that is used in blending the wines being featured. *[S. GO]*

S. 674 (Thurmond) is federal legislation to enact the Sensible Advertising and Family Education Act which would, among other things, require specified health warnings to be included in alcoholic beverage advertisements. This bill is pending in the Senate Commerce, Science, and Transportation Committee.

LITIGATION

In ***Provigo Corporation v. Alcoholic Beverage Control Appeals Board*** and ***Lucky Stores v. Alcoholic Beverage Control Appeals Board***, Nos. A058137 & A058534 (Jan. 27, 1993), the First District Court of Appeal addressed the constitutionality of the use of underage youths as decoys in the enforcement of the prohibition against selling alcohol to minors. In both cases, ABC suspended the licenses of petitioners for selling alcohol to minors; the minors who purchased the alcoholic beverages were working in a decoy program for their respective police departments. Petitioners argued that the use of underage police agents to purchase alcoholic beverages is unconstitutional and requires dismissal of the charges. Petitioners also raised the defenses of entrapment and violation of due process in the failure of the local police departments to follow ABC guidelines for a decoy program. In its decision reversing ABC's action, the First District found that the constitutional provision which states that "[n]o person under the age of 21 shall purchase any alcoholic beverage" is clear and unambiguous and contains no exceptions; the court also noted that no exception has been created by statute. *[13:2&3 CRLR 120]*

On April 29, the California Supreme Court granted ABC's petition to review both cases. Since that time, the City of Los Angeles, nine alcohol policy groups, and an enforcement organization, among others, have each filed *amicus curiae* briefs supporting ABC's position; the California Grocers Association, the California Restaurant Association, the California Retailers Association, eighteen chambers of commerce, and some beverage industry labor unions have filed *amicus curiae* briefs in support of the licensees.

The issue is also being addressed in the legislature; ACA 6 (Tucker) and its companion measure, AB 1208 (Tucker), would permit the use of minor decoys but require ABC and enforcement agencies to show "probable cause" before proceeding with a minor decoy operation (*see* LEGISLATION).

BANKING DEPARTMENT

Superintendent:
James E. Gilleran
(415) 557-3232
Toll-Free Complaint Number:
1-800-622-0620

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 business 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.

In June, SBD announced the appointment of Walter Mix III to the position of Senior Deputy Superintendent of Banks.

MAJOR PROJECTS

SBD Releases Annual Report. On May 28, SBD released its 83rd Annual Report, for the calendar year ended on December 31, 1992. Among other things, the report included the following comments and findings:

–The California economy remained in a recession during 1992; the state's unemployment rate rose to 9.4% by the third quarter of 1992, while the national rate

was 7.6%. Job losses in California were primarily concentrated in the aerospace and construction industries.

–Cutbacks in the aerospace industry can be attributed to the breakup of the Soviet Union, which has resulted in reduced defense spending; the Department of Defense estimates that California regularly received 20% of all domestic defense purchases.

–The construction industry was affected by a continued weak housing market marked by declines in new construction, existing home sales, and prices; housing demand was poor despite lower prices and favorable interest rates.

–Interest rates continued to fall in 1992, prompted by the reduction of the discount rate by the Federal Reserve Board. Low interest rates bode well for the banking industry; wide interest margins and declines in provisions for bad loans were factors that stimulated profits.

–California state-chartered banks had a higher return on assets and return on equity in 1992 compared to prior-year levels; capital balances and loan reserves were up, resulting in strengthened capital positions.

–California is facing the largest bank merger in its history with Bank of America acquiring Security Pacific National Bank; this megamerger will produce the second-largest banking company in the nation, with $186.6 billion in assets.

The report also commented on the April 1992 civil unrest which followed the state court acquittals of four Los Angeles police officers charged with beating Rodney King; SBD noted that immediately following the disturbances, it organized meetings with Los Angeles area banks, federal and state bank regulators, and Secretary of the Treasury Nicholas Brady to assess the impact of the unrest on the banks, discuss their role in the rebuilding effort, and develop regulatory guidelines designed to aid banks in determining how they could maximize their participation in the rebuilding effort. The guidelines that were adopted are aimed at providing both short-term relief and long-term economic development in the affected areas.

Among other things, the guidelines encourage banks to work with regulators in extending additional loans to meet the needs of local businesses and customers; state that unsecured or under-secured loans to replace damaged or destroyed inventories are not subject to adverse classification by regulators, provided that the business generates adequate cash flow to reduce the debt and there are not other significant uncertainties as to repayment; and stipulate that loans to rebuild income property are not subject to adverse classification provided that the underlying debt, principal, and interest are serviced within a reasonable period of time. The guidelines also urge banks to carefully review their credit policy and concentration levels when the extension of additional real estate loans exceeds their own existing internal guidelines.

The report also noted that SBD is a self-sustaining agency and, as such, is not supported by the state's general fund; instead, SBD's programs are financed by the State Banking Fund, which is supported by assessments against state-chartered banks, foreign banking corporations, trust companies, issuers of money orders and travelers checks, and from fees generated by specific services. According to SBD, the assessment rate is adjusted to reflect the actual expenses incurred by the Department and the maintenance of a prudent reserve. SBD noted that its assessments have always been below the maximum statutory rate of $2.20 per $1,000 of assets; the rate for fiscal year 1992 was $1.22 per $1,000. In August, SBD announced that the assessment rate for the 1993–94 fiscal year is $1.34 per $1,000; further, SBD estimated that the 1994–95 assessment rate could be in the range of $1.50 per $1,000.

SBD also reported that, during 1992, five state-chartered banks and three national banks failed in California. The failed state-chartered banks were American Interstate Bank, the Bank of Beverly Hills, Independence Bank, Placer Bank of Commerce, and Valley Commercial Bank. The failed national banks were the Financial Center Bank, N.A., Mission Viejo National Bank, and United Mercantile Bank & Trust Company, N.A. According to SBD, insured depositors in each of the failed national banks were paid in full by the FDIC.

Federal Regulators Consider Revising Fair Lending Law Regulations. During September, the U.S. Comptroller of the Currency, the Federal Reserve Bank, the Office of Thrift Supervision, and the FDIC hosted six hearings across the nation to generate comments on how to revise regulations implementing the Community Reinvestment Act (CRA), a federal fair lending law which requires banks and thrifts to "serve the needs of their communities." The Clinton administration has ordered federal regulators to revise the guidelines interpreting the CRA in order to clarify what is required. At a Los Angeles hearing on September 8, representatives of the banking industry complained that the current standards are vague, inconsistently enforced, and require too much paperwork. Representatives of consumer groups also expressed support for revising the guidelines, arguing that many banks and thrifts are currently able to get by on minimal lending to low-income neighborhoods. *[13:1 CRLR 78]*

At this writing, the federal agencies are expected to release a revised set of CRA regulations for public comment in early November; the administration hopes the new rules will become effective by January 1.

San Diego Trust & Savings Sold. In August, Los Angeles-based First Interstate Bancorp announced its plans to buy San Diego-based San Diego Trust & Savings Bank, the largest financial institution based in San Diego, for an estimated $340 million. If the sale is approved by regulators and shareholders, First Interstate Bank officials estimate that some of San Diego Trust's fifty branches will be closed and some of its 1,600 employees may be laid off. Although San Diego will be losing its largest financial institution, the terms of the sale reportedly require the Sefton family—which owns 52% of the stock of the bank's holding company—to donate up to $2 million for a downtown public library, $2 million for scholarships for children of bank employees, and $1 million for the downtown Rotary Club's youth foundation.

Mergers. On May 19, an application was filed to merge Bank of America with and into Security Pacific State Bank, and to change the name of the surviving bank to Bank of America Community Development Bank. On August 9, SBD approved the merger.

On June 14, an application was filed to merge California Republic Bank with and into First Interstate Bank of California and to operate all existing offices of California Republic Bank as offices of First Interstate Bank of California; at this writing, that application is pending.

On August 24, SBD approved the merger of Cal-West National Bank with and into Overland Bank.

Bank Closings. On June 18, the Superintendent of Banking took possession of American Bank and Trust Company in San Jose, ordered that it be liquidated, and appointed the FDIC as receiver of the bank, which accepted the appointment. Also on June 18, the FDIC entered into a purchase and assumption agreement with the Bank of Santa Clara, under which all insured deposits of American Bank and Trust Company were assumed and certain of its assets were purchased.

Also on June 18, the Superintendent of Banking took possession of Capital Bank

of California in Los Angeles, ordered that it be liquidated, and appointed the FDIC as receiver of the bank. Efforts were made to arrange a transfer of the insured deposits of the bank, but the FDIC did not receive an acceptable bid. Consequently, on June 21, the FDIC commenced paying the insured deposits of the bank, as well as 66% of the uninsured deposits, with additional payments to depend upon the liquidation of the bank.

On July 9, the Superintendent of Banking took possession of First California Bank, ordered that it be liquidated, and appointed the FDIC as receiver of the bank. On July 10, the FDIC entered into purchase and assumption agreements with Valle de Oro Bank, N.A., and Scripps Bank, under which all of the insured deposits of First California Bank were assumed and certain of its assets were purchased.

On August 27, the Superintendent of Banking took possession of Maritime Bank of California in Century City, ordered that it be liquidated, and appointed the FDIC as receiver of the bank. On the same date, the FDIC entered into purchase and assumption agreements with Western Bank and Bay Cities National Bank, under which all of the insured deposits of Maritime Bank of California were assumed and certain of its assets were purchased.

Cease and Desist Warnings Issued. On September 17, SBD announced its issuance of a warning to cease and desist from doing business in California without a license to David Ng, doing business as Interstate Trust Credit at locations in Walnut and Monterey Park. According to SBD, neither David Ng nor Interstate Trust Credit is authorized to transact business under any name which contains the word "trust" and which indicates the business is that of a trust company pursuant to Chapter 18 of Division 1 of the California Financial Code.

In late August, SBD issued a warning to cease and desist from doing business in California without a license to Troy Bradbury, Mark Douglas, H. Michael Rapp, Russell Sharp, Joel Ward, Sayona Ward, and David Webster; those individuals are doing business as Franklin Trust Company; The Alpha Ltd. Trust Company; Ameritrust; and Yosemite National Trust at locations in Groveland and Modesto. The above-named individuals are not authorized to transact business under any name which contains the word "trust" and which indicates the business is that of a trust company pursuant to Chapter 18 of Division 1 of the California Financial Code.

On August 13, SBD announced that it issued a warning to cease and desist from engaging in the business of receiving money in California for the purpose of transmitting the same or its equivalent to foreign countries to the following companies: Cargo Express Multiservice; Fiesta Latina; El Condor Multiservice, Inc.; Superior Express; and Transportes Salvadorenos. According to SBD, these companies are not authorized to engage in the business of receiving money in California for the purpose of transmitting the same or its equivalent to foreign countries.

LEGISLATION

AB 687 (Johnson). Existing provisions of the Financial Code require banks to notify depositors of specified information prior to maturity of a time deposit, maintain information about charges and interest on accounts, and furnish statements to depositors concerning charges and interest on accounts. As amended May 6, this bill repeals those provisions in deference to recent federal regulations in the area of banks' disclosures to their customers; the bill also states legislative intent. This bill was signed by the Governor on July 12 (Chapter 107, Statutes of 1993).

AB 1496 (Peace). Existing law contains various provisions for economic aid to businesses, including provisions for a small business loan program administered by the Superintendent of Banking. As amended September 1, this bill repeals SBD's existing small business loan program and establishes a new Capital Access Loan Program for Small Businesses, to be administered by the California Pollution Control Financing Authority to provide financing assistance for pollution control facilities. The Authority is authorized to contract with financial institutions, as defined, to participate in the program. The bill requires the Authority to establish procedures under which financial institutions participating in the program may submit claims for reimbursement for losses incurred as a result of qualified loan defaults. The bill also expands the uses to which the funds may be used. This bill was signed by the Governor on October 11 (Chapter 1164, Statutes of 1993).

AB 1785 (Tucker). Existing law imposes various requirements for loans made by banks and savings associations, including in some instances collateral requirements. As amended August 17, this bill requires the Treasurer, in consultation with SBD and the Department of Savings and Loan, on or before June 1, 1994, to develop alternatives to current collateral requirements for financial institutions in order to promote the economic recovery and growth of those areas affected by the civil disturbances in Los Angeles on April 29, 1992, and following days. The bill requires the Treasurer, in evaluating collateral requirement alternatives, to require a financial institution taking advantage of those requirements to demonstrate and maintain a community reinvestment performance profile that is consistent with promoting economic growth and recovery in California's minority and inner-city communities. This bill was signed by the Governor on October 9 (Chapter 994, Statutes of 1993).

AB 2324 (Caldera). Existing law, known as the Holden Act, generally requires the Secretary of Business, Transportation and Housing to monitor and investigate the building patterns and lending practices of financial institutions relating to housing. More specifically, the Holden Act prohibits a financial institution from discriminating in the availability of, or in the provision of, financial assistance for the purpose of rehabilitating, improving, or refinancing housing accommodations due, in whole or in part, to the consideration of conditions, characteristics, or trends in the neighborhood surrounding the housing accommodation unless the financial institution can demonstrate that the consideration in the particular case is required to avoid an unsafe or unsound business practice. As amended May 3, this bill provides that nothing in that provision shall be construed to prohibit any financial institution from establishing a special loan program designed to engender equality in housing in accordance with the federal Fair Housing Act or similar state and federal laws, so long as the program promotes housing opportunities in ethnic minority or low-income neighborhoods. This bill was signed by the Governor on September 8 (Chapter 366, Statutes of 1993).

SB 1145 (Boatwright). 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 amended May 24, this bill would authorize a supervised financial organization, defined to include banks, savings associations, savings banks, and credit unions, to charge and collect fees pursuant to a consumer credit agreement, as specified.

Civil Code section 1671 sets forth the standard for determining the validity of a liquidated damages provision in a contract; section 1671(d) provides that a contract liquidated damages provision is void except that the parties may agree upon an amount contractually presumed to be the

measure of damages for a contract breach when, from the nature of the case, it would be impractical or extremely difficult to fix the actual damage. *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1383 (1991), applied section 1671 to limit credit card fees which may be assessed by a bank for a late payment or over-the-limit use of the credit card. *[12:1 CRLR 111]* SB 1145 would nullify *Beasley* and make section 1671 inapplicable to determine the validity of fees charged under a credit card agreement; instead, the bill would permit supervised financial institutions to charge and collect fees for late payment, over-the-limit usage, and bounced checks at the rates and amounts set forth in the credit card agreement. Those fees would be presumed valid, notwithstanding any other state law or regulation, if the fee is "commercially reasonable," defined by the bill as "less than or equal to a comparable fee used by at least one of the ten largest lenders headquartered outside of California providing a similar type of open-end credit."

The stated purpose of this bill is to allow banks to charge fees similar to those charged by out-of-state deregulated banks and to avoid litigation challenging the validity of such fees. However, opponents such as Consumers Union contend that SB 1145 is a back-door attempt to exempt credit card fees from the Civil Code requirement that penalty fees be reasonably related to the costs they are supposed to cover. Opponents point out that Civil Code section 1671(d) and caselaw interpreting it require that credit card penalty fees such as late and overlimit fees must be reasonably related to the actual damages expected to be caused by the event triggering the fee, and note that SB 1145 would exempt banks, savings associations, savings banks, credit unions, and their subsidiaries from these consumer protections. *[S. Jud]*

AB 320 (Burton). Existing law does not prescribe interest rates for bank credit card accounts, but prohibits defined usurious interest rates for any loan or forbearance made by a nonexempt lender. As introduced February 4, this bill would prescribe a maximum interest rate or finance charge which could be charged on credit card accounts issued by a bank, savings association, or credit union. Except as otherwise provided, the interest rate or finance charge assessed with respect to any account for which charges may be added by the use of a bank credit card shall not exceed an annual rate equal to 10% plus the savings account interest rate paid by the financial institution issuing the card. *[A. F&I]*

AB 1756 (Tucker), as amended June 9, would prohibit state, city, and county governments from contracting for services with financial institutions with $100 million dollars or more in assets unless those companies file Community Reinvestment Act reports annually with the Treasurer. The Treasurer would be required to annually submit a report to the legislature and to make summaries available to the public. These reports would include specified information regarding the nature of the governance of the companies, and their lending and investment practices with regard to race, ethnicity, gender, and income of the governing boards and of the recipients of loans and contracts from the institutions. *[A. Inactive File]*

AB 1640 (Bates). Existing law authorizes the Treasurer to deposit funds belonging to the state or in the custody of the state in various financial institutions. As introduced March 4, this bill would require the Treasurer to annually report to the Governor and the legislature on the amounts deposited in each financial institution and to include the institution's rating under the federal Community Reinvestment Act. *[A. F&I]*

SB 179 (Hughes), as introduced February 3, would prohibit the Treasurer from depositing or investing state moneys with financial institutions that receive specified ratings from federal authorities pursuant to the federal Community Reinvestment Act. *[S. GO]*

AJR 17 (Costa), as introduced March 5, would request the federal government and the state to conduct a thorough review of banking regulations, and to revise those that are unnecessarily burdensome and barriers to effective community lending. *[A. Rls]*

AJR 19 (Polanco), as amended September 1, would resolve that the legislature urge the United States Congress to repeal those laws found to be unduly restrictive, burdensome, and unnecessary to protect the safety and soundness of the banking system and to direct the federal agencies responsible for banking regulations to modify and rescind those regulations that may inhibit lending to small businesses, women, communities of color, and agricultural borrowers. This measure would also resolve that the legislature urge the President of the United States to use the authority of the executive branch of the federal government to reduce overregulation of the banking system by administrative act and to seek necessary legislative changes. *[S. Rls]*

AB 1995 (Archie-Hudson), as introduced March 5, would authorize state-chartered banks, savings associations, and credit unions to restructure a loan or extend credit terms and obligations to minority or women business enterprises in accordance with safe and sound financial operations. Any loan so restructured or extended shall not be classified as delinquent, and the financial institution shall not be required to increase its reserves or be subject to adverse regulatory action because of that loan. *[A. F&I]*

AB 2165 (Areias). Existing law requires the Secretary of Trade and Commerce to coordinate state policy on economic development and trade. As introduced March 5, this bill would require the Secretary, in conjunction with SBD, to develop a program to assist and encourage the banking industry to form a privately owned consortium to assist business relocation in California. *[A. F&I]*

AB 2232 (McDonald), as introduced March 5, would direct SBD to conduct a study and make recommendations to the legislature on or before July 1, 1994 on the regulatory process and procedures for banks engaged in making small business loans. *[A. F&I]*

AB 2349 (Polanco). Existing law prohibits any person from engaging in the business of receiving money for the purpose of transmitting the money or its equivalent to foreign countries, unless the person has first obtained a license from the Superintendent of Banks or is exempt. Under existing law, specified fees are charged for services performed by the Superintendent, including a $400 dollar per day fee for the services of an examiner, which a licensee must pay within ten days after receipt of a statement from the Superintendent for those services. As introduced March 5, this bill would change the time period for payment for those services from ten days to twelve days. *[A. F&I]*

SB 161 (Deddeh). Existing law requires banks to furnish depositors, if not physically present at the time of the initial deposit into an account, with a statement concerning charges and interest not later than ten days after the date of the initial deposit. As introduced February 1, this bill would instead require the statement to be furnished not later than seven business days after the date of the initial deposit. With respect to an increase in the rate of account charges or a variance in the interest rate, the bill would reduce the notice time from fifteen days prior to date of change or variance to seven business days.

Existing law, with specified exceptions, prohibits a commercial bank from lending in the aggregate an amount in excess of 70% of the amount of its savings and other time deposits upon the security of real property. This bill would specify that the percentage limitation applies with

respect to the aggregate amount of accounts subject to a negotiable order of withdrawal, savings deposits, money market accounts, super now accounts, and other time deposits of a commercial bank, including certificates of deposit. *[S. BC&IT]*

SB 203 (Deddeh). Existing law provides that the failure of a bank or trust company to open a branch office within one year after the Superintendent of Banks approves the application terminates the right to open the office, except that prior to the expiration of the one-year period a one-year extension may be granted by the Superintendent in which to open and operate a branch office upon filing an application with the Superintendent and the payment of a $100 fee. As introduced February 4, this bill would increase that fee to $350. *[S. BC&IT]*

SB 632 (Deddeh). Under existing law, if a draft, such as a check, is unaccepted by the bank and is dishonored, the drawer is obliged to pay the draft according to its terms. As introduced March 2, this bill would, in addition, provide that the drawer is obligated to pay any service charges resulting from dishonor of the draft. *[S. Jud]*

HR 20 (Burton), as amended May 4, states that the Bank of America (BofA) is known as the leading bank in the West; BofA is one of the most profitable financial institutions in America, making a profit of $1.5 billion in 1992; BofA has achieved this success in part through federal subsidies of FDIC guaranteed borrowing and mergers approved by the federal government; BofA's Chief Executive Officer earned a salary of $1.6 million in 1992 and approximately $12 million in stock options between 1987 and 1991; BofA is opening overseas offices in Vietnam while at the same time closing neighborhood banks in California communities; BofA has asked all employees to sign "at will" statements acknowledging that the bank may fire them without cause at the employer's pleasure, work hours may be cut and health care and other benefits taken away, and employees may be transferred anywhere in the bank's system; this personnel action compromises the principle of employer responsibility by implying that the cutting of employee hours, salaries, and benefits is acceptable behavior while the bank continues to earn large profits; the elimination of employee benefits by BofA may place an additional burden on the state budget by increasing the costs of the Medi-Cal system and of state hospitals for uncompensated care; BofA is moving its credit card operations to Arizona and transferring 1,600 jobs out of San Francisco and Glendale in order to escape California consumer protection laws that do not apply if the credit card business is headquartered in a state with weaker regulations; BofA is the dominant bank in the State of California and is the depository bank for the State of California; in the 1991–92 fiscal year, the State of California's total dollar investment in BofA was $3.9 billion; 91% of all deposits from California state agencies are deposited with BofA; and the State of California has $131 million in debt issuance corporate notes from the Pooled Money Account with the BofA.

Accordingly, the measure would state the Assembly's request that the State Treasurer consider withdrawing all deposits from BofA and investing them in other banks within California in accordance with the care, skill, prudence, and diligence that a prudent person would use in conducting or making state financial investments; that the Treasurer discontinue any investment in BofA's corporate notes and invest in other banks within the state of California in accordance with the care, skill, prudence, and diligence that a prudent person would use in conducting or making state financial investments; and that all state agencies consider withdrawing their deposits from BofA and investing them in other banks within California in accordance with the care, skill, prudence, and diligence that a prudent person would use in conducting or making state financial investments. *[A. Inactive File]*

LITIGATION

Badie v. Bank of America, No. 944916, filed in San Francisco Superior Court in August 1992, challenges BofA's new policy which requires that customer disputes over deposit and credit card accounts be sent to binding arbitration. *[13:2&3 CRLR 124]* In July, San Francisco Superior Court Judge Stuart Pollak was assigned to hear the case, which is now expected to go to trial in December. BofA and Wells Fargo are the only banks in California which currently have such a policy; however, if BofA prevails, many of the state's financial institutions are expected to adopt similar policies.

On July 27, Milton Zucker Mende was sentenced to 151 months in federal prison for his role in a multimillion-dollar advance loan fee scam; five other defendants have also been convicted and are awaiting sentencing. Mende was convicted in December 1992 on forty counts of conspiracy, mail fraud, wire fraud, and money laundering; Mende was found to have created sham corporations, including Banco Commercial Arabe, S.A., to take fees ranging from a few thousand to several hundred thousand dollars for loans or loan guarantees which Mende falsely promised to provide. According to SBD, Mende and Banco Commercial Arabe are subject to a permanent injunction prohibiting them from, among other things, transacting banking or trust business in California without a certificate of authority from the Superintendent, and to civil monetary penalties for violations of state banking law.

In ***Leary v. Wells Fargo Bank***, No. 866229 (Aug. 17, 1993), plaintiffs alleged that in 1966 or 1967, defendants Wells Fargo Bank, First Interstate Bank, Crocker National Bank, and Bank of America began a conspiracy to fix the interest rates on bank credit cards, and ultimately charged California customer nearly 5% more interest than they should have. In October 1986, plaintiffs filed a class action against the four banks, charging violations of California antitrust laws. In 1992, Wells Fargo Bank, First Interstate Bank, and Crocker National Bank settled for a total of $55 million; however, Bank of America refused to settle, even though plaintiffs were seeking $672 million in damages, which could be trebled under California antitrust law. Following a ten-week trial, the jury found for Bank of America, finding that plaintiffs failed to prove it conspired to fix prices on credit cards. At this writing, plaintiffs have not decided whether they will appeal the decision.

In ***Youngberg v. Bank of America***, No. 953812, filed on July 30 in San Francisco Superior Court, the plaintiff alleges that Security Pacific Bank, now owned by Bank of America after a 1992 merger, overcharged its trust account customers. Specifically, the case challenges the fee charged by Bank of America for a practice known as "sweeping"—a process in which banks channel otherwise idle trust funds into interest-bearing accounts. The suit seeks unspecified damages for an undetermined number of trust account holders and the beneficiaries of those trusts who may have been affected by excessive sweep fees. Bank of America contends that the fees in question were lawful and appropriate and that proper notification was made to customers.

DEPARTMENT OF CORPORATIONS

Commissioner: Gary S. Mendoza
(916) 445-7205
(213) 736-2741

The Department of Corporations (DOC) is a part of the cabinet-level Business, Transportation and Housing Agency and