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 479, 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).

**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.
Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud, or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The commissioner has particularly broad civil investigative discovery powers; he/she can compel the deposition of witnesses and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The commissioner can also issue “desist and refrain” orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.


MAJOR PROJECTS

DOC Approves Blue Cross’ Public Benefit Plan. On September 7, DOC Commissioner Gary Mendoza approved the public benefit plan belatedly proposed by Blue Cross of California (BCC) after its conversion from nonprofit to for-profit status. Under California law, nonprofit organizations are required to include in their articles of incorporation a promise that, if and when they choose to convert to for-profit status, they will transfer an amount equal to the total value of their assets to the sort of charitable purposes for which they were formed. Under the Knox-Keene Health Care Service Plan Act of 1975, DOC is responsible for adopting procedures which nonprofit entities must follow when they convert to for-profit status, and for reviewing and approving conversion proposals. In 1991, BCC presented DOC with a plan to “restructure” (rather than convert) from nonprofit to for-profit status, by placing 90% of its assets into a for-profit entity. Under this plan, BCC would remain in existence as a nonprofit entity, but its for-profit subsidiary called WellPoint Health Networks would conduct its HMO business. After more than a year of negotiations and some modifications to the proposed plan, then-DOC Commissioner Tom Sayles approved Blue Cross’ new status without requiring BCC to transfer an amount equal to its full value—estimated at $2.5 billion—to charitable purposes.

During 1994, however, Commissioner Mendoza, a group of public interest organizations, and Assemblymember Phil Isenberg—all dissatisfied with BCC’s maneuvering—took action to force Blue Cross to return its assets to charity as required by law. Following months of pressure, Blue Cross finally submitted a public benefit plan to DOC in September 1994, in which it promised to turn over $2.1 billion in assets to a charitable foundation called the California HealthCare Foundation, which in turn would make grants to qualified health care programs and projects. DOC solicited public comments concerning Blue Cross’ proposed public benefit plan, and received 180 comments by October 31, 1995. Most comments expressed concern that no independent assessment of the value of Blue Cross’ nonprofit assets had ever been conducted; that the plan must prohibit employees, officers, and directors of Blue Cross and WellPoint from serving on the Foundation’s board; and that the Foundation should be incorporated as a 501(c)(3) nonprofit organization rather than as a 501(c)(4) organization (as desired by Blue Cross), because the latter type of nonprofit is permitted to lobby and engage in other forms of advocacy. [15:2&3 CRLR 115–16; 15:1 CRLR 106–07; 14:4 CRLR 150–01]

Pursuant to the approved plan, two new nonprofit foundations will be created with a total of $3.2 billion in public charitable assets. One foundation will be established under Internal Revenue Code section 501(c)(3); this foundation will be governed by a board with a majority of new independent members. The other foundation will be established under Internal Revenue Code section 501(c)(4); although this foundation’s board will not have a majority of new or independent members, it will be required to follow strict conflict of interest rules and will be prohibited from engaging in any lobbying or political activities. The two foundations are expected to make $160 million in grants in 1996; after that, grants will amount to at least 5% of the foundations’ consolidated assets.

However, the formation of the two nonprofit organizations was jeopardized by the inability of WellPoint Health Networks and Health Systems International (HSI) to resolve disputes over their proposed merger that would have created the nation’s second-largest managed care company. [15:2&3 CRLR 115–16] As Blue Cross owns 80% of WellPoint’s stock, WellPoint’s acquisition of HSI would have provided Blue Cross with the means to create the $3.2 billion charitable foundations as called for under the approved plan. In November, Commissioner Mendoza sent a letter to officials at both companies, in which he stated that there is “no legitimate reason” for delaying the merger; the letter also stated that DOC “questions the legitimacy of a renegotiation of management responsibilities and the propriety of making compensation issues a driving force.”

On December 14, however, WellPoint and HSI formally called off the merger. Mendoza announced that the failed merger does not end Blue Cross’ obligation to create the charitable foundations, and stated that he would direct Blue Cross to promptly submit an alternative proposal for funding the charities.

Offer and Sale of Securities by Small Businesses. On December 19, the Office of Administrative Law (OAL) approved DOC’s amendments to its regulations under the Corporate Securities Act of 1968 relating to small businesses. [15:2&3 CRLR 116] Corporations Code section 25113(b)(2) provides for a modified permit application process for small companies intending to raise up to $1 million in any 12-month period through the offer and sale of securities to the public; the provision was intended to facilitate the raising of capital and job creation by small businesses in California and increase access of small business issuers to the capital markets. Section 25113(b)(2) was also intended to implement the Small Business Offering Regulation (SCOR) procedures approved by the North American Securities Administrators Association (NASAA) and adopted by various other states. Since the enactment of section 25113(b)(2), however, fewer than twenty application filings have been made under that section.

REGULATORY AGENCY ACTION
Based upon discussions with filers and potential filers, Commissioner Mendoza found that the standards applied by DOC fail to recognize the often extensive personal contribution made by the promoters to the success of the enterprise, the market realities of finding a selling agent for the securities of small companies, and the often limited need for audited financial statements when the issuer is a small enterprise. DOC adopted following amendments in order to facilitate capital formation and job creation by small businesses in California, and to bring about greater uniformity in regulatory standards among the states:

- Subsection 260.001(i), Title 10 of the CCR, was added to define the term “small business issuer” as a California corporation or a foreign corporation subject to Corporations Code section 2115 that meets the “small business concern” criteria found in 15 U.S.C. section 632(a) and 13 C.F.R. Part 121; is not an investment company or “blind pool” company; and, if a majority-owned subsidiary, the parent must also be a small business issuer. Also, subsection 260.001(a) was amended to include articles of organization of limited liability companies, which are now recognized as business entities under California law.

- Section 260.140.01(e), Title 10 of the CCR, was adopted to provide investor suitability standards for a small business issuer. Under subsection (e), when the proposed maximum aggregate offering does not exceed $5 million, the requirements under section 260.140.05 (except for proposed subsection (c), 260.140.31, and 260.140.50 (except for the requirement that the initial offering price shall not be less than $2 per share) are waived if the securities are sold to (1) investors having either a minimum net worth of $150,000, or a minimum net worth of at least $75,000 and a minimum gross income of $50,000 (either during the last tax year or, based upon a good faith estimate, during the current tax year); and (2) to a small investor who has not purchased more than $2,500 of securities in the twelve months before the proposed sale; or (3) to both (1) and (2).

- Formerly, section 260.140.05, Title 10 of the CCR, provided that an application for an open qualification would be denied if the business in which the issuer is engaged is not anticipated to produce profits within a reasonable period of time or if the business operation depends upon the development of a product or system which will not be completed before the offering begins. Section 260.140.05 was amended to provide that 24 months after the application becomes effective is a “reasonable period of time” for determining whether a business will produce profits; a longer period of time may be authorized under certain circumstances. According to DOC, this will allow the issuer to file for an extension of time. DOC also repealed language which provided that an open qualification will be denied if the development of a product or system upon which the business depends has not been completed prior to the commencement of the offerings.

- New section 260.140.05(b) requires prospective financial information to be prepared by the issuer and based upon appropriate and reasonable assumptions. The Commissioner may require that the prospective financial information be reviewed by an independent certified public accountant.

- New section 260.140.05(c) requires small business issuers to deliver a copy of the pamphlet, A Consumer’s Guide to Small Business Investments, to each prospective purchaser at least five business days before a prospective investor’s offer to purchase securities is accepted. This guide is published by NASAA and is available from that organization or from any of DOC’s offices.

- Formerly, section 260.140.20, Title 10 of the CCR, set forth reasonable selling expenses. The Commissioner amended the reasonable selling expenses for small business issuers. New subsection 260.140.20(b) allows reasonable selling expenses of 18% of the aggregate offering price when the maximum aggregate offering price does not exceed $5 million anywhere, providing that the total underwriting and brokerage discounts and commissions do not exceed 13%. New subsection 260.140.20(c) allows reasonable selling expenses of 20% of the aggregate offering price when the maximum aggregate offering price for all securities does not exceed $3 million anywhere, providing that the total underwriting and brokerage discounts do not exceed 15%.

- Section 260.140.31, Title 10 of the CCR, provided that a number of promotional shares which do not exceed 25% of all of the common shares issued and proposed to be issued by the corporation which is a small business issuer is presumptively reasonable. DOC’s amendments raise the limit of promotional shares to 50%, if an issuer meets the conditions for filing under Corporations Code section 25113(b)(2).

- Section 260.613, Title 10 of the CCR, requires audited financial statements for all open qualifications. Amendments to subsection 260.613(b) delete the reference to “independent public accountant,” as this term is outdated and rarely used. In addition, the Commissioner adopted new subsection 260.613(f) to allow a small business issuer to use “reviewed financial statements” if the aggregate proceeds of the proposed offering plus the total aggregate proceeds to the issuer from the sale of any of its securities in the preceding twelve months is not more than $500,000; the term “reviewed financial statements” means financial statements prepared and accompanied by a report issued by an independent certified public accountant prepared in accordance with generally accepted accounting principles. However, the Commissioner will retain the authority to require audited financial statements.

Qualification of Stock Option and Purchase Plans. On December 1, Commissioner Mendoza published notice of his intent to amend sections 260.140.41, 260.140.42, and 260.140.45, Title 10 of the CCR, relating to the qualification of stock option and purchase plans. Section 260.140.41 currently provides that the issuance of shares sold to employees, directors, or consultants under a stock option plan must meet specified conditions. DOC’s changes would, among other things, exempt officers, directors, and consultants of the issuer from the requirement that the option granted be exercisable at a rate of 20% per year over a period not greater than five years from the date of grant of the option in order to allow companies greater flexibility to meet the company’s needs; clearly state that the right to exercise options to purchase stock may be terminated when employment is terminated for cause; and eliminate a requirement that companies issuing securities under option plans repurchase certain shares at the higher of the original purchase price or fair market value.

Section 260.140.42 provides that shares sold to employees, directors, or consultants under a stock purchase plan must be issued pursuant to specific conditions. DOC’s changes would eliminate a requirement that companies repurchase shares at the higher of the original purchase price or fair market value, and would require companies to repurchase shares at not less than fair market value or the original issue price, provided that the right to repurchase at the original issue price terminates at a rate of 20% of the shares per year.

Section 260.140.45 limits the issuance of shares pursuant to a stock option or purchase plan, or similar plan, to 30% of the then-outstanding shares of the issuer. The proposed change would allow shareholders to approve, by a two-thirds vote, the issuance of options in excess of 30% of the outstanding shares.
REGULATORY AGENCY ACTION

No hearing was scheduled on these proposed changes; at this writing, DOC is scheduled to receive public comments on the proposal until January 19.

Eligible Securities List. On October 20, Commissioner Mendoza published notice of his intent to amend section 260.608, Title 10 of the CCR, regarding the eligible securities list, which specifies those securities which are exempt from qualification under Corporations Code section 25101(b) and eligible for sale in California. DOC's changes to section 260.608 would provide that the list is available through DOC. The Department received public comments on the proposal until December 8. At this writing, the change awaits adoption by Commissioner Mendoza and review and approval by OAL.

Other DOC Rulemaking Under the Corporate Securities Act. The following is a status update on other rulemaking proceedings initiated by DOC under the Corporate Securities Act in recent months:

- At this writing, OAL is reviewing the Commissioner's proposed new sections 260.102.16, 260.102.17, 260.102.18, and amendments to sections 260.103(b), 260.113.1(b), 260.102.10.1, and 260.102.15, Title 10 of the CCR, to implement SB 1951 (Killea) (Chapter 828, Statutes of 1994). [15:2&3 CRLR 117; 14:4 CRLR 119–20]

In order to comply with section 1371.4(g), the Commissioner readopted section 1300.71.4 on an emergency basis. Specifically, section 1300.71.4 prevents the interruption of, or gap in, health care services, and clarifies the responsibilities of health care providers and HCSPs in circumstances where an enrollee continues to require medically necessary health care services after stabilization of the enrollee's emergency medical condition. The section governs circumstances prior to stabilization or during periods of destabilization of an enrollee's emergency medical condition when an enrollee requires immediate medically necessary health care services. In this situation, a HCSP is required to pay for such care regardless of whether the emergency health care provider is contracting with the HCSP.

The section also sets forth the responsibilities of a HCSP when an enrollee has stabilized and does not continue to require immediate medically necessary health care services. In this situation, a HCSP shall respond to a noncontracting emergency health care provider's request for treatment authorization within one hour and pay for any medically necessary health care services provided to an enrollee to maintain the enrollee's stabilized condition up to the time that the HCSP actually initiates the enrollee's transfer.

At this writing, the emergency regulations will remain in effect until April 17, 1996.

DOC Proposes Toll-Free Consumer Services Hotline for HCSP Enrollee Grievances. On October 11, DOC announced the establishment of a toll-free telephone number which health maintenance organization enrollees may use to report grievances. The hotline, as mandated by AB 73 (Friedman) (Chapter 787, Statutes of 1995) and SB 689 (Rosenthal) (Chapter 789, Statutes of 1995) (see LEG-ISLATION), will be operated by the Consumer Services Unit of DOC's Health Care Division, and is not a replacement for any HCSP's internal grievance procedures. According to DOC, an enrollee should first follow his/her health plan's internal grievance procedure before contacting DOC. The toll-free number is (800) 400-0815, and the hours of operation are from 8:00 a.m. to 5:00 p.m. Monday through Friday; DOC officials expect to receive close to 10,000 calls per month on the new system.


Among other things, the proposed regulatory action would set forth DOC's standards and requirements relating to conflicts of interest; specify the licensure requirements; set forth the procedures for maintaining trust accounts; state the procedure for maintaining general accounting books; require each licensee to provide borrowers with a periodic statement of their accounts; and require each licensee
to immediately report any civil, criminal, or disciplinary actions filed against the licensee or any of its officers, directors, partners, shareholders controlling 10% or more of the ownership interests, trustees, or certain employees, as well as any actual or alleged defalcation, embezzlement, or theft by any of those persons.

The Department has not scheduled a public hearing on these proposed changes; DOC accepted public comments on the proposals until December 8. At this writing, the rulemaking file awaits adoption by the Commissioner and review and approval by OAL.

Escrow Industry/DOC Task Force Meets. On July 10 and August 2, a task force consisting of members of the independent escrow industry and DOC staff met to discuss ways to reduce the costs of regulation and insurance, while maintaining adequate safeguards to protect the public’s funds. As a result of the task force’s efforts, DOC determined that the majority of industry members want DOC to continue its regulatory examinations, although on a less frequent basis; the majority of the industry also indicated that it does not want to eliminate the requirement for an annual audit by a certified public accountant. Accordingly, DOC announced on November 9 that it would take specific action to reduce the costs of the annual audit. Among other things, DOC announced that it would extend the regulatory examination cycle from every twelve months to every other year. According to DOC, this change, along with other changes DOC will make to streamline its operations, will materially reduce the regulatory costs for independent escrow agents; however, DOC also predicted that the change will result in its inability to take as many actions against escrow companies or individuals who violate the escrow law as it has in the past.

LEGISLATION

H.R. 1058 (Bliley) enacted the Private Securities Litigation Reform Act of 1995, which seeks to reduce or eliminate the incidence of lawyer-driven litigation against securities dealers or companies. Supporters of the measure generally contend that the Act makes it more difficult for attorneys to bring frivolous suits on behalf of disgruntled shareholders against securities dealers or companies; however, several consumer groups, including the American Association of Retired Persons and the Consumer Federation of America, contend that the measure would also limit meritorious suits and enable companies to speculate in promotional literature about future performance. The measure passed out of Congress in early December; on December 19, just hours before the bill would have become law without his signature, President Clinton vetoed the measure. In his veto message, President Clinton stated that he supports the goals of securities litigation reform and believes that there should be an end to frivolous suits, but expressed concern that the legislation might affect small investors with legitimate complaints. However, on December 20, the House of Representatives voted 319–100 to override the veto, as did the Senate with a 68–30 vote on December 22; accordingly, H.R. 1058 became Public Law 104-67 over the objections of the President.

AB 1152 (Bordonaro). Under existing law, the Corporations Commissioner licenses and regulates health care service plans (HCSPs), and the Insurance Commissioner regulates policies of disability insurance and nonprofit hospital service plan contracts; existing law requires that HCSPs, disability insurers, and nonprofit hospital service plans provide coverage for certain benefits and services. As amended August 30, this bill requires, by July 1, 1996, HCSPs that provide coverage on a group basis, certain group disability insurance policies that provide coverage for hospital, medical, or surgical benefits, and certain nonprofit hospital service plan contracts that provide coverage on a group basis to file a written policy with DOC or the Department of Insurance regarding coverage for enrollees, insureds, or subscribers receiving services during a current episode of care from a noncontracting provider. The bill provides that the written policy shall include, among other things, a description of the process used to facilitate the continuity of patient care, and the review process of requests to continue services with an existing provider. The bill requires that a copy of the policy be provided to enrollees, insureds, and subscribers. This bill was signed by the Governor on October 3 (Chapter 504, Statutes of 1995).

AB 1101 (Speier), as amended September 11, would have required every HCSP contract, nonprofit hospital service plan contract, and certain disability insurance policies issued, amended, delivered, or renewed on or after January 1, 1996, which provides group coverage, to include coverage, under terms and conditions applicable to other benefits, for a variety of federal and Drug Administration-approved prescription contraceptive methods. The bill would have prohibited any contract or policy that provides coverage for pregnancy services from containing any exclusion, reduction, or other limitation as to pregnancy that is more restrictive than any other provision applicable to any other benefit covered by the plan contract or policy, and would have provided that this provision would not affect copayment deductible provisions in a contract or policy. This bill was vetoed by Governor Wilson on October 16.

AB 1840 (Figueroa). Existing law requires HCSPs to establish and maintain a grievance system for enrollees to submit grievances, requires plans to provide notice to group contractholders of the cancellation of the plan contract, and also provides procedures for the appeal of a contested claim. As amended September 8, this bill requires contracts with providers to contain provisions requiring a dispute resolution mechanism. With certain exceptions, the bill requires a plan, entities contracting with a plan, and providers to each be responsible for their own acts or omissions and not be liable for the acts or omissions of, or the costs of defending, others. This bill declares that contractual provisions to the contrary are void and unenforceable.

Under existing law, when a HCSP terminates a contract with an individual provider within a medical group or individual practice association, an entire medical group, or an individual practice association, it is required to notify enrollees who have selected that provider, group, or association of the termination at that time. With certain exceptions, this bill instead requires enrollees who are receiving a course of treatment or who have selected a provider to be notified thirty days prior to the termination of the contract with an individual provider, or individual provider within a medical group or individual practice association, and authorizes the plan to request the group or association to notify the enrollees who are patients of a terminated individual provider. This bill was signed by the Governor on October 11 (Chapter 774, Statutes of 1995).

SB 454 (Russell), as amended August 29, also requires HCSPs to include in their
contracts with providers a dispute resolution system for the submission of disputes to the plan by providers.  

This bill also allows subscribers and enrollees, or their agents, to submit a grievance to DOC for review after compliance with certain procedures, and requires the plan to provide notice of this right to subscribers or enrollees in a prescribed manner. The bill authorizes DOC to refer any grievance or complaint to other appropriate state and federal entities for investigation and resolution, and requires DOC to refer any grievance or complaint involving a Medi-Cal enrollee to the state Department of Health Services for investigation and resolution.

This bill authorizes a provider to join with, or otherwise assist, a subscriber or enrollee in submitting the grievance or complaint to DOC and to assist with DOC's grievance process. The bill requires DOC to review the documents submitted, authorizes DOC to request additional information and to hold meetings with the parties, and requires DOC to send a written notice of the final disposition of the grievance and the reasons therefor to the subscriber or enrollee, or their agent, and the plan within 60 calendar days. This bill requires that distribution of the written notice not be deemed a waiver of any exemption or privilege under existing law for any information disclosed in connection with the written notice, and prohibits any person employed or in any way retained by DOC from being required to testify regarding that information or notice.

The bill also authorizes the subscriber or enrollee, or their agent, to request voluntary mediation with the plan prior to exercising their right to submit a complaint or grievance to DOC, and provides that choosing to use mediation services would not affect that right.

This bill requires the Commissioner, or before January 1, 1997, to establish and maintain a system of aging of complaints that are pending and unresolved for 60 days or more. This bill also requires, on or before January 1, 1997, a plan's grievance system to include a system of aging of complaints that are pending and unresolved for 30 days or more. This bill provides that the procedures authorized by the bill are in addition to other procedures that may be available, and that failure to pursue or exhaust the remedies or to engage in the procedures described shall not preclude the use of any other remedy provided by law. This bill also authorizes the Commissioner to contract on a noncompetitive bid basis with necessary medical consultants to assist with DOC's health care program, and exempts these contracts from certain provisions of the Public Contract Code. This bill was signed by the Governor on October 12 (Chapter 788, Statutes of 1995).

**SB 445 (Rosenthal),** as amended September 8, requires every nonprofit HCSP applying to restructure or convert its activities to submit to DOC a copy of its articles of incorporation, bylaws, and a report summarizing all activities undertaken to meet its nonprofit obligations, as directed by the Commissioner. This bill further requires any nonprofit HCSP that intends to restructure or convert to meet its nonprofit public benefit obligations, for approval by DOC. This bill requires a plan that intends to convert or restructure its activities from nonprofit to for-profit to secure approval from the DOC Commissioner in accordance with certain procedures involving establishing an amount equal to the fair market value of the plan to be set aside for charitable purposes, and requires any organization receiving a set-aside from the plan to provide the Commissioner and the Attorney General with an annual report, open to public inspection, of its grant-making and other charitable activities related to its use of the assets.

This bill requires a plan engaging in certain transactions that are exempt from the restructuring requirement to seek prior written approval of the Commissioner.

The bill requires the Commissioner to charge plans fees, to be deposited in the State Corporations Fund, to pay the costs of the application process, including providing public notice and comment, and requires the Commissioner to adopt regulations to implement its provisions.

The bill requires DOC to provide the public with notice of, reasonable access to, and an opportunity to comment on, public records relating to the restructure and conversion of health care service plans. It authorizes the Commissioner to disapprove any application to convert or restructure that does not meet the requirements of its provisions or the state nonprofit corporation law. The bill establishes certain requirements for nonprofit mutual benefit health care service plans that do not have, or have only a partial, charitable trust obligation and that intend to convert or restructure their activities, including approval from the Commissioner. This bill was signed by the Governor on October 12 (Chapter 792, Statutes of 1995).

**AB 73 (Friedman).** Under existing law, it is prohibited for persons retained to review claims for health care services by disability insurers to be compensated based on a percentage of the amount by which a claim is reduced for payment. As amended August 29, this bill also prohibits the compensation of those persons being based on the number of claims or the cost of services for which the person has denied authorization or payment, and imposes the same prohibitions on persons retained to review claims by HCSPs.

This bill also requires the Commissioner of Corporations to establish and maintain a toll-free telephone number for the purpose of receiving complaints regarding HCSPs, and requires every HCSP to publish this toll-free number on certain documents issued by the plan by specified dates, together with a prescribed statement explaining that the toll-free number is available for the purpose of receiving complaints about plans. This bill was signed by the Governor on October 12 (Chapter 787, Statutes of 1995).

**SB 689 (Rosenthal).** Existing law requires each HCSP to reimburse the Commissioner for the actual cost of processing the licensure application as well as for other costs incurred by the Commissioner in administering the laws governing the plans including routine financial examinations, medical surveys, and overhead, according to specified schedules. As amended September 14, this bill revises this provision to also require each plan to reimburse the Commissioner for costs resulting from grievances and complaints including maintaining a toll-free number for consumer inquiries, investigation and enforcement, and medical surveys and reports. It revises the schedules for computing reimbursements, and authorizes the Commissioner to require payment of an additional assessment for administrative costs associated with implementing AB 73 (Friedman) (see above).

This bill requires plans to provide enrollees or subscribers with a written statement of the disposition or pending status of a grievance within 30 days of receipt of the complaint, and an expedited review process for certain cases; requires DOC to investigate and take enforcement action regarding complaints; requires the Commissioner to establish and maintain a toll-free telephone number for receiving complaints and inquiries and responding to grievances and complaints; and authorizes DOC to refer complaints to other governmental entities for investigation and resolution. This bill also requires plans to publish DOC's toll-free telephone number with certain information on every plan contract, on every evidence of coverage, and on copies of plan grievance procedures, and certain other written notices.

This bill requires the Commissioner to evaluate complaints to determine what ac-
regulatory implementation of the responsibilities imposed by these provisions. This bill requires that a single copy of a summary of the final report’s findings be provided free of charge to members of the public, and requires DOC to conduct a follow-up review within 18 months after issuance of the final report.

This bill requires the Commissioner to submit a report containing specified information to the legislature on the administrative implementation of the responsibilities imposed by these provisions. This bill was signed by the Governor on October 12 (Chapter 789, Statutes of 1995).

SB 957 (Watson). Existing law exempts from licensure certain HCSPs operated by any city, county, city and county, public entity, or political subdivision, or by a joint labor management trust governed by a board of trustees; these exemptions remain in effect only until January 1, 1996. As amended July 28, this bill instead grants an exemption from the Knox-Keene Act to any HCSP, including a self-insured reimbursement plan, operated by a city, county, city and county, public entity, political subdivision, or public joint labor management trust, as defined, that provides services only to employees of those governmental entities and their dependents, and retirees and their dependents, but not the general public, provides funding for the program, and meets certain additional requirements including, among others, fiscal and consumer protection requirements. This bill requires that certain financial statements submitted as part of those fiscal requirements be accompanied by a description of the declaration executed under penalty of perjury. This bill also deletes the repeal date for the exemption. This bill was signed by the Governor on October 10 (Chapter 575, Statutes of 1995).

SB 1151 (Rosenthal). Existing law defines certain terms relating to HCSPs, including “basic health care services” to include emergency services, including out-of-area coverage. As amended June 21, this bill defines the term out-of-area coverage, for purposes of this definition of basic health care services, to also include certain urgent services. This bill also requires that enrollees be permitted to select as a primary care physician any available primary care physician who contracts with the plan in the service area, as defined, where the enrollee lives or works. This bill was signed by the Governor on October 3 (Chapter 1515, Statutes of 1995).

AB 1266 (Goldsmith). Existing law requires the Commissioner to require the use by HCSPs of certain disclosure forms containing specified information. As amended August 30, this bill adds additional information required to be disclosed by plans. This bill was signed by the Governor on October 4 (Chapter 535, Statutes of 1995).

AB 706 (Calder). The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328) 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 branch banking. 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, as specified.

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, or other states, or of 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 was signed by the Governor on September 28 (Chapter 479, Statutes of 1995).

AB 1482 (Weggeland), as amended September 5, 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. This bill was signed by the Governor on September 28 (Chapter 480, Statutes of 1995).

SB 513 (Calderon). Existing law provides for the formation of various types of legal entities, including corporations, limited liability companies, partnerships, and limited partnerships. Under existing law, in an ordinary partnership each partner is generally liable for all debts and obligations of the partnership. As amended September 6, this bill authorizes the establishment of registered limited liability partnerships. The bill provides for registration with the Secretary of State, provides for the registration of foreign limited liability partnerships, and specifies that limited liability partnerships are subject to the minimum franchise tax. This bill was signed by the Governor on October 8 (Chapter 679, Statutes of 1995).

AB 640 (Weggeland). Existing law sets forth various requirements regarding the giving or receiving of notice, whether oral or written, as applied to notice of special corporate meetings and other forms of notice. As amended June 29, this bill specifies, among other things, with respect to those notice provisions, that, in certain instances, facsimiles, telegrams, electronic mail, and electronic voice mail messages are encompassed within specified terms of notice. The bill also revises and recasts provisions respecting the reacquisition of shares by a corporation; and revises the conditions by which shareholders are entitled to obtain member in-
formulation. The bill makes various other technical changes. This bill was signed by the Governor on July 22 (Chapter 154, Statutes of 1995).

**AB 675** (Cunneen). Under existing law, the members of the board of directors of a for-profit corporation, nonprofit public benefit corporation, nonprofit mutual benefit corporation, and nonprofit religious corporation may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in the meeting can hear one another, and participation in a meeting under this circumstance constitutes presence in person at that meeting. As amended July 28, this bill provides that the members of the boards of these corporations may participate in their respective meetings through use of conference telephone, electronic video screen communication, or other communications equipment if each member participating in the meeting can (1) communicate with all members concurrently, (2) is provided the means of participating in all matters before the board, including the capacity to propose, or to interpose an objection, to a specific action to be taken by the corporation, and (3) the corporation adopts some means of verifying that a person communicating by telephone, video screen, or other equipment is a director entitled to participate in the meeting and that all statements, questions, actions, or votes were made by that director and not by another person not permitted to participate as a director. This bill was signed by the Governor on October 12 (Chapter 811, Statutes of 1995).

**AB 1196** (Takasugi). Existing law provides that any loan or obligation made or acquired by an industrial loan company that has investment certificates outstanding that is secured primarily by real property and has an outstanding principal balance of $10,000 or more shall be secured by real property or personal property having a fair market value at the time the loan or other obligation is made or acquired of at least 115% of the principal amount owing on the loan or obligation and on prior encumbrances, except for nondelinquent tax liens, secured by the same real property, except as specified. Existing law provides an exception from the requirement that the property securing the loan have a fair market value of at least 115% for any loan made by an industrial loan company to facilitate the sale of real property owned by the industrial loan company resulting from foreclosure or receipt of a deed in lieu of foreclosure, as specified. As amended May 1, this bill provides that this exception shall also apply to any loan renewed or modified by an industrial loan company pursuant to a clearly-defined and well-documented program adopted by the board of directors of the industrial loan company to achieve orderly repayment of the loan or to maximize recovery of the loan as specified. This bill was signed by the Governor on July 22 (Chapter 182, Statutes of 1995).

**AB 919** (Cunneen). The Corporate Securities Law of 1968 authorizes the Commissioner of Corporations, in prescribing rules and forms, to cooperate with other states and the Securities and Exchange Commission, in order to achieve maximum uniformity in the form and content of registration statements, applications, and reports related to securities. As amended July 18, this bill revises and reclassifies the provisions. The bill also authorizes the Commissioner to cooperate with additional agencies, as specified, and to participate in a nationwide central depository for qualification and registration of securities and related documents and records.

Existing law requires certain securities offered or sold in this state to be qualified or exempted, as specified. This bill provides that an application for qualification, an amendment to an application, or a related securities document or record that is filed in this state by means of an electronic communication technology, as specified, shall be deemed to be a valid original document upon reproduction to paper form by DOC. This bill was signed by the Governor on October 4 (Chapter 596, Statutes of 1995).

**SB 820** (Russell). Existing law authorizes licensed escrow agents to establish additional business office locations by, among other things, complying with specified filing requirements with respect to an additional bond or bonds for each additional office location or, in lieu thereof, the filing of a written amendment to extend coverage under an existing bond or bonds, as specified. As amended June 19, this bill recasts the above requirement to instead require, in addition to any additional bonds required by existing law, that the amounts for additional office locations be $5,000 for each additional location. This bill was signed by the Governor on July 31 (Chapter 226, Statutes of 1995).

**AB 1725** (Knight). Existing law authorizes the Commissioner of Corporations and Fidelity Corporation to charge and collect certain amounts from escrow licensees. As amended July 3, this bill provides for those payments to be made in three installments. This bill was signed by the Governor on August 3 (Chapter 297, Statutes of 1995).

**AB 46** (Hauser). Existing law defines and regulates common interest developments, providing, among other things, that these developments shall be managed by an association. Existing law regulates the conduct of meetings of the association’s boards of directors, including the attendance of association members at these meetings, and the availability to association members of minutes of any board meeting. As amended September 1, this bill reorganizes and expands the scope of the law relating to association board of directors meetings, by creating the “Common Interest Development Open Meeting Act.” The bill sets forth the rights and responsibilities of board members as well as association members, with respect to meetings, as defined, including notice procedures. The bill also permits the association president or two other members of the governing body to call an emergency meeting. The bill allows the board to meet in executive session, upon the request of a board member subject to discipline. This bill was signed by the Governor on October 8 (Chapter 661, Statutes of 1995).

**SB 186** (Maddy). The California Residential Mortgage Lending Act regulates the making of residential mortgage loans by specified entities. As amended July 1, this bill enables a licensed residential mortgage lender to engage as a principal in the business of buying from or selling to institutional investors, residential mortgage loans, and to engage, pursuant to a written agency contract with certain institutional lenders, in the business of soliciting, processing applications, or applying residential loan underwriting criteria as specified, using or advancing the lender’s own funds. A licensed residential mortgage lender that contracts with an institutional lender to provide these services will be subject to restrictions on fees and charges made, and to written disclosure and reporting requirements. Also, this bill modifies the definitions of certain words and phrases used in the Act. This bill was signed by the Governor on July 31 (Chapter 228, Statutes of 1995).

**AB 1136** (Brown). Existing law defines a specialized HCSP contract as a contract for health care services in a single specialized area of health care, including dental care. As amended September 12, this bill would revise this definition to clarify that the contract may be for pharmaceutical benefits. It would also require, commencing January 1, 1998, the Commissioner of Corporations to ensure that when formularies are created for pharmaceutical benefits, the formularies are subject to review by the plan’s quality assurance program.

This bill would also state the intent of the legislature relating to the dispensing of pharmaceutical drug benefits by HCSPs,
and require HCSPs to disclose the extent that they pay or offer to pay financial remuneration to a dispensary for substituting a prescribed drug for another drug. [S. Conference Committee]

AB 1183 (Isenberg), as amended September 14, would require the Commissioner to create a public nonprofit health foundation to receive the assets of any nonprofit health care service plan that has converted to for-profit status or restructured organizationally; authorize the Commissioner to determine the charitable obligation of the plan to transfer that value of its assets to the foundation; require the foundation to have a board of directors consisting of eleven members; and require the members to be persons familiar with health services, policy, and research.

The bill would also prohibit the management of the public nonprofit health foundation from having any affiliation with a nonprofit HCSP that converts to for-profit status or is restructured organizationally; prohibit the officers, executives, board members, and other staff of the foundation or the HCSP from receiving any preferential stock options, pensions, or other benefits from the foundation or HCSP; and require the compensation to the foundation’s board members, staff, and other employees to be ordinary and reasonable.

The bill would also prohibit the board of directors of the HCSP, as described, from pre-committing any funds on behalf of the public nonprofit health foundation; require the foundation to adopt a statement of intent regarding its public interest goals; and prohibit the foundation, and its officers, executives, directors, and other staff, from engaging in political activities and lobbying.

The bill would prohibit a HCSP subject to these provisions from altering its corporate status through merger, consolidation, or sale until the Commissioner is satisfied that the requirements established by this bill have been met and notice has been provided to the Governor and the legislature. [S. Rules]

AB 1360 (Knowles). Existing law imposes various requirements on HCSPs and insurers with respect to small employer coverage; among other things, plans and insurance carriers that sell coverage to small employers are required to make coverage available to all small employers. As amended September 6, this bill would require that the provisions that require a plan or carrier to fairly and affirmatively offer market, and sell all of the plan's or carrier's small employer benefit plan designs to all small employers in each service area shall not apply to a plan offered, marketed, or sold to a qualified association, as defined, during specified periods of time. [S. Ins]

AB 1663 (Friedman). Existing law requires every HCSP and disability insurer that denies coverage for an experimental medical procedure or plan of treatment for a claimant with a terminal illness to provide written notice of the medical and scientific reason for denial, references to pertinent policy provisions, a description of alternative medical treatments, and a description of an appeal process. As amended July 13, this bill would require every health care service plan and disability insurer that denies a request for coverage on the grounds that it is experimental or investigational and that it has a high probability of causing death to offer the opportunity for review of the requested service by at least two independent medical experts. The bill would provide that compliance with the review process with respect to a court action based on denial of coverage creates a rebuttable presumption that the coverage determination was reasonable. [S. Jud]

AB 1841 (Figueroa), as amended September 7, would require every HCSP contract, nonprofit hospital service plan contract, and certain disability insurance policies, issued, amended, delivered, or renewed on or after January 1, 1996, that provides maternity coverage, to include coverage for a minimum number of hours of inpatient care and certain other care for the mother and the newborn after childbirth, subject to certain requirements and exceptions. [A. Appr]

AB 505 (Villaraigosa), as introduced February 16, would require that, prior to closing a health facility, reducing or eliminating the level of health services provided, or leasing, selling, or transferring the management of a health facility, the facility or the HCSP providing direct patient care shall provide certain notice regarding those proposed changes to the public and the applicable administering department, in accordance with certain procedures. This bill would further require that eighteen months after implementation of any of those changes, the facility or HCSP report to the administering department on the impacts of the changes. [A. Health]

AB 490 (Villaraigosa). Existing law requires HCSPs to provide certain notice to enrollees of the termination of a contract with a medical group or individual practice association. As introduced February 16, this bill would permit an enrollee to disenroll from a plan at any time if the plan discontinues covering services provided by the enrollee's preferred provider or if that provider discontinues providing services through the plan. [A. Health]

SB 977 (Solis). Existing law regulates contracts for medical services which contain provisions for arbitration of disputes regarding the professional negligence of a health care provider, as specified; these provisions expressly provide that they do not apply to HCSP contracts offered by an organization licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 which contain specified provisions or offer specified notification procedures. As introduced February 24, this bill would delete that exemption and extend the requirements governing contracts for medical services which contain provisions for arbitration of disputes regarding the professional negligence of a health care provider to HCSP contracts offered by an organization licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975. [S. Jud]

AB 1203 (Murray). Existing law prohibits a check casher from charging a fee for cashing a payroll check or government check in excess of 3% if identification, defined as a California driver's license or identification card, is provided by the customer. As amended May 2, this bill would specify that the California driver's license or identification card must be valid. The bill would authorize a check casher to agree to defer the deposit of a check, warrant, draft, money order, or other commercial paper for up to 30 days under specified conditions. [A. B&F]

AB 1023 (Aguilar). Under the California Credit Union Law, the DOC Commissioner has specified duties, including conducting examinations of credit unions licensed or supervised by the Commissioner. To defray administrative costs, including investigations and supervision, the Commissioner requires every credit union licensed or under the Commissioner's supervision to pay in advance for the ensuing year charges and assessments in accordance with a specified schedule. As amended April 25, this bill would revise that schedule.

Under existing law, if an examination is made or services performed, the credit union examined or for which the services are performed is required to pay to the Commissioner the cost of the examination or service, as specified. This bill would repeal this provision. [A. B&F]

AB 520 (Cunneen). Under existing law, a holder of shares or voting trust certificates may bring an action on behalf of a corporation against the board of the corporation if certain requirements are met. One requirement is that the plaintiff allege in his/her complaint the efforts to
secure from the board the action that the plaintiff desires. If there has been no effort, the plaintiff must allege the reasons for not making the efforts. As introduced February 22, this bill would instead require that the plaintiff allege a demand to the board and the board’s unjustifiable rejection of the demand. If the plaintiff does not make a demand, the plaintiff must allege facts from which the court can conclude that a majority of directors could not be expected to fairly evaluate themselves. The bill would provide that certain allegations, including that a majority of the directors would have to sue themselves, are not sufficient to meet this burden. The bill would also provide that in order to be considered an unjustifiable rejection of a demand, the board must have failed to exercise its business judgment either in considering or in rejecting the demand. [A. Jud]

**AB 775 (Aguirae).** Existing law provides that a licensed escrow agent, in referring to corporate licensure under the Escrow Law in any communication, shall only use a statement to the effect that the escrow company holds a specified DOC escrow license number. As amended June 12, this bill would instead require the inclusion of that statement when referring to corporate licensure in any communication.

Existing law prohibits Fidelity Corporation and its members from advertising, printing, displaying, publishing, distributing, or broadcasting any statement or representation with regard to a guarantee of trust obligations without first obtaining written approval of the Commissioner of Corporations. This bill would delete that approval requirement and would also limit the applicability of the provision to statements and representations in advertisements that are false or misleading or calculated to deceive or misinform the public.

Existing law also provides that any advertising referring to Fidelity Corporation shall state in type not smaller than the largest size of type used in the body of the advertisement a statement to the effect that the Escrow Agents’ Fidelity Corporation is a private corporation and is not an agency or other instrumentality of the State of California. This bill would delete the type size requirement and instead require a statement to be displayed in a clear and conspicuous manner. The bill would also provide that the State of California does not guarantee payment of a claim. [S. F&f]

**AB 950 (Calderae).** Existing provisions of the Escrow Law exempt from its application brokers licensed by the Real Estate Commissioner while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required. As introduced February 22, this bill would delete that exemption. [A. B&F]

**AB 1646 (Conroy).** The Escrow Law exempts from its provisions, among others, any person licensed to practice law in California who is not actively engaged in conducting an escrow agency, any licensed real estate broker while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required, and persons whose principal business is that of preparing abstracts or making title searches, as specified. As amended April 17, this bill would delete the exemption of licensed real estate brokers, and require that every person licensed to practice law in this state, and, to the extent of any exemption under the escrow law, title insurers, underwritten title companies, and controlled escrow companies, that perform escrow activities shall have all escrow trust accounts covered by a fidelity bond in an amount equal to the amount on deposit with the respective entity. [A. B&F]

**AB 661 (Boland).** Existing law sets forth crimes and civil penalties for a violation of the Escrow Law; existing law requires all money deposited into escrow to be maintained as trust funds. As amended April 19, this bill would require the district attorney to prosecute persons who have caused a loss of those trust obligations, as specified. [A. B&F]

**SB 411 (Calderon).** As amended April 26, this bill would permit a residential mortgage lender licensed under the California Residential Mortgage Lending Act to provide brokerage services to a borrower, if the licensee first enters into a written brokerage agreement. The bill would restrict the licensee from brokering certain types of loans, specify the terms of the brokerage agreement with a borrower, provide remedies to a borrower if a licensee makes a materially false or misleading statement, limit the type of fees or charges that a licensee may impose, and require annual reporting of loans brokered by the licensee under these provisions. Under existing law, a real estate broker who negotiates a loan to be secured directly or collaterally by a lien on real property is required, among other things, to deliver a disclosure statement to the borrower before the borrower becomes obligated to complete the loan, as specified. This bill would provide that these provisions apply to a residential mortgage loan arranged by a residential mortgage lender, as specified. [A. B&F]

**LITIGATION**

In Engalla v. Permanente Medical Group, Inc., et al., 37 Cal. App. 4th 497 (Aug. 31, 1995), the court reviewed a provision in a health plan agreement between Wilfredo Engalla and the Permanente Medical Group, Inc., Kaiser Foundation Hospitals, and Kaiser Foundation Health Plan, Inc., which contained a mandatory arbitration clause. In 1986, Engalla went to Kaiser with a persistent cough and shortness of breath; he was diagnosed and treated for common colds and allergies, but his symptoms continued. In 1991, Kaiser took X-rays, which revealed inoperable lung cancer. Pursuant to the agreement, Engalla filed a demand for arbitration of his claim that Kaiser has been negligent in diagnosing his ailment. The arbitration clause required each side to choose an arbitrator within thirty days of the service of the claim, and these two arbitrators were to select a third, neutral arbitrator within thirty days. However, the arbitration was delayed for nearly three months because of disagreement between the two arbitrators on the selection of the third; the day after the selection was finally made, Engalla died. Engalla’s heirs refused to continue with the arbitration and sued in Alameda County Superior Court, claiming fraud in the enforcement of the arbitration provision. The trial court refused to compel arbitration, finding that Kaiser engaged in fraud in the inducement of the arbitration provision. Further, the trial court found that Kaiser had engaged in fraud in the application of the arbitration clause and that the provision was oppressive and unconscionable.

However, the First District Court of Appeal reversed these findings, stating that there was not substantial evidence of fraud in the inducement of the arbitration provision, or that it was oppressive or unconscionable; thus, the appellate court found that all of Engalla’s claims were arbitrable. On November 2, the California Supreme Court granted Engalla’s petition for review; the case is now pending before that court.

In Schmidt v. Foundation Health, et al., 35 Cal. App. 4th 1702 (June 26, 1995), the Third District Court of Appeal affirmed a trial court’s dismissal of a broker’s claims against two health care plans, finding that the broker’s辫e policy violated state law. James Schmidt, a licensed independent insurance agent, arranged to sell HCSPs of Foundation
Health and St. Joseph’s Omni Health Plan to his clients. Schmidt intended to reduce the cost of the plans to his clients by arranging a rebate drawn from his own commission. Two of Schmidt’s clients participated in this arrangement until they were informed by Foundation and Omni that the rebate policy was illegal; both clients then terminated their relationships with Schmidt. Schmidt then sued Foundation and Omni for conspiracy to restrain trade, breach of the covenant of good faith and fair dealing, tortious interference with contract and with prospective economic relationships, conspiracy to interfere with economic relationships, intentional misrepresentation, and slander. The trial court sustained the defendants’ demurrer on the ground that section 1300.46, Title 10 of the CCR, bars a HCSP broker from rebating commissions to his/her clients.

In PacifiCare of California v. Gary Mendoza, No. 751160 (Orange County Superior Court), filed on August 9, PacifiCare challenged DOC’s right to inspect its members’ complaints and records on members who have left the plan, as well as its grievance procedures, contracts with health care providers, peer review procedures, and financial statements. Among other things, PacifiCare contended that the inspection demands are unreasonable and that compliance would be too costly; according to DOC, it needs to review the complaints to determine whether it needs to increase its supervision of PacifiCare.

On November 30, Superior Court Judge John Watson ordered PacifiCare to turn the documents over to DOC; however, Judge Watson temporarily limited DOC’s investigation to 300 cases. In his ruling, Judge Watson also indicated that DOC is entitled to copy and/or take possession of the records during its investigation, as long as it takes adequate steps to prevent the disclosure of confidential information.

DEPARTMENT OF REAL ESTATE
Commissioner: Jim Antt, Jr.
(916) 739-3684

The Real Estate Commissioner is appointed by the Governor and is the chief officer of the Department of Real Estate (DRE). DRE was established pursuant to Business and Professions Code section 10000 et seq.; its regulations appear in Chapter 6, Title 10 of the California Code of Regulations (CCR). The commissioner’s principal duties include determining administrative policy and enforcing the Real Estate Law in a manner which achieves maximum protection for purchasers of real property and those persons dealing with a real estate licensee. The commissioner is assisted by the Real Estate Advisory Commission, which is comprised of six brokers and four public members who serve at the commissioner’s pleasure. The Real Estate Advisory Commission must conduct at least four public meetings each year. The commissioner receives additional advice from specialized committees in areas of education and research, mortgage lending, subdivisions and commercial and business brokerage. Various subcommittees also provide advisory input.

DRE primarily regulates two aspects of the real estate industry: licensees (salespersons and brokers) and subdivisions. Pursuant to Business and Professions Code section 10167 et seq., DRE also licenses "prepaid rental listing services" which supply prospective tenants with listings of residential real properties for tenancy under an arrangement where the prospective tenants are required to pay a fee in advance of, or contemporaneously with, the supplying of listings. Certified real estate appraisers are not regulated by DRE, but by the separate Office of Real Estate Appraisers within the Business, Transportation and Housing Agency. Pursuant to SB 1978 (Johnston) (Chapter 994, Statutes of 1994), the authority for licensing mortgage bankers that make or service loans will be transferred from DRE to the Department of Corporations as of January 1, 1996.

License examination requires a fee of $30 per salesperson applicant and $60 per broker applicant. Exam passage rates average 56% for salespersons and 48% for brokers (including retakes). License fees for salespersons and brokers are $170 and $215, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales, or leases exceeding one year in length, of any new residential subdivisions consisting of five or more lots or units, DRE protects the public by requiring that a prospective purchaser or tenant be given a copy of the "public report." The public report serves two functions aimed at protecting purchasers (or tenants with leases exceeding one year) of subdivision interests: (1) the report discloses material facts relating to title, encumbrances, and related information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting the project. The commissioner will not issue the public report if the subdivision fails to comply with any provision of the Subdivided Lands Act.

The Department regularly publishes three bulletins. Real Estate Bulletin, which is circulated quarterly as an educational service to all current licensees, contains information on legislative and regulatory changes, commentaries, and advice; in addition, it lists names of licensees who have been disciplined for violating regulations or laws. Mortgage Loan Bulletin is published twice yearly as an educational service to licensees engaged in mortgage lending activities. Finally, Subdivision Industry Bulletin is published annually as an educational service to title companies and persons involved in the building industry.

DRE publishes numerous books, brochures, and videos relating to licensee activities, duties and responsibilities, market information, taxes, financing, and investment information. In July 1992, DRE began offering one-day seminars entitled "How to Operate a Licensed Real Estate Business in Compliance with the Law." This seminar, which costs $10 per attendee and is offered on various dates in a number of locations throughout the state, covers mortgage loan brokering, trust fund handling, and real estate sales.

The California Association of Realtors (CAR), the trade association joined primarily by agents and brokers working with residential real estate, is the largest such organization in the state. CAR is often the sponsor of legislation affecting DRE. The four public meetings required to be held by the Real Estate Advisory Commission are usually scheduled on the same day and in the same location as CAR meetings.

On May 9, Governor Wilson appointed Jim Antt, Jr., to serve as Real Estate Commissioner; a long-time real estate licensee, Antt has served as a member of DRE's Real Estate Advisory Commission, President of the California Association of Realtors, and Regional Vice-President for the National Association of Realtors. Antt was sworn into office on June 1.

MAJOR PROJECTS
Commissioner Names New REAC Members. DRE Commissioner Antt recently appointed eight members to the Real Estate Advisory Commission (REAC); these members will assist the Commissioner in carrying out the responsibilities of DRE and act as liaisons between DRE and the real estate industry. The new members are Michael Cortney, president of a residential development company; Melinda Masson, owner of a homeowners’ association management firm; and real estate brokers George Francis, Vern Hansen,