasonable franchisee would view the terms as important in
12 negotiating the franchise.

13 SEC. 4. Section 31114 of the Corporations Code is amended
14 to read:

15 31114. The application for registration shall be accompanied
16 by a proposed franchise disclosure document, which shall contain
17 the material information set forth in the application for registration,
18 as specified by rule of the commissioner, and such additional
19 disclosures as the commissioner may require. The franchise
20 disclosure document shall recite in bold type of not less than
21 10-point type that registration does not constitute approval,
22 recommendation, or endorsement by the commissioner.

23 SEC. 5. Section 31119 of the Corporations Code is amended
24 to read:

25 31119. (a) It is unlawful to sell any franchise in this state that
26 is subject to registration under this law without first providing to
27 the prospective franchisee, at least 14 days prior to the execution
28 by the prospective franchisee of any binding franchise or other
29 agreement, or at least 14 days prior to the receipt of any
30 consideration, whichever occurs first, a copy of the franchise
31 disclosure document, together with a copy of all proposed
32 agreements relating to the sale of the franchise.

33 (b) Nothing in this division shall be construed to prevent a
34 franchisor from providing copies of the franchise disclosure
35 documents to prospective franchisees through electronic means
36 pursuant to any requirements or conditions that may be imposed
37 by rule or order of the commissioner.

38 SEC. 6. Section 101 of the Financial Code is amended to read:

1 101. If and to the extent that any provision of the Financial
2 Institutions Law is preempted by federal law, the provision does
3 not apply and shall not be enforced.

4 SEC. 7. Section 103 of the Financial Code is amended to read:

5 103. The word “bank” as used in the Financial Institutions Law
6 means any incorporated banking institution that shall have been
7 incorporated to engage in commercial banking business, industrial
8 banking, or trust business.

9 SEC. 8. *Section 129 of the Financial Code is amended to read:*

10 129. Unless the provision or the context otherwise requires,
11 the definitions set forth in this chapter govern the construction of
12 ~~this division~~ *the Financial Institutions Law.*

13 ~~SEC. 8.~~

14 SEC. 9. Section 133 of the Financial Code is amended to read:

15 133. If the articles of a bank provide for more or less than one
16 vote for any share on any matter, the references in Sections 139
17 and 141 to a majority or other proportion of shares means, as to
18 such matter, a majority or other proportion of the votes entitled to
19 be cast. Whenever, under Division 1 (commencing with Section
20 100), Title 1 of the Corporations Code, this division, or Division
21 1.1 (commencing with Section 1000), shares are disqualified from
22 voting on any matter, they shall not be considered outstanding for
23 the determination of a quorum at any meeting to act upon, or the
24 required vote to approve action upon, such matter under any
25 provision of Division 1 (commencing with Section 100), Title 1
26 of the Corporations Code, of this division, Division 1.1
27 (commencing with Section 1000), or of the articles or bylaws.

28 ~~SEC. 9.~~

29 SEC. 10. Section 155 of the Financial Code is amended to read:

30 155. “Certificate of revocation” means a certificate executed
31 and filed with the Secretary of State pursuant to the second and
32 third sentences of subdivision (c) of Section 110 of the
33 Corporations Code, subject, however, to the provisions of Section
34 1106.

35 ~~SEC. 10.~~

36 SEC. 11. Section 171 of the Financial Code is amended to read:

37 171. “Distribution to its shareholders” has the meaning set
38 forth in Section 166 of the Corporations Code. However, in
39 Division 1 (commencing with Section 100), Title 1 of the
40 Corporations Code, in this division, and in Division 1.1

1 (commencing with Section 1000), “distribution to its shareholders”
2 does not include any purchase of shares by a bank or by a
3 majority-owned subsidiary of a bank which is necessary to reduce
4 or avoid loss to such bank or to such subsidiary on an extension
5 of credit previously made in good faith. Also, in this division and
6 in Division 1.1 (commencing with Section 1000), “distribution to
7 its shareholders” includes any distribution made by a bank or by
8 a majority-owned subsidiary of a bank to the shareholders of any
9 corporation of which such bank is a majority-owned subsidiary.

10 ~~SEC. 11.~~

11 *SEC. 12.* Section 185 of the Financial Code is amended to read:

12 185. “Licensee” has the following meanings:

13 (a) Any bank authorized by the commissioner pursuant to
14 Section 1042 to transact banking or trust business.

15 (b) Any industrial bank authorized by the commissioner pursuant
16 to Section 1042 to transact industrial banking business.

17 (c) Any trust company authorized by the commissioner pursuant
18 to Section 1042 to transact trust business.

19 (d) Any foreign (other nation) bank that is licensed under Article
20 2 (commencing with Section 1780) of Chapter 20 or under Article
21 3 (commencing with Section 1800) of Chapter 20.

22 (e) Any person licensed by the commissioner as a money
23 transmitter pursuant to Division 1.2 (commencing with Section
24 2000).

25 (f) Any person authorized by the commissioner to conduct the
26 business of a savings association pursuant to Division 2
27 (commencing with Section 5000).

28 (g) Any credit union authorized by the commissioner to conduct
29 business pursuant to Section 14154.

30 (h) Any foreign (other state) credit union licensed by the
31 commissioner to conduct business pursuant to Chapter 11
32 (commencing with Section 16000) of Division 5.

33 (i) Any foreign (other nation) credit union licensed by the
34 commissioner to conduct business pursuant to Chapter 12
35 (commencing with Section 16500) of Division 5.

36 (j) Any industrial loan company authorized by the commissioner
37 to conduct insurance premium finance business pursuant to
38 Division 7 (commencing with Section 18000).

39 (k) Any corporation licensed by the commissioner as a business
40 and industrial development corporation pursuant to Section 31154.

1 ~~SEC. 12.~~

2 *SEC. 13.* Section 186 is added to the Financial Code, to read:
3 186. “Majority-owned subsidiary” has the meaning set forth
4 for “subsidiary” in subdivision (a) of Section 189 of the
5 Corporations Code.

6 ~~SEC. 13.~~

7 *SEC. 14.* Section 187 of the Financial Code is repealed.

8 ~~SEC. 14.~~

9 *SEC. 15.* Section 187 is added to the Financial Code, to read:

10 187. “Member of the public” means any person, except an
11 agent, officer, or employee of the department acting within the
12 scope of his or her agency, office, or employment. Member of the
13 public does not include a director, officer, employee, attorney,
14 accountant, or consultant of a licensee, provided that the
15 confidential information in question only pertains to the licensee
16 that employs or utilizes the director, officer, employee, attorney,
17 accountant, or consultant.

18 ~~SEC. 15.~~

19 *SEC. 16.* Section 188 is added to the Financial Code, to read:

20 188. “Money transmitter” means a person authorized pursuant
21 to Chapter 3 (commencing with Section 2030) of Division 1.2 to
22 engage in the business of money transmission.

23 ~~SEC. 16.~~

24 *SEC. 17.* Section 189 of the Financial Code is amended to read:

25 189. (a) “National bank” or “national banking association”
26 means a national banking association organized under the National
27 Bank Act.

28 (b) For purposes of the Financial Institutions Law, a national
29 bank is deemed to be a corporation.

30 ~~SEC. 17.~~

31 *SEC. 18.* Section 190 is added to the Financial Code, to read:

32 190. “Officer” means:

33 (a) When used with respect to a corporation, any person
34 appointed or designated as an officer of the corporation by or
35 pursuant to applicable law or the articles of incorporation or bylaws
36 of the corporation or any person who performs with respect to the
37 corporation functions usually performed by an officer of a
38 corporation.

39 (b) When used with respect to a specified person other than a
40 natural person or a corporation, any person who performs with

1 respect to the specified person, functions usually performed by an
2 officer of a corporation with respect to the corporation.

3 ~~SEC. 18.~~

4 *SEC. 19.* Section 326 of the Financial Code is amended to read:

5 326. The commissioner is responsible for the performance of
6 all duties, the exercise of all powers and jurisdiction, and the
7 assumption and discharge of all responsibilities vested by law in
8 the department. The commissioner has and may exercise all the
9 powers necessary or convenient for the administration and
10 enforcement of, among other laws, the Financial Institutions Law.
11 The commissioner may issue such rules and regulations consistent
12 with law as he or she may deem necessary or advisable in executing
13 the powers, duties, and responsibilities of the department.

14 ~~SEC. 19.~~

15 *SEC. 20.* Section 329 of the Financial Code is amended to read:

16 329. (a) For purposes of this section, the following definitions
17 apply:

18 (1) “Applicable law” means:

19 (A) With respect to any bank, Division 1.6 (commencing with
20 Section 4800), and any of the following provisions:

21 (i) Article 6 (commencing with Section 405) of Chapter 3.

22 (ii) Article 3 (commencing with Section 1130) of Chapter 5 of
23 Division 1.1.

24 (iii) Chapter 6 (commencing with Section 1200) of Division
25 1.1.

26 (iv) Chapter 10 (commencing with Section 1320) of Division
27 1.1.

28 (v) Chapter 14 (commencing with Section 1460) of Division
29 1.1.

30 (vi) Article 1 (commencing with Section 1530) of Chapter 15
31 of Division 1.1.

32 (vii) Chapter 16 (commencing with Section 1550) of Division
33 1.1.

34 (viii) Chapter 20 (commencing with Section 1750) of Division
35 1.1.

36 (ix) Section 456.

37 (x) Section 457.

38 (xi) Section 459.

39 (xii) Section 460.

40 (xiii) Section 461.

- 1 (xiv) Section 1331.
- 2 (xv) Chapter 21 (commencing with Section 1850) of Division
- 3 1.1.
- 4 (xvi) Chapter 18 (commencing with Section 1660) of Division
- 5 1.1.
- 6 (xvii) Chapter 19 (commencing with Section 1670) of Division
- 7 1.1.
- 8 (B) With respect to any savings association, any provision of
- 9 Division 1.6 (commencing with Section 4800) and Division 2
- 10 (commencing with Section 5000).
- 11 (C) With respect to any insurance premium finance agency, any
- 12 provision of Division 7 (commencing with Section 18000).
- 13 (D) With respect to any business and industrial development
- 14 corporation, any provision of Division 15 (commencing with
- 15 Section 31000).
- 16 (E) With respect to any credit union, any of the following
- 17 provisions:
- 18 (i) Section 14252.
- 19 (ii) Section 14253.
- 20 (iii) Section 14255.
- 21 (iv) Article 4 (commencing with Section 14350) of Chapter 3
- 22 of Division 5.
- 23 (v) Section 14401.
- 24 (vi) Section 14404.
- 25 (vii) Section 14408, only as that section applies to gifts to
- 26 directors, volunteers, and employees, and the related family or
- 27 business interests of the directors, volunteers, and employees.
- 28 (viii) Section 14409.
- 29 (ix) Section 14410.
- 30 (x) Article 5 (commencing with Section 14600) of Chapter 4
- 31 of Division 5.
- 32 (xi) Article 6 (commencing with Section 14650) of Chapter 4
- 33 of Division 5, excluding subdivision (a) of Section 14651.
- 34 (xii) Section 14803.
- 35 (xiii) Section 14851.
- 36 (xiv) Section 14858.
- 37 (xv) Section 14860.
- 38 (xvi) Section 14861.
- 39 (xvii) Section 14863.

1 (F) With respect to any money transmitter, any provision of
2 Division 1.2 (commencing with Section 2000).

3 (2) “Licensee” means any bank, savings association, credit
4 union, trust company, money transmitter, insurance premium
5 finance agency, or business and industrial development corporation
6 that is authorized by the commissioner to conduct business in this
7 state.

8 (b) Notwithstanding any other provision of this code that applies
9 to a licensee or a subsidiary of a licensee, after notice and an
10 opportunity to be heard, the commissioner may, by order that shall
11 include findings of fact which incorporates a determination made
12 in accordance with subdivision (e), levy civil penalties against any
13 licensee or any subsidiary of a licensee who has violated any
14 provision of applicable law, any order issued by the commissioner,
15 any written agreement between the commissioner and the licensee
16 or subsidiary of the licensee, or any condition of any approval
17 issued by the commissioner. Notwithstanding any other provision
18 of law, neither the commissioner nor any employee of the
19 department shall disclose or permit the disclosure of any record,
20 record of any action, or information contained in a record of any
21 action, taken by the commissioner under the provisions of this
22 section, unless the action was taken pursuant to paragraph (2) of
23 subdivision (b), to persons other than federal or state government
24 employees who are authorized by statute to obtain the records in
25 the performance of their official duties, unless the disclosure is
26 authorized or requested by the affected licensee or the affected
27 subsidiary of the licensee. The commissioner shall have the sole
28 authority to bring any action with respect to a violation of
29 applicable law subject to a penalty imposed under this section.

30 Except as provided in paragraphs (1) and (2), any penalty
31 imposed by the commissioner may not exceed one thousand dollars
32 (\$1,000) a day, provided that the aggregate penalty of all offenses
33 in any one action against any licensee or subsidiary of a licensee
34 shall not exceed fifty thousand dollars (\$50,000).

35 (1) If the commissioner determines that any licensee or
36 subsidiary of the licensee has recklessly violated any applicable
37 law, any order issued by the commissioner, any provision of any
38 written agreement between the commissioner and the licensee or
39 subsidiary, or any condition of any approval issued by the
40 commissioner, the commissioner may impose a penalty not to

1 exceed five thousand dollars (\$5,000) per day, provided that the
2 aggregate penalty of all offenses in an action against any licensee
3 or subsidiary of a licensee shall not exceed seventy-five thousand
4 dollars (\$75,000).

5 (2) If the commissioner determines that any licensee or
6 subsidiary of the licensee has knowingly violated any applicable
7 law, any order issued by the commissioner, any provision of any
8 written agreement between the commissioner and the licensee or
9 subsidiary, or any condition of any approval issued by the
10 commissioner, the commissioner may impose a penalty not to
11 exceed ten thousand dollars (\$10,000) per day, provided that the
12 aggregate penalty of all offenses in an action against any licensee
13 or subsidiary of a licensee shall not exceed 1 percent of the total
14 assets of the licensee or subsidiary of a licensee subject to the
15 penalty.

16 (c) Nothing in this section shall be construed to impair or impede
17 the commissioner from pursuing any other administrative action
18 allowed by law.

19 (d) Nothing in this section shall be construed to impair or impede
20 the commissioner from bringing an action in court to enforce any
21 law or order he or she has issued, including orders issued under
22 this section. Nothing in this section shall be construed to impair
23 or impede the commissioner from seeking any other damages or
24 injunction allowed by law.

25 (e) In determining the amount and the appropriateness of
26 initiating a civil money penalty under subdivision (b), the
27 commissioner shall consider all of the following:

28 (1) Evidence that the violation or practice or breach of duty was
29 intentional or was committed with a disregard of the law or with
30 a disregard of the consequences to the institution.

31 (2) The duration and frequency of the violations, practices, or
32 breaches of duties.

33 (3) The continuation of the violations, practices, or breaches of
34 duty after the licensee or subsidiary of the licensee was notified,
35 or, alternatively, its immediate cessation and correction.

36 (4) The failure to cooperate with the commissioner in effecting
37 early resolution of the problem.

38 (5) Evidence of concealment of the violation, practice, or breach
39 of duty or, alternatively, voluntary disclosure of the violation,
40 practice, or breach of duty.

1 (6) Any threat of loss, actual loss, or other harm to the
2 institution, including harm to the public confidence in the
3 institution, and the degree of that harm.

4 (7) Evidence that a licensee or subsidiary of a licensee received
5 financial gain or other benefit as a result of the violation, practice,
6 or breach of duty.

7 (8) Evidence of any restitution paid by a licensee or subsidiary
8 of a licensee of losses resulting from the violation, practice, or
9 breach of duty.

10 (9) History of prior violations, practices, or breaches of duty,
11 particularly where they are similar to the actions under
12 consideration.

13 (10) Previous criticism of the institution for similar actions.

14 (11) Presence or absence of a compliance program and its
15 effectiveness.

16 (12) Tendency to engage in violations of law, unsafe or unsound
17 financial institutions practices, or breaches of duties.

18 (13) The existence of agreements, commitments, orders, or
19 conditions imposed in writing intended to prevent the violation,
20 practice, or breach of duty.

21 (14) Whether the violation, practice, or breach of duty causes
22 quantifiable, economic benefit or loss to the licensee or the
23 subsidiary of the licensee. In those cases, removal of the benefit
24 or recompense of the loss usually will be insufficient, by itself, to
25 promote compliance with the applicable law, order, or written
26 agreement. The penalty amount should reflect a remedial purpose
27 and should provide a deterrent to future misconduct.

28 (15) Other factors as the commissioner may, in his or her
29 opinion, consider relevant to assessing the penalty or establishing
30 the amount of the penalty.

31 (f) The amounts collected under this section shall be deposited
32 in the appropriate fund of the department. For purposes of this
33 subdivision, the term “appropriate fund” means the fund to which
34 the annual assessments of fined licensees, or the parent licensee
35 of the fined subsidiary, are credited.

36 ~~SEC. 20.~~

37 *SEC. 21.* Section 331 of the Financial Code is amended to read:

38 331. Notwithstanding any other provision of law, the
39 commissioner may adopt and implement any method of accepting
40 electronic filings of applications, reports, or other matters, which,

1 in the opinion of the commissioner, is secure. Any method of
2 electronic filing chosen by the commissioner shall include a method
3 to verify the identity of the person making the filing. The
4 verification shall be deemed to satisfy all other verifications
5 required by the Financial Institutions Law, and shall have the same
6 force and effect as the use of manual signatures.

7 ~~SEC. 21.~~

8 *SEC. 22.* Section 376 of the Financial Code is amended to read:

9 376. At least once each month, the commissioner shall issue
10 and disseminate as the commissioner deems appropriate a bulletin
11 containing the following information:

12 (a) Information regarding any of the following actions taken
13 since issuance of the previous bulletin:

14 (1) The filing, approval, or denial under Chapter 1 (commencing
15 with Section 1000) of Division 1.1 of an application for authority
16 to organize a California state bank, or the issuance under Chapter
17 3 (commencing with Section 1040) of Division 1.1 of a certificate
18 of authority to a California state bank.

19 (2) The filing, approval, or denial under Article 1 (commencing
20 with Section 5400) of Chapter 2 of Division 2 of an application
21 for the issuance of an organizing permit for the organization of a
22 California savings association, or for the issuance under Article 2
23 (commencing with Section 5500) of Chapter 2 of Division 2 of a
24 certificate of authority to a California savings association.

25 (3) The filing, approval, or denial under Article 2 (commencing
26 with Section 14150) of Chapter 2 of Division 5 of an application
27 for a certificate to act as a credit union, or the issuance of a
28 certificate to engage in the business of a credit union.

29 (4) The filing, approval, or denial under Division 1.2
30 (commencing with Section 2000), Division 7 (commencing with
31 Section 18000), or Division 15 (commencing with Section 31000)
32 of an application for a license to engage in business, or the issuance
33 under any of those laws of a license to engage in business.

34 (5) The filing, approval, or denial under Chapter 20
35 (commencing with Section 1750) of Division 1.1 of an application
36 by a foreign (other nation) bank to establish its first office of any
37 particular class (as determined under Section 1753) in this state,
38 or the issuance under that chapter of a license in connection with
39 the establishment of such an office.

1 (6) The filing, approval, or denial under Division 1.6
2 (commencing with Section 4800) of an application for approval
3 of a sale, merger, or conversion.

4 (7) The filing, approval, or denial under Article 6 (commencing
5 with Section 5700) of Chapter 2 of Division 2 of an application
6 for approval of a conversion of a federal savings association into
7 a state savings association, or the filing of a federal charter of a
8 state savings association that has converted to a federal savings
9 association.

10 (8) The filing, approval, or denial under Article 7 (commencing
11 with Section 5750) of Chapter 2 of Division 2 of an application
12 for approval of a reorganization, merger, consolidation, or transfer
13 of assets of a state savings association.

14 (9) The filing, approval, or denial under Chapter 9 (commencing
15 with Section 15200) of Division 5 of an application for approval
16 of a merger, dissolution, or conversion of a credit union.

17 (10) The taking of possession of the property and business of a
18 California state bank, savings association, credit union, or person
19 licensed by the commissioner under any of the laws cited in
20 paragraph (4).

21 (b) Other information as the commissioner deems appropriate.

22 ~~SEC. 22.~~

23 *SEC. 23.* Section 377 of the Financial Code is amended to read:

24 377. Notwithstanding any other provision of this code,
25 whenever any provision of the Financial Institutions Law requires
26 the pledge of securities to be deposited with the Treasurer, to ensure
27 the performance of any act or duty, the securities after first being
28 approved by the commissioner and upon the written order of the
29 commissioner, shall be deposited with the Treasurer. The Treasurer,
30 with the consent of the owner of the securities deposited or to be
31 deposited with the Treasurer, may place the securities in the
32 custody of a qualified trust company or bank in the same manner
33 and under the same conditions provided in Article 3 (commencing
34 with Section 16550) of Chapter 4 of Part 2 of Division 4 of Title
35 2 of the Government Code.

36 ~~SEC. 23.~~

37 *SEC. 24.* Section 379 of the Financial Code is amended to read:

38 379. (a) For the purposes of this section the following
39 definitions shall apply:

1 (1) “Control” has the meaning set forth in subdivision (b) of
2 Section 1250. “Control” also means the ownership of a subject
3 person by means of sole proprietorship, partnership, or by any
4 other similar means.

5 (2) “Controlling person” means a person who, directly or
6 indirectly, controls a subject person.

7 (3) “Subject person” means any licensee.

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

12 (1) An applicant for employment with the department.

13 (2) A person licensed, or proposed to be licensed, as a subject
14 person.

15 (3) A director, officer, or employee of an existing or proposed
16 subject person.

17 (4) An existing or proposed controlling person of a subject
18 person.

19 (5) A director, officer, or employee of an existing or proposed
20 controlling person of a subject person.

21 (6) A director, officer, or employee of an existing or proposed
22 affiliate of a subject person.

23 (c) The authorization in subdivision (b) may only be used by
24 the department for the purpose of obtaining information regarding
25 an individual as to the existence and nature of the criminal record,
26 if any, of that individual relating to convictions, and to any arrest
27 for which the individual is released on bail or on his or her own
28 recognizance pending trial, for the commission or attempted
29 commission of a crime involving robbery, burglary, theft,
30 embezzlement, fraud, forgery, bookmaking, receiving stolen
31 property, counterfeiting, or involving checks or credit cards or
32 using computers.

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

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

38 ~~SEC. 24.~~

39 *SEC. 25.* Section 405 of the Financial Code is amended to read:

1 405. (a) The commissioner shall annually collect pro rata from
 2 the banks and trust companies under the supervision of the
 3 department a fund in an amount sufficient in the commissioner's
 4 judgment to meet the expenses of the department in administering
 5 laws relating to banks or trust companies or to the banking or trust
 6 business that are not otherwise provided for and to provide a
 7 reasonable reserve for contingencies.

8 (b) The amount of the annual assessment for the fund on any
 9 bank or trust company shall not be less than five thousand dollars
 10 (\$5,000). Above that minimum amount, except as otherwise
 11 provided in subdivision (c), the annual assessment shall not exceed
 12 the sum of the products of a base assessment rate, or percentage
 13 thereof, and segregated portions of its total resources, according
 14 to the following table:

16 Segregated Total Resources	Percentage of Base
17 (In Millions or Fractions Thereof)	Assessment Rate
18 First \$2	100.0
19 Next \$18	50.0
20 Next \$80	12.0
21 Next \$100	6.25
22 Next \$800	6.0
23 Next \$1,000	4.0
24 Next \$4,000	3.5
25 Next \$14,000	3.0
26 Next \$20,000	2.5
27 Excess over \$40,000	1.5

28
 29 (c) (1) For purposes of determining the annual assessment on
 30 banks and trust companies that have one or more foreign (other
 31 state) branch offices, the resources of foreign (other state) branch
 32 offices shall be excluded from total resources, except that the
 33 commissioner may order the resources of foreign (other state)
 34 branch offices to be included in total resources if and to the extent
 35 that it is necessary in the commissioner's judgment to meet the
 36 expenses of the department on account of foreign (other state)
 37 branch offices and a reasonable reserve for contingencies.

38 (2) If the commissioner finds that a bank or trust company
 39 allocated any resource to a foreign (other state) branch office for
 40 the purpose, in whole or in part, of reducing its annual assessment,

1 the commissioner may, for purposes of calculating the annual
2 assessment on the bank or trust company, reallocate the resource
3 to the bank's or trust company's head office.

4 (d) The base assessment rate shall be set by the commissioner
5 from time to time at the commissioner's discretion, not to exceed
6 two dollars and twenty cents (\$2.20) per one thousand dollars
7 (\$1,000) of total resources.

8 ~~SEC. 25.~~

9 *SEC. 26.* Section 413 of the Financial Code is amended to read:

10 413. (a) In this section, "assessment statute" means any statute
11 that authorizes the commissioner to make or collect an assessment
12 (other than a fine) on financial institutions, including the following:

13 (1) Sections 405 to 407, inclusive.

14 (2) Section 2042.

15 (3) Article 2 (commencing with Section 8030) of Chapter 7 of
16 Division 2.

17 (4) Article 4 (commencing with Section 14350) of Chapter 3
18 of Division 5.

19 (5) Section 1533.

20 (b) The commissioner may charge to and collect from the
21 Financial Institutions Fund, the Credit Union Fund, each of the
22 accounts included in the Financial Institutions Fund, and each of
23 the programs included in the State Banking Account an amount
24 equal to the fund's, account's, or program's pro rata share of those
25 expenses of the department which, in the opinion of the
26 commissioner, it is not feasible to attribute to any single one of
27 the funds, accounts, or programs. The fund's, account's, or
28 program's pro rata share shall be determined and paid in the manner
29 and at the time ordered by the commissioner.

30 (c) The provisions of any assessment statute that authorize the
31 commissioner to make or collect an assessment for the purposes
32 specified in the assessment statute include authority for the
33 commissioner to make and collect an assessment for the additional
34 purpose of providing money in an amount that will, in the
35 commissioner's judgment, be sufficient to make payments that
36 may be required under subdivision (b).

37 ~~SEC. 26.~~

38 *SEC. 27.* Section 563 of the Financial Code is amended to read:

39 563. No provision of Section 560, 561, or 562 prohibits any
40 of the following from transacting any business or performing any

1 activity if it is authorized by applicable law to transact the business
2 or perform the activity and is not prohibited by any applicable law,
3 other than Section 560, 561, or 562, from transacting the business
4 or performing the activity:

5 (a) Any California state commercial bank, industrial bank, or
6 trust company.

7 (b) Any national bank.

8 (c) Any insured foreign (other state) state bank.

9 (d) Any foreign (other state) state bank that is licensed by the
10 commissioner under Article 3 (commencing with Section 1700)
11 of Chapter 19 of Division 1.1 to maintain a facility, as defined in
12 Section 1670, in this state.

13 (e) Any foreign (other nation) bank that is licensed by the
14 commissioner under Chapter 20 (commencing with Section 1750)
15 of Division 1.1 to maintain an office in this state.

16 (f) Any foreign (other nation) bank that maintains a federal
17 agency, as defined in subdivision (g) of Section 1750, or federal
18 branch, as defined in subdivision (h) of Section 1750, in this state.

19 (g) Any California state corporation that is incorporated for the
20 purpose of engaging in, and that is authorized by the commissioner
21 to engage in, business under Article 1 (commencing with Section
22 1850) of Chapter 21 of Division 1.1.

23 (h) Any corporation incorporated under Section 25A of the
24 Federal Reserve Act (12 U.S.C. Sec. 612 et seq.).

25 (i) Any foreign corporation that is licensed by the commissioner
26 under Article 1 (commencing with Section 1850) of Chapter 21
27 of Division 1.1 to maintain an office in this state and to transact
28 at that office business under Article 1 (commencing with Section
29 1850) of Chapter 21 of Division 1.1.

30 (j) Any industrial bank that is organized under the laws of
31 another state of the United States and is insured by the Federal
32 Deposit Insurance Corporation.

33 ~~SEC. 27.~~

34 *SEC. 28.* Section 589 of the Financial Code is amended to read:

35 589. (a) In this section, “subject financial institution” means
36 any:

37 (1) Licensee or any bank or credit union that maintains an office
38 in this state.

39 (2) Affiliate of any of the institutions specified in paragraph
40 (1).

1 (3) Subsidiary of any of the institutions specified in paragraph
2 (1).

3 (4) Holding company of any of the institutions specified in
4 paragraph (1).

5 (b) It is unlawful for any subject person or former subject person
6 of a subject financial institution to whom an order is issued under
7 Sections 585 to 587, inclusive, willfully to do, directly or indirectly,
8 any of the following without the approval of the commissioner,
9 so long as the order is in effect:

10 (1) Act as a subject person of any subject financial institution.

11 (2) Vote any shares or other securities having voting rights for
12 the election of any person as a director of a subject financial
13 institution.

14 (3) Solicit, procure, transfer or attempt to transfer, or vote any
15 proxy, consent, or authorization with respect to any shares or other
16 securities of a subject financial institution having voting rights.

17 (4) Otherwise to participate in any manner in the affairs of any
18 subject financial institution.

19 ~~SEC. 28.~~

20 *SEC. 29.* Section 590 of the Financial Code is amended to read:

21 590. The commissioner may revoke or suspend any license
22 issued by, or under the authority of, the commissioner, if, after
23 notice and opportunity to be heard, the commissioner finds any of
24 the following:

25 (a) The licensee has violated, is violating, or that there is
26 reasonable cause to believe that the licensee is about to violate,
27 any provision of any of the following:

28 (1) Any division subject to the jurisdiction of the commissioner.

29 (2) Any regulation promulgated by, or subject to the jurisdiction
30 of, the commissioner.

31 (3) A provision of any other applicable law.

32 (4) A provision of any order issued by the commissioner.

33 (5) A provision of any written agreement between the licensee
34 and the commissioner.

35 (6) A condition imposed on any written approval granted by
36 the commissioner.

37 (b) Any fact or condition exists which, if it had existed at the
38 time of the original application for the license, would be grounds
39 for denying the application for the license.

1 (c) The licensee is conducting its business in an unsafe or
2 unsound manner.

3 (d) The licensee is in such condition that it is unsafe or unsound
4 for the licensee to transact appropriate licensee business.

5 (e) The licensee has inadequate capital or net worth or is
6 insolvent.

7 (f) The licensee failed to pay any of its obligations as they came
8 due or is reasonably expected to be unable to pay its obligations
9 as they come due.

10 (g) The licensee has applied for an adjudication of bankruptcy,
11 reorganization, arrangement, or other relief under any bankruptcy,
12 reorganization, insolvency, or moratorium law, or that any person
13 has applied for any such relief under any such law against the
14 licensee and the licensee has by any affirmative act approved of,
15 or consented to, the action or the relief has been granted.

16 (h) The licensee has ceased to transact the business the licensee
17 is authorized to conduct pursuant to its license.

18 (i) The licensee refuses to submit its books, papers, and affairs
19 to the inspection of any examiner.

20 (j) Any officer of the licensee refuses to be examined upon oath
21 touching the concerns of the licensee.

22 (k) The licensee has, with the approval of its board, requested
23 the commissioner to take possession of its property and business.

24 ~~SEC. 29.~~

25 *SEC. 30.* Section 600 of the Financial Code is amended to read:
26 600. In this chapter, “Federal Insurance Agency” means the
27 Federal Deposit Insurance Corporation or the National Credit
28 Union Administration, as appropriate, or their respective
29 successors-in-interest.

30 ~~SEC. 30.~~

31 *SEC. 31.* The heading of Article 4 (commencing with Section
32 670) of Chapter 7 of Division 1 of the Financial Code is amended
33 to read:

34

35 Article 4. Conservatorship and Liquidation of a Bank and
36 Liquidation of an Uninsured Licensee

37

38 ~~SEC. 31.~~

39 *SEC. 32.* Section 672 of the Financial Code is amended to read:

1 672. (a) The commissioner may, with the approval of the court,
2 sell any part or the whole of the business of a licensee to any other
3 licensee. The purchase and sale shall be approved by the purchasing
4 licensee, as follows:

5 (1) If the purchasing licensee is organized under the laws of this
6 state, by two-thirds of all of its directors.

7 (2) If the licensee is any licensee other than a licensee organized
8 under the laws of this state, in accordance with the laws of the
9 jurisdiction under which the licensee is organized.

10 (b) (1) Subject to any applicable federal statutes and regulations,
11 any bank or credit union organized under the laws of this state
12 may, with the approval of two-thirds of all of its directors and of
13 the commissioner, purchase from the receiver of a national banking
14 association or a federal credit union the whole or any part of the
15 business of the national banking association or federal credit union.

16 (2) Subject to any applicable federal statutes and regulations
17 and any applicable laws of the jurisdiction under which a foreign
18 corporation is organized, any foreign corporation or any office of
19 a foreign corporation that is licensed by the commissioner to
20 transact business in this state and that is authorized to accept shares
21 or deposits in this state, may, with the approval of the
22 commissioner, purchase from the receiver of a national banking
23 association or federal credit union the whole or any part of the
24 business of the national banking association or federal credit union.

25 (c) The provisions of Chapter 12 (commencing with Section
26 1200) and Chapter 13 (commencing with Section 1300) of Division
27 1 of Title 1 of the Corporations Code shall not apply to any
28 purchase and sale of the type described in subdivision (a) or (b).

29 (d) When a purchase and sale of the type described in
30 subdivision (a) or (b) becomes effective, the purchasing licensee
31 shall, by operation of law and without further transfer, substitution,
32 act, or deed, to the extent provided in the agreement of the purchase
33 and sale or in the order of the court approving the purchase and
34 sale and except as withheld or limited by the agreement or by the
35 order:

36 (1) Succeed to the rights, obligations, properties, assets,
37 investments, shares, deposits, demands, and agreements of the
38 licensee whose business is sold, subject to the right of every
39 customer of the licensee whose shares or deposit is sold to

1 withdraw his or her shares or deposit in full on demand after the
2 sale, irrespective of the terms under which the deposit was made.

3 (2) Succeed to the rights, obligations, properties, assets,
4 investments, shares, deposits, demands, and agreements of the
5 licensee whose business is sold under all trusts, executorships,
6 administrations, guardianships, conservatorships, agencies, and
7 other fiduciary or representative capacities, to the same extent as
8 though the purchasing licensee had originally assumed, acquired,
9 or owned the same, subject to the rights of trustors and beneficiaries
10 under the trusts so sold to nominate another or succeeding trustee
11 of the trust so sold after the sale.

12 (3) Succeed to and be entitled to take and execute the
13 appointment to executorships, trusteeships, guardianships,
14 conservatorships, and other fiduciary and representative capacities
15 to which the licensee whose business is sold is or may be named
16 in wills, whenever probated, or to which it is or may be named or
17 appointed by any other instrument.

18 (e) For purposes of subdivision (d), any purchase and sale of
19 the type referred to in subdivision (d) shall be deemed to be
20 effective at the time provided in the agreement of the purchase
21 and sale or in the order of the court approving the purchase and
22 sale.

23 ~~SEC. 32.~~

24 *SEC. 33.* Section 1024 of the Financial Code is amended to
25 read:

26 1024. (a) In this section, “control” has the meaning set forth
27 in Section 1250.

28 (b) For purposes of Section 1023, the commissioner may find:

29 (1) That a proposed officer or director of a proposed bank or
30 trust company does not have sufficient standing to afford
31 reasonable promise of successful operation if such person has been
32 convicted of, or has pleaded nolo contendere to, any crime
33 involving fraud or dishonesty.

34 (2) That the establishment of a proposed bank or trust company
35 will not promote the public convenience and advantage if any
36 person who is proposed to control the proposed bank or trust
37 company or any director or officer of such person has been
38 convicted of, or has pleaded nolo contendere to, any crime
39 involving fraud or dishonesty.

1 (c) Subdivision (b) shall not be deemed to be the only grounds
2 upon which the commissioner may find, for purposes of Section
3 1023, that a proposed officer or director of a proposed bank or
4 trust company does not have sufficient standing to afford
5 reasonable promise of successful operation or that the establishment
6 of a proposed bank or trust company will not promote the public
7 convenience and advantage.

8 ~~SEC. 33.~~

9 *SEC. 34.* Section 1026 of the Financial Code is amended to
10 read:

11 1026. The commissioner may, in approving an application to
12 organize and establish a corporation to engage in the banking or
13 trust business pursuant to Section 1023, impose any conditions
14 the commissioner deems reasonable or necessary or advisable in
15 the public interest.

16 ~~SEC. 34.~~

17 *SEC. 35.* Section 1080 of the Financial Code is amended to
18 read:

19 1080. If a bank violates any provision of this chapter or fails
20 to comply with any order, the commissioner may levy a penalty
21 against the bank pursuant to Section 329.

22 ~~SEC. 35.~~

23 *SEC. 36.* Section 1255 of the Financial Code is amended to
24 read:

25 1255. (a) For purposes of Section 1254, the commissioner
26 may find:

27 (1) That the integrity of an acquiring person indicates that it
28 would not be in the interest of the depositors, creditors, or
29 shareholders of a bank or controlling person or in the interest of
30 the public to permit the acquiring person to control the bank or
31 controlling person if the acquiring person or any director or officer
32 of the acquiring person has been convicted of, or has pleaded nolo
33 contendere to, any crime involving fraud or dishonesty.

34 (2) That a plan to make a major change in the management of
35 a bank or controlling person is not fair and reasonable to the
36 depositors, creditors, or shareholders of the bank or controlling
37 person if the plan provides for a person who has been convicted
38 of, or has pleaded nolo contendere to, any crime involving fraud
39 or dishonesty to become a director or officer of the bank or
40 controlling person.

1 (b) Subdivision (a) shall not be deemed to be the only grounds
2 upon which the commissioner may find, for purposes of Section
3 1254, that the integrity of an acquiring person indicates that it
4 would not be in the interest of the depositors, creditors, or
5 shareholders of a bank or controlling person or in the interest of
6 the public to permit the acquiring person to control the bank or
7 controlling person or that a plan to make a major change in the
8 management of a bank or controlling person is not fair and
9 reasonable to the depositors, creditors, or shareholders of the bank
10 or controlling person.

11 ~~SEC. 36.~~

12 *SEC. 37.* Section 1331 of the Financial Code is amended to
13 read:

14 1331. (a) For purposes of this section, the following terms
15 have the following meanings:

16 (1) “Carrying a security” means maintaining, reducing, or
17 retiring indebtedness originally incurred to acquire a security.

18 (2) “Controlling person” has the same meaning specified in
19 Section 1250.

20 (3) “Security” has the following meanings:

21 (A) When used with respect to a bank, “security” has the same
22 meaning set forth in subdivision (c) of Section 1200.

23 (B) When used with respect to any other person, “security” has
24 the same meaning set forth in Section 25019 of the Corporations
25 Code.

26 (b) No bank shall acquire, hold, extend credit on the security
27 of, or extend credit for the purpose of acquiring or carrying, any
28 security of the bank or of any controlling person of the bank.

29 (c) (1) Any bank which acquires or holds securities in violation
30 of this section shall be liable to the people of this state for twice
31 the market, book, or face value of the securities, whichever is
32 greatest.

33 (2) Any bank which extends credit in violation of this section
34 shall be liable to the people of this state for twice the amount of
35 the credit so extended.

36 (d) This section does not apply to any of the following
37 transactions:

38 (1) Any acquisition or extension of credit by a bank which is
39 necessary to reduce or prevent loss to the bank on debts previously
40 contracted in good faith.

1 (2) Any redemption by a bank of any of its redeemable securities
2 in accordance with applicable provisions of this division and of
3 Division 1 (commencing with Section 100) of Title 1 of the
4 Corporations Code.

5 (3) Any acquisition by a bank of any of its securities, other than
6 an acquisition of the type described in paragraph (1) or (2), if the
7 acquisition is approved in advance by the commissioner.

8 (e) The provisions of Section 329 shall not apply to this section.

9 ~~SEC. 37.~~

10 *SEC. 38.* Section 1473 of the Financial Code is amended to
11 read:

12 1473. Sections 1481 and 1510 shall not apply to investments
13 held by a bank prior to January 1, 2009. All authorizations
14 regarding investments by a bank issued by the commissioner prior
15 to January 1, 2009, are terminated.

16 ~~SEC. 38.~~

17 *SEC. 39.* Section 1485 of the Financial Code is amended to
18 read:

19 1485. The limitations of Section 1481 shall not apply to the
20 following and the following shall not be included among the
21 obligations of a person for the purpose of applying these
22 limitations:

23 (a) Loans secured by obligations of the United States or by
24 obligations unconditionally guaranteed both as to principal and
25 interest by the United States, having a market value at least 10
26 percent in excess of the loans secured thereby.

27 (b) Loans in an amount and of a type or class previously
28 approved in writing by the commissioner that are secured by not
29 less than a like amount of obligations of the United States or by
30 obligations unconditionally guaranteed both as to principal and
31 interest by the United States.

32 (c) Loans to the extent that they are covered by guarantees or
33 by commitments to take over or to purchase without recourse made
34 by (1) any Federal Reserve bank, (2) the United States, (3) any
35 department, bureau, board, commission, agency, or establishment
36 of the United States, including any corporation wholly owned
37 directly or indirectly by the United States, or (4) any small business
38 development corporation, urban development corporation, or rural
39 development corporation incorporated pursuant to Part 5

1 (commencing with Section 14000) of Division 3 of Title 1 of the
2 Corporations Code.

3 (d) Drafts or bills of exchange drawn in good faith against actual
4 existing values with negotiable bills of lading attached, whether
5 or not accepted by the drawee.

6 (e) Bankers' acceptances of other banks which are eligible for
7 rediscount with a Federal Reserve bank.

8 (f) Obligations resulting from daily clearances through any
9 clearinghouse association.

10 (g) Obligations that are fully guaranteed or fully insured or
11 covered by a commitment to fully guarantee or fully insure by the
12 Federal Housing Administration.

13 (h) Obligations, including portions thereof, to the extent secured
14 by a segregated deposit account in the lending bank, provided a
15 security interest in the deposit has been perfected under applicable
16 law, and subject to all of the following conditions:

17 (1) Where the deposit is eligible for withdrawal before the
18 secured obligation matures, the lending bank shall establish internal
19 procedures to prevent release of the security without the lending
20 bank's prior consent.

21 (2) A deposit that is denominated and payable in a currency
22 other than that of the obligation that it secures may be eligible for
23 this exception if the currency is freely convertible to United States
24 dollars.

25 (A) This exception applies only to that portion of the obligation
26 that is covered by the United States dollar value of the deposit.

27 (B) The lending bank shall establish procedures to periodically
28 revalue foreign currency deposits to ensure that the loan or
29 extension of credit remains fully secured at all times.

30 (i) Obligations described in Section 1510.

31 ~~SEC. 39.~~

32 *SEC. 40.* Section 1495 of the Financial Code is amended to
33 read:

34 1495. (a) A commercial bank may make amortized loans upon
35 the security of residential real property to finance the purchase and
36 installation of material or equipment designed to promote energy
37 conservation or the efficient use of energy in the residential real
38 property securing the loan, if all of the following apply:

39 (1) The residential real property securing the loan consists of
40 not more than four dwelling units.

1 (2) The loan is made in connection with a concurrent loan
2 authorized under Section 1486.

3 (3) The loan is in an amount not to exceed 10 percent of the
4 loan made under the authority of Section 1486.

5 (b) A commercial bank may make additional advances, or
6 additional loans, to an existing borrower in order to finance the
7 purchase and installation of material and equipment designed to
8 promote energy conservation or the efficient use of energy in the
9 residential real property securing the loan, if all of the following
10 apply:

11 (1) The residential real property securing the loan consists of
12 not more than four dwelling units.

13 (2) The aggregate of the additional loan or advance and the
14 unpaid balance of the existing loan will not exceed that percent of
15 the appraised value of the residential real property securing the
16 loan permitted by Section 1486 immediately after the purchase
17 and installation of such material and equipment.

18 ~~SEC. 40.~~

19 *SEC. 41.* Section 1515 of the Financial Code is amended to
20 read:

21 1515. A bank or trust company may acquire stock in settlement
22 or reduction of a loan or in exchange for an investment previously
23 made in good faith where the acquisition of the stock is necessary
24 in order to minimize or avoid loss arising out of the loan or
25 investment. The limitation in Section 1510 shall not apply to the
26 stock acquired in accordance with this section. Whenever any stock
27 that is acquired in accordance with this section can be sold for an
28 amount sufficient to reimburse the bank or trust company for all
29 loss arising out of the loan for which the stock was security or
30 arising out of the original investment by the bank or trust company,
31 the bank or trust company shall sell the same or shall convert the
32 stock to an investment subject to Section 1510.

33 ~~SEC. 41.~~

34 *SEC. 42.* Section 1702 of the Financial Code is amended to
35 read:

36 1702. Not less than 30 days before an insured foreign (other
37 state) bank establishes a facility, the bank shall file with the
38 commissioner a report and the appointment required pursuant to
39 Section 1703.

1 ~~SEC. 42.~~

2 *SEC. 43.* Section 1805 of the Financial Code is amended to
3 read:

4 1805. (a) A foreign (other nation) bank that is licensed to
5 maintain an agency or branch office may transact commercial
6 banking business at the office, subject to the following:

7 (1) In case the office is a nondepository agency, the bank shall
8 not transact the business of accepting deposits.

9 (2) In case the office is a depository agency, the bank shall not
10 transact the business of accepting any deposits other than deposits
11 of (A) a foreign nation, (B) an agency or instrumentality of a
12 foreign nation, or (C) a person which resides, is domiciled, and
13 maintains its principal place of business in a foreign nation. For
14 purposes of this paragraph, “person” means any individual,
15 proprietorship, joint venture, partnership, trust, business trust,
16 syndicate, association, joint stock company, corporation, limited
17 liability company, or any other organization or any branch or
18 division thereof.

19 (3) In case the office is a limited branch office, the bank shall
20 not transact the business of accepting any deposits other than (A)
21 deposits of the kind described in paragraph (2), or (B) deposits
22 that a corporation organized under Section 25A of the Federal
23 Reserve Act (12 U.S.C. Sec. 612 et seq.) is permitted to accept.

24 (4) In case the office is a wholesale branch office, the bank shall
25 not transact the business of accepting any deposits other than (A)
26 deposits of the kind described in paragraph (2), (B) deposits of
27 two hundred fifty thousand dollars (\$250,000) or more, or (C)
28 deposits the acceptance of which the commissioner determines by
29 regulation or order do not constitute engaging in domestic retail
30 deposit activities requiring deposit insurance protection.

31 (5) In case the office is an agency, limited branch office, or
32 wholesale branch office, the bank may, subject to any regulations
33 that the commissioner may prescribe, maintain credit balances.

34 (6) In any case, the bank shall not transact any business that it
35 is not authorized to transact or is prohibited from transacting under
36 the law of its domicile or that commercial banks organized under
37 the laws of this state are not authorized to transact or are prohibited
38 from transacting.

1 (b) No foreign (other nation) bank that is licensed to maintain
2 an agency or branch office shall transact any trust business at the
3 office except as permitted under Section 1555.

4 ~~SEC. 43.~~

5 *SEC. 44.* Section 1806 of the Financial Code is amended to
6 read:

7 1806. (a) In addition to other provisions of this division and
8 Division 1 (commencing with Section 99) that are otherwise
9 applicable to or with respect to foreign (other nation) banks
10 licensed to maintain nondepository agencies, the following
11 provisions of this division shall apply to or with respect to each
12 foreign (other nation) bank licensed to maintain a nondepository
13 agency with respect to its business in this state as if the bank were
14 a commercial bank organized under the laws of this state:

15 (1) Article 6 (commencing with Section 405) of Chapter 3 of
16 Division 1.

17 (2) Chapter 6 (commencing with Section 550) of Division 1.

18 (3) Chapter 4.5 (commencing with Section 1090).

19 (4) Chapter 17 (commencing with Section 1620).

20 (5) Chapter 19 (commencing with Section 1670).

21 (b) In addition to other provisions of this division and Division
22 1 (commencing with Section 99) which are otherwise applicable
23 to or with respect to foreign (other nation) banks licensed to
24 maintain depository agencies or branch offices, the following
25 provisions of this division and Division 1 (commencing with
26 Section 99) shall apply to or with respect to each foreign (other
27 nation) bank licensed to maintain a depository agency or branch
28 office with respect to its business in this state as if the bank were
29 a commercial bank organized under the laws of this state:

30 (1) Article 6 (commencing with Section 405) of Chapter 3 of
31 Division 1.

32 (2) Chapter 6 (commencing with Section 550) of Division 1.

33 (3) Chapter 4.5 (commencing with Section 1090).

34 (4) Chapter 10 (commencing with Section 1320).

35 (5) Chapter 12 (commencing with Section 1400).

36 (6) Chapter 13 (commencing with Section 1450).

37 (7) Chapter 14 (commencing with Section 1460).

38 (8) Chapter 17 (commencing with Section 1620).

39 (9) Chapter 19 (commencing with Section 1670).

1 (10) Section 1864 and Article 2 (commencing with Section
2 1900), Article 3 (commencing with Section 1905), and Article 4
3 (commencing with Section 1910) of Chapter 21.

4 (c) Whenever any provision of this chapter or of any regulation
5 or order issued under this chapter that is applicable to or with
6 respect to foreign (other nation) banks licensed to transact business
7 in this state is inconsistent with any provision of any other chapter
8 of this division and Division 1 (commencing with Section 99) that
9 is applicable to or with respect to foreign (other nation) banks
10 licensed to transact business in this state, the former provision
11 shall apply, and the latter provision shall not apply.

12 (d) (1) Whenever any provision of this division (other than the
13 provisions of this chapter) and Division 1 (commencing with
14 Section 99) is applicable to or with respect to foreign (other nation)
15 banks licensed to transact business in this state, the provision shall
16 be applied with any changes in points of detail as may be necessary
17 or appropriate.

18 (2) Without limiting the provisions of paragraph (1), for
19 purposes of any provision of this division (other than the provisions
20 of this chapter) and Division 1 (commencing with Section 99) that
21 is applicable to or with respect to a foreign (other nation) bank
22 licensed to transact business in this state:

23 (A) “Approved by (or approval of) the board” means approved
24 or ratified by the board of the bank, by a committee of the board
25 authorized to exercise the powers of the board with respect to the
26 particular matter, or by an officer of the bank who is assigned to
27 the head office of the bank and who has authority over the bank’s
28 business in this state, including authority to approve or ratify the
29 particular matter.

30 (B) “Head office” means the primary office of the bank.

31 (C) “Shareholders’ equity” means the shareholders’ equity of
32 the bank or, if the bank has no shareholders’ equity, the closest
33 equivalent account or accounts.

34 (e) Whenever any provision of this division (other than the
35 provisions of this chapter) and Division 1 (commencing with
36 Section 99) that is applicable to or with respect to a foreign (other
37 nation) bank licensed to transact business in this state limits the
38 amount of any assets or liabilities of the bank (including, by way
39 of example, the amount of borrowings of, obligations to, or
40 investments of the bank), for purposes of calculating the amount

1 of the assets or liabilities, only the assets or liabilities of the
2 agencies or branch offices of the bank shall be included, and the
3 assets and liabilities of offices of the bank outside this state shall
4 be excluded.

5 ~~SEC. 44.~~

6 *SEC. 45.* Section 1835 of the Financial Code is amended to
7 read:

8 1835. (a) If the commissioner finds that any of the factors set
9 forth in Section 1831 is true with respect to any foreign (other
10 nation) bank which is licensed to transact business in this state and
11 that it is necessary for the protection of the interests of the creditors
12 of such bank's business in this state or for the protection of the
13 public interest that he or she take immediate possession of the
14 property and business of the bank, the commissioner may by order
15 forthwith take possession of the property and business of the bank
16 and retain possession until the bank resumes business in this state
17 or is finally liquidated. The bank may, with the consent of the
18 commissioner, resume business in this state upon such conditions
19 as the commissioner may prescribe.

20 (b) (1) Whenever the commissioner takes possession of the
21 property and business of a foreign (other nation) bank pursuant to
22 subdivision (a), such bank may, within 10 days, apply to the
23 superior court in the county in which the primary office of the
24 bank is located to enjoin further proceedings. The court may, after
25 citing the commissioner to show cause why further proceedings
26 should not be enjoined and after a hearing, dismiss such application
27 or enjoin the commissioner from further proceedings and order
28 him or her to surrender the property and business of the bank to
29 the bank or make such further order as may be just.

30 (2) The judgment of the court may be appealed by the
31 commissioner or by the bank in the manner provided by law for
32 appeals from the judgment of a superior court to the court of
33 appeal. In case the commissioner appeals the judgment of the court,
34 such appeal shall operate as a stay of the judgment, and the
35 commissioner shall not be required to post any bond.

36 (c) Whenever the commissioner takes possession of the property
37 and business of a foreign (other nation) bank pursuant to
38 subdivision (a), the commissioner shall conserve or liquidate the
39 property and business of the bank pursuant to Chapter 6
40 (commencing with Section 550) and Chapter 7 (commencing with

1 Section 600) of Division 1, and the provisions of those chapters
2 shall apply, except Sections 592, 593, and 690, as if the bank were
3 a bank organized under the laws of this state.

4 (d) When the commissioner has completed the liquidation of
5 the property and business of a foreign (other nation) bank, the
6 commissioner shall transfer any remaining assets to such bank in
7 accordance with such orders as the court may issue. However, in
8 case the bank has an office in another state of the United States
9 which is in liquidation and the assets of such office appear to be
10 insufficient to pay in full the creditors of the office, the court shall
11 order the commissioner to transfer to the liquidator of the office
12 such amount of any such remaining assets as appears to be
13 necessary to cover such insufficiency; if there are two or more
14 such offices and the amount of remaining assets is less than the
15 aggregate amount of insufficiencies with respect to the offices, the
16 court shall order the commissioner to distribute the remaining
17 assets among the liquidators of such offices in such manner as the
18 court finds equitable.

19 ~~SEC. 45.~~

20 *SEC. 46.* Section 1858 of the Financial Code is amended to
21 read:

22 1858. Nothing contained in this article shall prevent
23 corporations from purchasing and holding stock in any corporation
24 where such purchase shall be necessary to prevent a loss upon a
25 debt previously contracted in good faith; and stock so purchased
26 or acquired in corporations shall within six months from such
27 purchase be sold or disposed of at public or private sale unless the
28 time to so dispose of same is extended by the commissioner.

29 ~~SEC. 46.~~

30 *SEC. 47.* Section 4805.01 of the Financial Code is amended
31 to read:

32 4805.01. Subject to additional definitions contained in this
33 division that are applicable to specific provisions of this division
34 and unless the context otherwise requires:

35 (a) The definitions in this article apply throughout this division.

36 (b) The definitions in Chapter 1 (commencing with Section 99)
37 of Division 1 and in Section 1750 apply throughout this division.
38 For this purpose, “this division,” as used in Sections 139 and 141,
39 means:

1 (1) In the case of a California state bank, Division 1
2 (commencing with Section 99), Division 1.1 (commencing with
3 Section 1000), and this division.

4 (2) In the case of a California state savings association, this
5 division and Division 2 (commencing with Section 5000).

6 ~~SEC. 47.~~

7 *SEC. 48.* Section 4805.02 of the Financial Code is amended
8 to read:

9 4805.02. (a) In this division, “bank” means a commercial bank
10 or trust company (other than an industrial loan company authorized
11 to engage in trust business). “Bank” does not include an industrial
12 loan company.

13 (b) Notwithstanding subdivision (a), “foreign (other nation)
14 bank” has the meaning set forth in paragraph (1) of subdivision
15 (b) of Section 177.

16 ~~SEC. 48.~~

17 *SEC. 49.* Section 4805.05 of the Financial Code is amended
18 to read:

19 4805.05. “California state-licensed foreign (other nation) bank,”
20 when used with respect to a sale or merger, means a foreign (other
21 nation) bank that is licensed under Article 3 (commencing with
22 Section 1800) of Chapter 20 of Division 1.1 to maintain an agency
23 or branch office in this state immediately before the effective time
24 of the sale or merger in case it is the selling or disappearing
25 corporation or at the effective time of the sale or merger in case it
26 is the purchasing or surviving corporation.

27 ~~SEC. 49.~~

28 *SEC. 50.* Section 4805.10 of the Financial Code is amended
29 to read:

30 4805.10. In this division, “industrial loan company” means an
31 industrial bank as defined in Section 111.

32 ~~SEC. 50.~~

33 *SEC. 51.* Section 4821.5 of the Financial Code is amended to
34 read:

35 4821.5. Any certificate of authority, license, or other
36 authorization issued under subdivision (b) of Section 4858,
37 subdivision (b) of Section 4879.12, subdivision (b) of Section
38 4888, subdivision (b) of Section 4928, or Section 4948 or 4949 is
39 deemed to have been issued under the provisions of Division 1.1
40 (commencing with Section 1000) or Division 2 (commencing with

1 Section 5000) that would otherwise apply to the issuance of the
2 certificate of authority, license, or other authorization.

3 ~~SEC. 51.~~

4 *SEC. 52.* Section 4822 of the Financial Code is amended to
5 read:

6 4822. (a) References in this division to the voting of the shares
7 of a California state depository corporation shall be construed in
8 accordance with Section 111 of the Corporations Code.

9 (b) If the articles of a California state depository corporation
10 provide for more or less than one vote for any share on any matter
11 that is subject to this division, the references in Sections 139 and
12 141 (which are made applicable to this division by Section
13 4805.01) to a majority or other proportion of shares mean, as to
14 the matter, a majority or other proportion of the votes entitled to
15 be cast.

16 (c) Whenever shares of a California state depository corporation
17 are disqualified under any applicable law from voting on any matter
18 that is subject to this division, the shares shall not be considered
19 outstanding for the determination of a quorum at any meeting to
20 act upon, or the required vote to approve action upon, the matter.

21 ~~SEC. 52.~~

22 *SEC. 53.* Section 4823 of the Financial Code is amended to
23 read:

24 4823. References in this division to shareholders' equity mean
25 shareholders' equity determined in accordance with generally
26 accepted accounting principles, subject (a) in the case of California
27 state banks or California industrial loan companies, to the
28 provisions of Section 463, and (b) in the case of California state
29 savings associations, to the provisions of Division 2 (commencing
30 with Section 5000).

31 ~~SEC. 53.~~

32 *SEC. 54.* Section 4824 of the Financial Code is amended to
33 read:

34 4824. In determining for purposes of this division whether the
35 shareholders' equity of a California state depository corporation
36 will be adequate:

37 (a) In case the corporation is, or is to convert into, a California
38 state bank, the commissioner shall consider the factors specified
39 in Section 1150.

1 (b) In case the corporation is, or is to convert into, a California
2 state savings association or a California industrial loan company,
3 the commissioner shall consider factors equivalent to those
4 specified in Section 1150.

5 ~~SEC. 54.~~

6 *SEC. 55.* Section 4826.5 of the Financial Code is amended to
7 read:

8 4826.5. Notwithstanding any other provision of this division:

9 (a) The provisions of Chapter 19 (commencing with Section
10 1670) of Division 1.1 apply to any transaction that is subject to
11 this division. Whenever any provision of Chapter 19 (commencing
12 with Section 1670) of Division 1.1 or of any regulation or order
13 issued under Chapter 19 (commencing with Section 1670) of
14 Division 1.1 is inconsistent with any provision of this division or
15 of any regulation or order issued under this division, the provision
16 of Chapter 19 (commencing with Section 1670) of Division 1.1
17 or of the regulation or order issued under Chapter 19 (commencing
18 with Section 1670) of Division 1.1 applies, and the provision or
19 this division or of the regulation or order issued under this division
20 does not apply.

21 (b) Nothing in this division authorizes any sale or merger in a
22 case where the purchasing or surviving depository corporation is
23 a foreign depository corporation if the sale or merger is prohibited
24 by Chapter 19 (commencing with Section 1670) of Division 1.1.

25 (c) Nothing in this division constitutes an election by this state
26 under federal law to prohibit or permit interstate sales or mergers
27 between banks or industrial loan companies.

28 ~~SEC. 55.~~

29 *SEC. 56.* Section 4827 of the Financial Code is amended to
30 read:

31 4827. Except as expressly provided otherwise in this division:

32 (a) (1) No sale of a whole business unit (as defined in Section
33 4840) or merger in which the selling or disappearing depository
34 corporation is a California state savings association, in which the
35 purchasing or surviving depository corporation is a California state
36 bank, a California industrial loan company, or a California
37 state-licensed foreign (other nation) bank, and which may be
38 effected with the approval of the commissioner pursuant to this
39 division is prohibited or restricted by any provision of Division 2
40 (commencing with Section 5000) or requires any approval, consent,

1 or other authorization of the commissioner pursuant to Division 2
2 (commencing with Section 5000).

3 (2) No conversion in which the converting depository
4 corporation is a California state savings association in which the
5 resulting depository corporation is a California state bank or a
6 California industrial loan company, and which may be effected
7 with the approval of the commissioner pursuant to this division is
8 prohibited or restricted by any provision of Division 2
9 (commencing with Section 5000) or requires any approval, consent,
10 or other authorization of the commissioner pursuant to Division 2
11 (commencing with Section 5000).

12 (b) (1) No sale of a whole business unit (as defined in Section
13 4840) or merger in which the selling or disappearing depository
14 corporation is a California state bank, a California state-licensed
15 foreign (other nation) bank, or a California industrial loan
16 company, in which the purchasing or surviving depository
17 corporation is a California state savings association, and which
18 may be effected with the approval of the commissioner pursuant
19 to this division is prohibited or restricted by any provision of
20 Division 1.1 (commencing with Section 1000), except the
21 provisions of Chapter 19 (commencing with Section 1670) of
22 Division 1.1, or requires any approval, consent, or other
23 authorization of the commissioner pursuant to Division 1.1
24 (commencing with Section 1000), except as may be required under
25 the provisions of Chapter 19 (commencing with Section 1670) of
26 Division 1.1.

27 (2) No conversion in which the converting depository
28 corporation is a California state bank or a California industrial
29 loan company, in which the resulting depository corporation is a
30 California state savings association, and which may be effected
31 with the approval of the commissioner pursuant to this division is
32 prohibited or restricted by any provision of Division 1.1
33 (commencing with Section 1000), except the provisions of Chapter
34 19 (commencing with Section 1670) of Division 1.1, or requires
35 any approval, consent, or other authorization of the commissioner
36 pursuant to Division 1.1 (commencing with Section 1000), except
37 as may be required under the provisions of Chapter 19
38 (commencing with Section 1670) of Division 1.1.

1 ~~SEC. 56.~~

2 *SEC. 57.* Section 4827.3 of the Financial Code is amended to
3 read:

4 4827.3. Except as otherwise provided in paragraph (2) of
5 subdivision (a) of Section 4827.7 in the case of a California
6 state-licensed foreign (other nation) bank or in federal law in the
7 case of a federally licensed foreign (other nation) bank, nothing
8 in this division except subdivision (c) of Section 4879.02 authorizes
9 any sale or merger in a case where the purchasing or surviving
10 corporation is a foreign (other nation) bank unless the foreign
11 (other nation) bank is at the effective time of the sale or merger
12 licensed under Article 3 (commencing with Section 1800) of
13 Chapter 20 of Division 1.1 or authorized under federal law to
14 transact in this state the business to be acquired in the sale or
15 merger.

16 ~~SEC. 57.~~

17 *SEC. 58.* Section 4827.7 of the Financial Code is amended to
18 read:

19 4827.7. (a) (1) Except as otherwise provided in paragraph
20 (2):

21 (A) No California state depository corporation may, as the
22 selling or disappearing depository corporation, make a sale or
23 merger pursuant to this division in which it would transfer to a
24 California state-licensed or federally licensed foreign (other nation)
25 bank any deposit or fiduciary account that the foreign bank is not
26 authorized to accept.

27 (B) No California state-licensed foreign (other nation) bank
28 may, as the purchasing or surviving depository corporation, make
29 a sale or merger pursuant to this division in which it would acquire
30 any deposit or fiduciary account that it is not authorized to accept.

31 (2) Notwithstanding paragraph (1) and Section 1805, a
32 California state depository corporation may, as the selling or
33 disappearing depository corporation, make a sale or merger
34 pursuant to this division in which it transfers to a California
35 state-licensed or federally licensed foreign (other nation) bank
36 deposits or fiduciary accounts that the foreign bank is not
37 authorized to accept, and a California state-licensed foreign (other
38 nation) bank may, as the purchasing or surviving depository
39 corporation, make a sale or merger pursuant to this division in
40 which it acquires deposits or fiduciary accounts that it is not

1 authorized to accept, if, concurrently with the effective time of the
2 sale or merger, the foreign bank, pursuant to Article 5 (commencing
3 with Section 4879.01) of Chapter 3 or other applicable law, sells
4 all those deposits and fiduciary accounts to a depository corporation
5 that is authorized to accept them.

6 (b) (1) Except as otherwise provided in paragraph (2):

7 (A) No California state bank or industrial loan company may,
8 as the selling, disappearing, or converting depository corporation,
9 make a sale, merger, or conversion pursuant to this division in
10 which it would transfer to a savings association any deposit or
11 fiduciary account that the savings association is not authorized to
12 accept.

13 (B) No California state savings association may, as the
14 purchasing, surviving, or resulting depository corporation, make
15 a sale, merger, or conversion pursuant to this division in which it
16 would acquire any deposit or fiduciary account that it is not
17 authorized to accept.

18 (2) Notwithstanding paragraph (1) and Division 2 (commencing
19 with Section 5000), a California state bank or industrial loan
20 company may, as the selling, disappearing, or converting
21 depository corporation, make a sale, merger, or conversion pursuant
22 to this division in which it transfers to a savings association
23 deposits or fiduciary accounts that the savings association is not
24 authorized to accept, and a California state savings association
25 may, as the purchasing, surviving, or resulting depository
26 corporation, make a sale, merger, or conversion pursuant to this
27 division in which it acquires deposits or fiduciary accounts that it
28 is not authorized to accept, if, concurrently with the effective time
29 of the sale, merger, or conversion, the savings association, pursuant
30 to Article 5 (commencing with Section 4879.01) of Chapter 3 or
31 other applicable law, sells all those deposits and fiduciary accounts
32 to a depository corporation that is authorized to accept them.

33 (c) (1) Except as otherwise provided in paragraph (2):

34 (A) No California state bank or savings association may, as the
35 selling, disappearing, or converting depository corporation, make
36 a sale, merger, or conversion pursuant to this division in which it
37 would transfer to an industrial loan company any deposit or
38 fiduciary account that the industrial loan company is not authorized
39 to accept.

1 (B) No California industrial loan company may, as the
2 purchasing, surviving, or resulting depository corporation, make
3 a sale, merger, or conversion pursuant to this division in which it
4 would acquire any deposit or fiduciary account that it is not
5 authorized to accept.

6 (2) Notwithstanding paragraph (1) and Division 1.1
7 (commencing with Section 1000), a California state bank or savings
8 and loan association may, as the selling, disappearing, or converting
9 depository corporation, make a sale, merger, or conversion pursuant
10 to this division in which it transfers to an industrial loan company
11 deposits or fiduciary accounts that the industrial loan company is
12 not authorized to accept, and a California industrial loan company
13 may, as the purchasing, surviving, or resulting depository
14 corporation, make a sale, merger, or conversion pursuant to this
15 division in which it acquires deposits or fiduciary accounts that it
16 is not authorized to accept, if, concurrently with the effective time
17 of the sale, merger, or conversion, the industrial loan company,
18 pursuant to Article 5 (commencing with Section 4879.01) of
19 Chapter 3 or other applicable law, sells all those deposit accounts
20 and fiduciary accounts to a depository corporation that is authorized
21 to accept them.

22 ~~SEC. 58.~~

23 *SEC. 59.* Section 4871.5 of the Financial Code is amended to
24 read:

25 4871.5. (a) No provision of Division 1.1 (commencing with
26 Section 1000), except the provisions of Chapter 19 (commencing
27 with Section 1670) of Division 1.1, prohibits or restricts a sale in
28 a case where the seller is a California state bank or a California
29 industrial loan company.

30 (b) No provision of Division 2 (commencing with Section 5000)
31 prohibits or restricts a sale in a case where the seller is a California
32 state savings and loan association.

33 ~~SEC. 59.~~

34 *SEC. 60.* Section 4877.03 of the Financial Code is amended
35 to read:

36 4877.03. No provision of Division 1.1 (commencing with
37 Section 1000), except the provisions of Chapter 19 (commencing
38 with Section 1670) of Division 1.1, prohibits or restricts a sale in
39 a case where the seller is a California state bank or a California
40 industrial loan company.

1 ~~SEC. 60.~~

2 *SEC. 61.* Section 4901.5 of the Financial Code is amended to
3 read:

4 4901.5. (a) No provision of Division 1.1 (commencing with
5 Section 1000), except the provisions of Chapter 19 (commencing
6 with Section 1670) of Division 1.1, prohibits or restricts the merger
7 of a California state bank or California industrial loan company.

8 (b) No provision of Division 2 (commencing with Section 5000)
9 prohibits or restricts the merger of a California state savings and
10 loan association.

11 ~~SEC. 61.~~

12 *SEC. 62.* Section 4961.5 of the Financial Code is amended to
13 read:

14 4961.5. (a) No provision of Division 1.1 (commencing with
15 Section 1000), except the provisions of Chapter 19 (commencing
16 with Section 1670) of Division 1.1, prohibits or restricts the
17 conversion of a California state bank.

18 (b) No provision of Division 2 (commencing with Section 5000)
19 prohibits or restricts the conversion of a California state savings
20 and loan association.

21 (c) No provision of Division 7 (commencing with Section
22 18000), except the provisions of Chapter 10 (commencing with
23 Section 18660) of Division 7, prohibits or restricts the conversion
24 of a California industrial loan company.

25 ~~SEC. 62.~~

26 *SEC. 63.* Section 4970 of the Financial Code is amended to
27 read:

28 4970. For purposes of this division:

29 (a) “Annual percentage rate” means the annual percentage rate
30 for the loan calculated according to the provisions of the federal
31 Truth in Lending Act and the regulations adopted thereunder by
32 the Federal Reserve Board.

33 (b) “Covered loan” means a consumer loan in which the original
34 principal balance of the loan does not exceed the most current
35 conforming loan limit for a single-family first mortgage loan
36 established by the Federal National Mortgage Association in the
37 case of a mortgage or deed of trust, and where one of the following
38 conditions are met:

39 (1) For a mortgage or deed of trust, the annual percentage rate
40 at consummation of the transaction will exceed by more than eight

1 percentage points the yield on Treasury securities having
2 comparable periods of maturity on the 15th day of the month
3 immediately preceding the month in which the application for the
4 extension of credit is received by the creditor.

5 (2) The total points and fees payable by the consumer at or
6 before closing for a mortgage or deed of trust will exceed 6 percent
7 of the total loan amount.

8 (c) “Points and fees” shall include the following:

9 (1) All items required to be disclosed as finance charges under
10 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal
11 Regulations, including the Official Staff Commentary, as amended
12 from time to time, except interest.

13 (2) All compensation and fees paid to mortgage brokers in
14 connection with the loan transaction.

15 (3) All items listed in Section 226.4(c)(7) of Title 12 of the Code
16 of Federal Regulations, only if the person originating the covered
17 loan receives direct compensation in connection with the charge.

18 (d) “Consumer loan” means a consumer credit transaction that
19 is secured by real property located in this state used, or intended
20 to be used or occupied, as the principal dwelling of the consumer
21 that is improved by a one-to-four residential unit. “Consumer loan”
22 does not include a reverse mortgage, an open line of credit as
23 defined in Part 226 of Title 12 of the Code of Federal Regulations
24 (Regulation Z), or a consumer credit transaction that is secured by
25 rental property or second homes. “Consumer loan” does not include
26 a bridge loan. For purposes of this division, a bridge loan is any
27 temporary loan, having a maturity of one year or less, for the
28 purpose of acquisition or construction of a dwelling intended to
29 become the consumer’s principal dwelling.

30 (e) “Original principal balance” means the total initial amount
31 the consumer is obligated to repay on the loan.

32 (f) “Licensing agency” shall mean the Department of Real Estate
33 for licensed real estate brokers, the Department of Corporations
34 for licensed residential mortgage lenders and licensed finance
35 lenders and brokers, and the Department of Financial Institutions
36 for commercial and industrial banks and savings associations and
37 credit unions organized in this state.

38 (g) “Licensed person” means a real estate broker licensed under
39 the Real Estate Law (Part 1 (commencing with Section 10000) of
40 Division 4 of the Business and Professions Code), a finance lender

1 or broker licensed under the California Finance Lenders Law
2 (Division 9 (commencing with Section 22000)), a residential
3 mortgage lender licensed under the California Residential Mortgage
4 Lending Act (Division 20 (commencing with Section 50000)), a
5 commercial or industrial bank organized under the Banking Law
6 (Division 1.1 (commencing with Section 1000)), a savings
7 association organized under the Savings Association Law (Division
8 2 (commencing with Section 5000)), and a credit union organized
9 under the California Credit Union Law (Division 5 (commencing
10 with Section 14000)). Nothing in this division shall be construed
11 to prevent any enforcement by a governmental entity against any
12 person who originates a loan and who is exempt or excluded from
13 licensure by all of the licensing agencies, based on a violation of
14 any provision of this division. Nothing in this division shall be
15 construed to prevent the Department of Real Estate from enforcing
16 this division against a licensed salesperson employed by a licensed
17 real estate broker as if that salesperson were a licensed person
18 under this division. A licensed person includes any person engaged
19 in the practice of consumer lending, as defined in this division, for
20 which a license is required under any other provision of law, but
21 whose license is invalid, suspended or revoked, or where no license
22 has been obtained.

23 (h) “Originate” means to arrange, negotiate, or make a consumer
24 loan.

25 (i) “Servicer” has the same meaning provided in Section 6 (i)(2)
26 of the Real Estate Settlement Procedures Act of 1974.

27 ~~SEC. 63.~~

28 *SEC. 64.* Section 4982 of the Financial Code is amended to
29 read:

30 4982. Any violation of this division by a bank is a violation of
31 Division 1.1 (commencing with Section 1000); a violation by a
32 savings association is a violation of Division 2 (commencing with
33 Section 5000); a violation by a credit union is a violation of
34 Division 5 (commencing with Section 14000); and a violation by
35 an industrial loan company is a violation of Division 7
36 (commencing with Section 18000).

37 ~~SEC. 64.~~

38 *SEC. 65.* Section 4990 of the Financial Code is amended to
39 read:

1 4990. (a) Any person convicted of a felony violation of any
2 of the provisions specified in subdivision (b) shall not serve in any
3 capacity as a director or officer or in any other position involving
4 any management duties with a financial institution in this state
5 with accounts insured by an agency or instrumentality of the United
6 States or a private share insurance or guaranty arrangement. This
7 subdivision does not, however, apply to any director or officer of
8 a financial institution, or to persons serving in managerial positions
9 for financial institutions, whose office or employment with a
10 financial institution commenced, and whose felony conviction
11 occurred, prior to January 1, 1991.

12 (b) Subdivision (a) applies to felony convictions of offenses
13 specified in Chapter 10 (commencing with Section 1320) of
14 Division 1.1, Article 4 (commencing with Section 5300) of Chapter
15 1 of Division 2, Article 8 (commencing with Section 14750) of
16 Chapter 4 of Division 5, and Chapter 6 (commencing with Section
17 18435) of Division 7. Subdivision (a) also applies to felony
18 convictions of offenses specified in provisions of the laws of the
19 United States added or amended by the federal Financial
20 Institutions Reform, Recovery, and Enforcement Act of 1989
21 (Public Law 101-73).

22 (c) On and after January 1, 1991, any person who seeks
23 employment by, or a controlling interest in, a financial institution
24 specified in subdivision (a) shall, as a condition to obtaining that
25 employment or controlling interest, permit the financial institution,
26 its regulatory agency, or both to have access to that person's state
27 summary criminal history information, as defined in Section 11105
28 of the Penal Code, for purposes of determining whether the person
29 has a prior conviction of a felony offense specified in subdivision
30 (b) or any theft offense.

31 (d) Any state summary criminal history information obtained
32 pursuant to this subdivision shall be kept confidential and no
33 recipient under this subdivision shall disclose the contents other
34 than for the purpose of determining eligibility for employment by,
35 or acquisition of a controlling interest in, a financial institution
36 specified in subdivision (a).

37 (e) The authority granted by this section to the commissioner
38 and other regulatory agencies shall be in addition to any other
39 authority granted by law to obtain information about the
40 background of any person. Nothing in this section shall be

1 construed to limit any authority of the commissioner or any
2 regulatory agency otherwise provided by law.

3 ~~SEC. 65.~~

4 *SEC. 66.* Section 4995 of the Financial Code is amended to
5 read:

6 4995. The following definitions shall apply for purposes of
7 this division:

8 (a) “Higher-priced mortgage loan” has the meaning set forth in
9 Part 226 of Title 12 of the Code of Federal Regulations.

10 (b) “Licensed person” means a real estate broker licensed under
11 the Real Estate Law (Part 1 (commencing with Section 10000) of
12 Division 4 of the Business and Professions Code), a finance lender
13 or broker licensed under the California Finance Lenders Law
14 (Division 9 (commencing with Section 22000)), a residential
15 mortgage lender licensed under the California Residential Mortgage
16 Lending Act (Division 20 (commencing with Section 50000)), a
17 commercial or industrial bank organized under the Banking Law
18 (Division 1.1 (commencing with Section 1000)), a savings
19 association organized under the Savings Association Law (Division
20 2 (commencing with Section 5000)), and a credit union organized
21 under the California Credit Union Law (Division 5 (commencing
22 with Section 14000)).

23 (c) “Mortgage broker” means a licensed person who provides
24 mortgage brokerage services. For purposes of this division, a
25 licensed person who makes home loans is a “mortgage broker,”
26 and subject to the requirements of this division applicable to
27 mortgage brokers, only with respect to transactions in which the
28 licensed person provides mortgage brokerage services.

29 (d) “Mortgage brokerage services” means arranging or
30 attempting to arrange, as exclusive agent for the borrower or as
31 dual agent for the borrower and lender, for compensation or in
32 expectation of compensation, paid directly or indirectly, a
33 higher-priced mortgage loan made by an unaffiliated third party.

34 ~~SEC. 66.~~

35 *SEC. 67.* Section 18003 of the Financial Code is amended to
36 read:

37 18003. “Industrial loan company,” “thrift and loan company,”
38 or “company” as used in this division means a premium finance
39 agency as defined in Section 18560. Notwithstanding any other
40 provision of this chapter, these terms and this division do not apply

- 1 to an industrial bank subject to, and governed by, Chapter 15
- 2 (commencing with Section 1530) of Division 1.1.

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