provides that with the prior written approval of the Superintendent, a bank may change the location of a place of business from one location to another in the same vicinity upon application and a fee of $100. This bill would increase that fee to $250. *[S. BC&IT]*

The following bills died in committee: ***AB 1593 (Floyd)***, which would have transferred the licensing and regulatory functions of SBD, the Department of Savings and Loan, and the Department of Corporations to a Department of Financial Institutions, which the bill would have created; ***SB 893 (Lockyer)***, which would have authorized the establishment of the California Financial Consumers' Association to inform, advise, and represent consumers on financial service matters; ***SB 949 (Vuich)***, which would have increased a specified fee from $100 to $300; ***AB 1596 (Floyd)***, which would have amended the California Public Records Act's exemption for records of any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions; ***SB 950 (Vuich)*** and ***AB 1463 (Hayden)***, which would have specified the application of a certain percentage limitation 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; and ***AB 1195 (Lancaster)***, which would have provided that for compensation or in expectation of compensation, a bank or trust company may, on behalf of another or others, sell, buy, lease, exchange, or offer to sell, buy, lease, or exchange, or solicit prospective sellers, purchasers, or lessees of, or negotiate the sale, purchase, lease, or exchange of any business opportunity.

LITIGATION:

On March 12, the California Supreme Court denied review of the First District Court of Appeal's decision in ***Beasley v. Wells Fargo Bank***, No. A048490, in which the court affirmed a $5 million judgment in a class action challenging Wells Fargo's assessment of fees against credit card customers who failed to make timely payments or exceeded their credit limits. Also on March 12, the California Supreme Court denied review in a related action, ***Beasley v. Wells Fargo Bank***, No. A049948, in which the First District upheld the trial court's award of almost $2 million in attorneys' fees and costs to plaintiffs in the class action discussed above. *[12:1 CRLR 111]*

DEPARTMENT OF CORPORATIONS

Commissioner: Thomas Sayles
(916) 445-7205
(213) 736-2741

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 Chapter 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.

The commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plan Law, Escrow Law, Check Sellers and Cashers Law, Securities Depositor Law, California Finance Lenders Law, and Security Owners Protection Law.

A Consumer Lenders Advising Committee advises the commissioner on policy matters affecting regulation of consumer lending companies licensed by the Department of Corporations. The committee is composed of leading executives, attorneys, and accountants in consumer finance.

On March 26, the Senate approved Governor Pete Wilson's appointment of Thomas S. Sayles as Commissioner of the Department of Corporations.

MAJOR PROJECTS:

Feasibility of Establishing Separate Department to Regulate State-Chartered Credit Unions Examined. Senate Resolution 66 (Kopp), approved in 1990, required the Legislative Analyst's Office (LAO) to examine the "fiscal feasibility" of establishing a separate department to regulate state-chartered credit unions. Currently, regulation of credit unions is just one of the functions performed by DOC, which regulates the 267 credit unions in California that operate under a state charter (another 674 credit unions operate under a federal charter).

In its recently released analysis, LAO indicates that the establishment of a separate regulatory department would increase state administrative costs by about $453,000 for 1992 (assuming that there is no change in the regulatory workload). These increased costs would have to be paid by the state-chartered credit unions. For 1992, assessments paid by these credit unions would have to be increased by approximately $0.04 per $1,000 of assets, resulting in assessment increases that range from 2.9% (for credit unions with

assets of less than $500,000) to over 16% (for those with assets in excess of $500 million). The impact of these assessment increases could induce some credit unions to convert to a federal charter.

However, LAO noted that—with a separate department responsible only for the regulation of credit unions—licensed institutions would likely receive more direct and responsive state regulatory attention, as opposed to being part of a state department that regulates a number of financial programs. According to LAO, the relative value of having such attention might offset the increased assessments for some of the institutions.

Regulatory Action Under the Corporate Securities Law. On March 27, Commissioner Sayles published notice of DOC's intent to amend section 260.101.2, Title 10 of the CCR, to reflect the American Stock Exchange's (ASE) rule change relating to the Emerging Company Marketplace (AMEX/ECM). Corporations Code section 25101(a) provides that any security issued by a person who is the issuer of any security listed on a national securities exchange certified by rule or order of the Commissioner is exempt from the non-issuer qualification requirements of Corporations Code section 25130. Under section 260.101.2, Title 10 of the CCR, the Commissioner has certified the ASE. DOC's proposed amendments to section 260.101.2 would provide that the ASE is certified, but only to the extent that the securities are those of an issuer which has a security that is regularly listed on the ASE; an issuer of securities listed on the AMEX/ECM is not an issuer which has a security listed on the ASE and, therefore, the exemption from the qualification requirements of section 25130 afforded by section 25101(a) is unavailable. At this writing, no public hearing on this proposed regulatory change is scheduled; however, the Department received written comments until May 22.

On February 21, the Commissioner published notice of his intent to adopt new section 260.105.37, Title 10 of the CCR, relating to an exemption from the qualification requirements of Corporations Code sections 25110, 25120, and 25130 for the offer and sale of certain securities listed or approved for listing upon notice of issuance on the Chicago Board Options Exchange (CBOE) and any warrant or right to purchase or subscribe to such security. Under current provisions of the Corporate Securities Law of 1968, the CBOE is not a national securities exchange certified by the DOC Commissioner under the exemption afforded by Corporations Code section 25100(o). The current principal activity of the CBOE is listing and trading options and other derivative products for which there are no listing standards under section 25100(o), but for which other exemptions are available. The CBOE has adopted criteria for approval of traditional securities for original listing (and those criteria have been approved by the SEC), but has no history of applying its criteria to the listing and delisting of traditional securities products.

Because the specific language of section 25100(o) may not give the Commissioner authority to certify a national securities exchange which has no history of listing or delisting traditional securities products, and because the Commissioner believes that the CBOE should be entitled to develop an operating history to qualify for approval of securities for original listing, DOC proposes that an exemption from the qualification requirements of Corporations Code section 25110, 25120, and 25130 be afforded for the offer and sale of securities listed or approved for listing upon notice of issuance on the CBOE and any warrant or right to purchase or subscribe to such security. Accordingly, DOC proposes to adopt new section 260.105.37, which would set forth the extent of and conditions to the exemption from the qualifications requirements of the Corporate Securities Law. At this writing, no public hearing is scheduled on this proposed regulatory change; DOC received written public comment until April 10.

Also on February 21, the Commissioner announced DOC's intent to amend section 260.105.11, relating to the securities of foreign issuers. Currently, section 260.105.11 provides for a trading exemption from the qualification requirements for securities of foreign-country issuers where certain requirements are met. This trading or non-issuer exemption from the requirements of Corporations Code section 25130 applies to a security listed on a securities exchange located in a foreign country the laws of which have been determined by the DOC Commissioner to provide "substantially similar protection" to investors as provided by the federal Securities Exchange Act of 1934 with respect to securities listed on a national securities exchange in the United States.

As amended, section 260.105.11 would limit the exemption for non-issuer trading of foreign-country issuer securities to (1) those issuers currently filing with the SEC information and reports pursuant to section 15(d) of the Securities Exchange Act; and (2) those securities exempted from the provisions of section 12(g) of the Exchange Act by virtue of section 12g3-2(b)(1), where the foreign private issuer is in compliance with all of the conditions of that rule and where a broker-dealer meets certain requirements. As a result of these proposed amendments to section 260.105.11, the Commissioner would no longer review the laws of a foreign country to determine whether those laws provide substantially similar protection to investors as provided by the Securities Exchange Act. Consequently, those securities of foreign private issuers which are listed on any stock or securities exchange in Japan, as well as those securities listed on the Manila Stock Exchange, the Tel Aviv Stock Exchange, Limited, and the Australian Associated Stock Exchanges, will be no longer able to rely on the trading exemption under section 260.105.11, unless the new, proposed requirements are met, or unless another exemption from qualification exists under the Corporate Securities Law of 1968. At this writing, no public hearing is scheduled; the Department received public comment until May 8.

On January 31, DOC published notice of its intent to amend sections 260.105.33 and 260.105.34, relating to the senior to listed and rated debt securities exemptions. Currently, section 260.105.33 provides an exemption from the qualification requirements of Corporations Code sections 25110 and 25130 for securities which are senior to a security listed on the New York Stock Exchange (NYSE) or the ASE or designated as a national market system security on an interdealer quotation system of the National Association of Securities Dealers, Inc. (NASD). This rule excludes from the definition of "senior" a security which is, or is able to be converted into, an evidence of indebtedness which is not an "investment grade security," as defined by section 260.105.34, Title 10 of the CCR. The Commissioner's amendment to section 260.105.33 limits the exemption to equity securities, which would not be a "senior" security if it is currently able to be converted into an evidence of indebtedness which is not an "investment grade security," as defined in section 260.105.34.

Section 260.105.34 currently exempts from the qualification requirement of Corporations Code section 25110 any offer or sale of an evidence of indebtedness which has been rated as an "investment grade security" by Standard and Poor's Corporation or Moody's Investors Service Inc. The references to Standard and Poor's and Moody's are amended to reflect the proper

names of those organizations. The exemption is currently available for evidences of indebtedness convertible in a security listed or approved for listing on the NYSE or ASE. Under DOC's amendments to section 260.105.34, the exemption is now available for evidences of indebtedness which are convertible into a security which is designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by NASD, certified by the Commissioner pursuant to Corporations Code section 25100(o). DOC received public comment until March 20 and subsequently adopted these changes; the Office of Administrative Law (OAL) approved the changes on May 20.

The following is a status update on other DOC regulatory action under the Corporate Securities Law, which was reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 113 and Vol. 11, No. 4 (Fall 1991) at pages 126–27:

–DOC's adoption of sections 260.235.3, 260.235.4, and 260.238, Title 10 of the CCR, regarding the licensing of investment advisers, was approved by OAL on May 12.

–DOC's amendments to section 260.165, Title 10 of the CCR, regarding the consent to service of process form required to be filed by Corporations Code section 25165, were approved by OAL on February 27.

–DOC's proposed amendments to sections 260.101.1 and 260.101.3, Title 10 of the CCR, which would implement 1989 amendments to Corporations Code section 25101(b) to enable NASD to file a notice of exemption on behalf of an issuer whose securities meet the requirements of section 25101(b)'s exemption, still await review and approval by OAL.

–DOC's amendments to 53 regulatory sections regarding its securities qualification standards for real estate programs in the form of limited partnerships were released in modified form for public comment on March 5, subsequently adopted by DOC, and approved by OAL on May 18.

Regulatory Action Under the Health Care Service Plan Act. On December 26, OAL approved DOC's repeal of section 1300.67.10, a provision prohibiting discrimination by health care service plan (HCSP) contracts which has been codified in statute. Also on December 26, OAL approved DOC's amendments to subsections (a)(6) and (a)(7) of section 1300.67.4, regarding the specified written notice of changes in premium rates or coverage prior to a group control renewal effective date, and to subsections (a)(2)(A) and (c)(9) of section 1300.67.4, to include an appropriate reference to the CCR. *[12:1 CRLR 112]*

On January 8, OAL approved DOC's amendments to sections 1300.67.52 and adoption of section 1300.64.54, Title 10 of the CCR, which establish minimum benefit standards for so-called "Medigap" supplement contracts offered by HCSPs. *[12:1 CRLR 112–13]*

Proposed Regulatory Action Under the Credit Union Law. At this writing, DOC's proposal to repeal section 909 and adopt new section 909, Title 10 of the CCR, awaits review and approval by OAL. Proposed new section 909 would clarify when bond or insurance coverage is deemed "commensurate with risks involved." Among other things, the bond form or insurance policy must be approved by rule or regulation of the National Credit Union Administration. In addition, the bond form or insurance policy must also provide coverage for loss caused by fraud or dishonesty or through the failure of an officer, credit manager, or employee to faithfully perform his/her trust; provide coverage for loss caused by noncompliance with any provision of federal or state laws or regulations dealing with specified subjects; and contain a requirement that the issuer of the bond or insurance policy give the Commissioner at least thirty days' written notice prior to termination. *[12:1 CRLR 114]*

Investor Alert. On April 14, DOC issued a news bulletin alerting California consumers of the fastest-growing investment telemarketing scam in the country, which involves the Federal Communications Commission's (FCC) lottery for "wireless cable" television licenses. Although the chances of winning one of the FCC licenses are slim, so-called "application mills" inflate the prospects for an investor to prevail in the wireless cable television lottery, gloss over the complicated mechanics of the FCC lottery process, understate the risks, exaggerate the potential value of a license, overstate the availability of necessary financing, and lead the consumer to believe that high profits are a certainty. In his warning to consumers, DOC Commissioner Sayles commented, "It seems that every time the federal government holds a lottery to award licenses, a new crop of these 'application mills' springs up to separate consumers from their hard-earned savings."

Commissioner Approves Health Net Conversion. According to DOC, more than one-half billion dollars will flow into preventive health care programs over the next fifteen years as a result of the conversion of Health Net, a health maintenance organization (HMO), from nonprofit to for-profit status under terms of the conversion approved by DOC Commissioner Sayles in February. The law regulating the conversion of HMOs from nonprofit to for-profit requires that the fair value of the HMO be contributed to a successor charity engaged in similar activity; the successor charity established to receive the contribution from Health Net is the Wellness Foundation.

The terms of conversion approved by Commissioner Sayles call for Health Net to pay the Foundation $75 million in cash at the time of the conversion and to issue the Foundation $225 million in fifteen-year interest-bearing notes. Starting this year, Health Net will begin paying the Foundation at least $20 million per year to retire the notes, for an estimated total of $520–$620 million. In addition to the cash contribution, Health Net will contribute 80% of the stock of the newly-converted HMO to the Foundation; Health Net's management and directors will own the remaining 20%.

The purpose of the Wellness Foundation is to improve the health of Californians through disease prevention, health promotion, and education. The Foundation will support programs providing childhood immunizations, disease screening, substance abuse treatment for pregnant women, and prenatal care for teens.

According to Commissioner Sayles, the conversion benefits the state because it will have another taxpaying company contributing to the tax base; Health Net benefits because, as a for-profit corporation, it will have access to capital markets to raise necessary funds to accomplish its objectives; and the people of California will benefit because millions of dollars will be available to establish and support preventive health care programs.

LEGISLATION:

AB 3469 (T. Friedman). Existing provisions of the Savings Association Law prescribe various criminal offenses and penalties for violations thereof, and provide for forfeiture of property or proceeds derived from these violations. As amended May 11, this bill would enact similar criminal forfeiture provisions for violation of the Corporate Securities Law of 1968, and would expand the list of criminal offenses, as specified, the violation of which subjects the violator to the forfeiture provisions. This bill would also provide that a petition for forfeiture may be filed prior to, in conjunction with, or subsequent to a criminal proceeding, and if filed prior to the criminal proceedings, the prosecuting agency shall provide con-

current notice to any parties subject to the proposed forfeiture that they are targets of an anticipated criminal action. The petition and any injunctive order shall be dismissed unless a criminal complaint is filed within 120 days after the filing of the petition. The bill would also provide that no injunctive order shall impair the ability of a defendant or interested party to pay legal fees relating to the criminal charges. Existing law provides that the proceeds of forfeited property shall be distributed to the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, as specified. This bill would provide that the balance of any forfeited funds shall be also distributed to the victim of specified crimes committed by the defendants. *[A. W&M]*

AB 2831 (Archie-Hudson), as amended April 6, would rename the Check Sellers and Cashers Law as the "Check Sellers, Bill Payers, and Proraters Law," and provide that it is a felony to violate this law or any rules, orders, or regulations of the DOC Commissioner under this law. This bill would also increase the bond required of check sellers from $10,000 to $500,000 and to $25,000 for other licensees, and permit the Commissioner to deny an application for a license under the law if the applicant has not complied with the law; if the proposed officers and directors do not have sufficient check selling, bill paying, prorating, or other experience; if the public convenience and advantage will not be promoted; if the proposed business is being formed for a purpose other than the legitimate objectives; or if the proposed capital structure is inadequate. This bill would also require licensees to prominently post on the premises and at machines that issue checks or money orders and are operated by the licensee or its agents a notice clearly stating that checks or money orders issued by the licensee are not insured by the federal government, the state government, or any other public or private entity.

AB 2831 is sponsored by DOC to increase consumer protection when money order companies fail. In the past six months, two independent money order companies regulated by DOC have failed; in each case, the company did not have sufficient funds to cover millions of dollars in money orders it had sold, leaving the thousands of individuals who had purchased them "holding the bag." *[S. BC&IT]*

SB 1552 (McCorquodale). Existing provisions of the General Corporation Law specify the powers and duties of a corporation's board of directors. As introduced February 18, this bill would require the boards of specified corporations to establish at least two committees composed of independent directors, as defined, to provide analysis and recommendations to the board concerning an audit of internal company operations and procedures and an evaluation and compensation of company officers and executives. *[S. Floor]*

SB 1815 (Dills). Existing law provides that no provision imposing liability under the Personal Property Brokers Law or the Consumer Finance Lenders Law applies to an act done or omitted in good faith in conformity with any written general rule, regulation, or specific ruling of the Commissioner of Corporations. As amended May 5, this bill would instead provide that no such provision imposing liability applies to an act done or omitted in good faith in conformity with any rule, order of the DOC Commissioner, or written interpretive opinion of the Commissioner or any opinion of the Attorney General, notwithstanding that after the act or omission has occurred one of these is amended, rescinded, or determined to be invalid. *[S. Floor]*

SB 1727 (Beverly), as amended May 4, would provide that a personal property broker or consumer finance lender licensed by DOC may not make a loan to refinance a retail installment contract subject to the Unruh Act that is held by that broker or lender, or its subsidiaries or affiliates, unless specified conditions are met. *[S. Floor]*

SB 2028 (Calderon). Existing law authorizes an industrial loan company to make loans to, or purchase any obligations from, persons who do not reside or have a place of business in this state not to exceed 20%, in the aggregate, of a company's assets. As amended April 21, this bill would provide that upon application to and approval by the Commissioner of Corporations, an industrial loan company may increase its loans to, or purchases of, obligations from persons who do not reside or have a place of business in this state not to exceed 30%, in the aggregate, of a company's total assets. *[A. BF&BI]*

AB 3159 (Cannella). Existing provisions of the Corporations Code require "investment advisers," as defined, to be licensed by the Commissioner of Corporations. As amended March 30, this bill would, on and after January 1, 1995, authorize the Department of Consumer Affairs (DCA) to require, with specified exceptions, licensure of "financial planners," as defined. The bill would create the Financial Planners Policy Board in DCA and establish specified standards, procedures, and bonding requirements for regulation of financial planners. *[A. CPGE&ED]*

SB 1738 (Russell). Existing law provides for the delivery of escrow instructions to any person executing the same. As amended April 29, this bill would require in any escrow transaction for the purchase or simultaneous exchange of real property, where a policy of title insurance will not be issued to the buyer or to the parties to the exchange, that the buyer or the parties to the exchange be provided a disclosure statement stating that in a purchase or exchange of real property it may be advisable to obtain title insurance. [A. BF&BI]

AB 3827 (Conroy), as introduced March 25, would permit an applicant or licensee for an escrow agent's license to obtain an irrevocable letter of credit in an form which shall be approved by the Commissioner of Corporations in lieu of a bond. *[A. W&M]*

AB 3161 (Conroy). Existing law prohibits any person who has been convicted of specified criminal violations, or has been held liable in a civil action by a final judgment or administrative action by any public agency for certain violations within the past ten years, from serving in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agency, or in any position involving any duties with an escrow agent, in the state. Existing law requires any person who seeks employment by, an ownership interest in, or other participation in the business of a licensed escrow agent to authorize the Escrow Agents' Fidelity Corporation and the Commissioner of Corporations, or both, to have access to that person's state summary criminal history information. As amended April 6, this bill would make those prohibitions against holding escrow positions applicable to criminal convictions, pleas of nolo contendere, or civil judgments. This bill would also delete a list of criminal charges and would instead include any felony, or offense punishable as a felony, involving dishonesty, fraud, deceit, or any other crime reasonably related to the qualifications, functions, or duties of a person engaged in the business under the Escrow Law that has not been expunged and the person has not obtained a certificate of rehabilitation from a court of competent jurisdiction as allowed by the Penal Code. *[A. W&M]*

SB 1316 (Davis), as amended April 21, would require a licensed escrow agent, in referring to the corporation's licensure in any communication, as specified, to use a specified statement, and would require the

DOC Commissioner to enforce this provision by order. *[A. BF&BI]*

AB 83 (Kelley), as amended January 6, would reenact provisions of law that provide that no cause of action may be maintained against a person serving without compensation as a director or officer of a tax-exempt nonprofit corporation subject to specified provisions of the nonprofit corporation law organized to provide charitable, educational, scientific, social, or other forms of public service on account of any negligent act or omission by that person without a court order, as specified. *[S. Jud]*

AB 2656 (Frizzelle). Under existing law, a health care service plan (HCSP), disability insurer covering hospital, medical, or surgical benefits, and a nonprofit hospital service plan is required to reimburse claims no later than thirty working days after receipt of the claim, or 45 days in the case of a health maintenance organization, unless within those time periods a notice of contest or denial is given. As amended May 21, this bill would extend these provision to all HCSPs including specialized health care service plans, and to other plans and insurance providing dental benefits, and would provide that certain provisions relating to overpayment of benefits apply to specialized HCSPs, and to other plans and insurance providing dental benefits. *[A. W&M]*

SB 1002 (Watson), as amended January 21, would provide that disclosure of the proceedings or records of HCSP peer review or quality of care proceedings to the DOC Commissioner in conducting medical surveys does not change the status of the records or proceedings as privileged and confidential communications. This bill would also authorize the Commissioner to require onsite review of HCSP peer review proceedings and records or medical records where necessary to determine that quality health care is being delivered to subscribers and enrollees. *[A. Ins]*

SB 917 (Kopp) would require certain HCSPs that proposed to offer a pharmacy benefit or change their relationship with pharmacy providers to give written or published notice to pharmacy service providers of the plan's proposal and give those providers an opportunity to submit a proposal to participate in the plan's panel of providers on the terms proposed. *[A. Ins]*

AB 2083 (Felando) would provide that HCSPs and disability insurers that choose to retain, but do not employ, licensed health care providers to review claims for health care services that are rendered by a health care provider licensed in California, and who render opinions on final appeals concerning reimbursement of those reviewed claims, shall ensure, when reasonably available, that the reviewing licensed health care provider holds a current California license of the same license class as the provider of services being reviewed. *[S. InsCl&Corps]*

AB 2516 (Bentley). Existing law exempts from provisions regulating the sale, lease, or offer, or the advertising in connection therewith, of financial services offered in the ordinary course of business by a state or federal credit union, among other entities. As amended March 25, this would additionally exclude the financial services offered in the ordinary course of business by an authorized industrial loan company, a licensed consumer finance lender, a licensed commercial finance lender, a licensed personal property broker, or persons licensed pursuant to the Real Estate Law. *[S. BC&IT]*

SB 488 (Mello). Existing law provides that every credit union shall obtain insurance, a guaranty of shares, or a form of comparable insurance or guaranty of shares acceptable to the Commissioner of Corporations, for the purpose of insuring its members' share accounts. This bill would specify that the comparable insurance or guaranty of shares acceptable to the Commissioner is to be provided by a guaranty corporation licensed pursuant to this bill. *[A. BF&BI]*

AB 1597 (Floyd) would permit the Commissioner to refuse to issue a permit for the qualification of securities in a recapitalization or reorganization unless, in addition to finding that the proposed plan and issuance of securities is fair, just, and equitable to all security holders affected, the Commissioner finds that the proposed plan does not result in the termination or impairment of any labor contract covering persons engaged in employment in this state and negotiated by a labor organization, collective bargaining agent, or other representative. *[S. BC&IT]*

SB 506 (McCorquodale), as amended January 6, would direct the Business, Transportation and Housing Agency to conduct a study on the feasibility and advisability of consolidating some or all of the state's regulatory functions involving banks and savings associations and, at the discretion of the Agency, other financial institutions. The study would be required to be reported to the legislature and the Governor on or be fore March 1, 1993. *[A. BF&BI]*

SB 366 (Robbins), as amended March 2, is no longer relevant to the Department of Corporations.

The following bills died in committee: ***SB 852 (Bergeson)***, which would have authorized a HCSP to enter into a new or modified plan contract or publish, distribute, or allow to be published or distributed on its behalf a disclosure form or evidence of coverage without having filed the same for the Commissioner's approval if the contract, disclosure form, or evidence of coverage is pursuant to a contract with the federal Health Care Financing Administration to provide Medicare benefits and services; ***AB 1124 (Frizzelle)***, which would have prohibited HCSPs and specialized HCSPs which provide one or more optometric services from interfering with the professional judgment of a person engaged in the practice of optometry pursuant to the plan; ***AB 1596 (Floyd)***, which would have amended the California Public Records Act's exemption relating to records of any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions; ***AB 1593 (Floyd)***, which would have transferred the licensing and regulatory functions of DOC, the Department of Savings and Loan, and the State Banking Department to a Department of Financial Institutions, which the bill would create; ***SB 893 (Lockyer)***, which would have authorized the establishment of the California Financial Consumers' Association to inform, advise, and represent consumers on financial service matters; ***SB 935 (Roberti)***, which would have revised the criteria for determining whether a corporation, regardless of its jurisdiction or incorporation, is a "Foreign-California Corporation" subject to the corporate laws of this state; ***SB 703 (Royce)***, which would have required HCSPs that advertise, solicit for, enter into, amend, or renew any plan contract which provides any dental services to provide prescribed basic dental services; ***AB 1141 (Woodruff)***, which would have authorized a HCSP to expand its geographic service area, under specified conditions; ***AB 1251 (Hauser)***, which would have established the Bureau of Community Associations in the Department; and ***AB 889 (Mays)***, which would have extended the January 1, 1992 repeal date of section 5047.5 of the Corporations Code, which immunizes from liability directors or officers of certain nonprofit corporations who serve without compensation for acts or omissions committed in the exercise of the director's or officer's policymaking judgment.

LITIGATION:

"Oftentimes, more money is stolen at

the point of a fountain pen than the point of a gun." Paraphrasing folk singer Woody Guthrie, Los Angeles County Superior Court Judge Lance Ito, who presided over the criminal trial of ***People v. Keating***, prefaced his sentence and fine of former savings and loan kingpin Charles H. Keating, Jr. On April 10, Ito gave Keating the maximum ten-year prison sentence, fined him $250,000, and ordered him jailed immediately. Keating, 68, was convicted on December 4 on 17 counts of securities fraud counts stemming from the failure of Lincoln Savings and Loan. *[12:1 CRLR 116]*

People of the State of California v. American Continental Corporation (ACC), the Department's civil fraud action against Keating, the bankrupt ACC, and two of ACC's top officers, is still pending before U.S. District Judge Richard M. Bilby. *[12:1 CRLR 116]* At this writing, the Department is monitoring the ongoing jury trial against Keating and several co-defendants in consolidated class actions, which commenced in March in Tucson. DOC will reevaluate the utility of pursuing its lawsuit against Keating and/or his co-defendants if and when a judgment is returned against them.

DEPARTMENT OF INSURANCE

Commissioner: John Garamendi
(415) 557-3848
Toll-Free Complaint Number: 1-800-927-4357

Insurance is the only interstate business wholly regulated by the several states, rather than by the federal government. In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed by the Insurance Commissioner. Insurance Code sections 12919 through 12931 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 800-page Insurance Code; the Department's regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

The Department's designated purpose is to regulate the insurance industry in order to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of insurers to sell in the state.

In California, the Insurance Commissioner licenses approximately 1,300 insurance companies which carry premiums of approximately $63 billion annually. Of these, 600 specialize in writing life and/or accident and health policies.

In addition to its licensing function, DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects more than 170 different fees levied against insurance producers and companies.

The Department also performs the following functions:

(1) regulates insurance companies for solvency by tri-annually auditing all domestic insurance companies and by selectively participating in the auditing of other companies licensed in California but organized in another state or foreign country;

(2) grants or denies security permits and other types of formal authorizations to applying insurance and title companies;

(3) reviews formally and approves or disapproves tens of thousands of insurance policies and related forms annually as required by statute, principally related to accident and health, workers' compensation, and group life insurance;

(4) establishes rates and rules for workers' compensation insurance;

(5) preapproves rates in certain lines of insurance under Proposition 103, and regulates compliance with the general rating law in others; and

(6) becomes the receiver of an insurance company in financial or other significant difficulties.

The Insurance Code empowers the Commissioner to hold hearings to determine whether brokers or carriers are complying with state law, and to order an insurer to stop doing business within the state. However, the Commissioner may not force an insurer to pay a claim—that power is reserved to the courts.

DOI has over 800 employees and is headquartered in San Francisco. Branch offices are located in San Diego, Sacramento, and Los Angeles. The Commissioner directs 21 functional divisions and bureaus.

The Underwriting Services Bureau (USB) is part of the Consumer Services Division, and handles daily consumer inquiries through the Department's toll-free complaint number. It receives more than 2,000 telephone calls each day. Almost 50% of the calls result in the mailing of a complaint form to the consumer. Depending on the nature of the returned complaint, it is then referred to Claims Services, Rating Services, Investigations, or other sections of the Division.

Since 1979, the Department has maintained the Bureau of Fraudulent Claims, charged with investigation of suspected fraud by claimants. The California insurance industry asserts that it loses more than $100 million annually to such claims. Licensees currently pay an annual assessment of $1,000 to fund the Bureau's activities.

MAJOR PROJECTS:

Governor Again Overrules OAL's Rejection of Proposition 103 Rollback Regulations. On February 14, Governor Wilson overruled Office of Administrative Law (OAL) Director Marz Garcia's rejection of sections 2641.1–2647.1, Title 10 of the CCR, DOI's emergency regulations designed to implement the rate rollback provisions of Proposition 103.

The Valentine's Day ruling marked the second time the Governor has overruled his own appointee's rejection of the Department's emergency rollback regulations. Last October, Wilson overrode a similar rejection, paving the way for Commissioner Garamendi to order $1.5 billion in rebates and to continue administrative hearings on several insurers' challenges to those orders. *[12:1 CRLR 116–17; 11:4 CRLR 131–32]* Because emergency rules are effective for only 120 days and they were due to expire on December 11, DOI filed two rulemaking packages with OAL that day: permanent rollback regulations to replace those which were expiring, and another set of emergency rules to avoid any lapse in the regulations should OAL require revisions in the permanent rules. On January 10, OAL rejected both packages. Following negotiations with OAL, DOI submitted an amended version of the emergency rules on January 15.

In a ruling that was similar to his September 1991 rejection, OAL Director Garcia rejected them on January 23, for failure to satisfy the authority and consistency standards of Government Code section 11349.1. Specifically, Garcia found that the regulatory scheme embodied in the emergency rules allegedly "restricts an insurer's right to obtain relief from confiscatory rates," in violation of state statute and the California Supreme Court's opinion in *Calfarm v. Deukmejian*, 48 Cal. 3d 805 (1989). The regulatory scheme involves use of a "single, consistent methodology" (a mathematical calculation using numbers drawn mostly from company-specific data but partly from norms established by the Commissioner, plus several variances which may be claimed by insurers in specified circumstances). The use of the single "generic" model developed by the Department through years of rulemaking and established in DOI regulations, without exception (other than the variance opportunities) and without ability on the part of insurers to "relitigate" the methodology, was said to be the only way to ensure