

AMENDED IN ASSEMBLY AUGUST 6, 1998

AMENDED IN ASSEMBLY JULY 6, 1998

AMENDED IN SENATE MAY 5, 1998

AMENDED IN SENATE MARCH 30, 1998

SENATE BILL

No. 2189

Introduced by Senator Vasconcellos

(Principal coauthor: Assembly Member Kuykendall)

February 20, 1998

~~An act to add Chapter 2 (commencing with Section 14100) to Part 5 of Division 3 of Title 1 of the Corporations Code, relating to small business venture funds. An act to amend Section 25102 of, to add Section 25208 to, and to add Division 3 (commencing with Section 28000) to Title 4 of, the Corporations Code, relating to capital access companies.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 2189, as amended, Vasconcellos. Small business venture funds.

Existing law establishes certain programs, including those contained in the Small Business Development Corporation Law, to promote the economic development of small businesses in the state.

This bill would, in addition, ~~establish the California Small Business Venture Fund Program~~ *enact the Capital Access Company Law*, which would provide for the licensure and regulation by the Commissioner of Corporations, of ~~small business venture funds~~ *capital access companies*, to enable

those entities to provide risk capital and management assistance to small businesses in the state, exempt from the requirements of the federal Investment Company Act of 1940.

This bill would prescribe certain fees to be paid by applicants for licensure under these provisions and for other related matters, and would require that those fees be deposited into the State Corporations Fund.

This bill would also impose civil penalties for violations, and criminal penalties for willful violations, of these provisions. By the creation of new crimes, this bill would impose a state-mandated local program.

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

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

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

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

1 ~~SECTION 1. Chapter 2 (commencing with Section~~
2 *SECTION 1. Section 25102 of the Corporations Code*
3 *is amended to read:*

4 25102. The following transactions are exempt from
5 the provisions of Section 25110:

6 (a) Any offer (but not a sale) not involving any public
7 offering and the execution and delivery of any agreement
8 for the sale of securities pursuant to the offer if (1) the
9 agreement contains substantially the following provision:
10 “The sale of the securities that are the subject of this
11 agreement has not been qualified with the Commissioner
12 of Corporations of the State of California and the issuance
13 of the securities or the payment or receipt of any part of
14 the consideration therefor prior to the qualification is
15 unlawful, unless the sale of securities is exempt from the
16 qualification by Section 25100, 25102, or 25105 of the
17 California Corporations Code. The rights of all parties to
18 this agreement are expressly conditioned upon the



1 qualification being obtained, unless the sale is so exempt";
2 and (2) no part of the purchase price is paid or received
3 and none of the securities are issued until the sale of the
4 securities is qualified under this law unless the sale of
5 securities is exempt from the qualification by this section,
6 Section 25100, or 25105.

7 (b) Any offer (but not a sale) of a security for which
8 a registration statement has been filed under the
9 Securities Act of 1933 but has not yet become effective,
10 or for which an offering statement under Regulation A
11 has been filed but has not yet been qualified, if no stop
12 order or refusal order is in effect and no public
13 proceeding or examination looking toward such an order
14 is pending under Section 8 of the act and no order under
15 Section 25140 or subdivision (a) of Section 25143 is in
16 effect under this law.

17 (c) Any offer (but not a sale) and the execution and
18 delivery of any agreement for the sale of securities
19 pursuant to the offer as may be permitted by the
20 commissioner upon application. Any negotiating permit
21 under this subdivision shall be conditioned to the effect
22 that none of the securities may be issued and none of the
23 consideration therefor may be received or accepted until
24 the sale of the securities is qualified under this law.

25 (d) Any transaction or agreement between the issuer
26 and an underwriter or among underwriters if the sale of
27 the securities is qualified, or exempt from qualification, at
28 the time of distribution thereof in this state, if any.

29 (e) Any offer or sale of any evidence of indebtedness,
30 whether secured or unsecured, and any guarantee
31 thereof, in a transaction not involving any public offering.

32 (f) Any offer or sale of any security in a transaction
33 (other than an offer or sale to a pension or profit-sharing
34 trust of the issuer) that meets each of the following
35 criteria:

36 (1) Sales of the security are not made to more than 35
37 persons, including persons not in this state.

38 (2) All purchasers either have a preexisting personal
39 or business relationship with the offeror or any of its
40 partners, officers, directors or controlling persons, or



1 managers (as appointed or elected by the members) if
2 the offeror is a limited liability company, or by reason of
3 their business or financial experience or the business or
4 financial experience of their professional advisors who are
5 unaffiliated with and who are not compensated by the
6 issuer or any affiliate or selling agent of the issuer, directly
7 or indirectly, could be reasonably assumed to have the
8 capacity to protect their own interests in connection with
9 the transaction.

10 (3) Each purchaser represents that the purchaser is
11 purchasing for the purchaser's own account (or a trust
12 account if the purchaser is a trustee) and not with a view
13 to or for sale in connection with any distribution of the
14 security.

15 (4) The offer and sale of the security is not
16 accomplished by the publication of any advertisement.
17 The number of purchasers referred to above is exclusive
18 of any described in subdivision (i), any officer, director or
19 affiliate of the issuer, or manager (as appointed or elected
20 by the members) if the issuer is a limited liability
21 company, and any other purchaser who the
22 commissioner designates by rule. For purposes of this
23 section, a husband and wife (together with any custodian
24 or trustee acting for the account of their minor children)
25 are counted as one person and a partnership, corporation
26 or other organization that was not specifically formed for
27 the purpose of purchasing the security offered in reliance
28 upon this exemption, is counted as one person. The
29 commissioner may by rule require the issuer to file a
30 notice of transactions under this subdivision. However,
31 the failure to file the notice or the failure to file the notice
32 within the time specified by the rule of the commissioner
33 shall not affect the availability of this exemption. An issuer
34 who fails to file the notice as provided by rule of the
35 commissioner shall, within 15 business days after demand
36 by the commissioner, file the notice and pay to the
37 commissioner a fee equal to the fee payable had the
38 transaction been qualified under Section 25110.

39 (g) Any offer or sale of conditional sale agreements,
40 equipment trust certificates, or certificates of interest or



1 participation therein or partial assignments thereof,
2 covering the purchase of railroad rolling stock or
3 equipment or the purchase of motor vehicles, aircraft, or
4 parts thereof, in a transaction not involving any public
5 offering.

6 (h) Any offer or sale of voting common stock by a
7 corporation incorporated in any state if, immediately
8 after the proposed sale and issuance, there will be only
9 one class of stock of the corporation outstanding that is
10 owned beneficially by no more than 35 persons, provided
11 all of the following requirements have been met:

12 (1) The offer and sale of the stock is not accompanied
13 by the publication of any advertisement, and no selling
14 expenses have been given, paid, or incurred in
15 connection therewith.

16 (2) The consideration to be received by the issuer for
17 the stock to be issued shall consist of (i) only assets (which
18 may include cash) of an existing business enterprise
19 transferred to the issuer upon its initial organization, of
20 which all of the persons who are to receive the stock to be
21 issued pursuant to this exemption were owners during,
22 and the enterprise was operated for, a period of not less
23 than one year immediately preceding the proposed
24 issuance, and the ownership of the enterprise
25 immediately prior to the proposed issuance was in the
26 same proportions as the shares of stock are to be issued,
27 or (ii) only cash or cancellation of indebtedness for
28 money borrowed or both upon the initial organization of
29 the issuer, provided all of the stock is issued for the same
30 price per share, or (iii) only cash, provided the sale is
31 approved in writing by each of the existing shareholders
32 and the purchaser or purchasers are existing
33 shareholders, or (iv), in a case where after the proposed
34 issuance there will be only one owner of the stock of the
35 issuer, any legal consideration.

36 (3) No promotional consideration has been given,
37 paid, or incurred in connection with the issuance.
38 Promotional consideration means any consideration paid
39 directly or indirectly to a person who, acting alone or in
40 conjunction with one or more other persons, takes the



1 initiative in founding and organizing the business or
2 enterprise of an issuer, for services rendered in
3 connection with the founding or organizing.

4 (4) A notice in a form prescribed by rule of the
5 commissioner, signed by an active member of the State
6 Bar of California, shall be filed with or mailed for filing to
7 the commissioner not later than 10 business days after
8 receipt of consideration for the securities by the issuer,
9 which notice shall contain an opinion of the member of
10 the State Bar of California that the exemption provided
11 by this subdivision is available for the offer and sale of the
12 securities. However, the failure to file the notice as
13 required by this subdivision and the rules of the
14 commissioner shall not affect the availability of this
15 exemption. An issuer who fails to file the notice within the
16 time specified by this subdivision shall, within 15 business
17 days after demand by the commissioner, file the notice
18 and pay to the commissioner a fee equal to the fee payable
19 had the transaction been qualified under Section 25110.
20 The notice, except when filed on behalf of a California
21 corporation, shall be accompanied by an irrevocable
22 consent, in the form that the commissioner by rule
23 prescribes, appointing the commissioner or his or her
24 successor in office to be the issuer's attorney to receive
25 service of any lawful process in any noncriminal suit,
26 action, or proceeding against it or its successor that arises
27 under this law or any rule or order hereunder after the
28 consent has been filed, with the same force and validity
29 as if served personally on the issuer. An issuer on whose
30 behalf a consent has been filed in connection with a
31 previous qualification or exemption from qualification
32 under this law (or application for a permit under any
33 prior law if the application or notice under this law states
34 that the consent is still effective) need not file another.
35 Service may be made by leaving a copy of the process in
36 the office of the commissioner but it is not effective unless
37 (1) the plaintiff, who may be the commissioner in a suit,
38 action, or proceeding instituted by him or her, forthwith
39 sends notice of the service and a copy of the process by
40 registered or certified mail to the defendant or



1 respondent at its last address on file with the
2 commissioner, and (2) the plaintiff's affidavit of
3 compliance with this section is filed in the case on or
4 before the return day of the process, if any, or within the
5 further time as the court allows.

6 (5) Each purchaser represents that the purchaser is
7 purchasing for the purchaser's own account, or a trust
8 account if the purchaser is a trustee, and not with a view
9 to or for sale in connection with any distribution of the
10 stock.

11 For the purposes of this subdivision, all securities held
12 by a husband and wife, whether or not jointly, shall be
13 considered to be owned by one person, and all securities
14 held by a corporation that has issued stock pursuant to this
15 exemption shall be considered to be held by the
16 shareholders to whom it has issued the stock.

17 All stock issued by a corporation pursuant to this
18 subdivision as it existed prior to the effective date of the
19 amendments to this section made during the 1996 portion
20 of the 1995–96 Regular Session that required the issuer to
21 have stamped or printed prominently on the face of the
22 stock certificate a legend in a form prescribed by rule of
23 the commissioner restricting transfer of the stock in a
24 manner provided for by that rule shall not be subject to
25 the transfer restriction legend requirement and, by
26 operation of law, the corporation is authorized to remove
27 that transfer restriction legend from the certificates of
28 those shares of stock issued by the corporation pursuant
29 to this subdivision as it existed prior to the effective date
30 of the amendments to this section made during the 1996
31 portion of the 1995–96 Regular Session.

32 (i) Any offer or sale (1) to a bank, savings and loan
33 association, trust company, insurance company,
34 investment company registered under the Investment
35 Company Act of 1940, pension or profit-sharing trust
36 (other than a pension or profit-sharing trust of the issuer,
37 a self-employed individual retirement plan, or individual
38 retirement account), or other institutional investor or
39 governmental agency or instrumentality that the
40 commissioner may designate by rule, whether the



1 purchaser is acting for itself or as trustee, or (2) to any
2 corporation with outstanding securities registered under
3 Section 12 of the Securities Exchange Act of 1934 or any
4 wholly owned subsidiary of such a corporation that after
5 the offer and sale will own directly or indirectly 100
6 percent of the outstanding capital stock of the issuer;
7 provided the purchaser represents that it is purchasing
8 for its own account (or for the trust account) for
9 investment and not with a view to or for sale in
10 connection with any distribution of the security.

11 (j) Any offer or sale of any certificate of interest or
12 participation in an oil or gas title or lease (including
13 subsurface gas storage and payments out of production)
14 if (1) all of the purchasers: (i) are and have been during
15 the preceding two years engaged primarily in the
16 business of drilling for, producing, or refining oil or gas
17 (or whose corporate predecessor, in the case of a
18 corporation, has been so engaged), or (ii) are persons
19 described in clause (1) of subdivision (i) of this section,
20 or (iii) have been found by the commissioner upon
21 written application to be substantially engaged in the
22 business of drilling for, producing, or refining oil or gas so
23 as not to require the protection provided by this law
24 (which finding shall be effective until rescinded), or (2)
25 the security is concurrently hypothecated to a bank in the
26 ordinary course of business to secure a loan made by the
27 bank; provided each purchaser represents that it is
28 purchasing for its own account for investment and not
29 with a view to or for sale in connection with any
30 distribution of the security.

31 (k) Any offer or sale of any security under, or pursuant
32 to, a plan of reorganization under Chapter 11 of the
33 federal bankruptcy law that has been confirmed or is
34 subject to confirmation by the decree or order of a court
35 of competent jurisdiction.

36 (l) Any offer or sale of an option, warrant, put, call, or
37 straddle, and any guarantee of any of these securities, by
38 a person who is not the issuer of the security subject to the
39 right, if the transaction, had it involved an offer or sale of



1 the security subject to the right by the person, would not
2 have violated Section 25110 or 25130.

3 (m) Any offer or sale of a stock to a pension,
4 profit-sharing, stock bonus or employee stock ownership
5 plan provided that (1) the plan meets the requirements
6 for qualification under Section 401 of the Internal
7 Revenue Code, and (2) the employees are not required
8 or permitted individually to make any contributions to
9 the plan. The exemption provided by this subdivision
10 shall not be affected by whether the stock is contributed
11 to the plan, purchased from the issuer with contributions
12 by the issuer or an affiliate of the issuer, or purchased from
13 the issuer with funds borrowed from the issuer, an
14 affiliate of the issuer or any other lender.

15 (n) Any offer or sale of any security in a transaction,
16 other than an offer or sale of a security in a rollup
17 transaction, that meets all of the following criteria:

18 (1) The issuer is (A) a California corporation or
19 foreign corporation that, at the time of the filing of the
20 notice required under this subdivision, is subject to
21 Section 2115, or (B) any other form of business entity,
22 including without limitation a partnership or trust
23 organized under the laws of this state. The exemption
24 provided by this subdivision is not available to a “blind
25 pool” issuer, as that term is defined by the commissioner,
26 or to an investment company subject to the Investment
27 Company Act of 1940.

28 (2) Sales of securities are made only to qualified
29 purchasers or other persons the issuer reasonably
30 believes, after reasonable inquiry, to be qualified
31 purchasers. A corporation, partnership, or other
32 organization specifically formed for the purpose of
33 acquiring the securities offered by the issuer in reliance
34 upon this exemption may be a qualified purchaser if each
35 of the equity owners of the corporation, partnership, or
36 other organization is a qualified purchaser. Qualified
37 purchasers include the following:

38 (A) A person designated in Section 260.102.13 of Title
39 10 of the California Code of Regulations.



1 (B) A person designated in subdivision (i) or any rule
2 of the commissioner adopted thereunder.

3 (C) A pension or profit-sharing trust of the issuer, a
4 self-employed individual retirement plan, or an
5 individual retirement account, if the investment
6 decisions made on behalf of the trust, plan, or account are
7 made solely by persons who are qualified purchasers.

8 (D) An organization described in Section 501(c)(3) of
9 the Internal Revenue Code, corporation, Massachusetts
10 or similar business trust, or partnership, each with total
11 assets in excess of five million dollars (\$5,000,000)
12 according to its most recent audited financial statements.

13 (E) With respect to the offer and sale of one class of
14 voting common stock of an issuer or of preferred stock of
15 an issuer entitling the holder thereof to at least the same
16 voting rights as the issuer's one class of voting common
17 stock, provided that the issuer has only one-class voting
18 common stock outstanding upon consummation of the
19 offer and sale, a natural person who, either individually
20 or jointly with the person's spouse, (i) has a minimum net
21 worth of two hundred fifty thousand dollars (\$250,000)
22 and had, during the immediately preceding tax year,
23 gross income in excess of one hundred thousand dollars
24 (\$100,000) and reasonably expects gross income in excess
25 of one hundred thousand dollars (\$100,000) during the
26 current tax year or (ii) has a minimum net worth of five
27 hundred thousand dollars (\$500,000). "Net worth" shall
28 be determined exclusive of home, home furnishings, and
29 automobiles. Other assets included in the computation of
30 net worth may be valued at fair market value.

31 Each natural person specified above, by reason of his or
32 her business or financial experience, or the business or
33 financial experience of his or her professional advisor,
34 who is unaffiliated with and who is not compensated,
35 directly or indirectly, by the issuer or any affiliate or
36 selling agent of the issuer, can be reasonably assumed to
37 have the capacity to protect his or her interests in
38 connection with the transaction. The amount of the
39 investment of each natural person shall not exceed 10



1 percent of the net worth, as determined by this
2 subparagraph, of that natural person.

3 (F) Any other purchaser designated as qualified by
4 rule of the commissioner.

5 (3) Each purchaser represents that the purchaser is
6 purchasing for the purchaser's own account (or trust
7 account, if the purchaser is a trustee) and not with a view
8 to or for sale in connection with a distribution of the
9 security.

10 (4) Each natural person purchaser, including a
11 corporation, partnership, or other organization
12 specifically formed by natural persons for the purpose of
13 acquiring the securities offered by the issuer, receives, at
14 least five business days before securities are sold to, or a
15 commitment to purchase is accepted from, the
16 purchaser, a written offering disclosure statement that
17 shall meet the disclosure requirements of Regulation D
18 (17 C.F.R. 230.501 et seq.), and any other information as
19 may be prescribed by rule of the commissioner; provided
20 that the issuer shall not be obligated pursuant to this
21 paragraph to provide this disclosure statement to a
22 natural person qualified under Section 260.102.13 of Title
23 10 of the California Code of Regulations. The offer or sale
24 of securities pursuant to a disclosure statement required
25 by this paragraph in violation of Section 25401, or that fails
26 to meet the disclosure requirements of Regulation D (17
27 C.F.R. 230.501 et seq.), shall not render unavailable to the
28 issuer the claim of an exemption from Section 25110
29 afforded by this subdivision. This paragraph does not
30 impose, directly or indirectly, any additional disclosure
31 obligation with respect to any other exemption from
32 qualification available under any other provision of this
33 section.

34 (5) (A) A general announcement of proposed
35 offering may be published by written document only,
36 provided that the general announcement of proposed
37 offering sets forth the following required information:

- 38 (i) The name of the issuer of the securities.
39 (ii) The full title of the security to be issued.

1 (iii) The anticipated suitability standards for
2 prospective purchasers.

3 (iv) A statement that (I) no money or other
4 consideration is being solicited or will be accepted, (II)
5 an indication of interest made by a prospective purchaser
6 involves no obligation or commitment of any kind, and,
7 if the issuer is required by paragraph (4) to deliver a
8 disclosure statement to prospective purchasers, (III) no
9 sales will be made or commitment to purchase accepted
10 until five business days after delivery of a disclosure
11 statement and subscription information to the
12 prospective purchaser in accordance with the
13 requirements of this subdivision.

14 (v) Any other information required by rule of the
15 commissioner.

16 (vi) The following legend: “For more complete
17 information about (Name of Issuer) and (Full Title of
18 Security), send for additional information from (Name
19 and Address) by sending this coupon or calling
20 (Telephone Number).”

21 (B) The general announcement of proposed offering
22 referred to in subparagraph (A) may also set forth the
23 following information:

24 (i) A brief description of the business of the issuer.

25 (ii) The geographic location of the issuer and its
26 business.

27 (iii) The price of the security to be issued, or, if the
28 price is not known, the method of its determination or the
29 probable price range as specified by the issuer, and the
30 aggregate offering price.

31 (C) The general announcement of proposed offering
32 shall contain only the information that is set forth in this
33 paragraph.

34 (D) Dissemination of the general announcement of
35 proposed offering to persons who are not qualified
36 purchasers, without more, shall not disqualify the issuer
37 from claiming the exemption under this subdivision.

38 (6) No telephone solicitation shall be permitted until
39 the issuer has determined that the prospective purchaser
40 to be solicited is a qualified purchaser.



1 (7) The issuer files a notice of transaction under this
2 subdivision both (A) concurrent with the publication of
3 a general announcement of proposed offering or at the
4 time of the initial offer of the securities, whichever occurs
5 first, accompanied by a filing fee, and (B) within 10
6 business days following the close or abandonment of the
7 offering, but in no case more than 210 days from the date
8 of filing the first notice. The first notice of transaction
9 under subparagraph (A) shall contain an undertaking, in
10 a form acceptable to the commissioner, to deliver any
11 disclosure statement required by paragraph (4) to be
12 delivered to prospective purchasers, and any supplement
13 thereto, to the commissioner within 10 days of the
14 commissioner's request for the information. The
15 exemption from qualification afforded by this subdivision
16 is unavailable if an issuer fails to file the first notice
17 required under subparagraph (A) or to pay the filing fee.
18 The commissioner has the authority to assess an
19 administrative penalty of up to one thousand dollars
20 (\$1,000) against an issuer that fails to deliver the
21 disclosure statement required to be delivered to the
22 commissioner upon the commissioner's request within
23 the time period set forth above. Neither the filing of the
24 disclosure statement nor the failure by the commissioner
25 to comment thereon precludes the commissioner from
26 taking any action deemed necessary or appropriate
27 under this division with respect to the offer and sale of the
28 securities.

29 (o) An offer or sale of any security issued pursuant to
30 a stock purchase plan or agreement, or issued pursuant to
31 a stock option plan or agreement, where the security is
32 exempt from registration under the Securities Act of
33 1933, as amended, pursuant to Rule 701 adopted pursuant
34 to that act (17 C.F.R. 230.701), the provisions of which are
35 hereby incorporated by reference into this section;
36 provided that (1) the terms of any stock purchase plan or
37 agreement shall comply with Sections 260.140.42,
38 260.140.45, and 260.140.46 of Title 10 of the California
39 Code of Regulations, (2) the terms of any stock option
40 plan or agreement shall comply with Sections 260.140.41,



1 260.140.45, and 260.140.46 of Title 10 of the California
2 Code of Regulations, and (3) the issuer files a notice of
3 transaction in accordance with rules adopted by the
4 commissioner within 30 days after the initial issuance of
5 any security under that plan, accompanied by a filing fee
6 as prescribed by subdivision (y) of Section 25608.

7 *(p) An offer or sale of nonredeemable securities to*
8 *accredited investors (Section 28031) by a person licensed*
9 *under the Capital Access Company Law (Division 3*
10 *(commencing with Section 28000) of Title 4). All*
11 *nonredeemable securities shall be evidenced by*
12 *certificates that shall have stamped or printed*
13 *prominently on their face a legend in a form to be*
14 *prescribed by rule or order of the commissioner*
15 *restricting transfer of the securities in the manner as the*
16 *rule or order provides.*

17 *SEC. 2. Section 25208 is added to the Corporations*
18 *Code, to read:*

19 *25208. A person licensed as a capital access company*
20 *under Division 3 (commencing with Section 28000) of*
21 *Title 4 is exempt from the provisions of Section 25210*
22 *when engaged in the transaction of business pursuant to*
23 *the requirements of the Capital Access Company Law*
24 *and the regulations promulgated thereunder.*

25 *SEC. 3. Division 3 (commencing with Section 28000)*
26 *is added to Title 4 of the Corporations Code, to read:*

27

28 *DIVISION 3. CAPITAL ACCESS COMPANIES*

29

30 *CHAPTER 1. GENERAL PROVISIONS*

31

32 *Article 1. Short Title and Construction*

33

34 *28000. This division shall be known and may be cited*
35 *as the "Capital Access Company Law."*

36 *28001. This division shall be liberally construed to*
37 *accomplish its purposes.*

38 *28002. The provisions of the Corporate Securities Law*
39 *of 1968 (Division 1 (commencing with Section 25000) of*
40 *Title 4) shall apply to licensees.*



1 28003. *The Legislature finds all of the following:*

2 (a) *It is necessary to increase job opportunities in the*
3 *state.*

4 (b) *Promoting the establishment, growth, and*
5 *expansion of small business firms in this state is an*
6 *efficient way to increase job opportunities in the state.*

7 (c) *Small business firms are unable to grow and create*
8 *job opportunities unless they have access to risk capital.*

9 (d) *Congress has exempted from the provisions of the*
10 *federal Investment Company Act of 1940, certain*
11 *companies that are not in the business of issuing*
12 *redeemable securities, the operations of which are*
13 *subject to state regulation governing entities that provide*
14 *financial or managerial assistance to enterprises doing*
15 *business, or proposing to do business, in that state.*

16 (e) *Therefore, in order for the state to obtain the full*
17 *benefits of that exemption, it is necessary that the state*
18 *provide for the licensure and regulation of capital access*
19 *companies, to permit these companies to operate*
20 *pursuant to the exemption from regulation under the*
21 *federal Investment Company Act of 1940.*

22 28004. (a) *The purpose of this division is to provide*
23 *for the licensure and regulation of capital access*
24 *companies that will provide risk capital and management*
25 *assistance, primarily to small business firms in the state,*
26 *to enable those companies to operate pursuant to the*
27 *exemption from regulation under the federal Investment*
28 *Company Act of 1940.*

29 (b) *The purpose of this division as set forth in*
30 *subdivision (a) constitutes the standard that the*
31 *commissioner shall observe in administering the*
32 *provisions of this division.*

33

34

Article 2. Definitions

35

36 28030. *Subject to additional definitions contained in*
37 *this division which are applicable to specific provisions of*
38 *this division, and unless the context otherwise requires,*
39 *the definitions in this article apply throughout this*
40 *division.*



1 28031. “Accredited investor” means a person who is
2 defined in Section 2(a)(15) of the Securities Act of 1933,
3 or any other person that the Securities and Exchange
4 Commission may so designate by rule, regulation, or
5 order, who, by purchasing the securities of a licensee,
6 provides the investment funds with which the licensee
7 will provide financial assistance to small business firms.

8 28032. “Affiliate” means any person or persons
9 controlling, controlled by, or under common control
10 with, other specified persons.

11 28033. “Commissioner” means the Commissioner of
12 Corporations or his or her designee with respect to a
13 particular matter.

14 28034. “Company” means a corporation, limited
15 partnership, limited liability company, or other form of
16 business entity, which is organized under the laws of the
17 State of California.

18 28035. “Control” means the possession, direct or
19 indirect, of the power to direct or cause the direction of
20 the management and policies of a specified person.

21 28036. “Controlling person,” when used with respect
22 to a specified person, means any person who controls the
23 specified person, directly or indirectly, through one or
24 more intermediaries.

25 28037. “Insolvent,” when used with respect to any
26 person, means a person who has ceased to pay his or her
27 debts in the ordinary course of business, who cannot pay
28 his or her debts as they become due, or whose liabilities
29 exceed his or her assets.

30 28038. “License” means a license issued under this
31 division authorizing a licensee to transact business as a
32 capital access company.

33 28039. “Licensee” means a company that is licensed
34 under this division.

35 28040. “Officer” means either of the following:

36 (a) When used with respect to a corporation, any
37 person appointed or designated as an officer of the
38 corporation by or pursuant to applicable law or the
39 articles of incorporation or bylaws of the corporation or
40 any person who performs with respect to the corporation



1 functions usually performed by an officer of a
2 corporation.

3 (b) When used with respect to a specified person other
4 than a natural person or a corporation, any person who
5 performs with respect to the specified person functions
6 usually performed by an officer of a corporation with
7 respect to the corporation.

8 28041. "Order" means any approval, consent,
9 authorization, exemption, denial, prohibition, or
10 requirement applicable to a specific case issued by the
11 commissioner. "Order" includes any condition of a
12 license and any agreement made by any person with the
13 commissioner under this division.

14 28042. "Parent," when used with respect to a
15 specified person other than a natural person, means any
16 person other than a natural person that controls the
17 specified person, directly or indirectly, through one or
18 more intermediaries.

19 28043. "Person" means any natural person,
20 proprietorship, joint venture, partnership, trust, business
21 trust, syndicate, association, joint stock company,
22 corporation, limited liability company, government,
23 agency of any government, or any other organization.
24 However, "person," when used with respect to acquiring
25 control of or controlling a specified person, includes any
26 combination of two or more persons acting in concert.

27 28044. "Principal securityholder," means any person
28 who owns, directly or indirectly, of record or beneficially,
29 securities representing 10 percent or more of the voting
30 power of the issuer of those securities.

31 28045. "To provide financing assistance to a person"
32 means to purchase securities issued by the person, either
33 directly from the person, or indirectly through a
34 securities underwriter.

35 28046. "Security" has the meaning set forth in Section
36 25019.

37 28047. "Small business firm" means a person that: (a)
38 proposes to transact, or transacts, business on a regular
39 and continuous basis in California; (b) has fewer than 500
40 employees; (c) is (1) a California corporation, (2) a



1 *foreign corporation, which is either (A) subject to Section*
2 *2115 without regard to the filing requirement under*
3 *Section 2108 or (B) not subject to Section 2115, but by*
4 *applying the three-factor test set forth in subdivision (a)*
5 *of Section 2115, has an average property factor, payroll*
6 *factor, and sales factor of not less than 25 percent during*
7 *the latest full income year, provided that the payroll*
8 *factor for the same period is at least 50 percent, and has*
9 *a percentage of outstanding voting securities held of*
10 *record, as of the last record date for a shareholder's*
11 *meeting, by persons having addresses in this state of at*
12 *least 25 percent, or (3) a limited partnership, limited*
13 *liability company, or other form of business entity*
14 *organized under the laws of the State of California; (d) is*
15 *not an investment company subject to the Investment*
16 *Company Act of 1940; and (e) is not a person that either*
17 *(1) has no specific business plan or purpose or (2) has*
18 *indicated that its business plan is to engage in mergers or*
19 *acquisitions with unidentified companies or other*
20 *entities.*

21 28048. “Subsidiary,” when used with respect to a
22 specified person other than a natural person, means any
23 person other than a natural person controlled by the
24 specified person, directly or indirectly, through one or
25 more intermediaries.

26 28049. “Voting power” has the meaning set forth in
27 Section 194.5.

28

29

CHAPTER 2. ADMINISTRATION

30

31 28100. The commissioner shall administer and
32 enforce the provisions of this division.

33 28101. Whenever the commissioner issues an order or
34 license under this division, the commissioner may impose
35 any conditions that are in his or her opinion necessary to
36 carry out the provisions and purposes of this division.

37 28102. Any application filed with the commissioner
38 under this division or under any regulation or order
39 issued under this division shall be in a form, shall contain
40 information, shall be signed in a manner, and shall be



1 *verified in a manner; that the commissioner may by*
2 *regulation or order require.*

3 *28103. In determining whether to approve any*
4 *application filed under this division or under any*
5 *regulation or order issued under this division, the*
6 *commissioner may consider proposals made by the*
7 *applicant, including, but not limited to, proposals to*
8 *appoint officers, sell securities, obtain financing, or*
9 *purchase securities of small business firms, and, if in the*
10 *opinion of the commissioner it is probable that the*
11 *applicant will be able to implement the proposal, the*
12 *commissioner may make findings on the basis of the*
13 *proposal. However, whenever the commissioner*
14 *approves an application on the basis, in whole or in part,*
15 *of a proposal made by the applicant, the commissioner*
16 *shall impose upon the approval appropriate conditions*
17 *requiring that the applicant implement the proposal*
18 *within a period of time specified by the commissioner.*

19 *28104. (a) The commissioner may do both of the*
20 *following:*

21 *(1) Make public or private investigations within or*
22 *outside this state that he or she deems necessary to*
23 *determine whether to approve any application filed*
24 *under this division or under any regulation or order*
25 *issued under this division, to determine whether any*
26 *person has violated or may violate any provision of this*
27 *division or of any regulation or order issued under this*
28 *division, to aid in the enforcement of any provision of this*
29 *division or of any regulation or order issued under this*
30 *division, or to aid in the issuing of regulations or orders*
31 *under this division.*

32 *(2) Publish information concerning any violation of*
33 *any provision of this division or of any regulation or order*
34 *issued under this division.*

35 *(b) For purposes of any investigation, examination, or*
36 *other proceeding under this division, the commissioner*
37 *may administer oaths and affirmations, subpoena*
38 *witnesses, compel their attendance, take evidence, and*
39 *require the production of any books, papers,*
40 *correspondence, memoranda, agreements, or other*



1 documents or records that the commissioner deems
2 relevant or material to the inquiry.

3 (c) In case of contumacy by, or refusal to obey a
4 subpoena issued to, any person, the superior court, upon
5 application by the commissioner, may issue to the person
6 an order requiring him or her to appear before the
7 commissioner, and to produce documentary evidence, if
8 so ordered, or to give evidence relevant to the matter
9 under investigation or in question. Failure to obey the
10 order of the court may be punished by the court as a
11 contempt.

12 28105. The commissioner may provide information
13 relating to a licensee or any parent or subsidiary of the
14 licensee to, or receive information relating to a licensee
15 or any parent or subsidiary of the licensee from, any
16 governmental agency.

17 28106. If the commissioner permits any licensee, any
18 affiliate of the licensee, or any governmental agency to
19 inspect or make copies of any record relating to the
20 licensee or to any director, officer, employee, or affiliate
21 of the licensee, or if the commissioner provides the
22 record, or a copy thereof, to any of those persons, Sections
23 6254 and 6255 of the Government Code shall continue to
24 apply to the record to the extent that these sections
25 applied to the record prior to that action by the
26 commissioner.

27 28107. The commissioner may refer any evidence
28 available concerning any violation of this division or of
29 any regulation or order issued under this division that
30 constitutes a crime to the district attorney of the county
31 in which the violation occurred, who may, with or
32 without that reference, institute appropriate criminal
33 proceedings.

34 28108. Before any applicant for a license is issued a
35 license, the applicant and each parent and subsidiary of
36 the applicant shall file, and each person that becomes a
37 parent or subsidiary of a licensee shall file, not less than
38 30 days after becoming a parent or subsidiary of the
39 licensee, with the commissioner, in the form the
40 commissioner may by regulation or order require, an



1 *irrevocable consent appointing the commissioner to be*
2 *the person's attorney in fact to receive service of any*
3 *lawful process in any noncriminal judicial or*
4 *administrative proceeding against the person, or the*
5 *person's successor, executor, or administrator, which*
6 *arises under this division or under any regulation or order*
7 *issued under this division after the consent has been filed,*
8 *with the same force and validity as if served personally on*
9 *the person. Service may be made by leaving a copy of the*
10 *process at any office of the commissioner, but the service*
11 *is not effective unless (a) the party making the service,*
12 *who may be the commissioner, forthwith sends notice of*
13 *the service and a copy of the process by registered or*
14 *certified mail to the person served at the person's last*
15 *address on file with the commissioner, and (b) an*
16 *affidavit of compliance with this section by the party*
17 *making service is filed on or before the return date, if any,*
18 *or within that further time as the court, in the case of a*
19 *judicial proceeding, or the administrative agency, in the*
20 *case of an administrative proceeding, allows.*

21 *28109. Whenever any person, including any*
22 *nonresident of this state, engages in conduct prohibited*
23 *or made actionable by this division or by any regulation*
24 *or order issued under this division, whether or not the*
25 *person has filed a consent to service of process under*
26 *Section 28108, and if personal jurisdiction over the person*
27 *cannot otherwise be obtained in this state, that conduct*
28 *shall be considered equivalent to the person's*
29 *appointment of the commissioner to be the person's*
30 *attorney in fact to receive service of any lawful process in*
31 *any noncriminal judicial or administrative proceeding*
32 *against the person or the person's successor, executor, or*
33 *administrator, which grows out of that conduct and which*
34 *is brought under this division or under any regulation or*
35 *order issued under this division, with the same force and*
36 *validity as if served on the person personally. Service may*
37 *be made by leaving a copy of the process in any office of*
38 *the commissioner, but the service is not effective unless*
39 *(a) the party making the service, who may be the*
40 *commissioner, forthwith sends notice of the service and*



1 a copy of the process by registered or certified mail to the
2 person served at the person's last known address or takes
3 other steps which are reasonably calculated to give actual
4 notice, and (b) an affidavit of compliance with this
5 section by the party making service is filed in the case on
6 or before the return date, if any, or within that further
7 time as the court, in the case of a judicial proceeding, or
8 the administrative agency, in the case of an
9 administrative proceeding, allows.

10 28110. (a) Fees shall be paid to, and collected by, the
11 commissioner, as follows:

12 (1) The fee for filing with the commissioner an
13 application for a license shall be no greater than two
14 thousand dollars (\$2,000).

15 (2) The fee for filing with the commissioner an
16 application for approval to acquire control of a licensee
17 shall be no greater than one thousand dollars (\$1,000).

18 (3) The fee for filing with the commissioner an
19 application for approval for a licensee to merge with
20 another company, an application for approval for a
21 licensee to purchase all or substantially all of the business
22 of another person, or an application for approval for a
23 licensee to sell all or substantially all of its business or of
24 the business of any of its offices to another licensee, shall
25 be no greater than one thousand dollars (\$1,000).
26 However, whenever two or more applications relating to
27 the same merger, purchase, or sale are filed with the
28 commissioner, the fee for filing each application shall be
29 the quotient determined by dividing one thousand
30 dollars (\$1,000) by the number of the applications.

31 (4) Whenever the commissioner examines, audits, or
32 investigates any licensee or any affiliate of a licensee, that
33 licensee shall pay, within 10 days after receipt of a
34 statement from the commissioner, a fee that equals the
35 amount of the salary or other compensation paid to the
36 persons making the examination, audit, or investigation
37 plus the amount of expenses, including overhead,
38 reasonably incurred in the performance of the work. The
39 licensee shall be given a preliminary estimate of the fee
40 before the commissioner commences an examination,



1 *audit, or investigation. In determining the costs*
2 *associated with an examination, audit, or investigation,*
3 *the commissioner may use the estimated average hourly*
4 *cost for all departmental persons performing*
5 *examinations, audits, or investigations for the fiscal year.*

6 *(b) (1) Each fee for filing an application with the*
7 *commissioner shall be paid at the time the application is*
8 *filed with the commissioner.*

9 *(2) No fee for filing an application with the*
10 *commissioner shall be refundable, regardless of whether*
11 *the application is approved, denied, withdrawn, or*
12 *abandoned.*

13 *(c) All fees charged and collected under this section*
14 *shall be transmitted to the Treasurer at least weekly,*
15 *accompanied by a detailed statement therefor, and shall*
16 *be credited to the State Corporations Fund.*

17
18 *CHAPTER 3. LICENSING*
19

20 *28150. (a) Except as provided in subdivision (b), no*
21 *person proposing to transact or transacting business in*
22 *this state, other than a licensee, shall use any name or title*
23 *that indicates that it is a capital access company or*
24 *otherwise represent that it is a capital access company or*
25 *that it is a licensee.*

26 *(b) Any company that proposes to apply for a license*
27 *or that has applied for a license, may, before being issued*
28 *a license, use a name or title that indicates that it is a*
29 *capital access company if it meets all of the following*
30 *requirements:*

31 *(1) The company appends to the name the*
32 *designation “proposed,” “in organization,” or “in*
33 *formation,” or any similar designation that the*
34 *commissioner may approve. The designation shall be set*
35 *forth at least as conspicuously as the name or title.*

36 *(2) The company performs only those acts that may be*
37 *necessary to (A) apply for and obtain the license and (B)*
38 *prepare to commence transacting business as a licensee.*

39 *(3) The company does not represent that it is a*
40 *licensee.*

1 28151. No person other than a person who meets the
2 definition of a licensee may be issued a license under this
3 division.

4 28152. If the commissioner finds all of the following
5 with respect to an application for a license, the
6 commissioner shall approve the application:

7 (a) That the applicant has a tangible net worth,
8 exclusive of the funds to invest under subdivision (b), in
9 an amount that is not less than two hundred fifty thousand
10 dollars (\$250,000) and that the tangible net worth is
11 adequate for the applicant to transact business as a capital
12 access company.

13 (b) That the applicant has funds to invest in an amount
14 that is not less than five million dollars (\$5,000,000).

15 (c) That the applicant has, in addition to the
16 requirements of subdivisions (a) and (b), financial
17 resources in an amount that is adequate for the applicant
18 to pay its expenses in transacting business as a capital
19 access company for a period of not less than three years
20 from the date of licensure.

21 (d) That the directors, officers, and controlling
22 persons of the applicant are each of good character and
23 sound financial standing, that the directors and officers of
24 the applicant are each competent to perform their
25 functions with respect to the applicant, and that the
26 directors and officers of the applicant are collectively
27 adequate to manage the business of the applicant as a
28 capital access company. For purposes of this subdivision,
29 the commissioner shall accord weight to the prior or
30 current successful operation of a commercial or
31 investment enterprise.

32 (e) That any person who makes recommendations
33 with respect to the investment of funds of the company
34 is an investment adviser, either registered under the
35 Investment Adviser Act of 1940 or licensed as an
36 investment adviser under the Corporate Securities Law
37 of 1968, or exempt from registration or licensure, and that
38 the person is not subject to any act or omission
39 enumerated in subdivision (a), (e), (f), or (g) of Section
40 25212, or has been convicted of, or pled nolo contendere



1 to, any offense or been held liable in any civil action
2 specified in subdivision (b) of Section 25212, or is
3 enjoined from any act, conduct, or practice specified in
4 subdivision (c) of Section 25212, or is subject to any order
5 specified in subdivision (d) of Section 25212.

6 (f) That it is reasonable to believe that the applicant,
7 if licensed, will comply with the provisions of Section
8 6(a)(5) of the Investment Company Act of 1940, the
9 applicable provisions of the Corporate Securities Law of
10 1968, this division, and of any regulation adopted or order
11 issued under this division.

12 If, after notice and a hearing, the commissioner finds
13 otherwise, the commissioner shall deny the application.

14 28153. (a) For purposes of Section 28152, the
15 commissioner may find:

16 (1) That a director, officer, or controlling person of an
17 applicant is not of good character if the director, officer,
18 or controlling person or any director or officer of the
19 controlling person has been convicted of, or has pleaded
20 *nolo contendere* to, a crime involving fraud or dishonesty.

21 (2) That it is not reasonable to believe that an
22 applicant, if licensed, will comply with all applicable
23 provisions of this division and of any regulation or order
24 issued under this division if the applicant has been
25 convicted of, or has pleaded *nolo contendere* to, a crime
26 involving fraud or dishonesty.

27 (b) Subdivision (a) shall not be deemed to be the only
28 grounds upon which the commissioner may find, for
29 purposes of Section 28152, that a director, officer, or
30 controlling person of an applicant is not of good character
31 or that it is not reasonable to believe that an applicant, if
32 licensed, will comply with all applicable provisions of the
33 Investment Company Act of 1940, the Corporate
34 Securities Law of 1968, this division, and of any regulation
35 or order issued under this division.

36 28154. No license shall be transferable or assignable.

37 28155. No licensee shall represent that it is sponsored,
38 recommended, or approved by, or that its abilities or
39 qualifications have in any respect been passed upon by,
40 the commissioner. No licensee shall advertise, print,



1 *display, publish, distribute, or broadcast, or cause or*
2 *permit to be advertised, printed, displayed, published,*
3 *distributed, or broadcast in any manner, any statement or*
4 *representation with regard to the business subject to the*
5 *provisions of this division that is false, misleading, or*
6 *deceptive, or that omits material information that is*
7 *necessary to make the statements not false, misleading, or*
8 *deceptive, or in the case of a licensee, that refers to the*
9 *supervision of business by the state or any department or*
10 *official of the state. Nothing in this section shall be*
11 *deemed to prohibit a licensee from stating that it is*
12 *licensed if the effect of such license is not misrepresented.*

13
14 CHAPTER 4. ORGANIZATIONAL MATTERS

15
16 Article 1. Organization and Name

17
18 28200. *The organizational documents of the licensee*
19 *shall include the following statement:*

20 (a) *The activities of the licensee are limited to the*
21 *promotion of economic, business, or industrial*
22 *development in the State of California through the*
23 *provision of financial or managerial assistance primarily*
24 *to small business firms and to other activities that are*
25 *incidental or necessary to carry out that purpose.*

26 (b) *The licensee will not engage in the business of*
27 *issuing redeemable securities.*

28 (c) *The securityholders of the licensee are limited, on*
29 *a class-by-class basis, to persons who reside in the State of*
30 *California, or who have a substantial business presence in*
31 *the State of California, and who hold not less than 80*
32 *percent of the licensee's securities.*

33 (d) *The securities of the licensee will be sold solely to*
34 *accredited investors (Section 28031) and the licensee will*
35 *not purchase any securities issued by an investment*
36 *company as defined in Section 3 of the Investment*
37 *Company Act of 1940 or issued by any company that*
38 *would be an investment company except for the*
39 *exclusions from that definition under paragraph (1) or*
40 *(7) of Section 3(a) of that act, other than (1) any debt*



1 security that is rated investment grade by not less than
2 one nationally recognized statistical rating organization
3 or (2) any security issued by a registered open-end
4 investment company that is required by its investment
5 policies to invest not less than 65 percent of its total assets
6 in securities described in paragraph (1) or securities that
7 are determined by that registered open-end investment
8 company to be comparable in quality to securities
9 described in paragraph (1).

10 (e) The licensee will engage in the transaction of
11 business pursuant to the exemption from registration
12 under the Investment Company Act of 1940 afforded to
13 economic, business, and industrial development
14 companies as provided for by Section 6(a)(5) of the
15 Investment Company Act of 1940, as amended (15 U.S.C.
16 Sec. 80a-6(a)), and a license pursuant to the Capital
17 Access Company Law (Division 3 (commencing with
18 Section 28000)).

19 (f) The investment of funds by the licensee will be
20 limited by and subject to the provisions of Section 6(a)(5)
21 of the Investment Company Act of 1940, the Corporate
22 Securities Law of 1968, and the Capital Access Company
23 Law.

24 28201. No licensee shall, except by prior written
25 notice to the commissioner, transact business under any
26 name other than its corporate name.

27

28

Article 2. Directors

29

30 28210. Each licensee shall have a board of directors,
31 executive committee, or other policy body, which shall
32 consist of not less than three members.

33 28211. The board of directors, executive committee,
34 or other policy body of each licensee shall hold a meeting
35 not less frequently than once each calendar year.

36 28212. The board of directors, executive committee,
37 or other policy body of each licensee shall approve the
38 contract to be entered into between the licensee and any
39 person who will make recommendations with respect to
40 the investment of funds of the licensee.



CHAPTER 5. OFFICES

Article 1. Establishing, Relocating, and Closing Offices

28320. (a) No licensee shall relocate its head office without prior written notice to the commissioner.

(b) No licensee shall establish, relocate, or close any office (other than its head office) unless it files a notice with the commissioner not less than two business days after taking the action.

CHAPTER 6. TRANSACTION OF BUSINESS

28400. No licensee shall engage in any business other than the following:

(a) The business of providing financing assistance through the purchase of securities of small business firms doing business or proposing to do business wholly or substantially in this state.

(b) The business of providing managerial assistance (including managerial and technical assistance) to small business firms doing business or proposing to do business wholly or substantially in this state.

28401. Each licensee shall use its best efforts to provide financing assistance to small business firms doing business or proposing to do business wholly or substantially in this state.

28402. (a) Except as provided in subdivision (b), no licensee shall provide financing assistance to any person other than a small business firm in this state.

(b) (1) If a licensee provides financing assistance to a small business firm in this state that is a franchisor, the licensee may also provide financing assistance to any small business firm in another state that is a franchisee of the franchisor.

(2) If a licensee provides financing assistance to a small business firm in this state that is a franchisee of a franchisor, the licensee may also provide financing assistance to any small business firm in another state that is a franchisee of the franchisor.

1 28403. *Except as otherwise provided in subdivision*
2 *(b) of Section 28402, no licensee shall provide financing*
3 *assistance or management assistance for use primarily*
4 *outside this state.*

5 28404. (a) *No licensee shall provide financing*
6 *assistance to any small business firm the primary business*
7 *of which is to provide financing assistance.*

8 (b) *No licensee shall provide financing assistance to*
9 *any small business firm for the purpose of evading the*
10 *requirements of this division.*

11 28405. *This section creates and authorizes an exempt*
12 *class of persons pursuant to Section 1 of Article XV of the*
13 *California Constitution. The restrictions upon rates of*
14 *interest contained in Section 1 of Article XV of the*
15 *California Constitution shall not apply to any evidence of*
16 *indebtedness purchased by any licensee.*

17
18 CHAPTER 7. RECORDS, REPORTS, AND EXAMINATIONS
19

20 28500. *Each licensee shall make and keep books,*
21 *accounts, and other records in the form and in the*
22 *manner that the commissioner may by regulation or*
23 *order require. All records so required shall be kept at the*
24 *place and shall be preserved for the time that the*
25 *commissioner may by regulation or order specify.*

26 28501. *Each licensee shall, not more than 90 days after*
27 *the close of each of its fiscal years or within a longer period*
28 *that the commissioner may by regulation or order specify,*
29 *file with the commissioner an audit report containing all*
30 *of the following:*

31 (a) *Financial statements (including balance sheets,*
32 *statements of income or loss, statements of changes in*
33 *capital accounts, and statements of changes in financial*
34 *position or, in the case of a licensee that is a California*
35 *nonprofit corporation, comparable financial statements)*
36 *for, or as of, the end of the fiscal year, prepared, with*
37 *audit, by an independent certified public accountant in*
38 *accordance with generally accepted accounting*
39 *principles.*

1 (b) A report, certificate, or opinion of the
2 independent certified public accountant or independent
3 public accountant, stating that the financial statements
4 were prepared in accordance with generally accepted
5 accounting principles.

6 (c) Any other information that the commissioner may
7 by regulation or order require.

8 28502. Each licensee, director, officer, and employee
9 of a licensee, and each parent and subsidiary of a licensee
10 shall file with the commissioner all reports that the
11 commissioner may by regulation or order require within
12 the timeframe specified. In addition, each affiliate of a
13 licensee (other than a parent or subsidiary of the
14 licensee) shall file with the commissioner all reports
15 regarding transactions between the affiliate and the
16 licensee that the commissioner may require within the
17 timeframe specified. Each report shall be in a form, shall
18 contain information, shall be signed in a manner, and shall
19 be verified in a manner, that the commissioner may by
20 regulation or order require.

21 28503. (a) The commissioner shall examine each
22 licensee not less frequently than once each calendar year.

23 (b) (1) The commissioner may at any time examine
24 any licensee or any parent or subsidiary of a licensee.

25 (2) The commissioner may at any time examine any
26 affiliate of a licensee (other than a parent or subsidiary of
27 the licensee), but only with respect to matters relating to
28 transactions between the affiliate and the licensee.

29 (c) The directors, officers, and employees of any
30 licensee or of any affiliate of a licensee being examined by
31 the commissioner and any other person having custody of
32 any of the books, accounts, or records of the licensee or
33 of the affiliate shall exhibit to the commissioner, on
34 request, any or all of the books, accounts, and other
35 records of the licensee or of the affiliate and shall
36 otherwise facilitate the examination so far as it may be in
37 their power to do so. However, in the case of an
38 examination of an affiliate of a licensee other than a
39 parent or subsidiary of the licensee, only books, accounts,
40 and records of the affiliate that relate to transactions



1 *between the affiliate and the licensee shall be subject to*
2 *this subdivision.*

3 *(d) The commissioner may, if in his or her opinion it*
4 *is necessary in the examination of any licensee or of any*
5 *affiliate of a licensee, retain any certified public*
6 *accountant, attorney, appraiser, or other person to assist*
7 *him or her; and the licensee shall pay, within 10 days after*
8 *receipt of a statement from the commissioner, the fees of*
9 *the person retained.*

10 28504. *(a) A licensee may, after the approval of the*
11 *board of directors, executive committee, or other policy*
12 *body of the licensee, cause or permit any other person to*
13 *make or keep any of its books, accounts, or other records.*

14 *(b) If any person other than a licensee makes or keeps*
15 *any of the books, accounts, or other records of the*
16 *licensee, the provisions of this division and of any*
17 *regulation or order issued under this division shall apply*
18 *to the person with respect to the performance of those*
19 *services and with respect to those books, accounts, and*
20 *other records to the same extent as if the person were the*
21 *licensee.*

22 *(c) If any person other than an affiliate of a licensee*
23 *makes or keeps any of the books, accounts, or other*
24 *records of the affiliate or, in the case of an affiliate other*
25 *than a parent or subsidiary of the licensee, the books,*
26 *accounts, and other records of the affiliate that relate to*
27 *transactions between the affiliate and the licensee, the*
28 *provisions of this division and of any regulation or order*
29 *issued under this division shall apply to the person with*
30 *respect to those books, accounts, and other records to the*
31 *same extent as if the person were the affiliate.*

32 28505. *Subject to the provisions of Rules 250.10 and*
33 *250.10.5 of the Commissioner of Corporations (10 C.C.R.*
34 *Secs. 250.10 and 250.10.5), the commissioner may make*
35 *available to the public any report filed with him or her*
36 *under this division or under any regulations or order*
37 *issued under this division.*

38 28506. *The commissioner, on behalf of the Trade and*
39 *Commerce Agency, shall forward economic benefit*
40 *surveys and questionnaires to the licensees for their*



1 completion. The surveys and questionnaires shall be for
2 the purpose of evaluating the economic benefits to the
3 State of California resulting from the activities of the
4 capital access companies licensed under this division. The
5 information requested from the licensees shall be
6 reasonable in scope and shall include, but not be limited
7 to, the number and type of jobs created and retained by
8 the small business firms provided financing assistance,
9 data on growth and expansion of the small business firms
10 provided financing assistance, and aggregate data on tax
11 revenues. The Trade and Commerce Agency shall
12 compile and make this information available to the public
13 annually.

14
15 CHAPTER 8. ACQUISITION OF CONTROL

16
17 28550. No person shall, except with the prior written
18 approval of the commissioner, acquire control of a
19 licensee.

20 28551. The commissioner shall approve an application
21 for approval to acquire control of a licensee only if, after
22 notice and a hearing, the commissioner finds all of the
23 following:

24 (a) That the applicant and the directors and officers of
25 the applicant are of good character and sound financial
26 standing.

27 (b) That it is reasonable to believe that, if the applicant
28 acquires control of the licensee, the applicant will comply
29 with all applicable provisions of this division and of any
30 regulation or order issued under this division.

31 (c) That the applicant's plans, if any, to make any
32 major change in the business, corporate structure, or
33 management of the licensee are not detrimental to the
34 safety and soundness of the licensee or the accredited
35 investors of the licensee, or to the public convenience and
36 advantage.

37 28552. (a) For purposes of Section 28551, the
38 commissioner may find:

39 (1) That an applicant or a director or officer of an
40 applicant is not of good character if the person has been



1 convicted of, or has pleaded nolo contendere to, a crime
2 involving fraud or dishonesty.

3 (2) That an applicant’s plan to make a major change in
4 the management of a licensee is detrimental to the safety
5 and soundness of the licensee or the accredited investors
6 of the licensee and to the public convenience and
7 advantage if the plan provides for a person who has been
8 convicted of, or has pleaded nolo contendere to, a crime
9 involving fraud or dishonesty to become a director or
10 officer of the licensee.

11 (b) Subdivision (a) shall not be deemed to be the only
12 grounds upon which the commissioner may find, for
13 purposes of Section 28551, that an applicant or a director
14 or officer of an applicant is not of good character or that
15 an applicant’s plan to make a major change in the
16 management of a licensee is detrimental to the safety and
17 soundness of a licensee or to the accredited investors of
18 the licensee, or to the public convenience and advantage.

19

20 CHAPTER 9. MERGER AND PURCHASE OR SALE OF
21 BUSINESS

22

23 28600. For purposes of this chapter:

24 (a) “Acquiring licensee” means either of the
25 following:

26 (1) In the case of a merger, the licensee that is the
27 surviving company.

28 (2) In the case of a purchase or sale, the licensee that
29 is the purchaser.

30 (b) “Disappearing company” has the meaning set
31 forth in Section 165.

32 (c) “Surviving company” has the meaning set forth in
33 Section 190.

34 28601. No licensee shall merge with any other
35 company unless either of the following apply:

36 (a) If the licensee is to be the surviving company, the
37 merger is first approved by the commissioner.

38 (b) If the licensee is to be a disappearing company, the
39 surviving company is a licensee and the merger is first
40 approved by the commissioner.



1 28602. No licensee shall purchase all or substantially
2 all of the business of any other person unless the purchase
3 is first approved by the commissioner.

4 28603. No licensee shall sell all or substantially all of its
5 business to any other person unless the other person is a
6 licensee and the sale is first approved by the
7 commissioner.

8 28604. The commissioner shall approve an application
9 for approval of a merger, purchase, or sale, only if, after
10 notice and a hearing, the commissioner finds all of the
11 following:

12 (a) That the merger, purchase, or sale will be safe and
13 sound with respect to the acquiring licensee.

14 (b) That it is reasonable to believe that, upon
15 consummation of the merger, purchase, or sale, the
16 acquiring licensee will comply with all applicable
17 provisions of this division and of any regulation or order
18 issued under this division.

19 (c) That the merger, purchase, or sale will not be
20 detrimental to the licensee or the accredited investors of
21 the licensee, or the public convenience and advantage,
22 or, if the merger, purchase, or sale would be detrimental
23 to any of the foregoing, then it is necessary in the interests
24 of the safety and soundness of any of the parties to it.

25

26 CHAPTER 10. VOLUNTARY SURRENDER OF LICENSE

27

28 28650. Any licensee may offer to surrender its license
29 by filing with the commissioner the license and a report,
30 which shall (a) be in a form, (b) contain information, and
31 (c) be signed and verified in a manner, that the
32 commissioner may by regulation or order require.

33 28651. (a) Except as otherwise provided in
34 subdivision (b), a voluntary surrender of a license shall be
35 effective upon the issuance of an order by the
36 commissioner accepting the offer of surrender and the
37 report required under Section 28650.

38 (b) If a proceeding to revoke or suspend a license is
39 pending at the time when the license and the report
40 required under Section 28650 are filed with the



1 commissioner or if a proceeding to revoke or suspend a
2 license or to impose conditions upon the surrender of a
3 license is instituted before the license and the report
4 called for in Section 28650 are filed with the
5 commissioner, the voluntary surrender of the license shall
6 become effective at the time and upon the conditions that
7 the commissioner may by order specify.

8

9

CHAPTER 11. ENFORCEMENT

10

11 28700. For purposes of this chapter, unless the context
12 otherwise requires:

13 (a) "Office with a licensee" means the position of
14 director, officer, or employee of the licensee or of any
15 subsidiary of the licensee.

16 (b) "Subject person," when used with respect to a
17 licensee, means any of the following:

18 (1) Any controlling person or affiliate of the licensee.

19 (2) Any director, officer, or employee of the licensee
20 or of any of the persons specified in paragraph (1).

21 (3) Any other person who participates in the conduct
22 of the business of the licensee.

23 28701. Whenever it appears to the commissioner that
24 any person has violated, or that there is reasonable cause
25 to believe that any person may violate, any provision of
26 this division or of any regulation or order issued under this
27 division, the commissioner may bring an action in the
28 name of the people of this state in the superior court to
29 enjoin the violation or to enforce compliance with this
30 division or with any regulation or order issued under this
31 division. Upon a proper showing, a restraining order,
32 preliminary or permanent injunction, or writ of mandate
33 shall be granted, and a receiver or a conservator may be
34 appointed for the defendant or the defendant's assets.
35 The court may not require the commissioner to post a
36 bond.

37 28702. (a) If the commissioner finds that any person
38 has violated, or that there is reasonable cause to believe
39 that any person may violate, Section 28150, the
40 commissioner may order the person to cease and desist



1 from the violation unless and until the person is issued a
2 license.

3 (b) (1) Within 30 days after an order is issued
4 pursuant to subdivision (a), the person to whom the order
5 is directed may file with the commissioner an application
6 for a hearing on the order. If the commissioner fails to
7 commence a hearing within 15 business days after the
8 application is filed with him or her (or within any longer
9 period to which the person consents), the order shall be
10 deemed rescinded. Upon the completion of the hearing,
11 the commissioner shall affirm, modify, or rescind the
12 order.

13 (2) The right of any person to whom an order is issued
14 under subdivision (a) to petition for judicial review of the
15 order shall not be affected by the failure of the person to
16 apply to the commissioner for a hearing on the order
17 pursuant to paragraph (1).

18 28703. The commissioner may issue a cease and desist
19 order, including an order to take appropriate corrective
20 action, if, after notice and a hearing, the commissioner
21 finds either of the following:

22 (a) That any licensee or any subject person of a
23 licensee has violated, is violating, or that there is
24 reasonable cause to believe that any licensee or any
25 subject person of a licensee may violate, any provision of
26 this division or of any regulation or order issued under this
27 division or any provision of any other applicable law.

28 (b) That any licensee or any subject person of a
29 licensee has engaged or participated in, is engaging or
30 participating in, or that there is reasonable cause to
31 believe that any licensee or any subject person of a
32 licensee may engage or participate in, any unsafe or
33 unsound act with respect to the business of the licensee.

34 28704. (a) The commissioner may issue a cease and
35 desist order, including an order to take appropriate
36 corrective action, if the commissioner finds both of the
37 following:

38 (1) That any of the factors set forth in Section 28703 is
39 true with respect to any licensee or any subject person of
40 a licensee.



1 (2) That the action or violation is likely to cause the
2 insolvency of, or substantial dissipation of the assets or
3 earnings of, the licensee, or is likely to seriously weaken
4 the condition of the licensee or otherwise to seriously
5 prejudice the interests of the licensee or the accredited
6 investors of the licensee, prior to the completion of
7 proceedings conducted pursuant to Section 28703.

8 (b) (1) Within 30 days after an order is issued
9 pursuant to subdivision (a), any licensee or subject
10 person of a licensee to whom the order is directed may file
11 with the commissioner an application for a hearing on the
12 order. The filing of an application for a hearing shall not
13 stay the effectiveness of the order. If the commissioner
14 fails to commence a hearing within 15 business days after
15 the application is filed (or within any longer period to
16 which the licensee or subject person consents), the order
17 shall be deemed rescinded. Upon the completion of the
18 hearing, the commissioner shall affirm, modify, or rescind
19 the order.

20 (2) The right of any licensee or subject person of a
21 licensee to whom an order is issued under subdivision (a)
22 to petition for judicial review of the order shall not be
23 affected by the failure of the licensee or subject person to
24 apply to the commissioner for a hearing on the order
25 pursuant to paragraph (1).

26 28705. The commissioner may issue an order
27 removing a subject person from that person's office with
28 the licensee, if any, and prohibiting that person from
29 further participating in any manner in the conduct of the
30 business of the licensee, if, after notice and a hearing, the
31 commissioner finds all of the following:

32 (a) (1) That the subject person of a licensee has
33 violated a provision of this division or of any regulation or
34 order issued under this division or any provision of any
35 other applicable law;

36 (2) That the subject person of a licensee has engaged
37 or participated in any unsafe or unsound act with respect
38 to the business of the licensee; or



1 (3) That the subject person of a licensee has engaged
2 or participated in any act which constitutes a breach of his
3 or her fiduciary duty as a subject person.

4 (b) (1) That the act, violation, or breach of fiduciary
5 duty has caused or is likely to cause substantial financial
6 loss or other damage to the licensee or the accredited
7 investors of the licensee; or

8 (2) That the act, violation, or breach of fiduciary duty
9 has seriously prejudiced or is likely to seriously prejudice
10 the interests of the licensee or the accredited investors of
11 the licensee; or

12 (3) That the subject person has received financial gain
13 by reason of the act, violation, or breach of fiduciary duty.

14 (c) That the act, violation, or breach of fiduciary duty
15 either involves dishonesty on the part of the subject
16 person or demonstrates the subject person's gross
17 negligence with respect to the business of the licensee or
18 a willful disregard for the safety and soundness of the
19 licensee.

20 28706. The commissioner may issue an order
21 removing a subject person from his or her office, if any,
22 with the licensee and prohibiting him or her from further
23 participating in any manner in the conduct of the
24 business of the licensee, except with the prior consent of
25 the commissioner, if the commissioner finds, after notice
26 and a hearing, that the subject person of a licensee has, by
27 engaging or participating in any act with respect to any
28 financial or other business institution which resulted in
29 substantial financial loss or other damage, demonstrated
30 either of the following:

31 (a) Dishonesty.

32 (b) Willful or continuing disregard for the safety and
33 soundness of the financial or other business institution.

34 28707. (a) The commissioner may issue an order
35 suspending a subject person from his or her office, if any,
36 with the licensee and prohibiting him or her from further
37 participating in any manner in the conduct of the
38 business of the licensee, except with the consent of the
39 commissioner, if the commissioner finds both of the
40 following:



1 (1) That the factors set forth in subdivisions (a), (b),
2 and (c) of Section 28705 or the factors set forth in
3 subdivision (a) of Section 28706 are true with respect to
4 the subject person of a licensee.

5 (2) That it is necessary for the protection of the
6 interests of the licensee or the accredited investors of the
7 licensee, or for the protection of the public interest that
8 the commissioner immediately suspend the subject
9 person from his or her office, if any, with the licensee and
10 prohibit him or her from further participating in any
11 manner in the conduct of the business of the licensee.

12 (b) (1) Within 30 days after an order is issued
13 pursuant to subdivision (a), any subject person of a
14 licensee to whom the order is directed may file with the
15 commissioner an application for a hearing on the order.
16 The filing of an application for a hearing shall not stay the
17 effectiveness of the order. If the commissioner fails to
18 begin a hearing within 15 business days after the
19 application is filed (or within any longer period to which
20 the subject person consents), the order shall be deemed
21 rescinded. Upon the completion of the hearing, the
22 commissioner shall affirm, modify, or rescind the order.

23 (2) The right of any subject person of a licensee to
24 whom an order is issued under subdivision (a) to petition
25 for judicial review of the order shall not be affected by the
26 failure of the subject person to apply to the commissioner
27 for a hearing on the order pursuant to paragraph (1).

28 28708. (a) The commissioner may issue an order
29 suspending a subject person from his or her office, if any,
30 with the licensee and prohibiting him or her from further
31 participating in any manner in the conduct of the
32 business of the licensee, except with the consent of the
33 commissioner, if the commissioner finds both of the
34 following:

35 (1) That the subject person of a licensee has been
36 indicted by a grand jury for, or held to answer by a
37 magistrate for, a crime involving dishonesty or breach of
38 trust.

39 (2) That the continuation of that person as a subject
40 person of the licensee may threaten the interests of the



1 licensee or the accredited investors of the licensee, or
2 may threaten to impair public confidence in the licensee.

3 (b) The commissioner may issue an order suspending
4 or removing the subject person or former subject person
5 from his or her office, if any, with the licensee and
6 prohibiting him or her from further participating in any
7 manner in the conduct of the business of the licensee,
8 except with the prior consent of the commissioner, if the
9 commissioner finds both of the following:

10 (1) That the subject person or former subject person
11 of a licensee to whom an order was issued pursuant to
12 subdivision (a) or any other subject person of a licensee
13 has been finally convicted of a crime which is punishable
14 by imprisonment for a term exceeding one year and
15 which involves dishonesty or breach of trust.

16 (2) That the continuation or resumption by that
17 person as a subject person of the licensee may threaten
18 the interests of the licensee or the accredited investors of
19 the licensee, or may threaten to impair public confidence
20 in the licensee.

21 (c) (1) Within 30 days after an order is issued
22 pursuant to subdivision (a) or (b), any subject person of
23 a licensee to whom the order is directed may file with the
24 commissioner an application for a hearing on the order.
25 If the commissioner fails to commence a hearing within
26 15 business days after the application is filed (or within
27 any longer period to which the subject person consents),
28 the order shall be deemed rescinded. Upon the
29 completion of the hearing, the commissioner shall affirm,
30 modify, or rescind the order.

31 (2) The right of any subject person or former subject
32 person of a licensee to whom an order is issued under
33 subdivision (a) or (b) to petition for judicial review of the
34 order shall not be affected by the failure of the person to
35 apply to the commissioner for a hearing on the order
36 pursuant to paragraph (1).

37 (d) The fact that any subject person of a licensee
38 charged with a crime involving dishonesty or breach of
39 trust is not finally convicted of the crime shall not
40 preclude the commissioner from issuing an order to the



1 *subject person pursuant to any other section of this*
2 *division.*

3 28709. *Any person to whom an order is issued under*
4 *Section 28705, 28706, 28707, or 28708 may apply to the*
5 *commissioner to modify or rescind the order. The*
6 *commissioner shall not grant the application unless the*
7 *commissioner finds that it is in the public interest to do*
8 *so and that it is reasonable to believe that the person will,*
9 *if and when he or she becomes a subject person of a*
10 *licensee, comply with all applicable provisions of this*
11 *division and of any regulation or order issued under this*
12 *division.*

13 28710. *The commissioner may issue an order*
14 *suspending or revoking the license of a licensee, if, after*
15 *notice and a hearing, the commissioner finds any of the*
16 *following:*

17 (a) *That the licensee or any controlling person or*
18 *affiliate of the licensee has violated any provision of this*
19 *division or of any regulation or order issued under this*
20 *division or any provision of any other applicable law.*

21 (b) *That the licensee is conducting its business in an*
22 *unsafe and unsound manner.*

23 (c) *That the licensee is in a condition that it is unsafe*
24 *or unsound for it to transact business.*

25 (d) *That the licensee has ceased to transact business as*
26 *a capital access company.*

27 (e) *That the licensee is insolvent.*

28 (f) *That the licensee has suspended payment of its*
29 *obligations, has made an assignment for the benefit of its*
30 *creditors, or has admitted in writing its inability to pay its*
31 *debts as they become due.*

32 (g) *That the licensee has applied for an adjudication of*
33 *bankruptcy, reorganization, arrangement, or other relief*
34 *under any bankruptcy, reorganization, insolvency, or*
35 *moratorium law, or that any person has applied for any of*
36 *that relief under any of those laws against any licensee*
37 *and the licensee has by any affirmative act approved of*
38 *or consented to the action or the relief has been granted.*

39 (h) *That any fact or condition exists which, if it had*
40 *existed at the time when any licensee applied for its*



1 license, would have been grounds for denying the
2 application.

3 28711. (a) If the commissioner finds that any of the
4 factors set forth in Section 28709 is true with respect to
5 any licensee and that it is necessary for the protection of
6 the public interest that the commissioner immediately
7 suspend or revoke the license of the licensee, the
8 commissioner may issue an order suspending or revoking
9 the license of the licensee.

10 (b) Within 30 days after an order is issued pursuant to
11 subdivision (a), any licensee to whom the order is
12 directed may file with the commissioner a request for a
13 hearing on the order. If the commissioner fails to
14 commence a hearing within 15 business days after the
15 request is filed (or within any longer period to which the
16 licensee consents), the order shall be deemed rescinded.
17 Upon the completion of the hearing, the commissioner
18 shall affirm, modify, or rescind the order.

19 28712. Any person whose license is suspended or
20 revoked shall immediately deliver the license to the
21 commissioner.

22 28713. Any person to whom an order is issued under
23 Section 28709 or 28710 may apply to the commissioner to
24 modify or rescind the order.

25 The commissioner shall not grant the application unless
26 the commissioner finds that it is in the public interest to
27 do so and that it is reasonable to believe that the person
28 will, if and when it becomes a licensee, comply with all
29 applicable provisions of this division and of any regulation
30 or order issued under this division.

31 28714. (a) If the commissioner finds that any of the
32 factors set forth in Section 28709 is true with respect to
33 any licensee and that it is necessary for the protection of
34 the interests of the licensee or the accredited investors of
35 the licensee, or for the protection of the public interest
36 that the commissioner take immediate possession of the
37 property and business of the licensee, the commissioner
38 may forthwith take possession of the property and
39 business of the licensee and retain possession until the
40 licensee resumes business or is finally liquidated. The



1 licensee may, with the consent of the commissioner,
2 resume business upon any conditions that the
3 commissioner may prescribe.

4 (b) Whenever the commissioner takes possession of
5 the property and business of a licensee pursuant to
6 subdivision (a), the licensee may apply within 10 days to
7 the superior court in the county in which the head office
8 of the licensee is located to enjoin further proceedings.
9 The court, after citing the commissioner to show cause
10 why further proceedings should not be enjoined and after
11 a hearing, may dismiss the application or enjoin the
12 commissioner from further proceedings and order the
13 commissioner to surrender the property and business of
14 the licensee to the licensee or make any further order that
15 may be just.

16 (c) An appeal may be taken from the judgment of the
17 superior court by the commissioner or by the licensee in
18 the manner provided by law for appeals from the
19 judgment of a superior court. An appeal from the
20 judgment of the superior court shall operate as a stay of
21 the judgment. No bond need be given if the appeal is
22 taken by the commissioner, but if the appeal is taken by
23 the licensee, a bond shall be given as required by the
24 Code of Civil Procedure.

25 (d) Whenever the commissioner takes possession of
26 the property and business of a licensee pursuant to
27 subdivision (a), the commissioner shall conserve or
28 liquidate the property and business of the licensee.

29 28715. Sections 11041, 11042, and 11043 of the
30 Government Code do not apply to the Commissioner of
31 Corporations.

32

33 CHAPTER 12. CRIMES AND CRIMINAL PENALTIES

34

35 Article 1. General Provisions

36

37 28800. It shall be unlawful for any person willfully to
38 make any untrue statement of a material fact in any
39 application, report, or other document filed with the
40 commissioner under this division or under any regulation



1 or order issued under this division, or willfully to omit to
2 state in any application, report or other document filed
3 with the commissioner under this division any material
4 fact which is required to be stated therein.

5 28801. It shall be unlawful for any person having
6 custody of any of the books, accounts, or other records of
7 a licensee willfully to refuse to allow the commissioner,
8 upon request, to inspect or make copies of any of those
9 books, accounts, or other records.

10 28802. It shall be unlawful for any person, with intent
11 to deceive any director, officer, employee, auditor, or
12 attorney of a licensee, the commissioner or any
13 governmental agency, to make any false entry in any of
14 the books, accounts or other records of the licensee, to
15 omit to make any entry in those books, accounts or other
16 records which the person is required to make, or to alter,
17 conceal, or destroy any of those books, accounts, or other
18 records.

19

20 Article 2. Conflicts of Interest

21

22 28820. In this article, unless the context otherwise
23 requires:

24 (a) "Adviser," when used with respect to a licensee,
25 means any person who regularly provides legal,
26 accounting, investment, or management services or
27 advice to the licensee.

28 (b) (1) "Associate," when used with respect to a
29 licensee, means all of the following:

30 (A) Any principal shareholder, director, officer,
31 manager, agent, or adviser of such licensee.

32 (B) Any director, officer, partner, general manager,
33 agent, employer, or employee of any person referred to
34 in subparagraph (A).

35 (C) Any person who controls, is controlled by, or is
36 under common control with, any person referred to in
37 subparagraph (A), directly or indirectly, through one or
38 more intermediaries.

39 (D) Any close relative of any person referred to in
40 subparagraph (A).



1 (E) Any person of which any person referred to in
2 subparagraphs (A) to (D), inclusive, is a director or
3 officer.

4 (F) Any person in which any person referred to in
5 subparagraphs (A) to (D), inclusive, or any combination
6 of persons acting in concert owns or controls, directly or
7 indirectly, a 10 percent or greater equity interest.

8 (2) For purposes of this subdivision, any person who is
9 in any of the relationships referred to in subparagraphs
10 (A) to (F), inclusive, of paragraph (1) within six months
11 before or after a licensee provides financing assistance
12 shall be deemed to be in the relationship as of the date
13 when the licensee provides such financing assistance.

14 (3) For purposes of this subdivision, if a licensee, in
15 order to protect its interests, designates any person to
16 serve as a director of, officer of, or in any capacity in the
17 management of, a small business firm to which the
18 licensee provides financing assistance, the person shall
19 not, on that account, be deemed to have any relationship
20 with the small business firm. However, this paragraph
21 shall not apply in any case where the person has, directly
22 or indirectly, any other financial interest in the small
23 business firm or where the person, at any time before the
24 licensee provides the financing assistance, served as a
25 director of, officer of, or in any other capacity in the
26 management of, the small business firm for a period of 30
27 days or more.

28 (c) “Close relative” means ancestor, lineal
29 descendant, brother or sister and lineal descendants of
30 either, spouse, father-in-law, mother-in-law, son-in-law,
31 brother-in-law, daughter-in-law, or sister-in-law.

32 (d) “Closing services” means services performed in
33 connection with the providing of financing assistance.
34 “Closing services” includes, but is not limited to,
35 appraising property and preparing credit reports.
36 “Closing services” does not include any services
37 performed after the providing of financing assistance.

38 (e) “Short-term financing assistance” means any
39 financing assistance with a term of not more than five
40 years.



1 28821. (a) *The commissioner may, by regulation or*
2 *order, either unconditionally or upon specified terms and*
3 *conditions and for specified periods, exempt from the*
4 *provisions of this article any person or transaction or class*
5 *of persons or transactions, if the commissioner finds the*
6 *action to be in the public interest and that the regulation*
7 *of the persons or transactions is not necessary for the*
8 *purposes of this division.*

9 (b) *In exempting from the provisions of this article any*
10 *person or transaction or class of persons or transactions,*
11 *the commissioner shall give due consideration to any*
12 *conflict of interest provision of federal law or regulation*
13 *applicable to the person or transaction governing*
14 *participants in federal financing programs.*

15 28822. *It shall be unlawful for any licensee, directly or*
16 *indirectly, to provide financing assistance to any of its*
17 *associates.*

18 28823. (a) *It shall be unlawful for any licensee,*
19 *directly or indirectly, to provide financing assistance to*
20 *any associate of another licensee if any associate of the*
21 *first licensee receives, has received, or is about to receive,*
22 *directly or indirectly, financing assistance or a*
23 *commitment for financing assistance from the other*
24 *licensee.*

25 (b) *It shall be unlawful for any licensee, directly or*
26 *indirectly, to provide financing assistance to any associate*
27 *of another licensee if any associate of the first licensee*
28 *receives, has received, or is about to receive, directly or*
29 *indirectly, financing assistance or a commitment for*
30 *financing assistance from a third licensee pursuant to any*
31 *contract, understanding, or arrangement among the*
32 *licensees.*

33 28824. *It shall be unlawful for any licensee or for any*
34 *associate of a licensee, directly or indirectly, to borrow*
35 *money, or purchase or otherwise receive securities, from*
36 *any of the following:*

37 (a) *Any person to which the licensee has provided, or*
38 *has committed to provide, financing assistance.*



1 (b) Any director of, officer of, or person who owns a 10
2 percent or greater equity interest in, any person referred
3 to in subdivision (a).

4 (c) Any close relative of any person referred to in
5 subdivision (b).

6 28825. It shall be unlawful for any licensee, directly or
7 indirectly, to provide financing assistance to discharge, or
8 to free other funds for use in discharging, in whole or in
9 part, an obligation to any associate of the licensee.
10 However, this section shall not apply to any transaction
11 effected by an associate of a licensee in the normal course
12 of the associate's business involving a line of credit or
13 short-term financing assistance.

14 28826. It shall be unlawful for any licensee, directly or
15 indirectly, to provide financing assistance for the
16 purchase of property from any associate of the licensee.

17 28827. It shall be unlawful for any licensee, directly or
18 indirectly, to provide financing assistance to any person
19 to whom any associate of the licensee provides financing
20 assistance, either contemporaneously with, or within one
21 year before or after, the providing of financing assistance
22 by the licensee, if the terms on which the licensee
23 provides financing assistance are less favorable to the
24 licensee than the terms on which the associate provides
25 financing assistance to the associate. In any case where
26 the financing assistance provided by the associate of the
27 licensee is of a different kind from the financing
28 assistance provided by the licensee, the burden shall be
29 on the licensee to prove that the terms on which it
30 provided financing assistance were at least as favorable to
31 it as the terms on which the associate provided financing
32 assistance to the associate. This section shall not apply to
33 any transaction effected by an associate of a licensee in
34 the normal course of the associate's business involving a
35 line of credit or short-term financing assistance.

36 28828. It shall be unlawful for any associate of a
37 licensee, directly or indirectly, to receive from any person
38 to whom the licensee provides financing assistance, any
39 compensation in connection with the providing of the
40 financing assistance or anything of value for procuring,



1 *influencing, or attempting to procure or influence, the*
 2 *licensee’s action with respect to the providing of the*
 3 *financing assistance. This section shall not apply to the*
 4 *receipt by an associate of a licensee of fees for bona fide*
 5 *closing services performed by the associate. If the*
 6 *associate is, with the consent and knowledge of the person*
 7 *to whom the financing assistance is provided, designated*
 8 *by the licensee to perform the services, the services are*
 9 *appropriate and necessary in the circumstances, the fees*
 10 *for the services are approved as reasonable by the*
 11 *licensee, and the fees for the services are collected by the*
 12 *licensee on behalf of the associate.*

13 28829. *It shall be unlawful for any licensee, directly or*
 14 *indirectly, to sell or otherwise transfer any of its assets to*
 15 *any of its associates.*

16

17 *Article 3. Criminal Penalties*

18

19 28880. *Any person who willfully violates any provision*
 20 *under this chapter shall upon conviction be fined not*
 21 *more than two hundred fifty thousand dollars (\$250,000)*
 22 *or be imprisoned in the state prison, or in a county jail for*
 23 *not more than one year, or be punished by both that fine*
 24 *and imprisonment.*

25 28881. *Nothing in this division limits the power of the*
 26 *state to punish any person for any act which constitutes*
 27 *a crime under any statute.*

28

29 *CHAPTER 13. CIVIL PENALTIES*

30

31 28900. *If, after notice and a hearing, the commissioner*
 32 *finds that any person has violated any provision of this*
 33 *division or of any regulation or order issued under this*
 34 *division, the commissioner may order the person to pay*
 35 *to the commissioner a civil penalty in that amount as the*
 36 *commissioner may specify. However, the amount of the*
 37 *civil penalty shall not exceed two thousand five hundred*
 38 *dollars (\$2,500) for each violation, or in the case of a*
 39 *continuing violation, two thousand five hundred dollars*
 40 *(\$2,500) for each day for which the violation continues.*



1 28901. *The provisions of Section 28900 are additional*
2 *to, and not alternative to, other provisions of this division*
3 *which authorize the commissioner to issue orders or to*
4 *take other action on account of a violation of any*
5 *provision of this division or of any regulation or order*
6 *issued under this division. However, no person who has*
7 *been finally convicted under Chapter 12 (commencing*
8 *with Section 28800) of this division on account of a*
9 *violation of any provision of Chapter 12 (commencing*
10 *with Section 28800) shall be liable to pay a civil penalty*
11 *under Section 28900 on account of the violation.*
12

13 CHAPTER 14. MISCELLANEOUS PROVISIONS
14

15 28950. *No provision of this division imposing any*
16 *liability applies to any act done or omitted in good faith*
17 *in conformity with any rule, form, permit, order, or*
18 *written interpretive opinion of the commissioner, or any*
19 *written interpretive opinion of the Attorney General,*
20 *notwithstanding that the rule, form, permit, order, or*
21 *written interpretive opinion may later be amended or*
22 *rescinded or be determined by judicial or other authority*
23 *to be invalid for any reason.*

24 28951. (a) *The commissioner may from time to time*
25 *make, amend, and rescind the rules, forms, and orders*
26 *that are necessary to carry out this law, and define any*
27 *terms, whether or not used in this law, insofar as the*
28 *definitions are not inconsistent with this law. For the*
29 *purpose of rules, the commissioner may, among other*
30 *things, classify persons within the commissioner's*
31 *jurisdiction and may prescribe different requirements for*
32 *different classes. The commissioner may, in the*
33 *commissioner's discretion, waive any requirement of any*
34 *rule or form in situations where in his or her opinion the*
35 *requirement is not necessary in the public interest.*

36 (b) *The commissioner may, by regulation or order,*
37 *either unconditionally or upon specified terms and*
38 *conditions or for specified periods, exempt from the*
39 *provisions of this division any person or transaction or*
40 *class of persons or transactions, if the commissioner finds*

1 *that action to be in the public interest and that the*
2 *regulation of those persons or transactions is not*
3 *necessary for the purposes of this division.*

4 *28952. The commissioner may honor requests from*
5 *interested persons for interpretive opinions.*

6 *28953. In any proceeding under this law, the burden*
7 *of proving an exemption or an exception from a definition*
8 *is upon the person claiming it.*

9 *28954. Every final order, decision, license, or other*
10 *official act of the commissioner is subject to judicial*
11 *review in accordance with law.*

12 *28955. Nothing in this law, shall impair, derogate, or*
13 *otherwise affect the authority or powers of the*
14 *commissioner under the Corporate Securities Law of*
15 *1968 (Part 3 (commencing with Section 25000)) or the*
16 *application of any provision thereof to any person or*
17 *transaction subject thereto.*

18 *28956. If any provision of this division are or the*
19 *application thereof to any person or circumstance is held*
20 *invalid, the invalidity shall not affect other provisions or*
21 *applications of this law which can be given effect without*
22 *the invalid provision or application, and to this end the*
23 *provisions of this division are declared to be severable.*

24 *28957. Neither the commissioner nor any employee of*
25 *the commissioner shall use any information which is filed*
26 *with or obtained by the commissioner which is not public*
27 *information for personal gain or benefit, nor shall the*
28 *commissioner nor any employee of the commissioner*
29 *engage in any securities transaction based on that*
30 *information, even though public, if there has not been a*
31 *sufficient period of time for the securities or commodity*
32 *markets to assimilate that information.*

33 *28958. (a) The program established by this division*
34 *shall be supported from funds appropriated by the*
35 *Legislature from the State Corporations Fund.*

36 *(b) The funds appropriated from the State*
37 *Corporations Fund and made available for expenditure*
38 *under subdivision (a) of this section shall come from fees*
39 *collected under Section 28110, penalties collected under*
40 *Sections 28880 and 28900, and securities application filing*



1 fees collected under subdivisions (e), (f), (h), and (i) of
2 Section 25608 and notice filing fees collected under
3 subdivision (a) of Section 25608.1.

4 SEC. 4. This act shall become operative on July 1,
5 1999.

6 SEC. 5. No reimbursement is required by this act
7 pursuant to Section 6 of Article XIII B of the California
8 Constitution because the only costs that may be incurred
9 by a local agency or school district will be incurred
10 because this act creates a new crime or infraction,
11 eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition
14 of a crime within the meaning of Section 6 of Article
15 XIII B of the California Constitution.

16 Notwithstanding Section 17580 of the Government
17 Code, unless otherwise specified, the provisions of this act
18 shall become operative on the same date that the act
19 takes effect pursuant to the California Constitution.

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**All matter omitted in this version of the
bill appears in the bill as amended in the
Assembly, July 6, 1998 (JR 11)**

