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AB-2907 Financial institutions and services: regulation. (2015-2016)

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Assembly Bill No. 2907

CHAPTER 277

An act to amend Sections 7574.14 and 17511.1 of the Business and Professions Code, to amend Section 4406 of the Commercial Code, to amend Sections 2510, 2601, 25100, 25254, and 25532 of the Corporations Code, to amend Sections 5100.2, 18139, and 18427.9 of the Financial Code, and to amend Section 53638 of the Government Code, relating to state government.

[Approved by Governor September 09, 2016. Filed with Secretary of State September 09, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2907, Committee on Banking and Finance. Financial institutions and services: regulation.

(1) The Uniform Commercial Code—Bank Deposits and Collections, among other things, limits the time in which a customer, who receives a sufficient statement of account, as specified, from a bank regarding the payments of items for the customer's account, is able to assert a claim against the bank based on an unauthorized signature or alteration against the account.

This bill would specify that a statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(2) Existing law abolished the Department of Corporations, the Commissioner of Corporations, the Department of Financial Institutions, and the Commissioner of Financial Institutions and transferred the powers, duties, responsibilities, and functions of those entities and officers to the Department of Business Oversight and the Commissioner of Business Oversight.

This bill would make technical, nonsubstantive changes to update references from these abolished entities and officers to the successor Department of Business Oversight and the Commissioner of Business Oversight.

(3) Existing law reorganized the provisions of the Financial Code.

This bill would make technical, nonsubstantive changes to update cross-references to the prior organization of the Financial Code to its current organization.

(4) Existing law regulates telephonic sellers, as defined, and requires, among other things, a telephonic seller to, not less than 10 days prior to doing business in this state, register specific information with the Department of Justice.

This bill would modify the definition of "telephonic seller" or "seller" to remove an outdated reference.

(5) The Corporate Securities Law of 1968 authorizes the Commissioner of Business Oversight to enforce its provisions, including the power to issue an order for a violation of that law, and, under certain conditions, make claim for ancillary relief.

This bill would make a technical, nonsubstantive change to include a cross-reference to a specific type of order issued by the commissioner within a procedure for a person to request a hearing regarding that order. The bill would also make a technical, nonsubstantive change to update a reference to the commissioner seeking administrative relief to instead refer to seeking ancillary relief.

(6) Under federal law, the Office of Thrift Supervision merged with the Office of the Comptroller of the Currency.

This bill would make technical, nonsubstantive changes to update references to the Office of Thrift Supervision to instead refer to the Office of the Comptroller of the Currency.

(7) Existing law prohibits the Secretary of State from filing articles of incorporation setting forth a name in which "bank," "trust," "trustee," or related words appear, except as specified.

This bill would remove a duplicate exception that does not prohibit the Secretary of State from filing these types of articles if a certificate of approval of the Commissioner of Business Oversight is attached to the articles.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7574.14 of the Business and Professions Code is amended to read:

7574.14. This chapter shall not apply to the following:

(a) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in a calendar month.

(b) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(c) A charitable philanthropic society or association incorporated under the laws of this state that is organized and duly maintained for the public good and not for private profit.

(d) Patrol special police officers appointed by the police commission of a city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(h) A bank subject to the jurisdiction of the Commissioner of Business Oversight under Division 1.1 (commencing with Section 1000) of the Financial Code or the Comptroller of the Currency of the United States.

(i) A person engaged solely in the business of securing information about persons or property from public records.

(j) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such a peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under

Section 7583.5. This officer may not carry an unloaded and exposed handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26361) of Chapter 6 of Division 5 of Title 4 of Part 6 of the Penal Code, may not carry an unloaded firearm that is not a handgun unless he or she is exempted under the provisions of Article 2 (commencing with Section 26405) of Chapter 7 of Division 5 of Title 4 of Part 6 of the Penal Code, and may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of Sections 25450 to 25475, inclusive, of the Penal Code or Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(l) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(m) A savings association subject to the jurisdiction of the Commissioner of Business Oversight or the Office of the Comptroller of the Currency.

(n) A secured creditor engaged in the repossession of the creditor's collateral and a lessor engaged in the repossession of leased property in which it claims an interest.

(o) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(p) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses a deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

SEC. 2. Section 17511.1 of the Business and Professions Code is amended to read:

17511.1. As used in this article, "telephonic seller" or "seller" means a person who, on his or her own behalf or through salespersons or through the use of an automatic dialing-announcing device, as defined in Section 2871 of the Public Utilities Code, causes a telephone solicitation or attempted telephone solicitation to occur which meets the criteria specified in subdivision (a), (b), (c), or (d) and who is not exempted by subdivision (e), as follows:

(a) A telephone solicitation or attempted telephone solicitation wherein the telephonic seller initiates telephonic contact with a prospective purchaser and represents or implies one or more of the following:

(1) That a prospective purchaser who buys one or more items will also receive additional or other items, whether or not of the same type as purchased, without further cost. For purposes of this subdivision, "further cost" does not include actual postage or common carrier delivery charges, if any.

(2) That a prospective purchaser will receive a prize or gift, if the person also encourages the prospective purchaser to do either of the following:

(A) Purchase or rent any goods or services.

(B) Pay any money, including, but not limited to, a delivery or handling charge.

(3) That a prospective purchaser is able to obtain any item or service at a price which the seller states or implies is below the regular price of the item or service offered. This paragraph shall not apply to retailers who, within the previous 12 months, have sold a majority of their goods or services through in-person sales at retail stores.

(4) That a prospective purchaser who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices which are below those that are usually charged or will be charged for the items.

(5) That the seller is a person other than the person he or she is.

(6) That the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(7) That the seller is offering to sell the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(8) That the seller is offering to make a loan, or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(9) That a prospective purchaser will receive a credit card, as defined in subdivision (a) of Section 1747.02 of the Civil Code, if the purchaser pays an upfront or preapplication fee for the credit card to the telephonic seller.

(b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by unrequested notifications sent by the seller to persons who have not previously purchased goods or services from the seller or who have not previously requested credit from the seller, to a prospective purchaser wherein the seller represents or implies to the recipient of the notification that any of the following applies to the recipient:

(1) That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification.

(2) That the recipient will receive a prize or gift if the recipient calls the seller.

(3) That if the recipient buys one or more items from the seller, the recipient will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of such items.

However, this subdivision does not apply to the solicitation of sales by a catalog seller who periodically issues and delivers catalogs to potential purchasers by mail or by other means. This exception only applies if the catalog includes a written description or illustration and the sales price of each item of merchandise offered for sale, includes at least 24 full pages of written material or illustrations, is distributed in more than one state, and has an annual circulation of not less than 250,000 customers.

(c) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to sell to the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(d) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to make a loan or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(e) For purposes of this article, "telephonic seller" or "seller" does not include any of the following:

(1) A person offering or selling a security qualified under Section 25110, 25120, or 25130 of the Corporations Code or exempt from qualification under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Corporate Securities Law of 1968 is filed with the Department of Business Oversight does not create an exemption under this paragraph.

(2) A person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4, when the solicited transaction is governed by that law.

(3) A person licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3, when the solicited transaction is governed by that law.

(4) A person licensed or certificated pursuant to Part 2 (commencing with Section 680) of Division 1 of the Insurance Code, including a person licensed pursuant to Chapter 5 (commencing with Section 1621) thereof, when the solicited transaction is governed by that law.

(5) A person offering or selling a franchise registered pursuant to Section 31110 of the Corporations Code or exempt from registration under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Franchise Investment Law is filed with the Department of Business Oversight does not create an exemption under this paragraph.

- (6) A person soliciting the sale of a seller assisted marketing plan, as defined in Title 2.7 (commencing with Section 1812.200) of Part 4 of Division 3 of the Civil Code, who has filed with the Attorney General the documents required by Section 1812.203 of the Civil Code.
- (7) A person primarily soliciting the sale of a newspaper of general circulation, as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code, a magazine, or membership in a book or record club whose program operates in conformity with the requirements of Section 1584.5 of the Civil Code.
- (8) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.
- (9) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.
- (10) Any supervised financial institution or parent, subsidiary, or subsidiary of parent thereof. As used in this paragraph, "supervised financial institution" means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, finance lender or broker, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.
- (11) A person soliciting the sale of a preneed funeral arrangement regulated by Article 9 (commencing with Section 7735) of Chapter 12 of Division 3.
- (12) A person licensed pursuant to Chapter 19 (commencing with Section 9600) of Division 3 when acting pursuant to that licensure.
- (13) A person soliciting the sale of services provided by a cable television system licensed or franchised pursuant to Section 53066 of the Government Code or any other authority.
- (14) A person or an affiliate of a person whose business is regulated by the Public Utilities Commission.
- (15) A person soliciting the sale of a commodity pursuant to Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code, if the solicitation neither intends to, nor actually results in, a sale which costs the purchaser in excess of one hundred dollars (\$100).
- (16) An issuer or subsidiary of an issuer that has a security listed on a national securities exchange if the exchange has been certified by rule or order of the Commissioner of Business Oversight under subdivision (o) of Section 25100 of the Corporations Code. A subsidiary of an issuer that qualifies for exemption under this paragraph is not itself exempt unless not less than 60 percent of the voting power of its shares is owned by the qualifying issuer or issuers.
- (17) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.
- (18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.), and the registration or license has not expired or been suspended or revoked.
- (19) A person who sells coins or bullion at a price which is not more than 25 percent more than the price at which the seller is concurrently buying the same coins or bullion, if: (A) the seller has had a retail location in California from which he or she has been selling coins or bullion to the public in person for at least three years; (B) the telephonic solicitations are not the person's primary business and sales made telephonically make up less than 20 percent of the person's total retail sales; and (C) the person claiming an exemption pursuant to this subdivision complies with Section 17511.3, as applicable, and subdivision (p) of Section 17511.4.
- (20) A person licensed pursuant to Division 1.2 (commencing with Section 2000) of the Financial Code to engage in the business of money transmission if the license has not expired or been suspended or revoked.
- (21) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.
- (22) A corporation that meets all of the following conditions:
- (A) It has been exempt from taxation under Section 23701e of the Revenue and Taxation Code for a minimum of 10 years.

(B) It has maintained its principal purpose for a minimum of 10 years.

(C) It has been incorporated in the state for a minimum of 25 years.

(f) In any civil proceeding alleging a violation of this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it.

(g) Compliance with this article does not satisfy nor substitute for any requirements for license, registration, or regulation mandated by other laws.

SEC. 3. Section 4406 of the Commercial Code is amended to read:

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

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. If the paid item requested by a customer was presented as a substitute check, the bank shall provide, in a reasonable time, either the substitute check or, if the substitute check has been destroyed or is not otherwise obtainable, a legible copy of the substitute check. A bank shall provide, upon request, and without charge to the customer, at least two items, substitute checks, or legible copies thereof, with respect to each statement of account sent to the customer.

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

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

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

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

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

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

(g) As used in this section, "substitute check" shall have the same meaning as used in Section 229.2 of Title 12 of the Code of Federal Regulations.

SEC. 4. Section 2510 of the Corporations Code is amended to read:

2510. "Social purpose corporation subject to the Banking Law" means any of the following:

(a) A social purpose corporation that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, the commercial banking business under the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code).

(b) Any social purpose corporation that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, the industrial banking business under the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code).

(c) Any social purpose corporation, other than a social purpose corporation described in subdivision (d), that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, the trust business under the Banking Law (Division 1.1 (commencing with Section 1000) of the Financial Code).

(d) Any social purpose corporation that is authorized by the Commissioner of Business Oversight and the Commissioner of Insurance to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business.

(e) Any social purpose corporation that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, business under Article 1 (commencing with Section 1850) of Chapter 21 of Division 1.1 of the Financial Code.

SEC. 5. Section 2601 of the Corporations Code is amended to read:

2601. (a) The Secretary of State shall not file articles setting forth a name in which “bank,” “trust,” “trustee,” or related words appear, unless the certificate of approval of the Commissioner of Business Oversight is attached to the articles. This subdivision does not apply to the articles of any social purpose corporation subject to the Banking Law on which is endorsed the approval of the Commissioner of Business Oversight.

(b) (1) The Secretary of State shall not file articles that set forth a name that is likely to mislead the public or that is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a domestic social purpose corporation, or the name of a foreign corporation that is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name that a foreign corporation has assumed under subdivision (b) of Section 2106, a name that will become the record name of a corporation or social purpose corporation or a foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name that is under reservation for another corporation or social purpose corporation pursuant to this title, except that a social purpose corporation may adopt a name that is substantially the same as an existing corporation or social purpose corporation, foreign or domestic, which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by the domestic or foreign corporation or social purpose corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled. The use by a social purpose corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

(2) A corporation formed pursuant to this division before January 1, 2015, may elect to change its status from a flexible purpose corporation to a social purpose corporation by amending its articles of incorporation to change its name to replace “flexible purpose corporation” with “social purpose corporation” and to replace the term “flexible purpose corporation” with “social purpose corporation” as applicable in any statements contained in the articles. For any flexible purpose corporation formed prior to January 1, 2015, that has not amended its articles of incorporation to change its status to a social purpose corporation, any reference in this division to social purpose corporation shall be deemed a reference to “flexible purpose corporation.”

(c) Any applicant may, upon payment of the fee prescribed in Article 3 (commencing with Section 12180) of Chapter 3 of Part 2 of Division 3 of Title 2 of the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (b), and upon the issuance of the certificate the name stated in the certificate shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person. No consecutive reservations shall be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of subdivision (b).

SEC. 6. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Commissioner of Business Oversight of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property that are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to: (1) any investment contract sold or offered for sale with, or as part of, that interest, or (2) any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use that is not a public utility except that the exemption is applicable to any security of a mutual water company (other than an investment contract as described in paragraph (1)) offered or sold in connection with subdivided lands pursuant to Chapter 2 (commencing with Section 14310) of Part 7 of Division 3 of Title 1.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Commissioner of Business Oversight of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or its successor or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(l) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of that renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars (\$25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from qualification of those securities when the commissioner finds that the qualification is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus, or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus, or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus, or similar benefit plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange, if the exchange has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or approved for listing upon notice of issuance on a national securities exchange, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange shall be made by the commissioner upon the written request of the exchange if the commissioner finds that the exchange, in acting on applications for listing of common stock, substantially applies the minimum standards set forth in either subparagraph (A) or (B) of paragraph (1), and, in considering suspension or removal from listing, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars (\$4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars (\$750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the exchange shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security that trades infrequently shall not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars (\$3) per share for a reasonable period of time prior to the filing of a listing application; provided, however, in certain instances an exchange may favorably consider listing an issue selling for less than three dollars (\$3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars (\$3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars (\$3,000,000).

(B) (i) Shareholders' equity of at least four million dollars (\$4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars (\$15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(A) If a company that (A) has shareholders' equity of less than one million dollars (\$1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars (\$3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(B) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings) is less than 150,000.

(C) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(D) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars (\$750,000).

(E) If shares of common stock sell at a price of less than three dollars (\$3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange, certified by rule or order of the commissioner under this subdivision, shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being met by the exchange in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange previously certified that ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange named in a rule or order of certification, and any warrant or right to purchase or subscribe to that security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, that qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may, in the commissioner's discretion, bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, a restraining order, or a writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section 1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after

validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars (\$25,000), except that costs exceeding twenty-five thousand dollars (\$25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed one thousand dollars (\$1,000). This exemption does not apply to the shares or memberships of that corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of that corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans that meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Business Oversight, and each of which at the time of transfer to the pool is an authorized investment for the originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars (\$25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under the laws of the state and authorized by the Commissioner of Business Oversight to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

SEC. 7. Section 25254 of the Corporations Code is amended to read:

25254. (a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(b) In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Business Oversight.

(c) After the exhaustion of the review procedures provided in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner may apply to the appropriate superior court for a judgment in the amount of the ancillary relief and costs awarded in a final decision and order compelling the respondent, or the named or cited person, to comply with the final decision of the commissioner brought under this division. The application shall include a certified copy of the final decision of the commission and shall constitute a sufficient showing to warrant the issuance of the judgment and order from superior court.

SEC. 8. Section 25532 of the Corporations Code is amended to read:

25532. (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.

(b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230, or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.

(d) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this division or a rule adopted or order issued under this division, the commissioner may issue an order directing the person to desist and refrain from engaging in the act, practice, or course of business, or take other action necessary or appropriate to comply with this division.

(e) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this division a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

(f) If, after an order has been served under subdivision (a), (b), (c), or (d), a request for hearing is filed in writing within 30 days of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the commissioner and is not subject to review by any court or agency, notwithstanding Section 25609.

The commissioner may file a certified copy of the final order with the clerk of the superior court or any court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

If a person does not comply with an order under this section, the commissioner may petition the superior court or any court of competent jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt and may grant any other relief the court determines is just and proper in the circumstances.

SEC. 9. Section 5100.2 of the Financial Code is amended to read:

5100.2. For purposes of this division:

(a) Any reference to regulations of the federal Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation shall also be deemed to include and refer to regulations adopted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation, to the extent these regulations have been continued in effect and made enforceable by the Office of the Comptroller of the Currency or Federal Deposit Insurance Corporation, respectively, pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73).

(b) Any reference to charters issued by the Office of the Comptroller of the Currency shall also be deemed to include and refer to charters issued by the Federal Home Loan Bank Board.

SEC. 10. Section 18139 of the Financial Code is amended to read:

18139. A sale, merger, or conversion involving an industrial loan company and another industrial loan company, a bank, or a savings association is subject to Division 1.6 (commencing with Section 4800).

SEC. 11. Section 18427.9 of the Financial Code is amended to read:

18427.9. There shall be exempted from the provisions of Section 18427.1 all of the following:

(a) (1) Any offer, not involving a public offering, to an affiliate or to a person of the type described in subdivision (i) of Section 25102 of the Corporations Code or in the regulations of the Commissioner of Business Oversight adopted thereunder.

(2) The execution and delivery of an agreement for the sale of securities to any person of the type described in paragraph (1), subject to all of the following:

(A) The agreement shall contain substantially the following provision:

"The sale of the securities which are the subject of this agreement has not been authorized by a permit issued by the Commissioner of Business Oversight. The issuance of the securities or the payment or receipt of any part of the consideration therefor prior to the issuance of a permit is unlawful, unless the sale of securities is exempt from Section 18427.1 of the California Financial Code. The rights of all parties to this agreement are expressly conditioned upon the issuance of a permit, unless the sale is so exempt."

(B) No part of the purchase price may be paid or received, and none of the securities may be issued, until a permit authorizing the sale of the securities is issued, unless the sale is exempt from Section 18427.1.

(b) Any transaction or security which the commissioner by regulation or order exempts as not being comprehended within the purposes of this article and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of investors.

SEC. 12. Section 53638 of the Government Code is amended to read:

53638. (a) The deposit shall not exceed the shareholder's equity of any depository bank. For the purposes of this subdivision, shareholder's equity shall be determined in accordance with Section 463 of the Financial Code, but shall be deemed to include capital notes and debentures.

(b) The deposit shall not exceed the total of the net worth of any depository savings association or federal association, except that deposits not exceeding a total of five hundred thousand dollars (\$500,000) may be made to a savings association or federal association without regard to the net worth of that depository, if such deposits are insured or secured as required by law.

(c) The deposit to the share accounts of any regularly chartered credit union shall not exceed the total of the unimpaired capital and surplus of the credit union, as defined by rule of the Commissioner of Business Oversight, except that the deposit to any credit union share account in an amount not exceeding five hundred thousand dollars (\$500,000) may be made if the share accounts of that credit union are insured or guaranteed pursuant to Section 14858 of the Financial Code or are secured as required by law.

(d) The deposit in investment certificates of a federally insured industrial loan company shall not exceed the total of the unimpaired capital and surplus of the insured industrial loan company.