chapter 5, Chapter 1, Title 10 of the CCR, now conforms to the model code established by the Fair Political Practices Commission at section 18730, Title 2 of the CCR. *[11:3 CRLR 117]*

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 163–64:

AB 3683 (Peace) would have required every banking organization located in a census tract with a median family income that is less than 80% of the median family income for the Metropolitan Statistical Area or county to mail written notice with customer statements of any planned closing to its customers, or to post notice of the planned closing at the branch office. This bill was vetoed by the Governor on September 26.

AB 2389 (Moore) requires the operator of any automated teller machine (ATM) in this state to disclose any transaction surcharge with respect to customers utilizing an access device not issued by that operator prior to completion of any transaction. This bill was signed by the Governor on July 24 (Chapter 348, Statutes of 1992).

SB 506 (McCorquodale) would have transferred the licensing and regulatory functions of SBD, the Superintendent of Banks, the Department of Savings and Loan (DSL), and the Savings and Loan Commissioner to the Department of State Banking and Savings and Loan, which the bill would have created. This bill was vetoed by the Governor on September 30. (*See infra* agency report on DSL for related discussion.)

AB 3469 (T. Friedman) was amended to pertain only to savings and loan institutions (*see infra* agency report on DSL for related discussion).

The following bills died in committee: **ABX 45 (Peace)**, which would have prohibited state, city, and county governments from contracting for services with financial institutions with $100 million or more in assets unless those companies file reports annually with the state Controller; **SB 1396 (Marks)**, which would have required banks and other financial institutions that assemble, evaluate, or disseminate information on the checking account experiences of consumer customers to give specified notices to new customers; **AB 3025 (Lancaster)**, which would have provided that when a bank's tangible shareholders' equity is less than certain sums, the Superintendent is authorized to take possession of the bank; **SB 1463 (Calderon)**, which would have provided that the robbery of any person who is using an ATM or immediately after the person has used an ATM while the person is in the vicinity of the ATM shall be punished by an additional term of one year in state prison; and **AB 696 (Lancaster)**, which would have increased from $100 to $250 the fee a bank must pay in order to change a place of business from one location to another in the same vicinity upon application.

LITIGATION

Badie v. Bank of America, No. 944916, which was filed in San Francisco County Superior Court on August 4, challenges BofA's new policy which requires that customer disputes over deposit and credit card accounts be sent to binding arbitration. The plaintiffs in the suit—four BofA customers, Consumer Action, and the California Trial Lawyers Association—seek an injunction blocking enforcement of the policy, which they claim violates the California Constitution, the Consumer Legal Remedies Act, and the Unfair Business Practice Act. Among other things, plaintiffs claim that the policy denies customers the right to trial by jury; severely curtails or eliminates customers' ability to obtain discoverable documents from the bank; was unilaterally and deceptively imposed; involves exorbitant fees; and results in a procedure that is biased toward the bank. A status conference in the proceeding is scheduled for February 26. (*See supra* MAJOR PROJECTS).

DEPARTMENT OF CORPORATIONS

Commissioner: Thomas Sayles
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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 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.

MAJOR PROJECTS

Auditor General's Report. In May, the Office of the Auditor General (OAG) released Report No. P-115, which analyzes DOC's management of medical surveys and consumer complaints in its Health Care Service Plan Division. Pursuant to the Knox-Keene Health Care Service Plan Act of 1975, DOC is responsible for regulating and licensing health care service plans (HCSPs). Among other things, DOC is required to perform various activities to ensure that HCSPs provide quality medical care; these activities include onsite medical surveys of every licensed health plan within specified timeframes. Additionally, DOC assists HCSP members in resolving complaints against their health plans.

As a result of its review, OAG found that DOC has not effectively managed its onsite medical surveys of HCSPs. Although required by law to conduct a survey of each HCSP at least once every five years, DOC told the legislature in 1986 that it attempts to conduct such surveys of most HCSPs every three years. However, OAG found that DOC did not conduct medical surveys every three years for 56% of the state's HCSPs from fiscal year 1987–88 through 1990–91. OAG also found that DOC did not conduct surveys every five years for 10% of the state's HCSPs from fiscal year 1986–87 through 1990–91. As a result, OAG noted that DOC may allow some HCSPs to continue to operate in a manner inconsistent with the law and possibly dangerous to their members' health.

OAG also found that DOC has not effectively managed the release of its medical survey reports. Specifically, OAG found that from fiscal year 1986–87 through 1990–91, 86% of DOC's confidential reports to HCSPs were not issued within the 90-day period established in DOC policy; instead, DOC took an average of 335 days to issue those confidential reports to the health plans. Also, for 78% of the medical surveys for which DOC could provide both the HCSPs' responses and DOC's public reports, DOC did not release the public reports within 45 days of receipt of the HCSPs' responses, as is required by DOC policy; rather, DOC took an average of 164 days to issue those public reports.

In addition, Health and Safety Code section 1380(h) requires DOC to make public specified deficiencies which are not corrected by HCSPs within thirty days of notification. However, OAG found that in 28% of the corrective action plans reviewed, DOC inappropriately deleted from the public reports deficiencies that the HCSPs had not corrected within that 30-day period. OAG also noted that DOC is required to open for public inspection reports of all surveys, deficiencies, and correction plans except for those deficiencies health plans correct within thirty days. However, OAG found that DOC has not properly maintained its records of medical survey information. For example, during OAG's review of medical surveys, DOC could not locate 153 of 247 documents requested by OAG.

OAG also found that DOC failed to clearly state in 25% of the confidential survey reports reviewed whether or not the HCSPs were complying with health care standards. OAG also found that although DOC has the authority to take follow-up and enforcement action, DOC did not do so in 62% of the medical surveys reviewed to ensure that HCSPs corrected cited deficiencies.

Finally, OAG found that DOC failed to meet its goal of processing complaints made by members against their health plans within 45 days in 52% of the complaints OAG reviewed. OAG also noted that as of January 1992, DOC had a backlog of 599 complaints, some received as long ago as fiscal year 1988–89.

OAG recommended that the DOC Commissioner take the following actions:

–establish management controls to ensure that DOC conducts onsite medical surveys according to its three-year goal and five-year statutory mandate;

–implement the training plan adopted in March 1992 for new analysts and update its procedure manual to ensure that analysts are informed of procedures based on the Policy Manual implemented in March 1992;

–ensure that analysts have consistent supervision and direction in conducting medical surveys and issuing medical survey reports;

–establish and implement policies and guidelines to ensure that analysts write medical survey reports clearly and uniformly;

–establish and implement policies regarding instances when DOC deems it unnecessary to issue medical survey reports;

–formalize DOC's policy to include new terminology describing whether health plans are meeting health care standards;

–ensure that consumer services representatives comply with applicable timelines for processing complaints established in DOC's March 1992 Complaint Manual; and

–ensure that the backlog of pending complaints is reduced to a level consistent with DOC's goal in processing complaints.

In response to these findings, DOC noted that it has already commenced implementation of many of OAG's suggestions, such as having DOC management receive monthly reports from its consumer services representatives to ensure careful and ongoing monitoring of any backlog, and take appropriate action to minimize any backlog that does occur.

Regulatory Action Under the Credit Union Law. On August 3, the Commissioner published notice of his intent to amend section 922, Title 10 of the CCR, which implements the Credit Union Law. Currently, section 922 sets forth investments authorized for California-chartered credit unions pursuant to Financial Code section 14653.5. Among other things, section 922(b)(6) authorizes California-chartered credit unions to invest in an "investment company" (commonly known as a mutual fund) as defined in the Investment Company Act of 1940 (15 U.S.C. section 80a-1 *et seq.*) or trusts, provided that all investments and investment practices of the investment company or trust would be permissible if made directly by the credit union. The Commissioner proposes to amend this provision to allow California-chartered credit unions to invest in mutual funds or trusts provided that all investments and investment practices of the mutual funds or trusts would be permissible if made directly by the credit union or federal credit unions. According to DOC, this proposal is based upon 12 C.F.R. Part 703.1–.5 of the National Credit Union Administration's regulations affecting federal credit unions. The Commissioner received public comment on the proposal until October 9; no public hearing is scheduled at this writing.

At this writing, DOC is still reviewing the comments received on its proposal to repeal existing section 909 and adopt new section 909, Title 10 of the CCR; new section 909 would clarify when bond or insurance coverage is deemed "commensurate with risks involved." *[12:2&3 CRLR 166]*

Regulatory Action Under the Corporate Securities Law. On August 24, the Office of Administrative Law (OAL) ap-

proved nonsubstantive changes to section 260.608, Title 10 of the CCR, making technical corrections to the section concerning fees for DOC publications. On July 2, OAL approved DOC's nonsubstantive changes to section 260.102.13, Title 10 of the CCR, regarding the limited offering exemption under the Securities Act of 1933.

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, Nos. 2 & 3 (Spring/Summer 1992) at pages 165–66:

• DOC's amendment to section 260.101.2, Title 10 of the CCR, removing stocks listed on the American Stock Exchange's Emerging Company Marketplace from the existing automatic certification of stocks listed on the AMEX as meeting the qualification exemption afforded by Corporations Code section 25101(a), was approved by OAL on July 29.

• DOC's amendment to section 260.105.37, Title 10 of the CCR, regarding an exemption from specified qualifications requirements for the offer and sale of certain securities, and any warrants or rights to purchase those securities, listed or approved for listing on the Chicago Board Options Exchange, was approved by OAL on July 28.

• Comments received in response to DOC's proposed amendments to section 260.105.11, Title 10 of the CCR, limiting the exemption for non-issuer trading of foreign-country issuer securities, are still being reviewed by the Department at this writing.

• 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 the National Association of Securities Dealers, Inc. (NASD) to file a notice of exemption on behalf of an issuer whose securities meet the requirements of section 25101(b)'s exemption, and facilitate the exemption notice filing by enabling the use of computer tape or disk, are awaiting additional information from NASD and further review by DOC.

Regulatory Action Under the Health Care Service Plan Act. On August 24, DOC adopted nonsubstantive amendments to sections 1300.51.3 and 1300.52, Title 10 of the CCR, to require that license applications and amendments to license applications be sent to DOC's Sacramento office, to the attention of the Health Care Service Plan Division Filing Clerk.

On July 6, DOC denied a petition by the California Podiatric Medical Association (CPMA) requesting that the Commissioner adopt regulations to clarify and carry out provisions of Health and Safety Code section 1373.11, which provides that a HCSP which offers or provides one or more podiatry services, as defined in Business and Professions Code section 2472, as a specific podiatric plan benefit shall not refuse to give reasonable consideration to affiliation with podiatrists for the provision of service solely on the basis that they are podiatrists. The Commissioner denied the petition on the basis that clarification of section 1373.11's phrases "specific podiatric plan benefit" and "reasonable consideration to affiliation" would be more appropriately addressed by the California legislature. According to DOC, construing these terms "would likely result in increased government intervention into the business decisions of health care service plans as to who they contract with to provide health care services. Increased government intervention regarding health care service plan delivery system choices is a matter which should be decided by the legislature."

Further, DOC opined that the legislature intended that podiatrists and health care service plans would work out among themselves "reasonable consideration to affiliation." To that end, DOC met with representatives of CPMA and the HCSP industry in November 1991 and May 1992 to facilitate discussion between the HCSP industry and podiatrists on the issue. According to DOC, it has done "as much as is feasible to assist podiatrists in the marketplace. Now it is up to the podiatric industry to convince health care service plans of the benefits of including them in the provision of health care services to consumers."

Regulatory Action Under the Industrial Loan Law. On August 24, OAL approved nonsubstantive changes to section 1142.3, Title 10 of the CCR, requiring that a 200% reserve for losses be maintained for an investment certificate ratio of twenty to one.

LEGISLATION

SB 1753 (Killea). Existing law makes it a crime for any person to offer or sell in this state any security in an issuer or non-issuer transaction, unless the sale or security is either qualified or exempted. Under existing law, any security listed or approved for listing on a national securities exchange or designated or approved for designation as a national market system security on an interdealer quotation system by NASD is exempt if the exchange or interdealer quotation system has been certified, as specified. This bill provides that this exemption does not apply to securities listed or designated, or approved for listing or designation upon notice of issuance, in a rollup transaction, as defined, unless the rollup transaction is an eligible rollup transaction, as defined. This bill also provides that it does not apply to securities issued in rollup transactions completed prior to January 1, 1993.

Existing law makes it unlawful to offer or sell any security in specified issuer transactions unless qualified or exempted. Existing law exempts any exchange incident to a merger, consolidation, or sale of corporate assets in consideration of the issuance of securities of another corporation, unless at least 25% of the outstanding shares of any class, any holders of which are to receive securities in the exchange, are held by persons who have addresses in this state, as specified. This bill revises that exemption to instead exempt any exchange incident to a merger, consolidation, or sale of assets in consideration of the issuance of securities of another issuer. The bill provides that this exemption is not available for a rollup transaction or other transaction excluded from the definition of rollup transaction, as specified. Also, this bill adds and revises definitions of specified terms relating to securities law, and provides that it shall not operate to limit or impair the fiduciary responsibility of general partners or sponsors to limited partners.

SB 1753 was sponsored by the American Association of Limited Partners. Its purpose is to protect limited partners against potential abuses which occur when partnerships are "rolled up"—where one or more limited partnerships are merged into a new entity which is traded on a national securities exchange. This bill was signed by the Governor on September 29 (Chapter 1183, Statutes of 1992).

SB 1643 (Deddeh) exempts HCSPs that provide services solely to specified Medi-Cal beneficiaries from existing on-site medical survey requirements, upon the submission to the DOC Commissioner of the medical survey audit for the same period, conducted by DOC as part of the Medi-Cal contracting process, unless the Commissioner determines that an additional medical survey audit is required.

This bill also authorizes a HCSP that contracts with the state Department of Health Services (DHS) to make a written request that the Commissioner permit DHS to review that plan's examination report, and would authorize the Commissioner to allow DHS to review that report.

This bill was signed by the Governor on September 27 (Chapter 1021, Statutes of 1992).

SB 1331 (Russell). Existing law provides that a dissolved corporation nevertheless continues to exist for specified purposes; existing law also provides that shareholders may be sued in the corporate name of a dissolved corporation and provides for service of process against a dissolved corporation. For those purposes, this bill provides that a dissolved corporation includes one that has filed a certificate of dissolution, as specified, and for which the Franchise Tax Board has not yet, or never has, made the determination that all taxes have been paid or secured. This bill was signed by the Governor on July 13 (Chapter 789, Statutes of 1992).

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 166–68:

AB 2831 (Archie-Hudson) provides that any willful violation of the Check Seller, Bill Payer, and Proraters Law or any rules, orders, or regulations of the Commissioner of Corporations is punishable by a fine of not more than $10,000 or imprisonment in the state prison or in a county jail for not more than one year, or by both such fine and imprisonment. This bill also increases the bond required of check sellers from $10,000 to $500,000 and to $25,000 for other licensees, and permits 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 plan of business does not demonstrate that the proposed business will have a reasonable chance for a successful operation; if the proposed business is being formed for a purpose other than legitimate objectives; or if the proposed capital structure is inadequate. This bill also requires 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. This bill was signed by the Governor on September 22 (Chapter 869, Statutes of 1992).

SB 1815 (Dills) makes various technical and clarifying changes with respect to provisions applicable to personal property brokers and consumer finance lenders. This bill was signed by the Governor on September 26 (Chapter 977, Statutes of 1992).

SB 1727 (Beverly) provides 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. This bill was signed by the Governor on July 24 (Chapter 342, Statutes of 1992).

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. This bill provides 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. This bill was signed by the Governor on August 1 (Chapter 409, Statutes of 1992).

SB 1738 (Russell). Existing law provides for the delivery of escrow instructions to any person executing the same. This bill requires that, 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. This bill was signed by the Governor on July 13 (Chapter 194, Statutes of 1992).

AB 3161 (Conroy). Existing law prohibits any person who has been convicted of specified criminal violations, or 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. Among other things, this bill would have made those prohibitions against holding escrow positions applicable to criminal convictions, pleas of nolo contendere to specified crimes within the last ten years, and civil and administrative judgments within the past seven years based on specified conduct. This bill was vetoed by the Governor on September 30.

SB 1316 (Davis) requires a licensed escrow agent, in referring to the corporation's licensure in any communication, as specified, to use a specified statement, and requires the DOC Commissioner to enforce this provision by order. This bill was signed by the Governor on August 1 (Chapter 393, Statutes of 1992).

AB 2656 (Frizzelle). Under existing law, a 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. This bill would extend these provision to all HCSPs including specialized health care service plans, and would provide that certain provisions relating to overpayment of benefits apply to specialized HCSPs. This bill was signed by the Governor on September 17 (Chapter 747, Statutes of 1992).

SB 1002 (Watson) provides 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 also authorizes 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. This bill was signed by the Governor on July 11 (Chapter 175, Statutes of 1992).

SB 917 (Kopp) would have required certain HCSPs that propose 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. This bill was vetoed by the Governor on July 29.

AB 2083 (Felando) requires HCSPs, disability insurers, and nonprofit hospital service plans, upon rejecting a claim from a health care provider or a patient, and upon their demand, to disclose the specific rationale used in determining why the claim was rejected. This bill provides that

compensation of persons retained to review claims shall not be based on a percentage of the amount by which a claim is reduced for payment; the bill's restrictions do not apply to Medi-Cal. This bill was signed by the Governor on August 22 (Chapter 544, Statutes of 1992).

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. This bill additionally excludes 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. This bill was signed by the Governor on August 20 (Chapter 530, Statutes of 1992).

SB 506 (McCorquodale), which would have created the Department of State Banking and Savings and Loan, was vetoed by the Governor on September 30.

AB 3469 (T. Friedman) was amended to pertain solely to savings and loan institutions (*see infra* agency report on DEPARTMENT OF SAVINGS AND LOAN for related discussion).

The following bills died in committee: **SB 1552 (McCorquodale)**, which would have required the boards of specified corporations to establish at least two committees composed of independent directors to provide analysis and recommendations to the board concerning an audit of internal company operations and procedures and an evaluation of compensation of company officers and executives; **AB 3159 (Cannella)**, which would have authorized the Department of Consumer Affairs to license "financial planners," as defined; **AB 3827 (Conroy)**, which would have permitted a licensee or applicant 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; **AB 83 (Kelley)**, which would have reenacted provisions of law stating 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; **SB 488 (Mello)**, which would have specified that the comparable insurance or guaranty of shares acceptable to the Commissioner for specified purposes is to be provided by a guaranty corporation licensed pursuant to this bill; and **AB 1597 (Floyd)**, which would have permitted 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.

■ LITIGATION

On July 10, in one of the numerous lawsuits stemming from the failure of Lincoln Savings and Loan, a federal jury ordered financier Charles Keating, Jr., and three co-defendants to pay over $3 billion in damages for conspiring to defraud investors; specifically, the jury awarded the 20,000 class action plaintiffs $600 million in compensatory damages and $1.5 billion in punitive damages from Keating, and $1.4 billion in compensatory damages and $900 million in punitive damages from Keating's co-defendants. *[12:2&3 CRLR 169; 11:4 CRLR 130]* However, U.S. District Court Judge Richard Bilby had instructed the jury that it could not award punitive damages against any defendant other than Keating; it is unclear whether Judge Bilby will allow the $900 million award. Keating, already in prison on California criminal convictions stemming from the same activities, sent no lawyers to defend him in the damages phase of this civil proceeding, claiming that he could not afford to. Keating was scheduled to go on trial in Los Angeles in October on federal criminal charges of fraud, conspiracy, and racketeering stemming from the 1989 collapse of Lincoln.

DEPARTMENT OF INSURANCE

Commissioner: John Garamendi
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Toll-Free Complaint Number:
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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