lease, or sell beer kegs to a consumer who is unable to produce the specified information and identification. This bill is pending in the Assembly Governmental Organization Committee.

AB 286 (Floyd), as introduced January 22, would repeal the $5 surcharge currently imposed on alcoholic beverage licensees to fund the preparation and transmission of Designated Driver Program information sheets. This bill would also make declarations of legislative intent that the costs of preparing the information sheet and sending it to all on-sale licensees are to be funded by the California Highway Patrol and ABC as ordinary and usual operating expenses. This bill is pending in the Assembly Governmental Organization Committee.

AB 386 (Murray), as introduced January 30, would impose on and after March 1, 1991, a surtax at specified rates on beer, wine, champagne, hard cider, and distilled spirits, as specified, and an equivalent compensating floor stock tax on beer, wine, champagne, hard cider, and distilled spirits in the possession of licensed persons, as specified, on March 1, 1991. This bill, which would take effect immediately as a tax levy and would require the proceeds from the surtaxes to be deposited in the General Fund, is pending in the Assembly Revenue and Taxation Committee.

AB 374 (Floyd). Existing law prohibits the holder of an alcoholic beverage wholesaler's license from holding any ownership interest in any on-sale alcoholic beverage license, except in a county with a population not in excess of 15,000, where one person may hold a wholesaler's license and an on-sale license. As introduced January 30, this bill would increase the population of the county where the exception applies from 15,000 to 25,000. The bill is pending in the Assembly Governmental Organization Committee.

AB 432 (Floyd). Existing law requires an applicant for an alcoholic beverage license to post a notice of intention to engage in the sale of alcoholic beverages at any premises in a conspicuous place at the entrance to the premises. As introduced February 5, this bill would require a notice to be posted at each entrance if there is more than one entrance; if the premises are not yet built, the bill would require two waterproof notices to be posted on the property. This bill, which would specify the contents of the notice, is pending in the Assembly Governmental Organization Committee.

AB 542 (Bronzan), as introduced February 14, would increase excise taxes on the privilege of selling or possessing for sale beer, wine, and distilled spirits in an unspecified amount. The bill, which would take effect immediately as a tax levy, is pending in the Assembly Revenue and Taxation Committee.

AB 1246 (Murray) and *AB 1290 (Murray)*, as introduced March 6, each seek to impose, on and after July 1, 1991, a surtax at specified rates on beer, wine, and distilled spirits, and an equivalent compensating floor stock tax on beer, wine, and distilled spirits in the possession of licensed persons on March 1, 1991. These bills are pending in the Assembly Revenue and Taxation Committee.

AB 1438 (Archie-Hudson), as introduced March 7, would require that every container of alcoholic beverages sold in this state have affixed to the container a distinctive label or package that clearly distinguishes those beverages from nonalcoholic beverages; require that the labeling or packaging include the percentage of alcohol by volume; and prohibit the mislabeling of alcoholic beverages. This bill is pending in the Assembly Governmental Organization Committee.

AB 1738 (Chacon). Existing law authorizes ABC to impose reasonable conditions upon retail licensees or upon any licensee in the exercise of retail privileges in specified situations. As introduced March 8, this bill would additionally authorize ABC to impose reasonable conditions in the case where ABC makes certain findings that specified circumstances have occurred or that restrictions for the sale of certain types of alcoholic beverages would benefit the local community. This bill would permit conditions to be imposed at the time of renewal, upon notice and hearing, that may be based upon information obtained from allegations by individuals, hearings, independent investigation by the Department, or any combination thereof. This bill would also place the burden of proving grounds for placing conditions on a license on the party seeking the conditions. This bill is pending in the Assembly Governmental Organization Committee.

SB 22 (Kopp), as amended March 12, would increase specified fees, surcharges, and penalties imposed by ABC and would require ABC to adjust certain fees every third year, based on the change in the California consumer price index.

Existing law limits the maximum purchase price or consideration which may be paid for the transfer of certain on-sale general licenses and off-sale general licenses. This bill would increase the maximum purchase price or consideration that may be paid. This bill is pending in the Senate Governmental Organization Committee.

SB 737 (Killea), as introduced March 6, would authorize ABC to issue special on-sale beer and wine licenses to any performing arts theater or symphony association organized as a nonprofit corporation more than 90 days before the date of application. This bill is pending in the Senate Governmental Organization Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 1 (Winter 1991) at page 94:

AB 94 (Friedman), as introduced December 4, would, among other things, prohibit on and after January 1, 1992, the issuance or renewal of any club license to a club which makes any discrimination, distinction, or restriction for the purpose of membership against any person on account of the person's color, race, religion, ancestry, national origin, sex, or age. This bill is pending in the Assembly Governmental Organization Committee.

SB 21 (Marks), which would impose on and after March 1, 1991, a surtax at specified rates on beer, wine, and distilled spirits, and an equivalent compensating floor stock tax on beer, wine, and distilled spirits in the possession of licensed persons on March 1, 1991, is pending in the Senate Revenue and Taxation Committee.

SB 23 (Kopp) was substantially amended on March 4 and is no longer relevant to ABC.

LITIGATION:

On February 14, the California Supreme Court denied a petition for review of the Second District Court of Appeal's ruling in *Williams v. Saga Enterprises, Inc.*, No. B043922 (Nov. 15, 1990). The Second District held that a restaurant bartender's voluntary retention of a customer's car keys created a duty to protect third parties from the customer's drunk driving. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 95 for background information on the decision.)

BANKING DEPARTMENT

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

Pursuant to Financial Code section 200 *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 proposed name does not so closely resemble as to cause confusion 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 or relocation of branch offices and the establishment 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 travelers checks unless licensed. The superintendent also regulates the safe-deposit business.

The superintendent examines the condition of all licensees. However, as the result of the increasing number of banks and trust companies within the state and the reduced number of examiners following passage of Proposition 13, the superintendent now conducts examinations only when necessary, but at least once every two years. The Department is coordinating its examinations with the FDIC so that every other 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 all 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.

MAJOR PROJECTS:

Survey on Real Estate Investment Activities of Banks. The Department recently completed a survey of the real estate investment activities of state-chartered banks.

In January 1984, state-chartered banks in California were authorized in Financial Code section 751.3 to invest, with the approval of the Superintendent, in acquisition, development, construction, and management of real property. Because this legislation restricted real estate investments to subsidiary corporations, commercial banks owned by holding companies were unable to utilize the section 751.3 powers, since these powers were not permissible activities for bank holding companies. In July 1984, section 751.3 was amended to allow both real estate investment by a bank up to 100% of the bank's capital and real estate investments in subsidiaries up to 10% of its total assets, with the total amount of the bank's direct investments in real property never to exceed 10% of total assets. This change also clarified that it is legal for commercial banks owned by bank holding companies to engage in real property investments. The objective of SBD's survey was to reveal the extent to which California banks, since 1984, have exercised their so-called "expanded powers."

The survey reports that only 77 (or 28%) of the 270 California state-chartered banks currently have real estate investments pursuant to section 751.3. The aggregate investments by these banks in real estate activity under section 751.3 is a modest .86 of one percent of the total assets of all banks engaging in real property investments. Total real estate delinquencies of state-chartered banks rose from $955 million to $1.2 billion between 1989 and June 1990. Total real estate loans rose from $31 billion to $35 billion for the same period. Combining section 751.3 real estate investments with other real estate-related lending activities, 34.81% of the total assets of California state banks are invested in some type of real estate risk.

At a recent meeting with representatives of banks authorized to invest in real estate, Superintendent Gilleran stated that the findings of the survey indicate that although success is not guaranteed, banks exercising section 751.3 authorities are for the most part engaging in these activities in a conservative, safe, and profitable manner. He further stressed the procedures involved in securing the Department's approval to invest in real estate, and set forth the basic elements of a satisfactory plan of real property investment. In reference to the aggregate real estate risk of 34.81%, Gilleran did not discuss the point other than to note that this fact has caught the attention of stock market analysts and others.

1990 Performance of State-Chartered Banks. As of December 31, 1990, the 270 state-chartered banks with 1,730 branches had total assets of $103.3 billion, an increase of $1.7 billion (or 1.6%) from December 31, 1989. Gross loans for the same period rose 8.4% to $73.2 billion, while reserves for loan losses only rose 7.4% to $1.36 billion. Total equity capital rose 10.2% to a final year-end figure of $7.65 billion.

On a national level, the state bank failure rate for 1990 fell from 1989's rate of 1%. In 1990, 67 of the 9,003 state-chartered banks failed, for a failure rate of .74%. Further, 102 of the 4,172

national banks failed, at a failure rate of 2.44%. This rate decreased from a high of over 2.5% for 1989.

National Banking Law Reforms. At this writing, Congress is debating a Bush administration proposal which would accomplish the most sweeping overhaul of federal banking law since the 1930s. Under the proposal, industrial companies would be allowed to own banks, but insured deposits would be held in a separate affiliate to protect them against use for speculative ventures. Banks would also be permitted to underwrite corporate securities and sell mutual funds. Permission to allow banks to sell insurance would be left to the states where they operate or are chartered. Sixteen states (including California) now permit banks to sell insurance.

National banks would be able to open branches across state lines without restrictions, and to buy banks in other states more easily. Federal regulation of banks and savings and loans, now shared by four agencies, would be consolidated into two agencies. The Federal Reserve Board would oversee state-chartered banks. A new regulator under the U.S. Treasury Department, called the Federal Banking Agency, would oversee nationally chartered banks and savings associations.

Finally, deposit insurance would be limited to two accounts per bank per person, one of $100,000 and the other a retirement account of $100,000. Large depositors could still get wider coverage by having accounts at more than one bank.

According to Representative Henry B. Gonzalez (D-Texas), chair of the House Banking Committee, "The administration makes a mistake in proposing new and risky activities before the supervisory and insurance reforms are in place and working....This is the same cart-before-the-horse mentality which plagued the deregulation of the savings and loan industry in the early 1980s."

Absent from the Bush administration's proposal is a plan to bolster the insurance fund of the Federal Deposit Insurance Corporation (FDIC), which is projected to become insolvent by September 1992. The FDIC dwindled to $8.4 billion by the end of 1990, due to more than 1,000 bank failures since 1984. On February 28, FDIC chair William Seidman, speaking to the Subcommittee on Financial Institutions of the House Banking Committee, proposed to borrow up to $30 billion during the next four years in an effort to replenish the FDIC fund. Seidman estimated that the $30 billion, plus funds from increased FDIC insurance premiums imposed on banks, should provide the FDIC with $64.4 billion through 1995 to pay for any future bank failures. That includes anticipated premium income of $26 billion and the $8.4 billion in the fund at the end of 1990. Seidman's plan seeks congressional approval of a premium cap of 30 cents for every $100 in deposits, and the authority to levy the premium on a wider base of deposits as the means to repay the monies borrowed by the FDIC. Although Seidman emphasized that, unlike the bailout of the savings and loan industry, "this plan does not involve the taxpayers in any way," the increased FDIC insurance premium assessed on banks will obviously be passed on to depositors, borrowers, and other bank customers. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 11 for background information.)

In an effort to cover the fund's short-term cash needs, the FDIC board on February 28 voted to raise the annual insurance premium paid by banks from 19.5 cents to 23 cents for every $100 in deposits. This premium increase, effective July 1, 1991, does not require congressional approval.

LEGISLATION:

AB 1593 (Floyd), as introduced March 8, and *SB 506 (McCorquodale)*, as introduced February 26, would both transfer 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 both bills seek to create; both bills would abolish SBD. AB 1593 is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness and SB 506 is pending in the Senate Committee on Banking, Commerce and International Trade.

SB 893 (Lockyer), as introduced March 7, would authorize the establishment of the California Financial Consumers' Association, which would be a private, nonprofit public benefit corporation established to inform and advise consumers on financial service matters, represent and promote the interests of consumers in financial service matters, intervene as a party or otherwise participate on behalf of financial service consumers in any regulatory proceeding, sue on behalf of members in regard to any financial service matter, and take related actions. This bill would also impose campaign requirements for election of directors, including contribution and expenditure limits. The bill would require regulated financial institutions to enclose a prescribed notice in deposit account statements to consumers concerning the availability of membership in the association. This bill is pending in the Senate Banking Committee.

AB 938 (Speier), as introduced March 4, would require banks, savings associations, and credit unions to process credits to deposit accounts before processing debits, including fees for dishonored checks; require specified items drawn on an account with insufficient funds to be presented at least twice before the item is returned unpaid, unless otherwise requested by the customer who deposited the item; and limit the fees which financial institutions may charge for dishonored checks. This bill is pending in the Assembly Banking Committee.

AB 697 (Lancaster). Existing law requires the Superintendent to collect from each bank authorized to engage in the trust business, and from each corporation doing a departmental business as a title insurance company and as a trust company, to defray the cost of examination, an examination fee not to exceed $200 per diem, for each SBD examiner necessarily engaged in the examination of the trust company, trust business, or trust department. As introduced February 25, this bill would increase the permitted fee to $400. This bill is pending in the Assembly Banking Committee.

AB 696 (Lancaster). Existing law 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. As introduced February 25, this bill would increase that fee to $250. This bill is pending in the Assembly Banking Committee.

SB 949 (Vuich). Existing law provides that the failure of a bank or trust company to open a branch office within one year after the Superintendent 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 March 8, this bill would increase that fee to $300. This bill is pending in the Senate Banking Committee.

AB 1596 (Floyd). The California Public Records Act requires that records of state and local agencies be open to public inspection, with specified exceptions, including specified documents filed with state agencies responsible for the regulation or supervision of the issuance of securities or of financial institutions. As introduced March 8, this

bill would delete this exception from the Act, thus subjecting these records to disclosure. This bill is pending in the Assembly Governmental Organization Committee.

SB 950 (Vuich) and *AB 1463 (Hayden)*. 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 receipt. SB 950, as introduced March 8, and AB 1463, as introduced March 7, would instead require the statement to be furnished not later than five legal 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 bills would reduce the notice time from fifteen days prior to date of change or variance to ten legal 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. These bills 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. SB 950 is pending in the Senate Banking Committee and AB 1463 is pending in the Assembly Banking Committee.

AB 1195 (Lancaster), as introduced March 6, would provide 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. This bill is pending in the Assembly Banking Committee.

DEPARTMENT OF CORPORATIONS

Commissioner: Christine W. Bender
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The Department of Corporations is a part of the cabinet-level Business and Transportation 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 Cashiers 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:

Exemption From Non-Issuer Qualification Requirements. On January 24, Commissioner Bender announced that she has issued an order certifying the interdealer quotation system of the National Association of Security Dealers, Inc., in accordance with section 25101(a) of the Corporations Code. As a result of this certification, any security issued by a person which is the issuer of any security designated as a National Market System security on an interdealer quotation system by the National Association of Security Dealers, Inc., is exempt from the non-issuer qualification provisions of section 25130 of the Corporations Code, effective January 24.

Proposed Regulatory Action Under the Escrow Law. On February 1, the Commissioner announced her intent to add new section 1727 to the Department's regulations, to implement section 17202 of the Financial Code. That statute permits an escrow agency applicant or licensee to obtain, in lieu of a surety bond, an irrevocable letter of credit approved by the Commissioner. However, no statute currently sets forth the form to be used in obtaining the letter or instructions for completing the form.

New section 1727 would set forth the form and require that: the letter be a personal obligation of the owner(s) of the escrow company; there be a board of directors' resolution authorizing the person(s) to obtain the letter of credit for the escrow company; the letter of credit be issued by a California branch of a national bank or a California-chartered bank; the beneficiary be the Department of Corporations and any person(s) who may have a cause of action against the escrow company under the Escrow Law; payment be made to the Department