would prohibit any person who holds a beer manufacturer's license for a specific location from holding an on-sale license for the same or contiguous premises, unless the licenses for the contiguous premises were issued prior to January 1, 1996, and the licensed contiguous premises have been in continuous operation since the issuance of the licenses.

Existing provisions of the ABC Act known as "tied-house" restrictions generally prohibit an on-sale alcoholic beverage licensee from having an ownership interest in an alcoholic beverage manufacturer. Existing law allows as an exception to those provisions a holder of no more than six on-sale licenses to own a microbrewery, as specified. Existing law limits the licensee to purchasing alcoholic beverages for sale from a wholesale or winegrower licensee, except for any alcoholic beverages manufactured by the licensee at a single location contiguous or adjacent to the licensee's premises. This bill would, instead, limit the on-sale licensee to purchasing alcoholic beverages from a wholesale or winegrower licensee, except for licensees who hold on-sale and beer manufacturer's licenses for contiguous premises that were issued prior to January 1, 1996, and the licensed contiguous premises have been in continuous operation since the issuance of the licenses. The bill would prohibit an on-sale licensee who also has an ownership interest in a licensed beer manufacturer from operating the on-sale licensed premises and the beer manufacturing premises as contiguous premises, unless the licenses for the contiguous premises were issued prior to January 1, 1996, and the contiguous premises have been in continuous operation since the issuance of the licenses. *[S. GO]*

AB 385 (Tucker). The ABC Act provides for the issuance of a retail package off-sale beer and wine license at an annual fee of $24. As introduced February 14, this bill would increase the annual fee for that license to $100. *[A. GO]*

LITIGATION

In ***44 Liquormart, Inc., et al., v. Rhode Island, et al.***, 39 F.3d 5 (Oct. 24, 1994), plaintiffs 44 Liquormart, Inc., and Peoples Super Liquor Stores, Inc., sought declaratory relief that two Rhode Island statutes are unconstitutional as contravening the First Amendment; the statutes, assertedly aimed at promoting temperance, prohibit advertisement of the price of intoxicating liquor, except at the place of sale if sold within the state. After a bench trial, the district court found for plaintiffs. On appeal, the U.S. Court of Appeals for the First Circuit reversed, thus allowing the state to limit advertising by Rhode Island vendors. According to the First Circuit, in order for plaintiffs to prevail, they first must prove that the expression is protected by the First Amendment; for commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, the court must determine whether the asserted governmental interest is substantial. Answering both of these questions in the affirmative, the court then sought to determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest. After reviewing the effect that price advertising has on alcohol consumption, the First Circuit found that the state's action was reasonable as a control.

On May 1, 1995, the U.S. Supreme Court granted plaintiffs' petition for a writ of certiorari, but limited its review to the following question: "Whether Rhode Island may, consistent with the First Amendment, prohibit truthful, non-misleading price advertising regarding alcoholic beverages?" The Supreme Court heard oral argument on November 1; at this writing, it has not yet issued its opinion.

The battle continues in ***California Beverage Retailer Coalition v. City of Oakland***, No. 726329-3 (Alameda County Superior Court), in which the Coalition is challenging an Oakland city ordinance which establishes performance standards for licensed premises, requires merchants to post a notice of the standards, and provides that vandalism, drug sales, prostitution, and graffiti in violation of the standards are grounds for revocation of a nearby retailer's local permit to sell alcohol. *[15:1 CRLR 101; 14:4 CRLR 111; 14:2&3 CRLR 119]* In January 1995, Alameda County Superior Court Judge James R. Lambden granted the Coalition's motion for summary adjudication of two causes of action which seek declaratory and injunctive relief based upon claims that the ordinance is preempted by the ABC Act (specifically, Business and Professions Code section 23790) and Article XX, section 22 of the California Constitution. The City of Oakland and seven intervenors then filed a petition for writ of mandate with the First District Court of Appeal, asking that court to issue a peremptory writ of mandate directing the superior court to vacate and set aside its order granting the motion for summary adjudication. Among other things, the petitioners argued that no appellate court decision considers whether section 23790 precludes a city from enforcing an ordinance which sets up a public nuisance/crime enforcement mechanism against a preexisting alcoholic beverage sales establishment, and that there is ample case authority supporting the power of a city to regulate public nuisance and criminal activities connected with existing alcoholic beverage sales establishments. *[15:2&3 CRLR 111]* At this writing, the First District has not yet ruled on the matter; a decision is expected to be made in early 1996.

BANKING DEPARTMENT

Superintendent:
Conrad Hewitt
(415) 288-8800
Toll-Free Complaint Number:
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Pursuant to Financial Code section 99 *et seq.*, the State Banking Department (SBD) administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation, and discontinuance of various types of offices of these entities; and the establishment, operation, relocation, and discontinuance of various types of offices of foreign banks. The Department is authorized to adopt regulations, which are codified in Chapter 1, Title 10 of the California Code of Regulations (CCR).

The superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor. The superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the superintendent must consider:

(1) the character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company;

(2) the need for banking or trust facilities in the proposed community;

(3) the ability of the community to support the proposed bank or trust company, considering the competition offered by existing banks or trust companies; the previous banking history of the community; opportunities for profitable use of bank funds as indicated by the average demand for credit; the number of potential depositors; the volume of bank transactions; and the stability, diversity, and size of the businesses and industries of the community. For trust companies, the opportunities for profitable employment of fiduciary services are also considered;

(4) the character, financial responsibility, banking or trust experience, and busi-

ness qualifications of the proposed officers; and

(5) the character, financial responsibility, business experience and standing of the proposed stockholders and directors.

The superintendent may not approve any application unless he/she determines that the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company; conditions in the locality of the proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the capital is adequate; the proposed name does not so closely resemble as to cause confusion with the name of any other bank or trust company transacting or which has previously transacted business in the state; and the applicant has complied with all applicable laws.

If the superintendent finds that the proposed bank or trust company has fulfilled all conditions precedent to commencing business, a certificate of authorization to transact business as a bank or trust company will be issued.

The superintendent must also approve all changes in the location of a head office; the establishment, relocation, or discontinuance of branch offices and ATM facilities; and the establishment, discontinuance, or relocation of other places of business. A foreign corporation must obtain a license from the superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue money orders or travelers checks unless licensed.

The superintendent examines the condition of all licensees when necessary, but at least once every two years. The Department is coordinating its examinations with the Federal Deposit Insurance Corporation (FDIC) so that every year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent oversees security pools that cover the deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

On September 15, Stanley Cardenas resigned as SBD's Chief Deputy Superintendent; on October 20, Governor Wilson announced the appointment of Walter Mix, III, to replace Cardenas. Chief State Bank Examiner John Paulus retired from his post as of October 20; Jim Brodie, formerly the Deputy Superintendent for the San Francisco Region, became Acting Chief State Bank Examiner on October 23.

MAJOR PROJECTS

Merger Trend Continues. Bank mergers continue to take place nationwide; for example, the merger of Chemical Banking Corporation with Chase Manhattan Corporation, announced on August 25, will create the largest bank holding company in the United States, with assets of $297 billion.

The trend is also evident in California. On October 18, San Francisco-based Wells Fargo commenced a $10.9 billion hostile takeover bid for Los Angeles-based First Interstate Bank. Prior to Wells Fargo's action, First Interstate had tentatively agreed to be purchased by First Bank System, Inc., of Minneapolis for $9.8 billion. At this writing, First Interstate shareholders will decide in January whether to approve the First Bank bid, which is supported by First Interstate management, or the Wells Fargo bid. Also, the Federal Reserve Board (Fed), which must approve the merger, is expected to hold public hearings in January to consider whether the convenience and needs of the communities affected will be served by the merger. After First Interstate shareholders decide on the winning bid, the Fed will make its final decision; although the Fed is expected to accept the stockholders' decision, it could change the terms of the deal.

As of June, California had a total of 358 total banks, down from 433 in December 1991. Of that total, California had 237 state-chartered banks as of June 30, down from 241 in December 1994 and 271 in December 1991.

FDIC Lowers Insurance Premiums. On August 8, the Federal Deposit Insurance Corporation (FDIC) lowered the premium which the healthiest banks are required to pay in order to insure their customers' deposits. Specifically, the FDIC lowered the fee from $0.23 per $100 of insured deposits to $0.04 per $100; under the August action, the weakest banks are still required to pay $0.31 per $100 of deposits.

On November 14, the FDIC again lowered the premiums, this time to the lowest rate ever; as of January 1, the premium will be lowered by $0.04 for each $100 of insured deposits. For the country's healthiest banks, this action means that they will actually be paying no premium; however, they will still be required to annually pay a minimum $2,000 to the Bank Insurance Fund (BIF), which insures deposits at banks. The country's weakest banks will see their premiums drop from $0.31 to $0.27 for each $100 of insured deposits. This cut brings the average assessment rate down to $0.43 per $100 of insured deposits. According to the FDIC, it took this action in light of the current healthy state of the banking industry and the improving economy. However, some experts—including consumer advocate Ralph Nader—criticized the FDIC's action, stating that it makes better sense to continue building the BIF in healthy economic times.

Consumer Group Criticizes Rising Banking Fees. On August 8, the U.S. Public Interest Research Group (PIRG) released a report which concludes that fees alone provide banks with profits of over $15 billion annually, and are increasing at twice the rate of inflation. According to PIRG, in the last two years the cost of maintaining a checking account rose by 10%; average monthly balances to avoid checking fees rose by 30%; customers with savings balances of $200 paid $31 more in fees than they earned in interest; average costs for ATM use jumped 6% for local networks and 7% for national networks; and fees for bounced checks are 7.5 times the administrative costs and fraud losses incurred by banks for bad checks. According to the report, these and other fees are increasing drastically while bank costs are increasing slowly or not at all. Further, the report states that banks are beginning to charge new fees, such as the "deposit item returned" fee charged against a customer who unknowingly deposits a bad check; while only 35% of banks assessed this fee in 1991, PIRG found that 100% of the banks surveyed for this report now charge this fee.

SBD Action Under New Banking Law. AB 1482 (Weggeland), the California Interstate Banking and Branching Act of 1995, enacted Financial Code section 490, which authorizes the Superintendent to grant exemptions from the requirement that California state banks obtain his/her approval before establishing a branch office, place of business, or automated teller machine branch office or before relocating a branch office or place of business. In its November 9 *Weekly Bulletin*, SBD stated the Superintendent's plan to adopt regulations to implement section 490; in the meantime, however, the Superintendent will entertain requests from California state banks for exemptions on a case-by-case basis. If granted, an exemption will expire one year after the date of issuance, unless extended; no fee will be charged for filing a request for an exemption or for issuing an exemption.

Superintendent Opposes Proposed Examination Fee. In a December 13 letter to certain members of Congress, Superintendent Conrad Hewitt expressed concern regarding a provision in President Clinton's budget proposal that would require the Federal Reserve and the FDIC to charge for examinations of state-chartered banks. Contending that these federal bank regulators already capture their costs related to state-chartered bank examinations through interest on reserves and premiums, Hewitt argued that such an examination fee would subject state banks to a duplicative charge. Hewitt also contended that state bank regulators such as SBD charge fees that are for the same sized banks typically 50% less than the annual charges imposed by the federal regulator, the Office of the Comptroller of the Currency (OCC); Hewitt opined that the new federal fee would raise the charges imposed on state banks at the OCC level without providing any new service to state banks.

SBD Joins State-Federal Working Group. On September 21, several state and federal banking regulators held the first meeting of a working group aimed at streamlining and improving the coordination of the examination and supervision of state-chartered banks operating across state lines; members of the working group include officials from the FDIC and Federal Reserve, as well as state regulators from Washington, California, Utah, and New York. At the September meeting, the group formed four subgroups to address specific issues related to interstate bank supervision: streamlining application procedures, coordinating examination procedures and forms, improving and maintaining professional examination skills, and maximizing the use of technology in interstate bank supervision. In each of these subgroups, members will focus on ways to share resources among regulatory agencies in order to maximize productivity and minimize regulatory burden.

Superintendent Announces Plan to Reform SBD's Regulations. In the September 22 *Weekly Bulletin*, SBD announced that Superintendent Hewitt has commenced a project to reform the Department's regulations; Hewitt's goal is to reduce the number of regulations and the regulatory burden to the extent feasible. To that end, the Superintendent has formed an internal working group to review SBD's regulations; written suggestions regarding changes to the regulations were requested from the banking industry by October 19. The Department is expected to hold meetings with the banking industry to receive further input regarding possible modifications to its existing regulations.

Hewitt Clarifies Appeal Process. In 1991, then-Superintendent James Gilleran notified bank chief executive officers that if a bank disagrees with the findings of an examination, a procedure to appeal is available; in the May 19 *Weekly Bulletin*, SBD Superintendent Hewitt announced his plan to continue that process. According to Hewitt, all findings of the examination are to be discussed by the Examiner-In-Charge with bank management at exit meetings, and the examiner is to note any material disagreement with the findings. After review by SBD supervisory staff, findings and classifications are communicated to the bank's board of directors through the report of examination and accompanying transmittal letter. Bankers will be afforded an opportunity to respond to the findings, and to provide new or additional information or rebuttal. Bankers may also discuss unresolved differences with the regional assistant deputies, regional deputies, or executive staff in the San Francisco office. Finally, if a matter is still not resolved, bankers may discuss any differences personally with the Superintendent of Banks.

Bank Closures. On July 28, Pacific Heritage Bank of Los Angeles was closed by the Superintendent; on the same date, the insured deposits and certain of the assets of Pacific Heritage were acquired by California Federal Bank, which is providing continued banking service at the locations of the former head and branch offices of Pacific Heritage.

Enforcement Action. On June 16, the Superintendent issued a warning to cease and desist from operating a fictitious, purported office of Metrobank under the name "Metro Bank," in Mission Hills; the Superintendent also issued a warning to cease and desist from conducting a commercial banking business in California without a license to Metro Bank, California Sales, and Carl Hanson. According to SBD, Metrobank, headquartered in Los Angeles, is licensed to transact banking business in California; however, an unauthorized and fictitious office called "Metro Bank" (with no connection to Metrobank) is being operated in Mission Hills; Metrobank also reports that counterfeit checks are being received through inclearings drawn on fictitious accounts at the unauthorized and fictitious office.

On August 11, the Superintendent issued a warning to cease and desist from doing banking business in California without a license to Banco De Londres Y Multinacionale, S.A., of Pasadena, which is not authorized to transact banking or trust business in California and is not authorized to transact business in the way or manner of a bank or trust company.

On September 1, the Superintendent issued a warning to cease and desist from doing business in California without a license to Leaning Rock Indian Bank Corporation of Alpine, which is not authorized to transact business under any name which contains the word "bank" and which indicates that the business is that of a bank.

On September 5, the Superintendent issued a warning to cease and desist from doing business or maintaining a representative office in California without a license to First Southern Banking Corporation of Nauru and its representative, Alamin, Inc., of Los Angeles; First Southern is not authorized to engage in the banking business or to maintain a representative office in California.

SBD Issues 1994 Annual Report. On October 5, SBD issued the 84th Annual Report of the Superintendent of Banks for the calendar year ending on December 31, 1994. Among other things, the report noted factors indicating that the state's economy improved in 1994; for example, the number of jobs increased and unemployment decreased throughout all regions of California, closing out the year with a seasonally adjusted unemployment rate of 7.8%. The report also detailed several significant regulatory events taking place in 1994, such as the enactment of the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. According to the report, California state-chartered banks earned $629.2 million in 1994, up 28% from the $490.3 million earned in 1993; 200 of 242 banks (82.6%) were profitable.

LEGISLATION

AB 706 (Caldera). The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328) became operative, in part, on September 29, 1995, and permits bank subsidiaries of a bank holding company to act as agents for each other for specified purposes, expands the authorization for interstate banking, and allows interstate bank branching. *[14:4 CRLR 134]* As amended September 5, this bill makes changes to state law regulating the operation of industrial loan companies to eliminate conflicts with the Act, implement the provisions of the act, and make related changes.

Existing law provides for the conversion of state or federal depository corporations and, upon authorization of the Commissioner, enables a California state or federal depository corporation to amend its articles of incorporation or articles of association to engage in the industrial loan business. This bill repeals these provisions and instead provides that a sale,

merger, or conversion involving an industrial loan company and a bank is subject to the Depository Corporation Sale, Merger, and Conversion Law.

Under existing law, the Commissioner may establish rules and regulations that are reasonable and necessary to carry out the purposes and provisions of law regulating industrial loan companies. This bill provides that the Commissioner may also make agreements that he/she deems necessary or appropriate in exercising his/her powers to carry out the purposes of those provisions of law regulating industrial loan companies, including agreements with agencies of this state, other states, or the United States, that regulate financial institutions, relating to examinations of industrial loan companies, banks, and other matters. This bill further provides that an agreement with a government agency that regulates a financial institution is exempt from the advertising and competitive bidding requirements of the Public Contract Code. This bill, which took effect immediately as an urgency measure, was signed by the Governor on September 28 (Chapter 479, Statutes of 1995).

AB 1482 (Weggeland), as amended September 5, also makes changes to state law regulating the operation of banks to eliminate conflicts with the Riegle-Neal Interstate Banking and Branching Efficiency Act, implement the provisions of the Act, and make related changes. The bill provides that certain of the changes also apply to industrial loan companies. The bill also enacts provisions to assist in the transition between the existing and revised banking laws. AB 1482 was signed by the Governor on September 28 (Chapter 480, Statutes of 1995).

SB 855 (Killea), as amended August 29, provides that whenever federal law applicable to national banks is substantially different from the Financial Code, the Superintendent may, by regulation, make that law applicable to state banks.

Existing law provides that no bank, officer, director, employee, or agent shall give a preference to any depositor or creditor except as expressly authorized by law. This bill instead provides that a bank may not pay or secure a creditor after committing an act of insolvency or in contemplation of insolvency, or to prevent the application of its assets in a specified manner, or with a view of a preference of one creditor to another.

Existing law provides for reports to the Superintendent as to the financial condition of banks and trust companies. This bill eliminates a requirement that these reports be published in a newspaper but requires the reports to be made available as specified.

Existing law provides that no bank shall acquire, hold, extend credit on the security of, or extend credit for the purpose of acquiring or carrying, any security of the bank or of any controlling person of the bank. This bill provides that the prohibition does not apply to an acquisition of its shares approved in advance by the Superintendent.

Existing law regulates loans to executive officers and directors of banks. For that purpose, existing law incorporates certain provisions of a regulation of the Federal Reserve Board. This bill revises references to various provisions of that regulation. This bill was signed by the Governor on October 10 (Chapter 754, Statutes of 1995).

AB 393 (Burton). Existing law prohibits an operator of an automated teller machine from imposing a surcharge upon the usage of that machine for customers using an access device not issued by that operator unless the surcharge is clearly disclosed prior to completion of the transaction. As introduced February 14, this bill would prohibit an operator of a point of sale transfer device that locates the device at a retailer, to facilitate electronic fund transfers in connection with retail sales, from imposing a fee on a retailer for the use of the point of sale transfer device by a customer of the retailer. *[A. B&F]*

SB 616 (Marks). Existing law requires banks and other financial institutions to maintain certain information concerning charges and interest on accounts, and to make that information available to the public. Existing law also requires banks and other financial institutions to furnish depositors with statements concerning charges and interest on accounts, as specified. As amended May 4, this bill would prohibit a supervised financial organization, defined to include banks, savings associations, savings banks, and credit unions, from charging and collecting deposit item return fees applicable to consumers who deposit checks that are subsequently not honored due to insufficient funds (*see* MAJOR PROJECTS). *[S. FI&IT]*

LITIGATION

In ***Smiley v. Citibank (South Dakota) N.A.***, 11 Cal. 4th 138 (Sept. 1, 1995), the California Supreme Court interpreted the National Bank Act, 12 U.S.C. section 85 *et seq.*, to allow a national bank to charge late payment fees as interest if such fees are allowed by the national bank's home state. Plaintiffs intend to seek U.S. Supreme Court review of the California Supreme Court's decision.

In ***Roy Supply, Inc. v. Wells Fargo Bank, N.A.***, 39 Cal. App. 4th 1051 (Oct. 26, 1995), the Third District Court of Appeal held that Commercial Code sections 1103 and 4406(4) bar a bank customer from recovering for a bank's negligent payment of forged checks unless the customer discovers and notifies the bank of the forgeries within one year of receiving a statement of account indicating payment of the forged checks.

DEPARTMENT OF CORPORATIONS

Commissioner: Gary S. Mendoza
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The Department of Corporations (DOC) is a part of the cabinet-level Business, Transportation and Housing Agency and is empowered under section 25600 of the California Code of Corporations. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Division 3, Title 10 of the California Code of Regulations (CCR).

The Department administers several major statutes. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the commissioner must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers, and investment advisors.